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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 $188.00 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.

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).

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*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 2. AGRICULTURE

PESTICIDE CONTROL BOARD

Initial Agency Notice

Title of Regulation: **2VAC20-51. Regulations Governing Pesticide Applicator Certification Under Authority of Virginia Pesticide Control Act.**

Statutory Authority: § 3.2-3906 of the Code of Virginia.

Name of Petitioner: Matt Crabbe, Crabbe Aviation, L.L.C.

Nature of Petitioner's Request: Requesting that the Virginia Pesticide Control Board prescribe additional experience requirements for certified commercial aerial applicators who are seeking to own and operate a commercial aerial pesticide application business. The petitioner proposes that the applicator have at least two years of experience in the field and a minimum of 300 hours performing actual aerial application.

Agency's Plan for Disposition of the Request: The Pesticide Control Board will consider this request at its July 15, 2010, quarterly meeting.

Public Comment Deadline: May 3, 2010.

Agency Contact: Roy E. Seward, Jr., Regulatory Coordinator, Department of Agriculture and Consumer Services, Oliver W. Hill, Sr., Building, 102 Governor Street, Richmond, VA 23219, telephone (804) 786-3535, or email roy.seward@vdacs.virginia.gov.

VA.R. Doc. No. R10-50; Filed March 19, 2010, 11:31 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Agency Decision

Title of Regulation: **22VAC40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Records.**

Statutory Authority: §§ 63.2-105 and 63.2-217 of the Code of Virginia.

Name of Petitioner: J. Thompson Shrader.

Nature of Petitioner's Request: Mr. Shrader, on behalf of the Amherst County Social Services Board, states: "...this regulation's revision to require the release of information unless doing so 'would be likely to' cause the harm set forth, will have the unintended consequence of placing child abuse and neglect victims at risk of further harm. Rather, the Amherst County Social Services Board suggests that the regulation should be further amended to permit the withholding of information even if it only 'may' cause such harm."

Agency Decision: Request denied.

Statement of Reasons for Decision: The Administration for Children and Families (ACF) advised the Department of Social Services by a letter dated June 2, 2009, that 22VAC40-190-100 B 3 b (2) did not make clear that local departments of social services do not have the discretion to withhold findings or information about a case of child abuse or neglect resulting in a child fatality or near fatality. ACF directed the State Board of Social Services (board) to make the regulatory language consistent with the Child Abuse and Prevention Treatment Act (CAPTA), which requires states to have procedures or provisions that allow the public to access findings or information about a child abuse or neglect case that results in the fatality or near fatality of a child. The regulation in question, 22VAC40-190-100, was changed to clarify that release of these findings or information is mandatory by changing "may" to "must." In a February 4, 2010, email message, ACF confirmed that to change "must" back to "may" would violate the requirements of CAPTA and would be contrary to ACF's direction to the board.

During the public comment period only two comments were received. The petitioner submitted comments in support of the petition. Commenter Jacklyn Trudell opposed the petition.

Agency Contact: Richard Martin, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7902, TDD (800) 828-1120, FAX (804) 726-7906, or email richard.martin@dss.virginia.gov.

VA.R. Doc. No. R10-31; Filed March 23, 2010, 9:43 a.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-960. Pertaining to Tautog (amending 4VAC20-960-47).**

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

Effective Date: April 1, 2010.

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

Summary:

The amendment changes the closed commercial fishing season for tautog to May 1 through November 12.

4VAC20-960-47. Commercial fishing season and possession limits.

The commercial fishing season shall be closed from ~~April 16 through October 2 and December 1 through December 15~~ May 1 through November 12, and it shall be unlawful for any person to possess tautog for commercial purposes during this period.

VA.R. Doc. No. R10-2350; Filed March 24, 2010, 10:29 a.m.

TITLE 7. ECONOMIC DEVELOPMENT

DEPARTMENT OF MINORITY BUSINESS ENTERPRISE

Final Regulation

REGISTRAR'S NOTICE: The Department of Minority Business Enterprise is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 2 of the Code of Virginia, which exempts regulations relating to the award or denial of state contracts, as well as decisions regarding compliance therewith.

Title of Regulation: **7VAC10-21. Regulations to Govern the Certification of Small, Women-, and Minority-Owned Businesses (amending 7VAC10-21-20, 7VAC10-21-130, 7VAC10-21-310).**

Statutory Authority: § 2.2-1403 of the Code of Virginia.

Effective Date: April 1, 2010.

Agency Contact: Paula Gentius, Esq., Executive Policy Advisor, Department of Minority Business Enterprise, 1111 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-1616, FAX (804) 786-9736, or email paula.gentius@dmbe.virginia.gov.

Summary:

This action revises the definition of "principal place of business" by requiring that the control of the business's day-to-day operations occur at the location for it to qualify as the principal place of business, consistent with the requirements for certification as a small, women-owned and minority-owned (SWaM) business. This action amends the definition of "Virginia-based business" and the certification eligibility requirements for out-of-state businesses to reflect the consistent use of one criterion, i.e., principal place of business. Finally, this action removes the prohibition on imposing a fee on a non-Virginia based business that is certified in another state as a SWaM to be so certified in Virginia, consistent with § 2.2-1403(8) of the Code of Virginia as amended by Chapter 869 of the 2009 Acts of Assembly.

7VAC10-21-20. Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context requires a different meaning:

"Affiliate" means a person effectively controlled by another person or under common control with a third person, including a branch, division, or subsidiary of a business, or under the Investment Company Act (15 USCA § 8a-2), a company in which there is ownership (direct or indirect) of 5.0% or more of the voting stock.

"Agent" means a person who (i) has the authority to act on behalf of a principal in transactions with third parties; (ii) is subject to the principal's control; and (iii) does not have title to the principal's property.

"Appeal" means a written request by an applicant to reconsider a denial or revocation of certification.

"Applicant" means any business that applies to the department for certification or recertification as a small, women-owned or minority-owned business.

"Application" means the documents the department requires the applicant to submit in the course of certification or recertification, including the application form the applicant submits under penalty of perjury, which may include any additional documentation that the department requests that the applicant submit, and any information or report that the department generates during or upon completion of an on-site visit.

"Broker" means a person who acts as an intermediary between a buyer and seller.

"Business" means any legal entity organized in the United States or a commonwealth or territory of the United States that regularly engages in lawful commercial transactions for profit.

"Certification" means the process by which a business is determined to be a small, women-owned or minority-owned business for the purpose of reporting small, women-owned and minority-owned business participation in state contracts and purchases pursuant to §§ 2.2-1404 and 2.2-1405 of the Code of Virginia.

"Certified" means the status accorded to an applicant upon the department's determination that the applicant has satisfied the requirements for certification as a small, women-owned or minority-owned business.

"Control" means the power to direct the operation and management of a business as evidenced through governance documents and actual day-to-day operation.

"Corporation" means a legal entity that is incorporated under the law of a state, the United States, or a commonwealth or territory of the United States.

"Day" means any day except Saturday, Sunday, and legal state holidays unless otherwise noted.

"Dealer" means a person or business that has the exclusive or nonexclusive authority to sell specified goods or services on behalf of another business.

"Department" means the Department of Minority Business Enterprise.

"Director" means the Director of the Department of Minority Business Enterprise or his designee.

"Expiration" means the date on which the director specifies that a certified business will cease to be certified.

"Franchise" means a contractual arrangement characterized by the authorization granted to someone to sell or distribute a company's goods or services in a certain area.

"Franchisee" means a business or group of businesses established or operated under a franchise agreement.

"Individual" means a natural person.

"Industry standard" or "standard in the industry" means the usual and customary practices in the delivery of products or services within a particular business sector.

"Joint venture" means a formal association of two or more persons or businesses for the purpose of carrying out a time-limited, single business enterprise for profit, in which the associated persons or businesses combine their property, capital, efforts, skills or knowledge, and in which the associated persons or businesses exercise control and management and share in profits and losses in proportion to their contribution to the business enterprise.

"Limited liability company" means a specific type of legal entity that is in compliance with the applicable requirements of the law of its state of formation.

"Manufacturer's representative" means an agent whose principal is a manufacturer or group of manufacturers.

"Minority individual(s)" means an individual(s) who is a citizen of the United States or a noncitizen who is in full compliance with United States immigration law and who satisfies one or more of the following definitions:

"African American" means a person having origins in any of the original peoples of Africa and who is regarded as such by the community of which this person claims to be a part.

"Asian American" means a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands, including but not limited to Japan, China, Vietnam, Samoa, Laos, Cambodia, Taiwan, Northern Mariana, the Philippines, a U.S. territory of the Pacific, India, Pakistan, Bangladesh, Sri Lanka and who is regarded as such by the community of which this person claims to be part.

"Hispanic American" means a person having origins in any of the Spanish-speaking peoples of Mexico, South or Central America, or the Caribbean Islands or other Spanish or Portuguese cultures and who is regarded as such by the community of which this person claims to be part.

"Native American" means a person having origins in any of the original peoples of North America and who is regarded as such by the community of which this person claims to be part or who is recognized by a tribal organization.

"On-site visit" means a visit by department representatives to the applicant's physical place(s) of business to verify the applicant's representations submitted to the department in the course of certification or recertification.

"Ownership" means an equity, partnership or membership interest in a business.

"Person" means a natural person or a business.

"Principal" means a person who contracts with another to act on the principal's behalf subject to the principal's control.

"Principal place of business" means the physical business location where natural persons who ~~manage~~ control the business's day-to-day operations spend most working hours.

"Partnership" means an association of two or more persons to carry on, as co-owners, a business for profit.

"Recertification" means the process by which a business applies to the department for renewed or continued status as a certified business.

"Record" means the materials submitted in support of an application for certification or recertification, which may include the application, supporting documentation, and additional materials obtained by the department in the course of the application, certification, or recertification process.

"Sole proprietorship" means a business the assets of which are wholly owned by a single natural person.

"Virginia-based business" means a business that ~~is organized in and~~ has its principal place of business in Virginia.

7VAC10-21-130. Eligible out-of-state business enterprise.

The department may certify a non-Virginia based business if:

1. It meets the applicable eligibility standards for certification as a small, women-owned or minority-owned business; and

2. The state in which the business ~~is incorporated or~~ has its principal place of business does not deny a like certification to a Virginia-based small, women-owned or minority-owned business or provide a preference to small, women-owned or minority-owned firms that is not available to Virginia-based businesses.

7VAC10-21-310. Procedures for initial certification of businesses previously certified by other qualifying local, state, private sector, or federal certification programs.

A. A Virginia-based business that has been certified as a small, women-owned or minority-owned business by a local, state, private sector or federal certification program determined by the department pursuant to Part V (7VAC10-21-400 et seq.) of this chapter to meet the minimum eligibility, ownership and control requirements shall be certified as a small, women-owned or minority-owned business in Virginia, without additional paperwork ~~or fee~~, upon presentation to the department of documentation that the business has received such certification, the certification has not expired and ownership and control of the applicant business remains unchanged since the certification was granted.

B. A business that is not based in Virginia that has been certified as a small, women-owned or minority-owned business by a local, state, private sector or federal certification program determined by the department pursuant to Part V (7VAC10-21-400 et seq.) of this chapter to meet the minimum eligibility, ownership and control requirements, shall be certified as a small, women-owned or minority-owned business in Virginia, without additional paperwork ~~or fee~~, upon presentation to the department of documentation that it has received such certification, the certification has not expired and ownership and control of the applicant business remains unchanged since the certification was granted only after the department determines that such certification would be available to Virginia-based businesses in the state in which the business is incorporated or has its principal place of business.

C. A business certified by the department under this section shall be certified for a period of three years unless:

1. The certification is revoked by the department or the program issuing the original certification;

2. The business is no longer in business; or

3. The business is no longer eligible as a small, women-owned or minority-owned business.

D. A business certified under this section is responsible for notifying the department of any change in legal structure, ownership, control, management, or status of the business or its certification within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification.

E. It shall be the responsibility of the certified business to notify the department of any change of name, address or contact information and to keep the department informed of its current address and contact information. Changes of name and address must be reported to the department in writing within 30 calendar days of such change. Failure to do so may be grounds for revocation of certification. The department shall not be liable or responsible if a certified business fails to receive notices, communications or correspondence based upon the certified business' failure to notify the department of any change of address or to provide correct address and contact information.

VA.R. Doc. No. R10-2195; Filed March 24, 2010, 10:28 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The following regulation filed by the State Water Control Board is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 9 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1, if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management (amending 9VAC25-630-10, 9VAC25-630-20, 9VAC25-630-30, 9VAC25-630-50, 9VAC25-630-80; adding 9VAC25-630-25).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.17:1.1 of the Code of Virginia.

Public Hearing Information:

May 13, 2010 - 7:30 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA

May 18, 2010 - 7:30 p.m. - Department of Environmental Quality, Valley Regional Office, 4411 Early Road, Harrisonburg, VA

Public Comment Deadline: June 11, 2010.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email betsy.bowles@deq.virginia.gov.

Summary:

The proposed action amends the existing Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management in order to reissue the regulation. The general permit first became effective on December 1, 2000, with a permit term of 10 years; therefore, the permit is due to expire on November 30, 2010. The proposal extends the expiration date to November 30, 2020; adds a section regarding duty to comply; and makes other changes for clarification. This regulation governs the management of poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys) and establishes utilization, storage, tracking, and accounting requirements related to poultry waste, including that transferred from poultry feeding operations.

The State Water Control Board will accept comments regarding 9VAC25-630-40, 9VAC25-630-60, and 9VAC25-630-70 even though the proposed action does affect these sections.

CHAPTER 630
VIRGINIA POLLUTION ABATEMENT ~~GENERAL PERMIT~~ REGULATION AND GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

9VAC25-630-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Agricultural storm water" means storm water that is not the sole result of land application of manure, litter or process wastewater. Where manure, litter or process wastewater has been applied in accordance with a nutrient management plan approved by the Virginia Department of Conservation and Recreation and in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of an animal feeding operation or under the control of a poultry waste end-user or poultry waste broker is an agricultural storm water discharge.

"Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where both of the following conditions are met:

1. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period; and

2. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the operation of the lot or facility.

Two or more animal feeding operations under common ownership are a single animal feeding operation for the purpose of determining the number of animals at an operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

"Confined animal feeding operation," for the purposes of this regulation, has the same meaning as an "animal feeding operation."

"Confined poultry feeding operation" means any confined animal feeding operation with 200 or more animal units of poultry. This equates to 20,000 chickens or 11,000 turkeys. These numbers are established regardless of animal age or sex.

"Department" means the Virginia Department of Environmental Quality.

"Director" means the Director of the Virginia Department of Environmental Quality or his designee.

"Fact sheet" means the document that details the requirements regarding utilization, storage, and management of poultry waste by poultry waste end-users and poultry waste brokers. The fact sheet is approved by the department, in consultation with the Department of Conservation and Recreation.

"Nutrient management plan" or "NMP" means a plan developed or approved by the Department of Conservation and Recreation that requires proper storage, treatment, and management of poultry waste, including dry litter, and limits accumulation of excess nutrients in soils and leaching or discharge of nutrients into state waters; except that for a poultry waste end-user or poultry waste broker who is not subject to the general permit the requirements of 9VAC25-630-80 constitute the NMP.

"Organic source" means any nutrient source including, but not limited to, manures, biosolids, compost, and waste or sludges from animals, humans, or industrial processes, but for the purposes of this regulation it excludes waste from wildlife.

"Permittee" means the poultry grower, poultry waste end-user, or poultry waste broker whose poultry waste management activities are covered under the general permit.

"Poultry grower" or "grower" means any person who owns or operates a confined poultry feeding operation.

"Poultry waste" means dry poultry litter and composted dead poultry.

"Poultry waste broker" or "broker" means a person who possesses or controls poultry waste that is not generated on an animal feeding operation under ~~their~~ his operational control and who transfers or hauls poultry waste to other persons. If the entity is defined as a broker they cannot be defined as a hauler for the purposes of this regulation.

"Poultry waste end-user" or "end-user" means any recipient of transferred poultry waste who stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial end use for an operation under his control.

"Poultry waste hauler" or "hauler" means a person who provides transportation of transferred poultry waste from one entity to another, and is not otherwise involved in the transfer or transaction of the waste, nor responsible for determining the recipient of the waste. The responsibility of the recordkeeping and reporting remains with the entities to which the service was provided: grower, broker, and end-user.

"Standard rate" means a land application rate for poultry waste approved by the board as specified in this regulation.

"Vegetated buffer" means a permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

9VAC25-630-20. Purpose; delegation of authority; effective date of permit.

A. This ~~general permit~~ regulation governs the management of poultry waste at confined poultry feeding operations not covered by a Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) permit and poultry waste utilized or stored by poultry waste end-users or poultry waste brokers. It establishes requirements for proper nutrient management, waste storage, and waste tracking and accounting of poultry waste.

B. The Director of the Department of Environmental Quality, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on December 1, ~~2000~~ 2010. This general permit will expire 10 years from the effective date.

9VAC25-630-25. Duty to comply.

A. Any person who manages or proposes to manage pollutants regulated by 9VAC25-630 shall comply with the applicable requirements of this chapter.

B. In order to manage pollutants from a confined poultry feeding operation, the poultry grower shall be required to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual VPA permit provided that the poultry grower has not been required to obtain a Virginia Pollutant Discharge Elimination System (VPDES) permit. The poultry grower shall comply with the requirements of this chapter and the permit.

C. Any poultry waste end-user or poultry waste broker shall comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80. Any poultry waste end-user or poultry waste broker who does not comply with the technical requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

D. Any poultry waste end-user or poultry waste broker who is required by the board to obtain coverage under the Virginia Pollution Abatement general permit shall obtain coverage and comply with the requirements of this chapter.

9VAC25-630-30. Authorization to manage pollutants.

A. Poultry grower. Any poultry grower governed by this general permit is hereby authorized to manage pollutants at confined poultry feeding operations provided that the poultry grower files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and ~~provided that~~:

1. The poultry grower has not been required to obtain a Virginia ~~Pollution~~ Pollutant Discharge Elimination System (VPDES) permit or an individual permit according to 9VAC25-32-260 B;

2. The activities of the confined poultry feeding operation shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law. There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

3. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit by a permittee for routine disposal of daily poultry mortalities shall be ~~considered~~ a violation of this permit. This prohibition shall not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia;

4. The poultry grower shall obtain Department of Conservation and Recreation ~~must approve~~ approval of a nutrient management plan for the confined poultry feeding operation prior to the submittal of the registration statement. The poultry grower shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan~~, and if the plan was written after December 31, 2005,~~ that ~~the plan~~ was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry grower shall implement the approved nutrient management plan;

5. Adjoining property notification.

a. Prior to filing ~~When a poultry grower files~~ a general permit registration statement for a confined poultry feeding operation that proposes construction of poultry growing houses after December 1, 2000, the poultry grower shall ~~also~~ give notice to all owners or residents of property that adjoins the property on which the proposed confined poultry feeding operation will be located. Such notice shall include (i) the types and maximum number of poultry which will be maintained at the facility and (ii) the address and phone number of the appropriate department regional office to which comments relevant to the permit may be submitted.

b. Any person may submit written comments on the proposed operation to the department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the director determines that the proposed operation will not be capable of complying with the provisions of the general permit, the director shall require the owner to obtain an individual permit for the operation. Any such determination by the director shall be made in writing and received by the poultry grower not more than 45 days after the filing of the registration statement or, if in the director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement; and

6. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted poultry growers shall complete a training program at least once every five years.

B. Poultry waste end-user, poultry waste broker. Any poultry waste end-user or poultry waste broker ~~who receives transferred poultry waste~~ shall comply with the requirements outlined in 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 ~~regarding utilization, storage, tracking, and accounting of poultry waste in his possession or under his control~~ or the general permit as applicable.

1. Any poultry waste end-user or poultry waste broker who does not comply with the requirements of 9VAC25-630-60, 9VAC25-630-70, and 9VAC25-630-80 may be required to obtain coverage under the general permit.

2. Any poultry waste end-user or poultry waste broker governed by this general permit is hereby authorized to manage pollutants relating to the utilization and storage of poultry waste provided that the poultry waste end-user or poultry waste broker files the registration statement of 9VAC25-630-40, complies with the requirements of 9VAC25-630-50, and ~~provided that~~:

a. The poultry waste end-user or poultry waste broker has not been required to obtain a Virginia Pollution Abatement individual permit according to subdivision 2 b of 9VAC25-32-260;

b. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia). There shall be no point source discharge of wastewater to surface waters of the state except in the case of a storm event greater than the 25-year, 24-hour storm. Agricultural storm water discharges are permitted. Domestic sewage or industrial waste shall not be managed under this general permit;

c. The poultry waste end-user or poultry waste broker shall obtain Department of Conservation and Recreation ~~must approve~~ approval of a nutrient management plan for land application sites where poultry waste will be utilized or stored and managed ~~by the poultry waste end-user or the poultry waste broker~~ prior to the submittal of the registration statement. The poultry waste end-user or the poultry waste broker shall attach to the registration statement a copy of the approved nutrient management plan and a copy of the letter from the Department of Conservation and Recreation certifying approval of the nutrient management plan~~, and if the plan was written after December 31, 2005,~~ that ~~the plan~~ was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia. The poultry waste end-user or the poultry waste broker shall implement the approved nutrient management plan; and

d. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All permitted end-users or permitted brokers shall complete a training program at least once every five years.

C. Receipt of this general permit does not relieve any poultry grower, poultry waste end-user, or poultry waste broker of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

9VAC25-630-50. Contents of the general permit.

Any poultry grower, poultry waste end-user, or poultry waste broker whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements therein and be subject to the VPA Permit Regulation, 9VAC25-32.

General Permit No. VPG2

Effective Date: December 1, ~~2000~~ 2010

~~Modification Date: January 1, 2006~~

~~Modification Date: January 1, 2010~~

Expiration Date: November 30, ~~2010~~ 2020

GENERAL PERMIT FOR POULTRY WASTE MANAGEMENT

AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the State Water Control Law and State Water Control Board regulations adopted pursuant thereto, owners of confined poultry feeding operations having 200 or more animal units, poultry waste end-users, and poultry waste brokers are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia, except where board regulations or policies prohibit such activities.

The authorized pollutant management activities shall be in accordance with the registration statement and supporting documents submitted to the Department of Environmental Quality, this cover page, and Part I—Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations and Part II—Conditions Applicable to All VPA Permits and Part III—Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Waste Brokers, as set forth herein.

Part I

Pollutant Management and Monitoring Requirements for Confined Poultry Feeding Operations

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the facility's approved nutrient management plan.

2. If poultry waste is land applied, it shall be applied at the rates specified in the facility's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the facility's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the facility's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. Analysis of soil and waste shall be according to methods specified in the facility's approved nutrient management plan.

6. All monitoring data required by Part I A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. The confined poultry feeding operation shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside of the growing house for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste; and

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a

result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ($1X10^{-6}$ centimeters per second).

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless the poultry grower has no land outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures. New, expanded or replacement poultry growing houses that are constructed after December 1, 2000, shall not be located within a 100-year floodplain unless they are part of an existing, ongoing confined poultry feeding operation and are constructed so that the poultry and poultry litter are housed above the 100-year flood elevation or otherwise protected from floodwaters through construction of berms or similar best management flood control structures.

4. Poultry waste may be transferred from a permitted poultry grower to another person without identifying the fields where such waste will be utilized in the permitted poultry grower's approved nutrient management plan if the following conditions are met:

a. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall provide that person with:

(1) Grower name, address, and permit number;

(2) A copy of the most recent nutrient analysis of the poultry waste; and

(3) A fact sheet.

b. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, the poultry grower shall keep a record of the following:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient analysis of the waste; and

(5) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

c. When a poultry grower transfers to another person more than 10 tons of poultry waste in any 365-day period, and the recipient of the waste is someone other than a broker, the poultry grower shall keep a record of the following:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code); and

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site.

d. Poultry growers shall maintain the records required by Part I B 4 a, b, and c for at least three years after the transaction and shall make them available to department personnel upon request.

e. Poultry waste generated by this facility shall not be applied to fields owned by or under the operational control of either the poultry grower or a legal entity in which the poultry grower has an ownership interest unless the fields are included in the facility's approved nutrient management plan.

5. Confined poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be ~~considered~~ a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

6. The poultry grower shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. ~~All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.~~ The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste generated by this facility will be applied by the poultry grower. The

location of fields as identified in Part I B 4 e shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the grower's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

7. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

8. Nitrogen application rates contained in the NMP shall ~~not exceed crop nutrient needs as determined by the Department of Conservation and Recreation~~ be established as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

9. ~~For all NMPs developed after October 1, 2001, and on or before December 31, 2005, phosphorus application rates shall not exceed the greater of crop nutrient needs or crop nutrient removal as determined by the Department of Conservation and Recreation. For all NMPs developed after December 31, 2005, phosphorus~~ Phosphorus application rates ~~shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written~~ contained in the NMP shall be established as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. The application of poultry waste shall be managed to minimize runoff and leaching and reduce adverse water quality impacts from phosphorous.

10. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice or snow covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

11. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists).

Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer.

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

12. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

13. Each poultry grower covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All poultry growers shall complete a training program at least once every five years.

Part II

Conditions Applicable to all VPA Permits

A. Monitoring.

1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.

2. Monitoring shall be conducted according to procedures listed under 40 CFR Part 136 unless other procedures have been specified in this permit.

3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The name of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The name of the individual(s) who performed the analyses;

e. The analytical techniques or methods used, with supporting information such as observations, readings, calculations and bench data; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit for a period of at least three years from the date of the sample, measurement, report or application. This period of retention may be extended by request of the board at any time.

C. Reporting monitoring results.

1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after the monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.

2. Monitoring results shall be reported on forms provided or specified by the department.

3. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant more frequently than required by the permit using approved analytical methods, the permittee shall report the results of this monitoring on the monitoring report.

4. If the permittee monitors the pollutant management activity, at a sampling location specified in this permit, for any pollutant that is not required to be monitored by the permit, and uses approved analytical methods, the permittee shall report the results with the monitoring report.

5. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the department, upon request, copies of records required to be kept by the permittee. Plans, specifications, maps, conceptual reports and other relevant information shall be submitted as requested by the board prior to commencing construction.

E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.

F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:

1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or

2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, or to animal or aquatic life, or to the use of such waters for domestic or industrial consumption, or for recreation, or for other uses.

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows (i) a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part II F or (ii) a discharge that may reasonably be expected to enter state waters in violation of Part II F shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

1. A description of the nature and location of the discharge;

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

6. If the discharge is continuing, how long it is expected to continue;

7. If the discharge is continuing, what the expected total volume of the discharge will be; and

8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.

Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part II I 2. Unusual and extraordinary discharges include but are not limited to any discharge resulting from:

1. Unusual spillage of materials resulting directly or indirectly from processing operations;

2. Breakdown of processing or accessory equipment;

3. Failure or taking out of service some or all of the treatment works; and

4. Flooding or other acts of nature.

I. Reports of noncompliance. The permittee shall report any noncompliance which may adversely affect state waters or may endanger public health.

1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information which shall be reported within 24 hours under this paragraph:

a. Any unanticipated bypass; and

b. Any upset which causes a discharge to surface waters.

2. A written report shall be submitted within five days and shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

The board may waive the written report on a case-by-case basis for reports of noncompliance under Part II I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.

3. The permittee shall report all instances of noncompliance not reported under Part II I 1 or 2 in writing at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part II I 2.

NOTE: The immediate (within 24 hours) reports required in Parts II F, G and H may be made to the department's regional office. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the design or operation of the pollutant management activity.

2. The permittee shall give at least 10 days advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

K. Signatory requirements.

1. Applications. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part II K 1, or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part II K 1;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with the State Water Control Law.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain a new permit. All permittees with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.

O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as provided in permit conditions on bypassing (Part II U), and upset (Part II V), nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall be responsible for the proper operation and maintenance of all treatment works, systems and controls which are installed or used to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any pollutant management activity in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted

activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of a treatment works. A bypass of the treatment works is prohibited except as provided herein.

2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, he shall notify the department promptly at least 10 days prior to the bypass. After considering its adverse effects, the board may approve an anticipated bypass if:

a. The bypass will be unavoidable to prevent loss of human life, personal injury, or severe property damage. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. "Severe property damage" does not mean economic loss caused by delays in production; and

b. There are no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated waste, or maintenance during normal periods of equipment downtime. However, if bypass occurs during normal periods of equipment downtime or preventive maintenance and in the exercise of reasonable engineering judgment the permittee could have installed adequate backup equipment to prevent such bypass, this exclusion shall not apply as a defense.

3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the department as soon as possible, but in no case later than 24 hours, and shall take steps to halt the bypass as early as possible. This notification will be a condition for defense to an enforcement action that an unplanned bypass met the conditions in paragraphs U 2 a and b and in light of the information reasonably available to the permittee at the time of the bypass.

V. Upset. A permittee may claim an upset as an affirmative defense to an action brought for noncompliance. In any enforcement proceedings a permittee shall have the burden of proof to establish the occurrence of any upset. In order to establish an affirmative defense of upset, the permittee shall present properly signed, contemporaneous operating logs or other relevant evidence that shows:

1. That an upset occurred and that the cause can be identified;

2. That the permitted facility was at the time being operated efficiently and in compliance with proper operation and maintenance procedures;

3. That the 24-hour reporting requirements to the department were met; and

4. That the permittee took all reasonable steps to minimize or correct any adverse impact on state waters resulting from noncompliance with the permit.

W. Inspection and entry. Upon presentation of credentials, any duly authorized agent of the board may, at reasonable times and under reasonable circumstances:

1. Enter upon any permittee's property, public or private and have access to records required by this permit;

2. Have access to, inspect and copy any records that must be kept as part of permit conditions;

3. Inspect any facility's equipment (including monitoring and control equipment) practices or operations regulated or required under the permit; and

4. Sample or monitor any substances or parameters at any locations for the purpose of assuring permit compliance or as otherwise authorized by the State Water Control Law.

For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is involved in managing pollutants. Nothing contained herein shall make an inspection unreasonable during an emergency.

X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause upon the request of the permittee or interested persons, or upon the board's initiative. If a permittee files a request for a permit modification, revocation, or termination, or files a notification of planned changes, or anticipated noncompliance, the permit terms and conditions shall remain effective until the request is acted upon by the board. This provision shall not be used to extend the expiration date of the effective VPA permit.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department. The board may require modification or revocation and reissuance of the permit to change the name of the permittee and to incorporate such other requirements as may be necessary. Except as provided in Part II Y 2, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified to reflect the transfer or has been revoked and reissued to the new owner or operator.

2. As an alternative to transfers under Part II Y 1, this permit shall be automatically transferred to a new permittee if:

a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property;

b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

c. The board does not, within the 30-day time period, notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

Z. Severability. The provisions of this permit are severable and, if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part III

Pollutant Management and Monitoring Requirements for Poultry Waste End-Users and Poultry Brokers

A. Pollutant management authorization and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to manage pollutants at the location or locations identified in the registration statement and the permittee's approved nutrient management plan.

2. If poultry waste is land applied on land under the permittee's operational control, it shall be applied at the rates specified in the permittee's approved nutrient management plan.

3. Soil at the land application sites shall be monitored as specified below. Additional soils monitoring may be required in the permittee's approved nutrient management plan.

SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

4. Poultry waste shall be monitored as specified below. Additional waste monitoring may be required in the permittee's approved nutrient management plan.

WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/3 years	Composite
Ammonia Nitrogen	NL	*	1/3 years	Composite
Total Phosphorus	NL	*	1/3 years	Composite
Total Potassium	NL	*	1/3 years	Composite
Moisture Content	NL	%	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

5. If waste from two or more poultry waste sources is commingled or stored then a sample that best represents the waste shall be used to calculate the nutrients available in the poultry waste for land application and shall be provided to the end-user of the waste.

6. Analysis of soil and waste shall be according to methods specified in the permittee's approved nutrient management plan.

7. All monitoring data required by Part III A shall be maintained on site in accordance with Part II B. Reporting of results to the department is not required; however, the monitoring results shall be made available to department personnel upon request.

B. Other requirements or special conditions.

1. Poultry waste storage facilities shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is ice covered, snow covered or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

2. Poultry waste shall be stored according to the approved nutrient management plan and in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste; and

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers must be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second).

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

3. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

4. When a poultry waste end-user or poultry waste broker receives, possesses, or has control over more than 10 tons of transferred poultry waste in any 365-day period, he shall provide the person from whom he received the poultry waste with:

a. The end-user or broker name, address, and permit number;

b. If the recipient of the poultry waste is an end-user, then he shall also provide the person from whom he received the poultry waste the following information:

(1) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(2) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site;

c. Written acknowledgement of receipt of:

(1) The waste;

(2) The nutrient analysis of the waste; and

(3) The fact sheet.

If the person receiving the waste is a poultry waste broker, then he shall also certify in writing that he will provide a copy of the nutrient analysis and fact sheet to each end user to whom he transfers poultry waste.

5. When a poultry waste broker transfers or hauls poultry waste to other persons, he shall provide the person who received the poultry waste with:

a. Broker name, address, and permit number;

b. The nutrient analysis of the waste; and

c. A fact sheet.

6. When a poultry waste end-user or poultry waste broker is a recipient of more than 10 tons of transferred poultry waste in any 365-day period, the poultry waste end-user or

poultry waste broker shall keep a record regarding the transferred poultry waste:

a. The following items shall be recorded regarding the source of the transferred poultry waste:

(1) The source name and address;

(2) The amount of poultry waste received from the source; and

(3) The date the poultry waste was acquired.

b. The following items shall be recorded regarding the recipient of the transferred poultry waste:

(1) The recipient name and address;

(2) The amount of poultry waste received by the person;

(3) The date of the transaction;

(4) The nutrient content of the waste;

(5) The locality in which the recipient intends to utilize the waste (i.e., nearest town or city and zip code);

(6) The name of the stream or waterbody if known to the recipient that is nearest to the waste utilization or storage site; and

(7) The signed waste transfer records form acknowledging the receipt of the following:

(a) The waste;

(b) The nutrient analysis of the waste; and

(c) A fact sheet.

7. End-users or brokers shall maintain the records required by Part III B 6 for at least three years after the transaction and make them available to department personnel upon request.

8. If poultry waste is also generated by this facility it shall not be applied to fields owned by or under the operational control of either the permittee or a legal entity in which the permittee has an ownership interest unless the fields are included in the permittee's approved nutrient management plan.

9. Poultry feeding operations that use disposal pits for routine disposal of daily mortalities shall not be covered under this general permit. The use of a disposal pit for routine disposal of daily poultry mortalities by a permittee shall be ~~considered~~ a violation of this permit. This prohibition does not apply to the emergency disposal of dead poultry done according to regulations adopted pursuant to § 3.2-6002 of the Code of Virginia or Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia.

10. The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. ~~All NMP's written after December 31, 2005, shall be developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.~~ The NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:

a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied by the permittee. The location of fields as identified in Part III B 8 shall also be included;

b. Site evaluation and assessment of soil types and potential productivities;

c. Nutrient management sampling including soil and waste monitoring;

d. Storage and land area requirements for the permittee's poultry waste management activities;

e. Calculation of waste application rates; and

f. Waste application schedules.

11. When the poultry waste storage facility is no longer needed, the permittee shall close it in a manner that: (i) minimizes the need for further maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the ground water, surface water, or the atmosphere. At closure, the permittee shall remove all poultry waste residue from the waste storage facility. At waste storage facilities without permanent covers and impermeable ground barriers, all residual poultry waste shall be removed from the surface below the stockpile when the poultry waste is taken out of storage. Removed waste materials shall be utilized according to the NMP.

12. Nitrogen application rates contained in the NMP shall ~~not exceed crop nutrient needs as determined by the Department of Conservation and Recreation~~ be established as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. The application of poultry waste shall be managed to minimize runoff, leachate, and volatilization losses, and reduce adverse water quality impacts from nitrogen.

13. Phosphorus application rates ~~shall conform solely to the Department of Conservation and Recreation's regulatory criteria and standards in effect at the time the NMP is written~~ contained in the NMP shall be established as stipulated in regulations promulgated pursuant to § 10.1-104.2 of the Code of Virginia. The application of poultry waste shall be managed to minimize runoff and leaching

and reduce adverse water quality impacts from phosphorous.

14. The timing of land application of poultry waste shall be according to the schedule contained in the NMP, except that no waste may be applied to ice- or snow-covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground within the NMP scheduled times only under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

15. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

16. The following records shall be maintained:

a. The identification of the land application field sites where the waste is utilized or stored;

b. The application rate;

c. The application dates; and

d. What crops have been planted.

These records shall be maintained on site for a period of three years after recorded application is made and shall be made available to department personnel upon request.

17. Each poultry waste end-user or poultry waste broker covered by this general permit shall complete a training program offered or approved by the department within one year of filing the registration statement for general permit coverage. All poultry waste end-users or poultry waste brokers shall complete a training program at least once every five years.

9VAC25-630-80. Utilization and storage requirements for transferred poultry waste.

A. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in the following sections.

B. Storage requirements. Any poultry waste end-user or poultry waste broker who receives poultry waste shall comply with the requirements outlined in this section regarding storage of poultry waste in their possession or under their control.

1. Poultry waste shall be stored in a manner that prevents contact with surface water and ground water. Poultry waste that is stockpiled outside for more than 14 days shall be kept in a facility or at a site that provides adequate storage. Adequate storage shall, at a minimum, include the following:

a. Poultry waste shall be covered to protect it from precipitation and wind;

b. Storm water shall not run onto or under the stored poultry waste;

c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored poultry waste. All poultry waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. "Seasonal high water table" means that portion of the soil profile where a color change has occurred in the soil as a result of saturated soil conditions or where soil concretions have formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these conditions first occur is termed the seasonal high water table. Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10-6 centimeters per second); and

d. For poultry waste that is not stored under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs.

2. Poultry waste storage facilities constructed after December 1, 2000, shall not be located within a 100-year floodplain unless there is no land available outside the floodplain on which to construct the facility and the facility

is constructed so that the poultry waste is stored above the 100-year flood elevation or otherwise protected from floodwaters through the construction of berms or similar best management flood control structures.

C. Land application requirements. Any poultry waste end-user or poultry waste broker who (i) receives five or more tons of poultry waste in any 365-day period and (ii) land applies poultry waste shall follow appropriate land application requirements as outlined in this section. The application of poultry waste shall be managed to minimize adverse water quality impacts.

1. The maximum application rates can be established by the following methods:

a. Phosphorus crop removal application rates can be used when:

(1) Soil test phosphorus levels do not exceed the values listed in the table below:

Region	Soil test P (ppm) VPI & SU Soil test (Mehlich I) *
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
* If results are from another laboratory the Department of Conservation and Recreation approved conversion factors must be used.	

(2) The phosphorus crop removal application rates are set forth by regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia.

b. Poultry waste may be applied to any crop at the standard rate of 1.5 tons per acre once every three years when:

(1) In the absence of current soil sample analyses and recommendations; and

(2) Nutrients have not been supplied by an organic source, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of poultry waste.

c. Soil test recommendations can be used when:

(1) Accompanied by analysis results for soil tests that have been obtained from the proposed field or fields in the last three years;

(2) ~~Provided by a laboratory whose procedures and recommendations are approved by the Department of Conservation and Recreation~~ The analytical results are from procedures in accordance with 4VAC5-15-150 A 2 f; and

(3) Nutrients from the waste application do not exceed the nitrogen or phosphorus recommendations for the proposed crop or double crops ~~listed on the soil test recommendation~~ in accordance with 4VAC5-15-150 A 2.

d. A nutrient management plan developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.

2. The timing of land application of poultry waste shall be appropriate for the crop, and in accordance with ~~regulations promulgated by the Department of Conservation and Recreation in accordance with § 10.1-104.2 of the Code of Virginia~~ 4VAC5-15-150 A 4, except that no waste may be applied to ice-covered or snow-covered ground or to soils that are saturated. Poultry waste may be applied to frozen ground under the following conditions:

a. Slopes are not greater than 6.0%;

b. A minimum of a 200-foot vegetative or adequate crop residue buffer is maintained between the application area and all surface water courses;

c. Only those soils characterized by USDA as "well drained" with good infiltration are used; and

d. At least 60% uniform cover by vegetation or crop residue is present in order to reduce surface runoff and the potential for leaching of nutrients to ground water.

3. Poultry waste shall not be land applied within buffer zones. Buffer zones at waste application sites shall, at a minimum, be maintained as follows:

a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling signs a waiver of the buffer zone);

b. Distance from water supply wells or springs: 100 feet;

c. Distance from surface water courses: 100 feet (without a permanent vegetated buffer) or 35 feet (if a permanent vegetated buffer exists). Other site-specific conservation practices may be approved by the department that will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot buffer;

d. Distance from rock outcropping (except limestone): 25 feet;

e. Distance from limestone outcroppings: 50 feet; and

f. Waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area.

D. Poultry waste end-users ~~or~~ and poultry waste brokers shall maintain the records demonstrating compliance with the requirements of subsections B and C for at least three years and make them available to department personnel upon request.

E. The activities of the poultry waste end-user or poultry waste broker shall not contravene the Water Quality Standards, as amended and adopted by the board, or any provision of the State Water Control Law (§ 62.1-44 et seq. of the Code of Virginia).

F. Any duly authorized agent of the board may, at reasonable times and under reasonable circumstances, enter any establishment or upon any property, public or private, for the purpose of obtaining information or conducting surveys or investigations necessary in the enforcement of the provisions of this regulation.

VA.R. Doc. No. R09-2006; Filed March 22, 2010, 12:36 p.m.

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: The following forms have been filed by the State Water Control Board. The forms are available for public inspection at the Department of Environmental Quality, 629 E. Main Street, Richmond, Virginia 23219 or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219. Copies of the forms may be obtained from Debra A. Miller, Policy Planning Specialist, 629 E. Main Street, Richmond, VA 23219, telephone (804) 698-4206, or email debra.miller@deq.virginia.gov.

Title of Regulation: **9VAC25-780. Local and Regional Water Supply Planning.**

FORMS (9VAC25-780)

Preparation and Submission of a Program (9VAC25-780-50) - Checklist, Form WSP-1 (eff. 03/10).

Existing Water Source and Water Use Data Entry Template, 9VAC25-780-70 and 9VAC25-780-80, Form WSP-2 (eff. 03/10).

Existing Resource Conditions (9VAC25-780-90) Checklist and Resources, Form WSP-3 (eff. 03/10).

Water Demand Management Information, 9VAC25-780-110, Form WSP-4 (eff. 03/10).

VA.R. Doc. No. R10-2314; Filed March 19, 2010, 9:37 a.m.

TITLE 14. INSURANCE

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: **14VAC5-350. Rules Governing Surplus Lines Insurance (amending 14VAC5-350-30, 14VAC5-350-90, 14VAC5-350-160, 14VAC5-350-165; repealing 14VAC5-350-100).**

Statutory Authority: §§ 12.1-13 and 38.2-223 of the Code of Virginia.

Effective Date: April 1, 2010.

Agency Contact: Keith Kelley, Supervisor-Administrative Tax, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9333, FAX (804) 371-9821, or email keith.kelley@scc.virginia.gov.

Summary:

The amendments update the rules, forms, and procedures used to administer Chapter 48 of Title 38.2 of the Code of Virginia, entitled Surplus Lines Insurance Law, and Chapter 6 of Title 38.2 of the Code of Virginia, entitled Insurance Information and Privacy Protection. The amendments delete the definitions and sections of the regulations relating to commercial insureds and diligent effort. The amendments are necessary due to the passage of Chapter 212 of the 2008 Acts of Assembly, which amended § 38.2-4806 of the Code of Virginia. No changes were made to the text of the regulations since publication of the proposed amendments.

AT RICHMOND, MARCH 17, 2010

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00225

Ex parte: In the matter of
Adopting Amendments to the Rules
Governing Surplus Lines Insurance

ORDER ADOPTING AMENDMENTS TO RULES

By Order to Take Notice entered December 17, 2009, all interested persons were ordered to take notice that subsequent to February 1, 2010, the State Corporation Commission

("Commission") would consider the entry of an order adopting proposed amendments to the regulations entitled Rules Governing Surplus Lines Insurance ("Regulations"), proposed by the Bureau of Insurance ("Bureau") which amend the Regulations at 14 VAC 5-350-30, 14 VAC 5-350-90, 14 VAC 5-350-100, 14 VAC 5-350-160, and 14 VAC 5-350-165, unless on or before February 1, 2010, any person objecting to the adoption of the proposed amendments to the Regulations filed a request for a hearing with the Clerk of the Commission ("Clerk"). The Bureau also recommended that Forms SLB 1, SLB 4, SLB 6, and SLB 10 be deleted and Forms 3001 and 4052 be added.

The Order to Take Notice also required all interested persons to file their comments in support of or in opposition to the proposed amendments to the Regulations on or before February 1, 2010.

There were no comments on the proposed amendments to the Regulations filed with the Clerk. There was no request for a hearing filed with the Clerk.

The Bureau does not recommend further changes to the proposed amendments to the Regulations, and further recommends that the amendments to the Regulations be adopted as proposed.

THE COMMISSION, having considered the Bureau's recommendation, is of the opinion that the attached proposed amendments to the Regulations should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to the Regulations entitled Rules Governing Surplus Lines Insurance at 14 VAC 5-350-30, 14 VAC 5-350-90, 14 VAC 5-350-100, 14 VAC 5-350-160, and 14 VAC 5-350-165 which are attached hereto and made a part hereof, should be, and they are hereby, ADOPTED to be effective April 1, 2010.

(2) AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the adoption of the amendments to the Regulations by mailing a copy of this Order, including a clean copy of the attached final amended Regulations, to all licensed group self-insurance associations, local government group self-insurance pools and certain interested parties designated by the Bureau.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with a copy of the amended Regulations, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations, and shall make available this Order and the amended Regulations on the Commission's website, http://www.scc.virginia.gov/case.

(4) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (2) above.

14VAC5-350-30. Definitions.

As used in this chapter:

"Admitted insurer" means an insurer licensed by the commission to do an insurance business in this Commonwealth.

"Authorized to write the insurance coverage sought" means that the admitted insurer is licensed for that class of insurance in this Commonwealth and has complied with the applicable provisions of Title 38.2 of the Code of Virginia concerning the filing of rules, rates and policy forms providing the insurance coverage sought, unless such insurance coverage has been exempted from filing by commission order.

"Business entity" means a partnership, limited partnership, limited liability company, corporation, or other legal entity other than a sole proprietorship.

"Class of insurance" means the classes enumerated in §§ 38.2-109 through 38.2-121 and §§ 38.2-124 through 38.2-134 of the Code of Virginia.

~~"Commercial insured" means an insured (i) who procures the insurance of any risk or risks by use of the services of a full-time employee acting as an insurance manager or buyer, (ii) whose aggregate annual premiums for insurance on all risks total at least $75,000, or (iii) who has at least 25 full-time employees.~~

~~"Diligent effort" means:~~

~~1. For business that is originated by a surplus lines broker, a good faith search for insurance among admitted insurers resulting in declinations of coverage by three unaffiliated admitted insurers licensed and authorized in this Commonwealth to write the insurance coverage sought, whether or not the surplus lines broker is an agent of any of the declining insurers; and~~

~~2. For business that is referred from a licensed property and casualty insurance agent, declinations or rejections of coverage by three insurers licensed in this Commonwealth to write the class of insurance, whether or not the surplus lines broker is an agent of any of the declining insurers.~~

"Eligible surplus lines insurer" means a nonadmitted insurer approved by the commission pursuant to subsection B of § 38.2-4811 of the Code of Virginia.

"Nonadmitted insurer" means an insurer not licensed to do an insurance business in this Commonwealth. "Nonadmitted insurer" includes insurance exchanges authorized under the laws of a state.

"Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.

"Solicit" or "negotiate" means the attempted selling or attempted placing of insurance or coverage, whether directly or indirectly, in this Commonwealth.

"Surplus lines broker" means an individual or business entity licensed pursuant to Article 5.1 (§ 38.2-1857.1 et seq.) of Chapter 18 of Title 38.2 of the Code of Virginia and thereby authorized to engage in the activities set forth in Chapter 48 (§ 38.2-4800 et seq.) of Title 38.2 of the Code of Virginia.

"Surplus lines insurance" means any insurance in this Commonwealth of risks resident, located or to be performed in this Commonwealth, permitted to be sold by or through a surplus lines broker from an eligible surplus lines insurer. Surplus lines insurance does not include reinsurance, insurance obtained directly from a nonadmitted insurer by the insured upon his own life or property, life insurance, credit life, industrial life, variable life, annuities, variable annuities, credit accident and sickness, credit insurance, title insurance, contracts of insurance on vessels or craft, their cargo, freight, marine builder's risk, maritime protection and indemnity, ship repairer's legal liability, tower's liability or other risks commonly insured under ocean marine insurance, and insurance of the rolling stock and operating properties of railroads used in interstate commerce or of any liability or other risks incidental to the ownership, maintenance or operation of such railroads.

"Unaffiliated" means admitted insurers who are not part of a group of insurers under common ownership or control.

14VAC5-350-90. Affidavit that insurance is unprocurable from licensed insurers.

A. Each surplus lines broker shall execute an affidavit on Form SLB-3 to accompany the quarterly report required by subsection ~~D~~ C of § 38.2-4806 of the Code of Virginia. ~~Each surplus lines broker shall also execute an affidavit on Form SLB-4 to accompany the annual report required by subsection A of § 38.2-4807 of the Code of Virginia.~~ The affidavit shall be a sworn statement, covering all of the policies reported by the broker on the accompanying quarterly ~~or annual~~ report, that such policies were procured by the broker in accordance with the applicable laws and rules governing surplus lines insurance in this Commonwealth.

B. The quarterly affidavit required under this section shall be filed with and received by the commission within the period specified in subsection A of § 38.2-4806 of the Code of Virginia. ~~The annual affidavit shall be filed by March 1 of each year.~~

C. If the insurance transaction involves insurance primarily for personal, family, or household needs rather than business or professional needs, the surplus lines broker must comply with the provisions of Chapter 6 (§ 38.2-600 et seq.) of Title 38.2 of the Code of Virginia by giving the prospective insured the required adverse underwriting decision notice as required by § 38.2-610 of the Code of Virginia. A copy of the executed adverse underwriting decision notice must be attached to the quarterly affidavit which covers the policy to which it applies.

14VAC5-350-100. ~~Commercial insured waiver of diligent effort.~~ (Repealed.)

~~A commercial insured as defined in this chapter may waive the requirement of a diligent effort being made by the surplus lines broker among companies licensed and authorized to write the class of insurance sought. The licensed surplus lines broker shall have the commercial insured sign the waiver notice required under subsection C of § 38.2-4806 of the Code of Virginia as prescribed in Form SLB-10. The signed waiver required under this section shall be attached to the quarterly affidavit forwarded to the commission as prescribed in 14VAC5-350-90. A copy of each signed waiver shall be retained by the surplus lines broker for the time period specified in 14VAC5-350-165.~~

14VAC5-350-160. Surplus lines broker to file annual report and remit outstanding premium tax and full amount of assessment due.

On or before the first day of March of each year every licensed surplus lines broker shall file with the commission a report as required by § 38.2-4807 of the Code of Virginia on ~~Forms SLB-4, SLB-6 (Parts 1-3), and~~ Form SLB-8 for the business conducted during the previous calendar year. The report prescribed in this section shall be verified and notarized. ~~In lieu of filing Form SLB-6 (Parts 1-3), a broker may file legible photocopies of the previously filed quarterly reports on Form SLB-5 (Parts 1-3) for the calendar year.~~

At the filing of the report, every licensed surplus lines broker shall remit to the commission any outstanding gross premium tax and the full assessment due as calculated on Form SLB-8. Such remittance shall be made payable to the Treasurer of Virginia. If a payment is made in an amount later found to be in error and an additional amount is due, the commission shall notify the surplus lines broker of the additional amount due, and the surplus lines broker shall pay such amount within 14 days of the date of the notice.

14VAC5-350-165. Records of surplus lines broker.

Each surplus lines broker shall retain in his office all of his records relative to insurance transactions, except that records of premium quotations that are not accepted by the insured or prospective insured need not be kept. ~~In addition, for each policy sold by him, the surplus lines broker shall make and keep a record of the rejections or declinations of coverage, which include the name of the declining admitted insurer, the representative of the admitted insurer responsible for rejecting or declining the coverage sought, and the date the coverage was rejected or declined by the admitted insurer.~~ The records ~~of each insurance transaction~~ shall be made available for inspection and subject to examination without notice by the

commission during normal business hours. Such records shall be retained for a period of not less than five years following termination of the policy.

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 (14VAC5-350)

Form ~~SLB-1~~ 3001, ~~Individual~~ Application for Individual Insurance License ~~for a Surplus Lines Broker, Part 1~~ (rev. ~~1/01)~~ [~~3/08)~~ 1/10)].

Form ~~SLB-1~~ 4052, Application for Business Entity ~~Application for~~ Insurance License ~~for a Surplus Lines Broker, Part 2~~ (rev. ~~1/01)~~ [~~3/08)~~ 1/10)].

Form SLB-2, Bond for Surplus Lines Insurance Broker (rev. ~~1/01)~~ 1/04).

Form SLB-3, Quarterly Combined Affidavit by Surplus Lines Broker (rev. ~~10/02)~~ 6/08).

~~Form SLB-4, Annual Combined Affidavit by Surplus Lines Broker (rev. 10/02).~~

Form SLB-5, Surplus Lines Quarterly Report (rev. 9/99).

~~Form SLB-6, Surplus Lines Annual Report (rev. 9/99).~~

Form SLB-7, Quarterly Gross Premiums Tax Report (rev. 9/99).

Form SLB-8, Annual Gross Premiums Tax Report (rev. ~~9/99)~~ 5/06).

Form SLB-9, Notice to Insured (eff. 9/96).

~~Form SLB-10, Commercial Insured Waiver (eff. 9/96).~~

VA.R. Doc. No. R10-2141; Filed March 17, 2010, 12:57 p.m.

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TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Notice of Extension of Public Comment Period

Title of Regulation: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-90, 16VAC25-60-240; adding 16VAC25-60-245).**

Statutory Authority: § 40.1-22 of the Code of Virginia.

Public Comment Deadline: May 12, 2010.

Notice is hereby given that, pursuant to § 2.2-4007.03 of the Code of Virginia, the Safety and Health Codes Board is extending the public comment period regarding 16VAC25-60, Administrative Regulation for the Virginia Occupational Safety and Health Program, published in 25:14 VA.R. 2638-2642 March 16, 2009, and soliciting additional comments on proposed changes made to 16VAC25-60-90 B since initial publication of the proposed regulations, as follows:

B. Interview statements of employers, owners, operators, agents, or employees given to the commissioner ~~in confidence~~ pursuant to § 40.1-49.8 of the Code of Virginia ~~shall not be disclosed for any purpose, except to the individual giving the statement~~ are confidential. Pursuant to the requirements set forth in § 40.1-11 of the Code of Virginia, individuals shall have the right to request a copy of their own interview statements.

The additional comment period ends on May 12, 2010. Public comment may be submitted to the agency contact listed below.

Agency Contact: Jay Withrow, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, or email jay.withrow@doli.virginia.gov.

VA.R. Doc. No. R08-1046; Filed March 19, 2010, 4:00 p.m.

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TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

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 Department of State Police will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **19VAC30-20. Motor Carrier Safety Regulations (amending 19VAC30-20-40, 19VAC30-20-80, 19VAC30-20-115, 19VAC30-20-150).**

Statutory Authority: § 52-8.4 of the Code of Virginia; 49 CFR Part 390.

Effective Date: May 12, 2010.

Agency Contact: Lieutenant Colonel Robert Kemmler, Regulatory Coordinator, Department of State Police, Bureau of Administrative and Support Services, P.O. Box 27472,

Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2234, or email robert.kemmler@vsp.virginia.gov.

Summary:

The amendments bring the Virginia Motor Carrier Regulations into compliance with the governing federal regulations, 49 CFR Part 390.

19VAC30-20-40. Application of regulations.

A. These regulations and those contained in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 386 Subpart G, 387, ~~and~~ 390 through 397, and 399 unless excepted, shall be applicable to all employers, employees, and commercial motor vehicles~~, which~~ that transport property or passengers in interstate and intrastate commerce.

B. These regulations shall not apply to hours worked by any carrier when transporting passengers or property to or from any portion of the Commonwealth for the purpose of (i) providing relief or assistance in case of earthquake, flood, fire, famine, drought, epidemic, pestilence, major loss of utility services or other calamity or disaster or (ii) engaging in the provision or restoration of utility services when the loss of such service is unexpected, unplanned or unscheduled. The suspension of the regulation provided for in § 52-8.4 A of the Code of Virginia shall expire if the Secretary of the United States Department of Transportation determines that it is in conflict with the intent of Federal Motor Carrier Safety Regulations.

Part III
Incorporation by Reference

Article 1
Compliance with Federal Regulations

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of January ~~2, 2009~~ 1, 2010, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 386 Subpart G, 387, ~~and~~ 390 through 397, and 399, which are incorporated in these regulations by reference, with certain exceptions, as set forth below.

19VAC30-20-115. Marking of commercial motor vehicles - § 390.21.

This section does not apply to private motor carriers operated wholly in intrastate commerce, except for private motor carriers subject to a hazardous materials safety permit pursuant to 49 CFR Part 385 Subpart E.

19VAC30-20-150. Waiver of certain physical defects - § 391.49.

A person who is not physically qualified to drive under 49 CFR 391.41(b)(1), (b)(2), (b)(3) or (b)(10), and is not subject to Article 7 (§ 10.1-1450 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia~~,~~ and Regulations Governing the Transportation of Hazardous Materials (9VAC20-110~~-10 et seq.~~), and ~~who~~ is otherwise qualified to drive a commercial motor vehicle~~,~~ may drive a commercial motor vehicle in intrastate commerce if granted a waiver by the commissioner. Intrastate drivers with a valid (L)(9) endorsement on their commercial driver's license will be deemed to be in compliance with this section and 49 CFR 391.49, even when the waiver is not in their possession.

VA.R. Doc. No. R10-2338; Filed March 25, 2010, 10:23 a.m.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Titles of Regulations: **21VAC5-10. General Administration - Securities Act (amending 21VAC5-10-40).**

21VAC5-20. Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer (amending 21VAC5-20-260, 21VAC5-20-280).

21VAC5-40. Exempt Securities (adding 21VAC5-40-170).

21VAC5-80. Investment Advisors (amending 21VAC5-80-10, 21VAC5-80-145, 21VAC5-80-160, 21VAC5-80-170, 21VAC5-80-200).

Statutory Authority: §§ 12.1-13 and 13.1-523 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: April 30, 2010.

Agency Contact: Timothy O'Brien, Chief Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email tim.obrien@scc.virginia.gov.

Summary:

The proposed amendments (i) define the term "solicitation"; (ii) clarify and create requirements for brokers-dealers and investment advisors to designate independent supervisors who will periodically review and physically inspect the activities of agent supervisors and investment advisor representatives; (iii) clarify the written procedures requirements imposed on brokers-dealers under the statutory and regulatory requirements of the Virginia Securities Act (Act) and these rules; (iv) reflect the name changes of the Institute for Credentialing Excellence; (v) preclude a broker-dealer from disclosing the identity, affairs, investments, or nonpublic personal information of a client to any third party, or making use of such prohibited disclosure as a recipient unless positively consented to by the client in writing; (vi) specify prohibited conduct that can subject a broker-dealer or agent to penalties or revocation of registration and enumerate types of prohibited dishonest and unethical practices by a broker-dealer or agent; (vii) limit solicitations and offers by a broker-dealer on behalf of an issuer in a private offering under § 13.1-514 B 7 a of the Act only to existing customers of the participating registered broker-dealer or its registered agent whose accounts have been in existence for an amount of time sufficient to evidence the customers' suitability for the investment; (viii) require the filing of a new form with an application to become a registered investment advisor; (ix) clarify the definition of "custody" by an investment advisor to include possession of the user ID and password of a client's retirement or securities accounts; (x) modify the requirement of those investment advisors required to send quarterly statements to their clients; (xi) replace references to § 13.1-502 of the Act with § 13.1-503 of the Act in deeming certain types of custody by an investment advisor to be violative of § 13.1-503 of the Act; (xii) modify the fee disclosure safeguard requirements of an investment advisor having custody of a client's funds; (xiii) clarify the exemption from safeguard requirements of those investment advisors having custody pursuant to appointment as trustees of a beneficial trust; (xiv) modify the requirement of an investment advisor having custody over client funds who is unable to use a qualified custodian as required under the rules to obtain specific written approval from the commission for such a custody arrangement; (xv) create additional client records requirements for investment advisors; (xvi) clarify the written procedures required to be maintained by an investment advisor; (xvii) include disclosure by an investment advisor of the identity, affairs, or investments of any client to any third party without the positive written consent of the client as an unethical business practice; and (xviii) clarify and identify specific types of prohibited advertising by an investment advisor.

AT RICHMOND, MARCH 23, 2010

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. SEC-2010-00022

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-523 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia, provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: http://www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission proposed revisions to Chapter 10, Chapter 20, Chapter 40, and Chapter 80 of Title 21 of the Virginia Administrative Code entitled "Rules and Forms Governing Virginia Securities Act" ("Rules").

Proposed amendment to Rule 21 VAC 5-10-40 creates a definition for the term "solicitation."

Proposed amendment to Rule 21 VAC 5-20-260 E clarifies the designation of an independent supervisor separate from the designated agent supervisor of a broker-dealer required under subsection C of that same Rule if the broker-dealer has designated more than one agent supervisor to periodically review the activities of agent supervisors and ensure the written procedures and compliance requirements are enforced through conducting annual physical inspections of each business office. Proposed amendment to Rule 21 VAC 5-80-170 E imposes a similar requirement on investment advisors having designated supervisors of investment advisor representatives required under Rule 21 VAC 5-80-170 C mandating the appointment of an independent supervisor to periodically review the activities of these designated supervisors.

Proposed amendment to Rule 21 VAC 5-20-260 D provides clarity to the requirements imposed on broker-dealers to comply with the statutory and regulatory requirements of the Act and the Rules, which includes, but is not limited to, the duties imposed in subsection D of this Rule.

Proposed amendment to Rule 21 VAC 5-20-280 A 26 b (2) updates the name change of the "National Commission for Certifying Agencies" to the "Institute for Credentialing Excellence."

Subsection A 27 is proposed to be added to Rule 21 VAC 5-20-280 to preclude a broker-dealer from disclosing the identity, affairs, investments, or non-public personal information of a client to any third party, or making use of such prohibited disclosure as a recipient unless positively consented to by the client in writing.

Rule 21 VAC 5-20-280 G is modified from specifying prohibited conduct that can subject a broker-dealer or agent to penalties or revocation of registration to enumerating types of prohibited dishonest and unethical practices by a broker-dealer or agent which include, but are not limited to, conduct involving forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, manipulative or deceptive practices or fraudulent course of business.

Subsection H is proposed to be added to Rule 21 VAC 5-20-280 to specify prohibited conduct and dishonest and unethical practices that can subject a broker-dealer or agent to penalties or revocation of registration.

Rule 21 VAC 5-40-170 is proposed to be added to Chapter 40 to limit solicitations and offers by a broker-dealer on behalf of an issuer in a private offering under § 13.1-514 B 7 a of the Act only to existing customers of the participating registered broker-dealer or its registered agent whose accounts have been in existence for an amount of time sufficient to evidence the customers' suitability for the investment.

Proposed amendments to Rule 21 VAC 5-80-10 B 11 and 21 VAC 5-80-160 A 22 require the filing of a new form with an application to become a registered investment advisor. Rule 21 VAC 5-80-10 B 12 is proposed to replace present Rule 21 VAC 5-80-10 B 11.

Proposed amendment to Rule 21 VAC 5-80-145 A 1 a (1) clarifies the definition of "custody" by an investment advisor to include possession of the user ID and password of a client's retirement or securities accounts.

Proposed amendment to Rule 21 VAC 5-80-145 B 1 replaces reference to § 13.1-502 of the Act with § 13.1-503 of the Act in deeming certain types of custody by an investment advisor to be violative of § 13.1-503 of the Act. Proposed amendment to Subsection B 1 d of this Rule is modified to make it a violation of § 13.1-503 of the Act for an investment advisor to fail to send, at least quarterly, statements of the qualified custodian account or proprietary account of a custodial client of an investment advisor. This same subsection is also modified to make it a violation of § 13.1-503 of the Act for an investment advisor having legal custody of a client's account under Rule 21 VAC 5-80-145 A 1 a (3) to fail to comply with the requirements of Subsection B 4 of this Rule.

Proposed amendments to Rule 21 VAC 5-80-145 B modify the fee disclosure safeguard requirements of an investment advisor having custody of a client's funds.

Proposed amendments to Rule 21 VAC 5-80-145 C 2 a (1) adds the term "unaffiliated" to modify the term "issuer." Proposed amendments to Rule 21 VAC 5-80-145 C 5 a clarify the exemption from the safeguard requirements of Rule 21 VAC 5-80-145 B for investment advisors having custody as trustees of a beneficial trust. Proposed amendments to Rule 21 VAC 5-80-145 C 5 b (2) and (3) update subsection references resulting from proposed changes.

Proposed amendments to Rule 21 VAC 5-80-145 C 6 modify the requirement of an investment advisor having custody over client funds that is unable to use a qualified custodian as defined under Rule 21 VAC 5-80-145 A 3 to obtain specific written approval from the Commission for such a custody arrangement.

Proposed amendment to Rule 21 VAC 5-80-160 B adds subsection 5 imposing additional records requirements for investment advisors having custody under Rule 21 VAC 5-80-145. Proposed amendment to Rule 21 VAC 5-80-160 E 4 updates subsection references resulting from proposed changes.

Proposed amendment to Rule 21 VAC 5-80-170 D adds the terms "to comply with the Act and associated regulations" to clarify the written procedures required to be maintained by an investment advisor having custody under this Rule.

Proposed amendments to Rules 21 VAC 5-80-200 A 14 and B 14 are modified to include the disclosure by an investment advisor of the identity, affairs, or investments of any client to any third party without the positive written consent of the client as an unethical business practice. Proposed amendments to Rule 21 VAC 5-80-200 A 18 b (2) and Rule 21 VAC 5-80-200 B 18 b (2) update the name change of the "National Commission for Certifying Agencies" to the "Institute for Credentialing Excellence."

Proposed amendment to Rule 21 VAC 5-80-200 B 13 identifies specific types of prohibited advertising by an investment advisor. The language prohibiting the publication, circulation or distribution of any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940 is deleted from this subsection.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of July 1, 2010. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who

specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request, and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by April 30, 2010. Any request for hearing that is received and granted by the Commission will be scheduled on May 12, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before April 30, 2010. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2010-00022. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) The proposed revisions shall be posted on the Commission's website: http://www.scc.virginia.gov/case and on the Division's website at http://www.scc.virginia.gov/srf. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail or e-mail.

(4) This Order, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be delivered by the Clerk of the Commission to the Division's Director, who shall forthwith provide notice of this Order via U.S. mail and e-mail to any interested persons as he may designate.

21VAC5-10-40. Definitions.

As used in this chapter, the following regulations and forms pertaining to securities, instructions and orders of the commission, the following meanings shall apply:

"Act" means the Securities Act contained in Chapter 5 (§ 13.1-501 et seq.) of Title 13.1 of the Code of Virginia.

"Applicant" means a person on whose behalf an application for registration or a registration statement is filed.

"Application" means all information required by the forms prescribed by the commission as well as any additional information required by the commission and any required fees.

"Bank Holding Company Act of 1956" (12 USC § 1841 et seq.) means the federal statute of that name as now or hereafter amended.

"Boiler room tactics" mean operations or high pressure tactics utilized in connection with the promotion of speculative offerings by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesmen or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives.

"Breakpoint" means the dollar level of investment necessary to qualify a purchaser for a discounted sales charge on a quantity purchase of open-end management company shares.

"Commission" means State Corporation Commission.

"Federal covered advisor" means any person who is registered or required to be registered under § 203 of the Investment Advisers Act of 1940 as an "investment adviser."

"Investment Advisers Act of 1940" (15 USC § 80b-1 et seq.) means the federal statute of that name as now or hereafter amended.

Notwithstanding the definition in § 13.1-501 of the Act, "investment advisor representative" as applied to a federal covered advisor only includes an individual who has a "place of business" (as that term is defined in rules or regulations promulgated by the SEC) in this Commonwealth and who either:

1. Is an "investment advisor representative" as that term is defined in rules or regulations promulgated by the SEC; or

2. a. Is not a "supervised person" as that term is defined in the Investment Advisers Act of 1940; and

b. Solicits, offers or negotiates for the sale of or sells investment advisory services on behalf of a federal covered advisor.

"Investment Company Act of 1940" (15 USC § 80a-1 et seq.) means the federal statute of that name as now or hereafter amended.

"NASAA" means the North American Securities Administrators Association, Inc.

"NASD" means the National Association of Securities Dealers, Inc., or its successor, the Financial Industry Regulatory Authority, Inc. (FINRA).

"Notice" or "notice filing" means, with respect to a federal covered advisor or federal covered security, all information required by the regulations and forms prescribed by the commission and any required fee.

"Registrant" means an applicant for whom a registration or registration statement has been granted or declared effective by the commission.

"SEC" means the United States Securities and Exchange Commission.

"Securities Act of 1933" (15 USC § 77a et seq.) means the federal statute of that name as now or hereafter amended.

"Securities Exchange Act of 1934" (15 USC § 78a et seq.) means the federal statute of that name as now or hereafter amended.

"Solicitation" means an offer to one or more persons by any of the following means or as a result of contact initiated through any of these means:

1. Television, radio, or any broadcast medium;

2. Newspaper, magazine, periodical, or any other publication of general circulation;

3. Poster, billboard, Internet posting, or other communication posted for the general public;

4. Brochure, flier, handbill, or similar communication, unless the offeror has a substantial preexisting business relationship or close family or personal relationship with each of the offerees;

5. Seminar or group meeting, unless the offeror has a substantial preexisting business relationship or close family or personal relationship with each of the offerees; or

6. Telephone, facsimile, mail, delivery service, or electronic communication, unless the offeror has a substantial preexisting business relationship or close family or personal relationship with each of the offerees.

NOTICE: The forms used in administering the above regulation are listed below. Any amended or added forms are reflected in the listing and are published following the listing.

FORMS (21VAC5-10)

Broker-Dealer and Agent Forms

Form BD—Uniform Application for Broker-Dealer Registration (2/98).

Form S.A.11—Broker-Dealer's Surety Bond (rev. 7/99).

Form S.A.2—Application for Renewal of a Broker-Dealer's Registration (rev. 7/99).

Form S.D.4—Application for Renewal of Registration as an Agent of an Issuer (1997).

Form S.D.4.A—Non-NASD Broker-Dealer or Issuer Agents to be Renewed Exhibit (1974).

Form S.D.4.B—Non-NASD Broker-Dealer or Issuer Agents to be Canceled with no disciplinary history (1974).

Form S.D.4.C—Non-NASD Broker-Dealer or Issuer Agents to be Canceled with disciplinary history (1974).

Form BDW—Uniform Notice of Termination or Withdrawal of Registration as a Broker-Dealer (rev. 4/89).

Rev. Form U—Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U—Uniform Termination Notice for Securities Industry Registration (11/97).

Investment Advisor and Investment Advisor Representative Forms

Form ADV—Uniform Application for Registration of Investment Advisors (rev. 1/01).

Form ADV-W—Notice of Withdrawal from Registration as an Investment Advisor (rev. 1/01).

Surety Bond Form (rev. 7/99).

Rev. Form U—Uniform Application for Securities Industry Registration or Transfer (11/97).

Rev. Form U—Uniform Termination Notice for Securities Industry Registration (11/97).

Form S.A.3—Affidavit for Waiver of Examination (rev. 7/99).

Form S.A.15—Investment Advisor Representative Multiple Employment Agreement (eff. 7/07).

Form S.A.16—Agent Multiple Employment Agreement (eff. 7/07).

Form IA XRF—Cross-Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure (eff. 7/10).

Securities Registration and Notice Filing Forms

Form U—Uniform Application to Register Securities (7/81).

Form U—Uniform Consent to Service of Process (7/81).

Form U-a—Uniform Form of Corporate Resolution (rev. 7/99).

Form S.A.4—Registration by Notification—Original Issue (rev. 11/96).

Form S.A.5—Registration by Notification—Non-Issuer Distribution (rev. 11/96).

Form S.A.6—Registration by Notification—Pursuant to 21VAC5-30-50 Non-Issuer Distribution "Secondary Trading" (1989).

Form S.A.8—Registration by Qualification (7/91).

Form S.A.10—Request for Refund Affidavit (Unit Investment Trust) (rev. 7/99).

Form S.A.12—Escrow Agreement (1971).

Form S.A.13—Impounding Agreement (rev. 7/99).

Form VA—Parts 1 and 2—Notice of Limited Offering of Securities (rev. 11/96).

Form NF—Uniform Investment Company Notice Filing (4/97).

CROSS REFERENCE BETWEEN ADV PART II, ADV PART 1A/1B, SCHEDULE F, CONTRACT and BROCHURE

Disclosure Description	PART II Item & section	PART 1A & B Item & section	Sch. F Page & paragraph	Contract* Page & paragraph	Brochure Page & paragraph
Name, Address & Telephone	Part II page 1	Part 1A, Item 1 A, F & F3			
Sole Proprietorship		Part 1A Item 3a and 1B 2 J (1)-(3)			
Advisory Services - General	Part II Item 1A(1)-(9)	Part 1A Item 5G			
Advisory Services – Financial Planning	Part II Item 1B	Part 1A Item 5G(1) & 5H			
Advisory Services – Wrap Fee Program	Part II Item 1, Schedule H & Brochure	Part 1A Item 5 I			
Advisory Services – Financial Planning	Part II Item 1B	Part 1B Item 2(H)			
Advisory Fees	Part II Item 1C	Part 1A Item 5E			
Complete description of all services	Part II Item 1D				
Types of Clients	Part II Item 2	Part 1A Item 5C&D			
Types of Investments	Part II Item 3(A)-(L)				
Types of Securities Analysis, Info, Strategies	Part II Item 4(A)				
Types of Securities Analysis, Info, Strategies	Part II Item 4(B)				
Types of Securities Analysis, Info, Strategies	Part II Item 4(C)				
Education/Business Standards	Part II Item 5				
Education/Business Background	Part II Item 6				
Other Business – Not Investment Advice	Part II Item 7A & B	Part 1A Item 6B(1) & (3)			

Other Business – Primary	Part II Item 7C	Part 1A Item 6B(2)			
Other Financial Industry Activities or Affiliations - BD	Part II Item 8A	Part 1A Item 6A(1)			
Other Financial Industry Activities or Affiliations - FCM, CPO, CTA	Part II Item 8B	Part 1A Item 6A(3)			
Other Financial Industry Activities or Affiliations - General	Part II Item 8C(1)-(12)	Part 1A Item 7A(1)-(11)			
Other Financial Industry Activities or Affiliations - Partnerships	Part II Item 8D	Part 1A Item 7B & 8B2			
Participation in Client Transactions - Principal	Part II Item 9A	Part 1A Item 8A(1)			
PART II – Item Header	PART II Item & section	PART 1A & B Item & section	Sch. F Page & paragraph	Contract* Page & paragraph	Brochure Page & paragraph
Participation in Client Transactions – BD/Agent Compensation	Part II Item 9B				
Participation in Client Transactions - Agency Cross Transactions	Part II Item 9C	Part 1A Item 8B(1)			
Participation in Client Transactions – Fin'l Interest	Part II Item 9D	Part 1A Item 8A(3) & B3			
Participation in Client Transactions – For Itself	Part II Item 9E	Part 1A Item 8A(2)			
Participation in Client Transactions – Code of Ethics	Part II Item 9				
Conditions for Managing Money	Part II Item 10				
Review of Accounts	Part II Item 11				
Investment or Brokerage Discretion	Part II Item 12A(1)	Part 1A Item 8C(1)			
Investment or Brokerage Discretion	Part II Item 12A(2)	Part 1A Item 8C(2)			
Investment or Brokerage Discretion	Part II Item 12A(3)	Part 1A Item 8C(3)			
Investment or Brokerage Discretion	Part II Item 12A(4)	Part 1A Item 8C(4)			

Investment or Brokerage Discretion - BD	Part II Item 12B	Part 1A Item 8D			
Additional Compensation – Soft Dollars	Part II Item 13A	Part 1A Item 8E			
Additional Compensation – Solicitors	Part II Item 13B	Part 1A Item 8F			
Custody of Funds – Balance Sheet	Part II Item 14	Part 1A Item 9A&B			
Custody of Funds – Balance Sheet	Part II Item 14	Part 1A Item 9 & Part 1B 2 i 3			

21VAC5-20-260. Supervision of agents.

A. A broker-dealer shall be responsible for the acts, practices, and conduct of its agents in connection with the sale of securities until such time as the agents have been properly terminated as provided by 21VAC5-20-60.

B. Every broker-dealer shall exercise diligent supervision over the securities activities of all of its agents.

C. Every agent employed by a broker-dealer shall be subject to the supervision of a supervisor designated by such broker-dealer. The supervisor may be the broker-dealer in the case of a sole proprietor, or a partner, officer, office manager or any qualified agent in the case of entities other than sole proprietorships. All designated supervisors shall exercise reasonable supervision over the securities activities of all of the agents under their responsibility.

D. As part of its responsibility under this section, every broker-dealer shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall (i) set forth the procedures adopted by the broker-dealer to comply with the Act and regulations, including but not limited to the following duties imposed by this section, and ~~shall~~ (ii) state at which business office or offices the broker-dealer keeps and maintains the records required by 21VAC5-20-240:

1. The review and written approval by the designated supervisor of the opening of each new customer account;

2. The frequent examination of all customer accounts to detect and prevent irregularities or abuses;

3. The prompt review and written approval by a designated supervisor of all securities transactions by agents and all correspondence pertaining to the solicitation or execution of all securities transactions by agents;

4. The review and written approval by the designated supervisor of the delegation by any customer of discretionary authority with respect to the customer's account to the broker-dealer or to a stated agent or agents of the broker-dealer and the prompt written approval of each discretionary order entered on behalf of that account; and

5. The prompt review and written approval of the handling of all customer complaints.

E. Every broker-dealer who has designated more than one supervisor pursuant to subsection C of this section shall designate from among its partners, officers, or other qualified agents, a person or group of persons, independent from the designated business supervisor or supervisors who shall:

1. Supervise and periodically review the activities of these supervisors designated pursuant to subsection C of this section; and

2. No less often than annually ~~inspect~~ conduct a physical inspection of each business office of the broker-dealer to insure that the written procedures and compliance requirements are enforced.

All supervisors designated pursuant to this subsection E shall exercise reasonable supervision over the supervisors under their responsibility to ensure compliance with this subsection.

21VAC5-20-280. Prohibited business conduct.

A. No broker-dealer shall:

1. Engage in a pattern of unreasonable and unjustifiable delays in the delivery of securities purchased by any of its customers or in the payment upon request of free credit balances reflecting completed transactions of any of its customers, or take any action that directly or indirectly interferes with a customer's ability to transfer his account; provided that the account is not subject to any lien for moneys owed by the customer or other bona fide claim, including, but not limited to, seeking a judicial order or decree that would bar or restrict the submission, delivery or acceptance of a written request from a customer to transfer his account;

2. Induce trading in a customer's account which is excessive in size or frequency in view of the financial resources and character of the account;

3. Recommend to a customer the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the customer based upon reasonable inquiry concerning the customer's investment objectives, financial situation, risk tolerance and needs, and any other relevant information known by the broker-dealer;

4. Execute a transaction on behalf of a customer without authority to do so or, when securities are held in a customer's account, fail to execute a sell transaction involving those securities as instructed by a customer, without reasonable cause;

5. Exercise any discretionary power in effecting a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time or price for the execution of orders;

6. Execute any transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the initial transaction in the account, or fail, prior to or at the opening of a margin account, to disclose to a noninstitutional customer the operation of a margin account and the risks associated with trading on margin at least as comprehensively as required by NASD Rule 2341;

7. Fail to segregate customers' free securities or securities held in safekeeping;

8. Hypothecate a customer's securities without having a lien thereon unless the broker-dealer secures from the customer a properly executed written consent promptly after the initial transaction, except as permitted by Rules of the SEC;

9. Enter into a transaction with or for a customer at a price not reasonably related to the current market price of a security or receiving an unreasonable commission or profit;

10. Fail to furnish to a customer purchasing securities in an offering, no later than the date of confirmation of the transaction, either a final prospectus or a preliminary prospectus and an additional document, which together include all information set forth in the final prospectus;

11. Introduce customer transactions on a "fully disclosed" basis to another broker-dealer that is not exempt under § 13.1-514 B 6 of the Act;

12. a. Charge unreasonable and inequitable fees for services performed, including miscellaneous services such as collection of moneys due for principal, dividends or interest, exchange or transfer of securities, appraisals, safekeeping, or custody of securities and other services related to its securities business;

b. Charge a fee based on the activity, value or contents (or lack thereof) of a customer account unless written disclosure pertaining to the fee, which shall include information about the amount of the fee, how imposition of the fee can be avoided and any consequence of late payment or nonpayment of the fee, was provided no later than the date the account was established or, with respect to an existing account, at least 60 days prior to the effective date of the fee;

13. Offer to buy from or sell to any person any security at a stated price unless the broker-dealer is prepared to purchase or sell at the price and under such conditions as are stated at the time of the offer to buy or sell;

14. Represent that a security is being offered to a customer "at a market" or a price relevant to the market price unless the broker-dealer knows or has reasonable grounds to believe that a market for the security exists other than that made, created or controlled by the broker-dealer, or by any person for whom he is acting or with whom he is associated in the distribution, or any person controlled by, controlling or under common control with the broker-dealer;

15. Effect any transaction in, or induce the purchase or sale of, any security by means of any manipulative, deceptive or fraudulent device, practice, plan, program, design or contrivance, which may include but not be limited to:

a. Effecting any transaction in a security which involves no change in the beneficial ownership thereof;

b. Entering an order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time and substantially the same price, for the sale of any security, has been or will be entered by or for the same or different parties for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security; however, nothing in this subdivision shall prohibit a broker-dealer from entering bona fide agency cross transactions for its customers;

c. Effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others;

16. Guarantee a customer against loss in any securities account of the customer carried by the broker-dealer or in any securities transaction effected by the broker-dealer with or for the customer;

17. Publish or circulate, or cause to be published or circulated, any notice, circular, advertisement, newspaper article, investment service, or communication of any kind

which purports to report any transaction as a purchase or sale of any security unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or which purports to quote the bid price or asked price for any security, unless the broker-dealer believes that the quotation represents a bona fide bid for, or offer of, the security;

18. Use any advertising or sales presentation in such a fashion as to be deceptive or misleading. An example of such practice would be a distribution of any nonfactual data, material or presentation based on conjecture, unfounded or unrealistic claims or assertions in any brochure, flyer, or display by words, pictures, graphs or otherwise designed to supplement, detract from, supersede or defeat the purpose or effect of any prospectus or disclosure;

19. Fail to make reasonably available upon request to any person expressing an interest in a solicited transaction in a security, not listed on a registered securities exchange or quoted on an automated quotation system operated by a national securities association approved by regulation of the commission, a balance sheet of the issuer as of a date within 18 months of the offer or sale of the issuer's securities and a profit and loss statement for either the fiscal year preceding that date or the most recent year of operations, the names of the issuer's proprietor, partners or officers, the nature of the enterprises of the issuer and any available information reasonably necessary for evaluating the desirability or lack of desirability of investing in the securities of an issuer. All transactions in securities described in this subdivision shall comply with the provisions of § 13.1-507 of the Act;

20. Fail to disclose that the broker-dealer is controlled by, controlling, affiliated with or under common control with the issuer of any security before entering into any contract with or for a customer for the purchase or sale of the security, the existence of control to the customer, and if disclosure is not made in writing, it shall be supplemented by the giving or sending of written disclosure at or before the completion of the transaction;

21. Fail to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether acquired as an underwriter, a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

22. Fail or refuse to furnish a customer, upon reasonable request, information to which the customer is entitled, or to respond to a formal written request or complaint;

23. Fail to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian, in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets;

24. Market broker-dealer services that are associated with financial institutions in a manner that is misleading or confusing to customers as to the nature of securities products or risks; ~~or~~

25. In transactions subject to breakpoints, fail to:

a. Utilize advantageous breakpoints without reasonable basis for their exclusion;

b. Determine information that should be recorded on the books and records of a member or its clearing firm, which is necessary to determine the availability and appropriateness of breakpoint opportunities; or

c. Inquire whether the customer has positions or transactions away from the member that should be considered in connection with the pending transaction, and apprise the customer of the breakpoint opportunities~~.~~;

26. Use a certification or professional designation in connection with the offer, sale, or purchase of securities, that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 26 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The ~~National Commission for Certifying Agencies~~ Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law~~.~~; or

27. Disclose the identity, affairs, investments, or nonpublic personal information as defined under the Securities and Exchange Act of 1934 (17 CFR 248.3 Definitions), of any client to any third party, or making use of as a recipient of such prohibited disclosure, unless positively consented to by the client, in writing.

B. No agent shall:

1. Engage in the practice of lending or borrowing money or securities from a customer, or acting as a custodian for money, securities or an executed stock power of a customer;

2. Effect any securities transaction not recorded on the regular books or records of the broker-dealer which the agent represents, unless the transaction is authorized in writing by the broker-dealer prior to execution of the transaction;

3. Establish or maintain an account containing fictitious information in order to execute a transaction which would otherwise be unlawful or prohibited;

4. Share directly or indirectly in profits or losses in the account of any customer without the written authorization of the customer and the broker-dealer which the agent represents;

5. Divide or otherwise split the agent's commissions, profits or other compensation from the purchase or sale of securities in this state with any person not also registered as an agent for the same broker-dealer, or for a broker-dealer under direct or indirect common control; or

6. Engage in conduct specified in subdivision A 2, 3, 4, 5, 6, 10, 15, 16, 17, 18, 23, 24, 25 ~~or,~~ 26 or 27 of this section.

C. It shall be deemed a demonstration of a lack of business knowledge by an agent insofar as business knowledge is required for registration by § 13.1-505 A 3 of the Act, if an agent fails to comply with any of the applicable continuing education requirements set forth in any of the following and such failure has resulted in an agent's denial, suspension, or revocation of a license, registration, or membership with a self-regulatory organization.

1. Schedule C to the National Association of Securities Dealers By-Laws, Part XII of the National Association of Securities Dealers, as such provisions existed on July 1, 1995;

2. Rule 345 A of the New York Stock Exchange, as such provisions existed on July 1, 1995;

3. Rule G-3(h) of the Municipal Securities Rulemaking Board, as such provisions existed on July 1, 1995;

4. Rule 341 A of the American Stock Exchange, as such provisions existed on July 1, 1995;

5. Rule 9.3A of the Chicago Board of Options Exchange, as such provisions existed on July 1, 1995;

6. Article VI, Rule 9 of the Chicago Stock Exchange, as such provisions existed on July 1, 1995;

7. Rule 9.27(C) of the Pacific Stock Exchange, as such provisions existed on July 1, 1995; or

8. Rule 640 of the Philadelphia Stock Exchange, as such provisions existed on July 1, 1995.

Each or all of the education requirements standards listed above may be changed by each respective entity and if so changed will become a requirement if the change does not materially reduce the educational requirements expressed above or reduce the investor protection provided by the requirements.

D. No person shall publish, give publicity to, or circulate any notice, circular, advertisement, newspaper article, letter, investment service or communication which, though not purporting to offer a security for sale, describes the security, for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

E. The purpose of this subsection is to identify practices in the securities business which are generally associated with schemes to manipulate and to identify prohibited business conduct of broker-dealers or sales agents.

1. Entering into a transaction with a customer in any security at an unreasonable price or at a price not reasonably related to the current market price of the security or receiving an unreasonable commission or profit.

2. Contradicting or negating the importance of any information contained in a prospectus or other offering materials with intent to deceive or mislead or using any advertising or sales presentation in a deceptive or misleading manner.

3. In connection with the offer, sale, or purchase of a security, falsely leading a customer to believe that the broker-dealer or agent is in possession of material, nonpublic information which would affect the value of the security.

4. In connection with the solicitation of a sale or purchase of a security, engaging in a pattern or practice of making contradictory recommendations to different investors of similar investment objective for some to sell and others to purchase the same security, at or about the same time, when not justified by the particular circumstances of each investor.

5. Failing to make a bona fide public offering of all the securities allotted to a broker-dealer for distribution by, among other things, (i) transferring securities to a customer, another broker-dealer or a fictitious account with the understanding that those securities will be returned to the broker-dealer or its nominees or (ii) parking or withholding securities.

6. Although nothing in this subsection precludes application of the general antifraud provisions against anyone for practices similar in nature to the practices discussed below, the following subdivisions a through f specifically apply only in connection with the solicitation of a purchase or sale of OTC (over the counter) unlisted non-NASDAQ equity securities:

a. Failing to advise the customer, both at the time of solicitation and on the confirmation, of any and all compensation related to a specific securities transaction to be paid to the agent including commissions, sales charges, or concessions.

b. In connection with a principal transaction, failing to disclose, both at the time of solicitation and on the confirmation, a short inventory position in the firm's account of more than 3.0% of the issued and outstanding shares of that class of securities of the issuer; however, subdivision 6 of this subsection shall apply only if the firm is a market maker at the time of the solicitation.

c. Conducting sales contests in a particular security.

d. After a solicited purchase by a customer, failing or refusing, in connection with a principal transaction, to promptly execute sell orders.

e. Soliciting a secondary market transaction when there has not been a bona fide distribution in the primary market.

f. Engaging in a pattern of compensating an agent in different amounts for effecting sales and purchases in the same security.

7. Effecting any transaction in, or inducing the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance including but not limited to the use of boiler room tactics or use of fictitious or nominee accounts.

8. Failing to comply with any prospectus delivery requirements promulgated under federal law or the Act.

9. In connection with the solicitation of a sale or purchase of an OTC unlisted non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under § 13 of the Securities Exchange Act when requested to do so by a customer.

10. Marking any order tickets or confirmations as unsolicited when in fact the transaction was solicited.

11. For any month in which activity has occurred in a customer's account, but in no event less than every three months, failing to provide each customer with a statement of account with respect to all OTC non-NASDAQ equity securities in the account, containing a value for each such security based on the closing market bid on a date certain;

however, this subdivision shall apply only if the firm has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued.

12. Failing to comply with any applicable provision of the Rules of Fair Practice of the NASD or any applicable fair practice or ethical standard promulgated by the SEC or by a self-regulatory organization approved by the SEC.

13. In connection with the solicitation of a purchase or sale of a designated security:

a. Failing to disclose to the customer the bid and ask price, at which the broker-dealer effects transactions with individual, retail customers, of the designated security as well as its spread in both percentage and dollar amounts at the time of solicitation and on the trade confirmation documents; or

b. Failing to include with the confirmation, the notice disclosure contained in subsection F of this section, except the following shall be exempt from this requirement:

(1) Transactions in which the price of the designated security is $5.00 or more, exclusive of costs or charges; however, if the designated security is a unit composed of one or more securities, the unit price divided by the number of components of the unit other than warrants, options, rights, or similar securities must be $5.00 or more, and any component of the unit that is a warrant, option, right, or similar securities, or a convertible security must have an exercise price or conversion price of $5.00 or more.

(2) Transactions that are not recommended by the broker-dealer or agent.

(3) Transactions by a broker-dealer: (i) whose commissions, commission equivalents, and mark-ups from transactions in designated securities during each of the preceding three months, and during 11 or more of the preceding 12 months, did not exceed 5.0% of its total commissions, commission-equivalents, and mark-ups from transactions in securities during those months; and (ii) who has not executed principal transactions in connection with the solicitation to purchase the designated security that is the subject of the transaction in the preceding 12 months.

(4) Any transaction or transactions that, upon prior written request or upon its own motion, the commission conditionally or unconditionally exempts as not encompassed within the purposes of this section.

c. For purposes of this section, the term "designated security" means any equity security other than a security:

(1) Registered, or approved for registration upon notice of issuance, on a national securities exchange and makes transaction reports available pursuant to 17 CFR 11Aa3-1 under the Securities Exchange Act of 1934;

(2) Authorized, or approved for authorization upon notice of issuance, for quotation in the NASDAQ system;

(3) Issued by an investment company registered under the Investment Company Act of 1940;

(4) That is a put option or call option issued by The Options Clearing Corporation; or

(5) Whose issuer has net tangible assets in excess of $4,000,000 as demonstrated by financial statements dated within no less than 15 months that the broker or dealer has reviewed and has a reasonable basis to believe are true and complete in relation to the date of the transaction with the person, and

(a) In the event the issuer is other than a foreign private issuer, are the most recent financial statements for the issuer that have been audited and reported on by an independent public accountant in accordance with the provisions of ~~17 CFR 210.2.02~~ 17 CFR 210.2-02 under the Securities Exchange Act of 1934; or

(b) In the event the issuer is a foreign private issuer, are the most recent financial statements for the issuer that have been filed with the SEC; furnished to the SEC pursuant to ~~17 CFR 241.12g3-2(b)~~ 17 CFR 240.12g3-2(b) under the Securities Exchange Act of 1934; or prepared in accordance with generally accepted accounting principles in the country of incorporation, audited in compliance with the requirements of that jurisdiction, and reported on by an accountant duly registered and in good standing in accordance with the regulations of that jurisdiction.

F. Customer notice requirements follow:

IMPORTANT CUSTOMER NOTICE-READ CAREFULLY

You have just entered into a solicited transaction involving a security which may not trade on an active national market. The following should help you understand this transaction and be better able to follow and protect your investment.

Q. What is meant by the BID and ASK price and the spread?

A. The BID is the price at which you could sell your securities at this time. The ASK is the price at which you bought. Both are noted on your confirmation. The difference between these prices is the "spread," which is also noted on the confirmation, in both a dollar amount and a percentage relative to the ASK price.

Q. How can I follow the price of my security?

A. For the most part, you are dependent on broker-dealers that trade in your security for all price information. You may be able to find a quote in the newspaper, but you should keep in mind that the quote you see will be for dealer-to-dealer transactions (essentially wholesale prices and will not necessarily be the prices at which you could buy or sell).

Q. How does the spread relate to my investments?

A. The spread represents the profit made by your broker-dealer and is the amount by which your investment must increase (the BID must rise) for you to break even. Generally, a greater spread indicates a higher risk.

Q. How do I compute the spread?

A. If you bought 100 shares at an ASK price of $1.00, you would pay $100 (100 shares X $1.00 = $100). If the BID price at the time you purchased your stock was $.50, you could sell the stock back to the broker-dealer for $50 (100 shares X $.50 = $50). In this example, if you sold at the BID price, you would suffer a loss of 50%.

Q. Can I sell at any time?

A. Maybe. Some securities are not easy to sell because there are few buyers, or because there are no broker-dealers who buy or sell them on a regular basis.

Q. Why did I receive this notice?

A. The laws of some states require your broker-dealer or sales agent to disclose the BID and ASK price on your confirmation and include this notice in some instances. If the BID and ASK were not explained to you at the time you discussed this investment with your broker, you may have further rights and remedies under both state and federal law.

Q. Where do I go if I have a problem?

A. If you cannot work the problem out with your broker-dealer, you may contact the Virginia State Corporation Commission or the securities commissioner in the state in which you reside, the United States Securities and Exchange Commission, or the National Association of Securities Dealers, Inc.

G. ~~Engaging in or having engaged~~ No broker-dealer or agent shall engage in any conduct ~~specified in subsection A, B, C, D, or E of this section, or other conduct such as~~ that constitutes a dishonest or unethical practice, including, but not limited to, forgery, embezzlement, nondisclosure, incomplete disclosure or misstatement of material facts, ~~or~~ manipulative or deceptive practices ~~shall be grounds under the Act for imposition of a penalty, denial of a pending application or refusal to renew or revocation of an effective registration~~, or fraudulent course of business.

H. No broker-dealer or agent shall engage in any conduct specified in subsection A, B, C, D, E, or G of this section which shall be grounds under the Act for imposition of a penalty, denial of a pending application, refusal to renew, revocation of an effective registration, or any other action the Act shall allow.

CHAPTER 40
EXEMPT SECURITIES AND TRANSACTIONS

21VAC5-40-170. Offerings conducted pursuant to § 13.1-514 B 7 a; broker-dealer participation and solicitation.

In accordance with § 13.1-514 B 7 a of the Act, an offer or sale by an issuer through a registered broker-dealer and its registered agents is deemed not to be made to the general public by advertisement or solicitation if the offerees are existing customers of the participating registered broker-dealer or its registered agent whose accounts have been in existence for an amount of time sufficient to evidence the customers' suitability for the investment. For purposes of this section, "solicitation" is defined in 21VAC5-10-40.

Part I
Investment Advisor Registration, Notice Filing for Federal Covered Advisors, Expiration, Renewal, Updates and Amendments, Terminations and Merger or Consolidation

21VAC5-80-10. Application for registration as an investment advisor and notice filing as a federal covered advisor.

A. Application for registration as an investment advisor shall be filed in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system and in full compliance with forms and regulations prescribed by the commission and shall include all information required by such forms.

B. An application shall be deemed incomplete for purposes of applying for registration as an investment advisor unless the following executed forms, fee and information are submitted:

1. Form ADV Parts I and II submitted to the IARD system.

2. The statutory fee in the amount of $200 submitted to the IARD system.

3. A copy of the client agreement.

4. A copy of the firm's supervisory and procedures manual as required by 21VAC5-80-170.

5. Copies of all advertising materials.

6. Copies of all stationery and business cards.

7. A signed affidavit stating that an investment advisor domiciled in Virginia has not conducted investment advisory business prior to registration, and for investment advisors domiciled outside of Virginia an affidavit stating

that the advisor has fewer than six clients in any prior 12-month period.

8. The following financial statements:

a. A trial balance of all ledger account;

b. A statement of all client funds or securities that are not segregated;

c. A computation of the aggregate amount of client ledger debit balances;

d. A statement as to the number of client accounts;

e. Financial statements prepared in accordance with generally accepted accounting principles that shall include a balance sheet, income statement, and statement of cash flow.

9. A copy of the firm's disaster recovery plan as required by 21VAC5-80-160 F.

10. At least one qualified individual must have a registration pending on the IARD system on behalf of the investment advisor prior to the grant of registration.

11. ~~Any other information the commission may require~~ Form IA XRF, "Cross-Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure."

12. Any other information the commission may require.

For purposes of this section, the term "net worth" means an excess of assets over liabilities, as determined by generally accepted accounting principles, but shall not include as assets: prepaid expenses (except as to items properly classified as assets under generally accepted accounting principles), deferred charges such as deferred income tax charges, goodwill, franchise rights, organizational expenses, patents, copyrights, marketing rights, unamortized debt discount and expense, all other assets of intangible nature, home furnishings, automobiles, and any other personal items not readily marketable in the case of an individual; advances or loans to stockholders and officers in the case of a corporation; and advances or loans to partners in the case of a partnership.

C. The commission shall either grant or deny each application for registration within 30 days after it is filed. However, if additional time is needed to obtain or verify information regarding the application, the commission may extend such period as much as 90 days by giving written notice to the applicant. No more than three such extensions may be made by the commission on any one application. An extension of the initial 30-day period, not to exceed 90 days, shall be granted upon written request of the applicant.

D. Every person who transacts business in this Commonwealth as a federal covered advisor shall file a notice as prescribed in subsection E of this section in compliance with all requirements of the Investment Advisor Registration Depository (IARD) system.

E. A notice filing for a federal covered advisor shall be deemed incomplete unless the following executed forms, fee and information are submitted:

1. Form ADV.

2. The statutory fee in the amount of $200 submitted to the IARD system.

Part III
Investment Advisor, Federal Covered Advisor and Investment Advisor Representative Regulations

21VAC5-80-145. Custody requirements for investment advisors.

A. For purposes of this section, the following definitions shall apply:

1. "Custody" means holding directly or indirectly, client funds or securities, or having any authority to obtain possession of them.

a. Custody includes:

(1) Possession of client funds or securities (which includes possession of the user ID and password of a client's retirement or securities accounts) unless received inadvertently and returned to the sender promptly, but in any case within three business days of receiving them;

(2) Any arrangement (including a general power of attorney) under which the investment advisor is permitted to withdraw client funds or securities maintained with a custodian upon the investment advisor's instruction to the custodian; and

(3) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company, or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives the investment advisor or the investment advisor's supervised person legal ownership of or access to client funds or securities.

b. Receipt of client's securities or checks drawn by clients and made payable to unrelated third parties will not meet the definition of custody if forwarded to the third party within 24 hours of receipt and the advisor maintains the following records:

(1) A ledger or other listing of all securities or funds held or obtained, including the following information:

(a) Issuer;

(b) Type of security and series;

(c) Date of issue;

(d) For debt instruments, the denomination, interest rate and maturity date;

(e) Certificate number, including alphabetical prefix or suffix;

(f) Name in which registered;

(g) Date given to the advisor;

(h) Date sent to client or sender;

(i) Form of delivery to client or sender, or copy of the form of delivery to client or sender; and

(j) Mail confirmation number, if applicable, or confirmation by client or sender of the fund's or security's return.

2. "Independent representative" means a person who:

a. Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership, members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle and by law or contract is obliged to act in the best interest of the advisory client or the limited partners, members, or other beneficial owners;

b. Does not control, is not controlled by, and is not under common control with the investment advisor; and

c. Does not have, and has not had within the past two years, a material business relationship with the investment advisor.

3. "Qualified custodian" means the following independent institutions or entities that are not affiliated with the advisor by any direct or indirect common control and have not had a material business relationship with the advisor in the previous two years:

a. A bank or savings association that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act, 12 USC § 1813;

b. A registered broker-dealer holding the client assets in customer accounts;

c. A registered futures commission merchant registered under § 4f(a) of the Commodity Exchange Act, 7 USC § 6f(a), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

d. A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

B. Requirements.

1. If the investment advisor is registered or required to be registered, it is unlawful and deemed to be a fraudulent, deceptive, or manipulative act, practice, or course of business under § ~~13.1-502~~ 13.1-503 of the Virginia Securities Act for the investment advisor to have custody of client funds or securities unless:

a. The investment advisor notifies the commission in writing that the investment advisor has or may have custody. Such notification is required on Form ADV submitted to the IARD system;

b. A qualified custodian maintains those funds and securities in a separate account for each client under that client's name or in accounts that contain only investment advisor's clients' funds and securities, under the investment advisor's name as agent or trustee for the clients;

c. If the investment advisor opens an account with a qualified custodian on his client's behalf, either under the client's name or under the investment advisor's name as agent, the investment advisor must notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information;

d. At least quarterly, the investment advisor sends ~~an~~ a copy of the qualified custodian's account statements or a proprietary account statement to each client for whom the investment advisor has custody of funds or securities, identifying the amount of funds and of each security of which the investment advisor has custody at the end of the period and setting forth all transactions during that period~~;~~ and if proprietary account statements are utilized or the advisor has custody pursuant to subdivision A 1 a (3) of this section and does not comply with subdivision 4 of this subsection;

(1) An independent certified public accountant verifies all client funds and securities by actual examination at least once during each calendar year at a time chosen by the accountant without prior notice or announcement to the advisor and that is irregular from year to year, and files a copy of the auditor's report and financial statements with the commission within 30 days after the completion of the examination, along with a letter stating that it has examined the funds and securities and describing the nature and extent of the examination~~.~~;

(2) The independent certified public accountant, upon finding any material discrepancies during the course of the examination, notifies the commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class

mail, directed to the attention of the Division of Securities and Retail Franchising.;

(3) If the investment advisor is a general partner of a limited partnership (or managing member of a limited liability company, or holds a comparable position for another type of pooled investment vehicle), the account statements required under subdivision 1 d of this subsection must be sent to each limited partner (or member or other beneficial owner or their independent representative).; and

(4) A client may designate an independent representative to receive, on his behalf, notices and account statements as required under subdivisions 1 c and d of this subsection.

2. An advisor who has custody as defined in subdivision A 1 a (2) of this section by having fees directly deducted from client accounts shall provide the following safeguards:

a. The investment advisor must have written authorization from the client to deduct advisory fees from the account held with the qualified custodian.

b. Each time a fee is directly deducted from a client account, the investment advisor must concurrently:

(1) Send Unless a qualified custodian is calculating the fee, send the qualified custodian an invoice of the amount of the fee to be deducted from the client's account; and

(2) Send the client an invoice itemizing the fee. Itemization includes the formula used to calculate the fee, the amount of assets under management the fee is based on, and the time period covered by the fee. The invoice will notify the client that the custodian will not be checking the accuracy of the fees and this responsibility is the client's.

c. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Schedule F of the Form ADV.

d. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (2) of this section and who complies with the safekeeping requirements in subdivisions 1 and 2 of this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180 and subdivisions 1 d (1) and (2) of this subsection provided the investment advisor sends a copy of the qualified custodian's account statements in accordance with subdivision 1 d of this subsection.

3. An investment advisor who has custody as defined in subdivision A 1 a (3) of this section and who does not meet the exception provided in subdivision C 3 of this section must, in addition to the safeguards set forth in subdivisions 1 a through d of this subsection, also comply with the following:

a. Hire an a qualified independent party to review all fees, expenses, and capital withdrawals from the pooled accounts.

b. Send all invoices or receipts to the qualified independent party, detailing the amount of the fee, expenses, or capital withdrawal and the method of calculation such that the qualified independent party can:

(1) Determine that the payment is in accordance with the pooled investment vehicle standards (generally the partnership agreement or membership agreement); and

(2) Forward, to the qualified custodian, approval for payment of the invoice with a copy to the investment advisor.

c. For purposes of this section, an a qualified independent party means a person who:

(1) Is engaged by an investment advisor to act as a financially qualified gatekeeper for the payment of fees, expenses, and capital withdrawals from the pooled investment (Examples would include an independent CPA or an attorney);

(2) Does not control and is not controlled by and is not under common control with the investment advisor, either directly or indirectly; and

(3) Does not have, and has not had within the past two years, a any other material business relationship with the investment advisor.

d. The investment advisor notifies the commission in writing that the investment advisor intends to use the safeguards provided above. Such notification is required to be given on Schedule F of the Form ADV.

e. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (3) of this section and who complies with the safekeeping requirements in subdivisions 1 and 3 of this subsection will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180 and subdivisions 1 d (1) and (2) of this subsection.

4. When a trust retains an investment advisor, investment advisor representative, or employee, director, or owner of an investment advisor as trustee, and the investment advisor acts as the investment advisor to that trust, the investment advisor shall:

a. Notify the commission in writing that the investment advisor intends to use the safeguards provided below.

Such notification is required to be given on Form ADV submitted to the IARD system.

b. Send to the grantor of the trust, the attorney for the trust if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at the same time that it sends any invoice to the qualified custodian, an invoice showing the amount of the trustees' fee or investment management or advisory fee, the value of the assets on which the fees were based, and the specific manner in which the fees were calculated. The invoice will notify the recipient that the custodian will not be checking the accuracy of the fees and that the responsibility is either the grantor's, trust's attorney's, co-trustee's or beneficiary's.

c. Enter into a written agreement with a qualified custodian that specifies the qualified custodian will not deliver trust securities to the investment advisor, any investment advisor representative or employee, director, or owner of the investment advisor, nor will transmit any funds to the investment advisor; any investment advisor representative or employee; director or owner of the investment advisor, except that the qualified custodian may pay trustees' fees to the trustee and investment management or advisory fees to investment advisor, provided that:

(1) The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust has authorized the qualified custodian in writing to pay those fees;

(2) The statements for those fees show the amount of the fees for the trustee and, in the case of statements for investment management or advisory fees, show the value of the trust assets on which the fee is based and the manner in which the fee was calculated; and

(3) The qualified custodian agrees to send to the grantor of the trust, the attorneys for a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, at least quarterly, a statement of all disbursements from the account of the trust, including the amount of investment management fees paid to the investment advisor and the amount of trustees' fees paid to the trustee.

d. Except as otherwise set forth in subdivision 4 d (1) of this subsection, the qualified custodian may transfer funds or securities, or both, of the trust only upon the direction of the trustee (who may be the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor), who the investment advisor has duly accepted as an authorized signatory. The grantor of the trust or attorneys for the trust, if it is a testamentary trust, the co-trustee (other than the investment advisor; investment advisor representative; or employee, director, or owner of the investment advisor); or a defined beneficiary of the trust, must designate the authorized signatory for management of the trust. The direction to transfer funds or securities, or both, can only be made to the following:

(1) To a trust company, bank trust department, or brokerage firm independent of the investment advisor for the account of the trust to which the assets relate;

(2) To the named grantors or to the named beneficiaries of the trust;

(3) To a third person independent of the investment advisor in payment of the fees or charges of the third person including, but not limited to:

(a) Attorney's, accountant's, or qualified custodian's fees for the trust; and

(b) Taxes, interest, maintenance, or other expenses, if there is property other than securities or cash owned by the trust;

(4) To third persons independent of the investment advisor for any other purpose legitimately associated with the management of the trust; or

(5) To a broker-dealer in the normal course of portfolio purchases and sales, provided that the transfer is made on payment against delivery basis or payment against trust receipt.

e. An investment advisor having custody solely because it meets the definition of custody as defined in subdivision A 1 a (3) of this section and who complies with the safekeeping requirements in subdivisions 1 and 4 of this subsection, will not be required to meet the financial requirements for custodial advisors as set forth in 21VAC5-80-180.

C. Exceptions.

1. With respect to shares of an open-end company as defined in § 5(a)(1) of the Investment Company Act of 1940, 15 USC § 80a-5(a)(1) (mutual fund), the investment advisor may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with subsection B of this section.

2. Certain privately offered securities.

a. An investment advisor is not required to comply with subsection B of this section with respect to securities that are:

(1) Acquired from the unaffiliated issuer in a transaction or chain of transactions not involving any public offering;

(2) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(3) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

b. Notwithstanding subdivision 2 a of this subsection, the provisions of subdivision 2 of this subsection are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, the audited financial statements are distributed, as described in subdivision 3 of this subsection and the investment advisor notifies the commission in writing that the investment advisor intends to provide audited financial statements, as described above. Such notification is required to be given on Schedule F of the Form ADV.

3. The investment advisor is not required to comply with subdivision B 1 ~~c~~ d (1) through (3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit at least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year. The investment advisor shall also notify the commission in writing that the investment advisor intends to employ the use of the audit safeguards described above. Such notification is required to be given on Schedule F of the Form ADV.

4. The investment advisor is not required to comply with this section with respect to the account of an investment company registered under the Investment Company Act of 1940, 15 USC §§ 80a-1 to 80a-64.

5. The investment advisor is not required to comply with safekeeping requirements of subsection B of this section or the net worth and bonding requirements of 21VAC5-80-180 if the investment advisor has custody solely because the investment advisor, investment advisor representative or employee, director, or owner of the investment advisor is a trustee for a beneficial trust, if all of the following conditions are met for each trust:

a. The beneficial owner of the trust is a parent, a grandparent, a spouse, a sibling, a child, ~~or~~ a grandchild, or other family relative designated as the legal beneficiary of the trustee. These relationships shall include "step" relationships.

b. For each account under subdivision 5 a of this subsection the investment advisor complies with the following:

(1) Provide a written statement to each beneficial owner of the account setting forth a description of the requirements of subsection B of this section and the reasons why the investment advisor will not be complying with those requirements.

(2) Obtain from each beneficial owner a signed and dated statement acknowledging the receipt of the written statement required under subdivision 5 ~~a~~ b (1) of this subsection.

(3) Maintain a copy of both documents described in subdivisions 5 ~~a~~ b (1) and (2) of this subsection until the account is closed or the investment advisor is no longer trustee.

6. Any investment advisor who intends to have custody of client funds or securities but is not able to utilize a qualified custodian as defined in subdivision A 3 of this section shall first obtain specific approval, in writing, from the commission and comply with all of the applicable safekeeping provisions under subsection B of this section including taking responsibility for those provisions that are designated to be performed by a qualified custodian.

21VAC5-80-160. Recordkeeping requirements for investment advisors.

A. Every investment advisor registered or required to be registered under the Act shall make and keep true, accurate and current the following books, ledgers and records, except an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. A journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger.

2. General and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts.

3. A memorandum of each order given by the investment advisor for the purchase or sale of any security, of any instruction received by the investment advisor from the client concerning the purchase, sale, receipt or delivery of a particular security, and of any modification or cancellation of any such order or instruction. The memoranda shall show the terms and conditions of the

order, instruction, modification or cancellation; shall identify the person connected with the investment advisor who recommended the transaction to the client and the person who placed the order; and shall show the account for which entered, the date of entry, and the bank, broker or dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated.

4. All check books, bank statements, canceled checks and cash reconciliations of the investment advisor.

5. All bills or statements (or copies of), paid or unpaid, relating to the business as an investment advisor.

6. All trial balances, financial statements prepared in accordance with generally accepted accounting principles which shall include a balance sheet, income statement and such other statements as may be required pursuant to 21VAC5-80-180, and internal audit working papers relating to the investment advisor's business as an investment advisor.

7. Originals of all written communications received and copies of all written communications sent by the investment advisor relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given; (ii) any receipt, disbursement or delivery of funds or securities; and (iii) the placing or execution of any order to purchase or sell any security; however, (a) the investment advisor shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment advisor, and (b) if the investment advisor sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment advisor shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if the notice, circular or advertisement is distributed to persons named on any list, the investment advisor shall retain with a copy of the notice, circular or advertisement a memorandum describing the list and the source thereof.

8. A list or other record of all accounts which list identifies the accounts in which the investment advisor is vested with any discretionary power with respect to the funds, securities or transactions of any client.

9. All powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment advisor, or copies thereof.

10. All written agreements (or copies thereof) entered into by the investment advisor with any client, and all other written agreements otherwise related to the investment advisor's business as an investment advisor.

11. A file containing a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media that the investment advisor circulates or distributes, directly or indirectly, to two or more persons (other than persons connected with the investment advisor), and if the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media recommends the purchase or sale of a specific security and does not state the reasons for the recommendation, a memorandum of the investment adviser indicating the reasons for the recommendation.

12. a. A record of every transaction in a security in which the investment advisor or any investment advisory representative of the investment advisor has, or by reason of any transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. For purposes of this subdivision 12, the following definitions will apply. The term "advisory representative" means any partner, officer or director of the investment advisor; any employee who participates in any way in the determination of which recommendations shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations:

(1) Any person in a control relationship to the investment adviser;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

"Control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with the company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of the ownership interest of a company shall be presumed to control the company.

c. An investment advisor shall not be deemed to have violated the provisions of this subdivision 12 because of his failure to record securities transactions of any investment advisor representative if the investment advisor establishes that it instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

13. a. Notwithstanding the provisions of subdivision 12 of this subsection, where the investment advisor is primarily engaged in a business or businesses other than advising investment advisory clients, a record must be maintained of every transaction in a security in which the investment advisor or any investment advisory representative of such investment advisor has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (i) transactions effected in any account over which neither the investment advisor nor any investment advisory representative of the investment advisor has any direct or indirect influence or control; and (ii) transactions in securities which are direct obligations of the United States. The record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. The record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment advisor or investment advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected.

b. An investment advisor is "primarily engaged in a business or businesses other than advising investment advisory clients" when, for each of its most recent three fiscal years or for the period of time since organization, whichever is less, the investment advisor derived, on an unconsolidated basis, more than 50% of (i) its total sales and revenues, and (ii) its income (or loss) before income taxes and extraordinary items, from such other business or businesses.

c. For purposes of this subdivision 13, the following definitions will apply. The term "advisory representative," when used in connection with a company primarily engaged in a business or businesses other than advising investment advisory clients, means any partner, officer, director or employee of the investment advisor who participates in any way in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which securities are being recommended prior to the effective dissemination of the recommendations; and any of the following persons, who obtain information concerning securities recommendations being made by the investment advisor prior to the effective dissemination of the recommendations or of the information concerning the recommendations:

(1) Any person in a control relationship to the investment advisor;

(2) Any affiliated person of a controlling person; and

(3) Any affiliated person of an affiliated person.

d. An investment advisor shall not be deemed to have violated the provisions of this subdivision 13 because of his failure to record securities transactions of any investment advisor representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

14. A copy of each written statement and each amendment or revision, given or sent to any client or prospective client of such investment advisor in accordance with the provisions of 21VAC5-80-190 and a record of the dates that each written statement, and each amendment or revision, was given, or offered to be given, to any client or prospective client who subsequently becomes a client.

15. For each client that was obtained by the advisor by means of a solicitor to whom a cash fee was paid by the advisor, the following:

a. Evidence of a written agreement to which the advisor is a party related to the payment of such fee;

b. A signed and dated acknowledgement of receipt from the client evidencing the client's receipt of the investment advisor's disclosure statement and a written disclosure statement of the solicitor; and,

c. A copy of the solicitor's written disclosure statement. The written agreement, acknowledgement and solicitor disclosure statement will be considered to be in compliance if such documents are in compliance with Rule 275.206(4)-3 of the Investment Advisers Act of 1940.

For purposes of this regulation, the term "solicitor" means any person or entity who, for compensation, acts as an agent of an investment advisor in referring potential clients.

16. All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including but not limited to electronic media that the investment advisor circulates or distributes directly or indirectly, to two or more persons (other than persons connected with the investment advisor); however, with respect to the performance of managed accounts, the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this subdivision.

17. A file containing a copy of all written communications received or sent regarding any litigation involving the investment advisor or any investment advisor representative or employee, and regarding any written customer or client complaint.

18. Written information about each investment advisory client that is the basis for making any recommendation or providing any investment advice to the client.

19. Written procedures to supervise the activities of employees and investment advisor representatives that are reasonably designed to achieve compliance with applicable securities laws and regulations.

20. A file containing a copy of each document (other than any notices of general dissemination) that was filed with or received from any state or federal agency or self regulatory organization and that pertains to the registrant or its investment advisor representatives, which file should contain, but is not limited to, all applications, amendments, renewal filings, and correspondence.

21. Any records documenting dates, locations and findings of the investment advisor's annual review of these policies and procedures conducted pursuant to subdivision E 2 of 21VAC5-80-170.

22. Form IA XRF, "Cross-Reference Between ADV Part II, ADV Part 1A/1B, Schedule F, Contract and Brochure."

B. If an investment advisor subject to subsection A of this section has custody or possession of securities or funds of any client, the records required to be made and kept under subsection A of this section shall also include:

1. A journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and credits to the accounts.

2. A separate ledger account for each client showing all purchases, sales, receipts and deliveries of securities, the date and price of each purchase and sale, and all debits and credits.

3. Copies of confirmations of all transactions effected by or for the account of any client.

4. A record for each security in which any client has a position, which record shall show the name of each client having any interest in each security, the amount or interest of each client, and the location of each security.

5. A copy of any records required to be made and kept under 21VAC5-80-145.

C. Every investment advisor subject to subsection A of this section who renders any investment advisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment advisor, make and keep true, accurate and current:

1. Records showing separately for each client the securities purchased and sold, and the date, amount and price of each purchase and sale.

2. For each security in which any client has a current position, information from which the investment advisor can promptly furnish the name of each client and the current amount or interest of the client.

D. Any books or records required by this section may be maintained by the investment advisor in such manner that the identity of any client to whom the investment advisor renders investment advisory services is indicated by numerical or alphabetical code or some similar designation.

E. Every investment advisor subject to subsection A of this section shall preserve the following records in the manner prescribed:

1. All books and records required to be made under the provisions of subsection A through subdivision C 1, inclusive, of this section, except for books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section, shall be maintained in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on record, the first two years of which shall be maintained in the principal office of the investment advisor.

2. Partnership articles and any amendments, articles of incorporation, charters, minute books, and stock certificate books of the investment advisor and of any predecessor, shall be maintained in the principal office of the investment advisor and preserved until at least three years after termination of the enterprise.

3. Books and records required to be made under the provisions of subdivisions A 11 and A 16 of this section shall be maintained in an easily accessible place for a period of not less than five years, the first two years of which shall be maintained in the principal office of the investment advisor, from the end of the fiscal year during which the investment advisor last published or otherwise disseminated, directly or indirectly, the notice, circular, advertisement, newspaper article, investment letter, bulletin, or other communication including by electronic media.

4. Books and records required to be made under the provisions of subdivisions A 17 through A ~~20~~ 22, inclusive, of this section shall be maintained and preserved in an easily accessible place for a period of not less than five years, from the end of the fiscal year during which the last entry was made on such record, the first two years in the principal office of the investment advisor, or for the time period during which the investment advisor was registered or required to be registered in the state, if less.

5. Notwithstanding other record preservation requirements of this subsection, the following records or copies shall be required to be maintained at the business location of the investment advisor from which the customer or client is being provided or has been provided with investment advisory services: (i) records required to be preserved under subdivisions A 3, A 7 through A 10, A 14 and A 15, A 17 through A 19, subsections B and C, and (ii) the records or copies required under the provision of subdivisions A 11 and A 16 of this section which records or related records identify the name of the investment advisor representative providing investment advice from that business location, or which identify the business locations' physical address, mailing address, electronic mailing address, or telephone number. The records will be maintained for the period described in this subsection.

F. Every investment advisor shall establish and maintain a written disaster recovery plan that shall address at a minimum:

1. The identity of individuals that will conduct or wind down business on behalf of the investment advisor in the event of death or incapacity of key persons;

2. Means to provide notification to clients of the investment advisor and to those states in which the advisor is registered of the death or incapacity of key persons;

a. Notification shall be provided to the Division of Securities and Retail Franchising via the IARD/CRD system within 24 hours of the death or incapacity of key persons.

b. Notification shall be given to clients within five business days from the death or incapacity of key persons.

3. Means for clients' accounts to continue to be monitored until an orderly liquidation, distribution or transfer of the clients' portfolio to another advisor can be achieved or until an actual notice to the client of investment advisor death or incapacity and client control of their assets occurs;

4. Means for the credit demands of the investment advisor to be met; and

5. Data backups sufficient to allow rapid resumption of the investment advisor's activities.

G. An investment advisor subject to subsection A of this section, before ceasing to conduct or discontinuing business as an investment advisor, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this section for the remainder of the period specified in this section, and shall notify the commission in writing of the exact address where the books and records will be maintained during such period.

H. 1. The records required to be maintained pursuant to this section may be immediately produced or reproduced by photograph on film or, as provided in subdivision 2 of this subsection, on magnetic disk, tape or other computer storage medium, and be maintained for the required time in that form. If records are preserved or reproduced by photographic film or computer storage medium, the investment advisor shall:

a. Arrange the records and index the films or computer storage medium so as to permit the immediate location of any particular record;

b. Be ready at all times to promptly provide any facsimile enlargement of film or computer printout or copy of the computer storage medium which the commission by its examiners or other representatives may request;

c. Store separately from the original one other copy of the film or computer storage medium for the time required;

d. With respect to records stored on computer storage medium, maintain procedures for maintenance of, and access to, records so as to reasonably safeguard records from loss, alteration, or destruction; and

e. With respect to records stored on photographic film, at all times have available, for the commission's examination of its records, facilities for immediate, easily readable projection of the film and for producing easily readable facsimile enlargements.

2. Pursuant to subdivision 1 of this subsection, an advisor may maintain and preserve on computer tape or disk or other computer storage medium records which, in the ordinary course of the advisor's business, are created by the advisor on electronic media or are received by the advisor solely on electronic media or by electronic transmission.

I. Any book or record made, kept, maintained, and preserved in compliance with SEC Rules 17a-3 (17 CFR 240.17a-3) and 17a-4 (17 CFR 240.17a-4) under the Securities Exchange Act of 1934, which is substantially the same as the book, or other record required to be made, kept, maintained, and preserved under this section shall be deemed to be made, kept, maintained, and preserved in compliance with this section.

J. For purposes of this section, "investment supervisory services" means the giving of continuous advice as to the investment of funds on the basis of the individual needs of each client; and "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment advisor, the client has directed or approved the purchase or sale of a definite amount of the particular security.

K. For purposes of this section, "principal place of business" and "principal office" mean the executive office of the investment advisor from which the officers, partners, or managers of the investment advisor direct, control, and coordinate the activities of the investment advisor.

L. Every investment advisor registered or required to be registered in this Commonwealth and has its principal place of business in a state other than the Commonwealth shall be exempt from the requirements of this section to the extent provided by the National Securities Markets Improvement Act of 1996 (Pub.L. No. 104-290), provided the investment advisor is licensed in such state and is in compliance with such state's recordkeeping requirements.

21VAC5-80-170. Supervision of investment advisor representatives.

A. An investment advisor shall be responsible for the acts, practices, and conduct of its investment advisor representatives in connection with advisory services until such time as the investment advisor representatives have been properly terminated as provided by 21VAC5-80-110.

B. Every investment advisor shall exercise diligent supervision over the advisory activities of all of its investment advisor representatives.

C. Every investment advisor representative employed by an investment advisor shall be subject to the supervision of a supervisor designated by such investment advisor. The supervisor may be the investment advisor in the case of a sole proprietor, or a partner, officer, office manager or any qualified investment advisor representative in the case of entities other than sole proprietorships. All designated supervisors shall exercise reasonable supervision over the advisory activities of all investment advisor representatives under their responsibility.

D. As part of its responsibility under this section, every investment advisor, except entities employing no more than one investment advisor representative, shall establish, maintain and enforce written procedures, a copy of which shall be kept in each business office, which shall set forth the procedures adopted by the investment advisor to comply with the Act and associated regulations, which shall include but not be limited to the following duties imposed by this section; provided that an investment advisor having its principal place of business outside this Commonwealth and registered or licensed, and in compliance with the applicable books and records requirements, in the state where its principal place of business is located, shall only be required to make, keep current, maintain and preserve such of the following required books, ledgers and records as are not in addition to those required under the laws of the state in which it maintains its principal place of business:

1. The review and written approval by the designated supervisor of the opening of each new client account;

2. The frequent examination of all client accounts to detect and prevent irregularities or abuses;

3. The prompt review and written approval by a designated supervisor of all advisory transactions by investment advisor representatives and of all correspondence pertaining to the solicitation or execution of all advisory transactions by investment advisor representatives;

4. The prompt review and written approval of the handling of all client complaints.

E. Every investment advisor who has designated more than one supervisor pursuant to subsection C of this section shall designate from among its partners, officers, or other qualified investment advisor representatives, a person or group of persons, independent from the designated business supervisor or supervisors who shall:

1. Supervise and periodically review the activities of the supervisors designated pursuant to subsection C of this section; and

2. No less often than annually ~~inspect~~, conduct a physical inspection of each business office under his supervision to ensure that the written procedures and compliance requirements are being enforced.

All supervisors designated pursuant to this subsection E shall exercise reasonable supervision over the supervisors under their responsibility to insure compliance with this subsection.

21VAC5-80-200. Dishonest or unethical practices.

A. An investment advisor or federal covered advisor is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor or federal covered advisor and his clients and the circumstances of each case, an investment advisor or

federal covered advisor shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation, risk tolerance and needs, and any other information known or acquired by the investment advisor or federal covered advisor after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor or federal covered advisor, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor or federal covered advisor is a financial institution engaged in the business of loaning funds or the client is an affiliate of the investment advisor or federal covered advisor.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor or federal covered advisor, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor without disclosing that fact. This prohibition does not apply to a situation where the advisor uses published research reports or statistical analyses to render advice or where an advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisors or federal covered advisors providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor or federal covered advisor or any of his employees which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the advisor or his employees.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; ~~or~~ and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist

any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated to its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless positively consented to by the client, in writing.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor has custody or possession of such securities or funds, when the investment advisor's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-145.

16. Entering into, extending or renewing any investment advisory contract unless the contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor or federal covered advisor and that no assignment of such contract shall be made by the investment advisor or federal covered advisor without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and/or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The ~~National Commission for Certifying Agencies~~ Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3 (a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1)).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of the law.

B. An investment advisor representative is a fiduciary and has a duty to act primarily for the benefit of his clients. While the extent and nature of this duty varies according to the nature of the relationship between an investment advisor representative and his clients and the circumstances of each case, an investment advisor representative shall not engage in unethical practices, including the following:

1. Recommending to a client to whom investment supervisory, management or consulting services are provided the purchase, sale or exchange of any security without reasonable grounds to believe that the recommendation is suitable for the client on the basis of information furnished by the client after reasonable inquiry concerning the client's investment objectives, financial situation and needs, and any other information known or acquired by the investment advisor representative after reasonable examination of the client's financial records.

2. Placing an order to purchase or sell a security for the account of a client without written authority to do so.

3. Placing an order to purchase or sell a security for the account of a client upon instruction of a third party without first having obtained a written third-party authorization from the client.

4. Exercising any discretionary power in placing an order for the purchase or sale of securities for a client without obtaining written discretionary authority from the client within 10 business days after the date of the first transaction placed pursuant to oral discretionary authority, unless the discretionary power relates solely to the price at which, or the time when, an order involving a definite amount of a specified security shall be executed, or both.

5. Inducing trading in a client's account that is excessive in size or frequency in view of the financial resources, investment objectives and character of the account.

6. Borrowing money or securities from a client unless the client is a broker-dealer, an affiliate of the investment advisor representative, or a financial institution engaged in the business of loaning funds or securities.

7. Loaning money to a client unless the investment advisor representative is engaged in the business of loaning funds or the client is an affiliate of the investment advisor representative.

8. Misrepresenting to any advisory client, or prospective advisory client, the qualifications of the investment advisor representative, or misrepresenting the nature of the advisory services being offered or fees to be charged for the services, or omission to state a material fact necessary to make the statements made regarding qualifications, services or fees, in light of the circumstances under which they are made, not misleading.

9. Providing a report or recommendation to any advisory client prepared by someone other than the investment advisor or federal covered advisor who the investment advisor representative is employed by or associated with without disclosing that fact. This prohibition does not apply to a situation where the investment advisor or federal covered advisor uses published research reports or statistical analyses to render advice or where an investment advisor or federal covered advisor orders such a report in the normal course of providing service.

10. Charging a client an unreasonable advisory fee in light of the fees charged by other investment advisor representatives providing essentially the same services.

11. Failing to disclose to clients in writing before any advice is rendered any material conflict of interest relating to the investment advisor representative which could reasonably be expected to impair the rendering of unbiased and objective advice including:

a. Compensation arrangements connected with advisory services to clients which are in addition to compensation from such clients for such services; or

b. Charging a client an advisory fee for rendering advice when a commission for executing securities transactions pursuant to such advice will be received by the investment advisor representative.

12. Guaranteeing a client that a specific result will be achieved as a result of the advice which will be rendered.

13. ~~Publishing, circulating or distributing any advertisement that would not be permitted under Rule 206(4)-1 under the Investment Advisers Act of 1940.~~ Directly or indirectly using any advertisement that does any one of the following:

a. Refers to any testimonial of any kind concerning the investment advisor or investment advisor representative or concerning any advice, analysis, report, or other service rendered by the investment advisor or investment advisor representative;

b. Refers to past specific recommendations of the investment advisor or investment advisor representative that were or would have been profitable to any person; except that an investment advisor or investment advisor representative may furnish or offer to furnish a list of all recommendations made by the investment advisor or investment advisor representative within the immediately preceding period of not less than one year if the advertisement or list also includes both of the following:

(1) The name of each security recommended, the date and nature of each recommendation, the market price at that time, the price at which the recommendation was to be acted upon, and the most recently available market price of each security; and

(2) A legend on the first page in prominent print or type that states that the reader should not assume that recommendations made in the future will be profitable or will equal the performance of the securities in the list;

c. Represents that any graph, chart, formula, or other device being offered can be used to determine which securities to buy or sell, or when to buy or sell them; or which represents, directly or indirectly, that any graph, chart, formula, or other device being offered will assist any person in making that person's own decisions as to which securities to buy or sell, or when to buy or sell them, without prominently disclosing in the advertisement the limitations thereof and the risks associated with its use;

d. Represents that any report, analysis, or other service will be furnished for free or without charge, unless the report, analysis, or other service actually is or will be furnished entirely free and without any direct or indirect condition or obligation;

e. Represents that the commission has approved any advertisement; or

f. Contains any untrue statement of a material fact, or that is otherwise false or misleading.

For the purposes of this section, the term "advertisement" includes any notice, circular, letter, or other written communication addressed to more than one person, or any notice or other announcement in any electronic or paper publication, by radio or television, or by any medium, that offers any one of the following:

(i) Any analysis, report, or publication concerning securities;

(ii) Any analysis, report, or publication that is to be used in making any determination as to when to buy or sell any security or which security to buy or sell;

(iii) Any graph, chart, formula, or other device to be used in making any determination as to when to buy or sell any security, or which security to buy or sell; or

(iv) Any other investment advisory service with regard to securities.

14. Disclosing the identity, affairs, or investments of any client to any third party unless required by law or an order of a court or a regulatory agency to do so, or unless positively consented to by the client, in writing.

15. Taking any action, directly or indirectly, with respect to those securities or funds in which any client has any beneficial interest, where the investment advisor representative other than a person associated with a federal covered advisor has custody or possession of such securities or funds, when the investment advisor representative's action is subject to and does not comply with the safekeeping requirements of 21VAC5-80-145.

16. Entering into, extending or renewing any investment advisory or federal covered advisory contract unless such contract is in writing and discloses, in substance, the services to be provided, the term of the contract, the advisory fee, the formula for computing the fee, the amount of prepaid fee to be returned in the event of contract termination or nonperformance, whether the contract grants discretionary power to the investment advisor representative and that no assignment of such contract shall be made by the investment advisor

representative without the consent of the other party to the contract.

17. Failing to clearly and separately disclose to its customer, prior to any security transaction, providing investment advice for compensation or any materially related transaction that the customer's funds or securities will be in the custody of an investment advisor or contracted custodian in a manner that does not provide Securities Investor Protection Corporation protection, or equivalent third-party coverage over the customer's assets.

18. Using a certification or professional designation in connection with the provision of advice as to the value of or the advisability of investing in, purchasing, or selling securities, either directly or indirectly or through publications or writings, or by issuing or promulgating analyses or reports relating to securities that indicates or implies that the user has special certification or training in advising or servicing senior citizens or retirees in such a way as to mislead any person.

a. The use of such certification or professional designation includes, but is not limited to, the following:

(1) Use of a certification or designation by a person who has not actually earned or is otherwise ineligible to use such certification or designation;

(2) Use of a nonexistent or self-conferred certification or professional designation;

(3) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training, or experience that the person using the certification or professional designation does not have; or

(4) Use of a certification or professional designation that was obtained from a designating or certifying organization that:

(a) Is primarily engaged in the business of instruction in sales and or marketing;

(b) Does not have reasonable standards or procedures for assuring the competency of its designees or certificants;

(c) Does not have reasonable standards or procedures for monitoring and disciplining its designees or certificants for improper or unethical conduct; or

(d) Does not have reasonable continuing education requirements for its designees or certificants in order to maintain the designation or certificate.

b. There is a rebuttable presumption that a designating or certifying organization is not disqualified solely for purposes of subdivision 18 a (4) of this subsection, when the organization has been accredited by:

(1) The American National Standards Institute;

(2) The ~~National Commission for Certifying Agencies~~ Institute for Credentialing Excellence (formerly the National Commission for Certifying Agencies); or

(3) An organization that is on the United States Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes" and the designation or credential issued therefrom does not primarily apply to sales and/or marketing.

c. In determining whether a combination of words (or an acronym standing for a combination of words) constitutes a certification or professional designation indicating or implying that a person has special certification or training in advising or servicing senior citizens or retirees, factors to be considered shall include:

(1) Use of one or more words such as "senior," "retirement," "elder," or like words, combined with one or more words such as "certified," "chartered," "adviser," "specialist," "consultant," "planner," or like words, in the name of the certification or professional designation; and

(2) The manner in which those words are combined.

d. For purposes of this section, a certification or professional designation does not include a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency, when that job title:

(1) Indicates seniority within the organization; or

(2) Specifies an individual's area of specialization within the organization.

For purposes of this subdivision d, "financial services regulatory agency" includes, but is not limited to, an agency that regulates broker-dealers, investment advisers, or investment companies as defined under § 3(a)(1) of the Investment Company Act of 1940 (15 USC § 80a-3(a)(1).

e. Nothing in this regulation shall limit the commission's authority to enforce existing provisions of law.

C. The conduct set forth in subsections A and B of this section is not all inclusive. Engaging in other conduct such as nondisclosure, incomplete disclosure, or deceptive practices may be deemed an unethical business practice except to the extent permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

D. The provisions of this section shall apply to federal covered advisors to the extent that fraud or deceit is involved, or as otherwise permitted by the National Securities Markets Improvement Act of 1996 (Pub. L. No. 104-290 (96)).

VA.R. Doc. No. R10-2324; Filed March 24, 2010, 10:04 a.m.

Proposed Regulation

REGISTRAR'S NOTICE: The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **21VAC5-110. Retail Franchising Act Rules (amending 21VAC5-110-30, 21VAC5-110-50, 21VAC5-110-85).**

Statutory Authority: §§ 12.1-13 and 13.1-572 of the Code of Virginia.

Public Hearing Information: A public hearing will be scheduled upon request.

Public Comment Deadline: April 30, 2010.

Agency Contact: Garland H. Sharp, Chief Auditor, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9280, FAX (804) 371-9911, or email garland.sharp@scc.virginia.gov.

Summary:

The proposed amendments (i) reflect the name changes of NASDAQ Stock Market, Inc., and Financial Industry Regulatory Authority, Inc., and (ii) require all new and renewal franchise applications to contain unaudited interim financial statements when the audited financial statements submitted with the registration application are over 120 days old.

AT RICHMOND, MARCH 23, 2010

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

CASE NO. SEC-2010-00021

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Retail Franchising Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-572 of the Virginia Retail Franchising Act ("Franchising Act"), § 13.1-557 et seq. of the Code of Virginia, provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Franchising Act.

The rules and regulations issued by the Commission pursuant to the Franchising Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: http://www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission a proposed revision to Chapter 110 of Title 21 of the Virginia Administrative Code entitled "Retail Franchising Act Rules" ("Rules").

Proposed amendments to Rule 21 VAC 5-110-30 and Rule 21 VAC 5-110-50 add subsections requiring all new and renewal franchise applications to contain unaudited interim financial statements when the audited financial statements are over 120 days old.

Proposed amendment to Rule 21 VAC 5-110-85 F 6 updates the name of the "National Association of Securities Dealers, Inc." to "NASDAQ Stock Market, Inc."

Proposed amendment to Rule 21 VAC 5-110-85 F 13 updates the name of the "National Association of Securities Dealers Regulation, Inc." to "Financial Industry Regulatory Authority, Inc."

The Division has recommended to the Commission that the proposed revisions be considered for adoption with an effective date of July 1, 2010. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefor.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request, and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by April 30, 2010. Any request for hearing that is received and granted by the Commission will be scheduled on May 13, 2010.

Accordingly, IT IS ORDERED THAT:

(1) The proposed revisions are appended hereto and made a part of the record herein.

(2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before April 30, 2010. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2010-00021. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: http://www.scc.virginia.gov/case.

(3) The proposed revisions shall be posted on the Commission's website: http://www.scc.virginia.gov/case

and on the Division's website at http://www.scc.virginia.gov/srf. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail or e-mail.

(4) This Order, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY hereof shall be delivered by the Clerk of the Commission to the Division's Director, who shall forthwith provide notice of this Order via U.S. mail and e-mail to any interested persons as he may designate.

21VAC5-110-30. Registration application; documents to file; interim financial statements.

A. An application for registration of a franchise is made by filing with the commission the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;

2. Total Costs and Sources of Funds for Establishing New Franchises, Form B;

3. Uniform Consent to Service of Process, Form C;

4. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;

5. Franchise Disclosure Document;

6. Application fee (payable to the "Treasurer of Virginia"); and

7. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the Franchise Disclosure Document.

B. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and

2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

~~B.~~ C. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the registration application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the registration application.

~~C.~~ D. In addition to paper copies of the materials required by subsection A of this section, the franchisor may file one copy of the complete franchise registration application, including the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~D.~~ E. Examples of Forms A through C are printed at the end of this chapter.

21VAC5-110-50. Expiration; application to renew the registration; interim financial statements.

A. A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute.

B. An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;

2. Updated Franchise Disclosure Document;

3. One complete copy of the amended Franchise Disclosure Document black-lined to show all additions, deletions, and other changes, using no margin balloons or color highlights; and

4. Application fee (payable to the "Treasurer of Virginia").

C. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and

2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

~~C.~~ D. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the renewal application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the renewal application.

~~D.~~ E. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise renewal application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;

2. The electronic version of the Franchise Disclosure Document must be text searchable; and

3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~E.~~ F. An example of Form A is printed at the end of this chapter.

21VAC5-110-85. Disclosure of confidential information.

A. This section governs the disclosure by the commission of information or documents obtained or prepared by any member, subordinate or employee of the commission in the course of any examination or investigation conducted pursuant to the provisions of the Retail Franchising Act (§ 13.1-557 et seq. of the Code of Virginia). It is designed to implement the provisions of § 13.1-567 that permit disclosure of information to governmental and quasi-governmental entities approved by rule of the commission.

B. The Director of the Division of Securities and Retail Franchising or his designee is hereby authorized to disclose information to the entities enumerated in subsections D, E and F of this section. Disclosure shall be made only for the purpose of aiding in the detection or prevention of possible violations of law or to further administrative, legislative or judicial action resulting from possible violations of law. As a condition precedent to disclosure a writing shall be obtained from the receiving entity undertaking that it will exercise reasonable measures to preserve the confidential nature of the information.

C. Disclosure may be made only under the following circumstances:

1. In response to an entity's request for information relating to a specific subject or person.

2. By disseminating to an entity information which may indicate a possible violation of law within the administrative, regulatory or enforcement responsibility of that entity.

3. To participate in a centralized program or system designed to collect and maintain information pertaining to possible violations of securities, investment advisory, retail franchising or related laws.

4. To the extent necessary for participation in coordinated examinations or investigations.

D. The following are approved governmental entities (including any agencies, bureaus, commissions, divisions or successors thereof) of the United States:

1. Board of Governors of the Federal Reserve System or any Federal Reserve Bank.

2. Commodity Futures Trading Commission.

3. Congress of the United States, including either House, or any committee or subcommittee thereof.

4. Department of Defense.

5. Department of Housing and Urban Development.

6. Department of Justice.

7. Department of Treasury.

8. Federal Deposit Insurance Corporation.

9. Office of Thrift Supervision.

10. Federal Trade Commission.

11. Postal Service.

12. Securities and Exchange Commission.

13. Comptroller of the Currency.

14. Federal Bureau of Investigation.

15. Any other federal agency or instrumentality which demonstrates a need for access to confidential information.

E. The following are approved nonfederal governmental entities:

1. The securities or retail franchising regulatory entity of any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico, state legislative bodies and state and local law-enforcement entities involved in the detection, investigation or prosecution of violations of law.

2. The securities or retail franchising regulatory entity of any foreign country, whether such entity is on a national, provincial, regional, state or local level, and law-enforcement entities within such countries.

F. The following are approved quasi-governmental entities:

1. American Stock Exchange.

2. Chicago Board Options Exchange.

3. Midwest Stock Exchange.

4. Municipal Securities Rulemaking Board.

5. National Association of Attorneys General.

6. ~~National Association of Securities Dealers, Inc.~~ NASDAQ Stock Market, Inc.

7. New York Stock Exchange.

8. North American Securities Administrators Association, Inc.

9. Pacific Stock Exchange.

10. Philadelphia Stock Exchange.

11. Securities Investor Protection Corporation.

12. National White Collar Crime Center.

13. ~~National Association of Securities Dealers Regulation, Inc.~~ Financial Industry Regulatory Authority, Inc.

14. Any other quasi-governmental entity which demonstrates a need for access to confidential information.

VA.R. Doc. No. R10-2307; Filed March 24, 2010, 10:03 a.m.

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TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

BOARD OF TOWING AND RECOVERY OPERATORS

Final Regulation

REGISTRAR'S NOTICE: The Board of Towing and Recovery Operators 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 Board of Towing and Recovery Operators will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **24VAC27-30. General Regulations for Towing and Recovery Operators (amending 24VAC27-30-70, 24VAC27-30-100, 24VAC27-30-110, 24VAC27-30-140 through 24VAC27-30-170).**

Statutory Authority: § 46.2-2805 of the Code of Virginia.

Effective Date: May 13, 2010.

Agency Contact: J. Marc Copeland, Executive Director, Board of Towing and Recovery Operators, 2601 W. Broad Street, Suite 200, Richmond, VA 23220, telephone (804) 367-0712, FAX (804) 367-0718, or email marc.copeland@btro.virginia.gov.

Summary:

The General Regulations for Towing and Recovery Operators cover credentialing and operational requirements established by the Board of Towing and Recovery Operators. The amendments are necessary to conform to changes in Virginia law pursuant to Chapter 806 of the 2009 Acts of Assembly. The summary and rationale of the major changes to these regulations are as follows:

1. Allow tow truck drivers to tow a vehicle from an origin in the Commonwealth to a destination in another state without a driver authorization document while requiring those who tow within the Commonwealth (pick up and drop off vehicles in Virginia) to have board-issued credentials. This change ensures the board is regulating towing in Virginia and not interfering with existing practices in other states.

2. Allows the board to reprimand a licensee or revoke or suspend a license if the licensee (i) fails to display at the licensed operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees or (ii) fails to have readily available, at the customer's request, the maximum fees normally charged by the licensed operator for basic services for towing and initial hookup of vehicles. This change removes the language that limits these requirements to towers of vehicles of 26,000 pounds gross vehicle weight or less so that it applies to all towing and recovery operators.

3. Allows the board to reprimand a licensee or revoke or suspend a license if the licensee willfully invoices for payment any services not stipulated in a contract with a locality whether or not the locality has a local towing advisory board established by law. This change allows this provision to apply to all jurisdictions.

4. Allow those towers who have a gross annual income of less than $10,000 derived from the performance of towing and recovery services to refuse to accept credit cards, but requires them to accept personal checks in lieu of credit cards. This change provides a payment alternative for towing and recovery operators whose work volume might not warrant the use of a credit card machine.

5. Removes any reference to public safety towing regulation by the board, consistent with the law.

6. Removes the requirement that a tow truck driver indicate that he is employed or engaged to be employed by a licensed operator. This change allows for qualified tow truck drivers to more freely obtain a driver authorization document and not have issuance contingent on employment with a towing and recovery operator.

24VAC27-30-70. Exemptions.

The following shall be exempt from these regulations:

1. "Rollbacks" used exclusively to transport cargo other than vehicles.

2. "Automobile or watercraft transporters," "stinger-steered automobiles or watercraft transporters" or "tractor trucks" as defined in § 46.2-100 of the Code of Virginia. Such transporters are only exempt if capable of transporting five or more vehicles and have appropriate and required interstate operating authority.

3. "Household goods carriers" as defined in § 46.2-2100 of the Code of Virginia providing they have been issued a valid "certificate of public convenience and necessity" by the Virginia Department of Motor Vehicles.

4. Tow trucks solely owned and operated directly by a government entity used for public safety towing or noncommercial purposes.

5. Tow trucks that are properly registered and domiciled in another state and have proper interstate operating authority may be operated within the Commonwealth of Virginia while passing through the Commonwealth to another jurisdiction or while delivering a vehicle within or without the Commonwealth, but only if either the pick up of the vehicle and origin of the trip is outside of the Commonwealth, or the drop off of the vehicle is outside of the Commonwealth. ~~However, tow~~ Tow trucks registered and domiciled in another state are not exempt from licensure or provisions of applicable state laws or regulations of the board if both the pick up ~~or hook up~~ and the drop off of a vehicle is in Virginia. Such tow trucks must obtain a temporary trip permit from the board prior to operating in Virginia unless licensed by the board.

6. Tow trucks owned by a person and used exclusively to transport vehicles owned by such person providing there is no charge or acceptance of fees or payment for services. In such situations, ownership of vehicles being transported must be supported by possession of title, bill of sale, registration or other legal document while the vehicle is being transported and signage must be permanently posted on the door of both sides of said tow truck indicating "NOT FOR HIRE." Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

7. Tow trucks owned by tow truck dealers or tow truck manufacturers operating with a legally recognized dealer license plate. Such tow trucks may only be operated by an employee of the dealer or manufacturer for the sole purpose of transporting it to and from the location of sale or demonstration. Such tow trucks shall be required to have temporary or permanent lettering with the dealer's or manufacturer's name, city and state and the words "NOT FOR HIRE" displayed on both of the side doors of the tow truck. Letters for such signs shall each be at least three inches in height and 1/4" in width and in a color contrasting with the tow truck's color.

24VAC27-30-100. Unprofessional conduct.

It shall be deemed unprofessional conduct, which may be subject to disciplinary action or sanctions imposed by the board, for any licensed operator in the Commonwealth to violate any statute or regulation governing towing and recovery services, or fail to:

1. Employ only tow truck drivers who comply with the board's requirements for drivers and hold a valid driver's authorization document from the board.

2. Advise the board in writing of any change in ownership listed on the application or management, including a change in the responsible individual, or in the licensee's principal or business mailing address within 30 days of such change occurring.

3. Have the licensee's trade name, clearly indicated on all of the operator's tow trucks. Provided, however, that if the licensee's towing business is exclusively limited to towing only vehicles that are being repossessed, then the name of the licensee and any other markings that might identify the vehicle as associated with the business of repossessing vehicles shall not be required but the board-issued decal for the vehicle must be displayed.

4. Retain for a minimum of one year from last date of service, records of services and fees charged or collected. If said records are not maintained at the operator's principal place of business, the location of such records shall be made known to the board at the board's request.

5. Allow an authorized staff person or agent who is not a member of the board to review or inspect, during regular business hours, the operator's records of services rendered and fees charged or collected, facilities and equipment. Such inspections shall be limited to that which is related to compliance with laws or regulations governing towing and recovery operators and towing and recovery services. All information obtained through any such inspection, to the extent permitted or required by the laws of the Commonwealth of Virginia, shall be considered confidential and shall not be disclosed except as necessary for investigations conducted by the board.

6. Accept at least one of two nationally recognized credit cards. However, any individual credit card offered in

payment, even if of a type normally accepted, may be considered unacceptable by the operator if the credit card processing company denies charges being applied to said card or if the actual card is not presented to the operator for inspection. Operators may insist payment by credit card be made at their principal place of business or any location at which payment for fees for services is normally accepted.

7. For operators engaged in towing passenger vehicles without the consent of their owners pursuant to § 46.2-1231 of the Code of Virginia, also known herein as private property/trespass towing, prominently display at their main place of business and at any other location where towed vehicles may be reclaimed, a comprehensive list of all their fees for towing and recovery or the basis of such charges. This requirement to display a list of fees may also be satisfied by providing, when the towed passenger vehicle is reclaimed, a written list of such fees, either as part of a receipt or separately, to the person who reclaims the vehicle. Charges in excess of those posted shall not be collectible from any motor vehicle owner whose vehicle is towed or recovered without his consent. If the owner or representative or agent of the owner of the trespassing passenger vehicle is present and removes the trespassing vehicle from the premises before it is actually towed, the trespassing vehicle shall not be towed, but the owner or representative or agent of the owner of the trespassing vehicle shall be liable for a reasonable fee, not to exceed the fee set out in § 46.2-1231 of the Code of Virginia, or such other limit as the governing body of the county, city, or town may set by ordinance, in lieu of towing.

8. Provide, at the customer's request, a price list indicating the maximum fees normally charged for basic services for towing, recovery and processing fees ~~for vehicles weighing 26,000 pounds or less~~. If storage fees are not included in the list of charges, the list shall include a statement indicating storage fees are additional and vary according to the size and condition of the vehicle, length of time the vehicle is stored and other costs that may be incurred by the operator when storing the vehicle.

9. Have affixed on the driver's side of all of the operator's tow trucks a tow truck decal issued by the board to all licensed operators.

10. Display his operator's license in a conspicuous place in the principal office in which he operates and display a copy of his operator's license at all other facilities at which payment for fees is accepted.

24VAC27-30-110. Standards of practice.

Violations of any standard of practice set out in this section may be subject to board disciplinary actions or sanctions, including suspension or revocation of an operator's license and imposition of civil penalties.

1. All of an operator's places of business, including their offices and storage facilities, shall comply with any required state or local building or zoning laws or codes.

2. If required by the locality in which the operator designates as his principal place of business, an operator must maintain a valid business license from that locality.

3. Any operator permanently ceasing to provide towing and recovery services shall notify the board in writing and return the board-issued operator's license for voluntary cancellation and termination within 30 days.

4. A licensed operator must maintain the following proof of insurance: (i) a minimum of $750,000 for automobile liability; (ii) a minimum of $750,000 for commercial general liability; (iii) a minimum of $50,000 for garagekeepers liability; and (iv) worker's compensation as required by state and federal entities.

5. Operators shall assure that only equipment designed and rated for the type of vehicle being transported is used. Operators shall additionally assure that at no time shall one of their tow trucks exceed the manufacturer's gross vehicle weight rating: for a Class B operator's tow truck, a minimum of 14,500 pounds on a rollback and a minimum of 10,000 pounds on a wrecker; for a Class A operator's tow truck, a minimum of 29,000 pounds gross vehicle weight rating for a wrecker or the manufacturer's rated capacity for towing apparatus.

6. All tow trucks shall meet all federal Department of Transportation and applicable Virginia regulations. A winch, boom or crane will not be prohibited by this subsection if the tow truck owner submits to the board a certification from a reputable testing laboratory, regularly engaged in the testing of such equipment, indicating that the capacity of the winch, boom, or crane as mounted on the tow truck is not less than the weight for which the application has been made and the certification is carried in the truck at all times. Tow trucks shall be able to retain 50% of its front axle weight during towing operations. Safety chains or straps shall be used in all towing operations with such chains or straps rated to secure the towed vehicle to the tow truck.

7. Any and all advertisements, promotions, and offers for services shall include the operator's trade name and board license number. Invoices shall include the operator's trade name, address, telephone number, and board license number.

8. Operators shall be responsible for the supervision , training and all actions of their employees and drivers pertaining to their compliance with laws and regulations governing towing and recovery services.

~~9. On or after the effective date of regulations established by the board for public safety towing and recovery services~~

~~pursuant to § 46.2-2826 of the Code of Virginia, or on or after such later date as may be set out in those regulations, operators shall not provide public safety towing and recovery services unless they have met the criteria established by the board in those regulations and have been placed on the list authorized by § 46.2-2826.~~

~~10.~~ 9. Whenever a trespassing vehicle is removed or towed without the owner's consent pursuant to § 46.2-1231 of the Code of Virginia, then in accordance with that section, notice of the removal or towing shall forthwith be given by the driver of the tow truck to the Virginia State Police or the local law-enforcement agency of the jurisdiction from which the vehicle was towed. Should the driver fail to report such action, it shall limit the amount that may be charged for the storage and safekeeping of the towed vehicle to an amount no greater than that charged for one day of storage and safekeeping. If the vehicle is removed and stored, the vehicle owner may be charged and the vehicle may be held for a reasonable fee for the removal and storage.

~~11.~~ 10. An operator shall comply with all local ordinances and with all contracts, if any, that he has entered into, including any agreements related to private property/trespass towing pursuant to § 46.2-1231 of the Code of Virginia. At the request of both the locality and a towing and recovery operator, the board may assist in conflict resolution between an operator and a locality regarding compliance with local ordinances or contracts.

~~12.~~ 11. For vehicles towed or removed from private property without the consent of the owner, unless different limits are established by ordinance of the local governing body, an operator shall not charge a hookup and initial towing fee in excess of the amount set out in § 46.2-1233.1 of the Code of Virginia. For towing such a vehicle between 7 p.m. and 8 a.m. or on any Saturday, Sunday, or holiday, an additional fee of no more than the amount set out in § 46.2-1233.1 of the Code of Virginia may be charged per instance; however, in no event shall more than two such fees be charged for towing any such vehicle. No charge shall be made for storage and safekeeping for such vehicle if it is stored for a period of 24 hours or less. Except for such fees as are set out in this subsection, no other fees or charges shall be imposed during the first 24-hour period.

~~13.~~ 12. As provided in § 46.2-2820 of the Code of Virginia, no operator shall impersonate a licensed operator of a like or different name.

~~14.~~ 13. As provided in § 46.2-2820 of the Code of Virginia, no operator shall publish or cause to be published in any manner an advertisement that is false, deceptive, misleading or that violates regulations of the board governing advertising by towing and recovery operators.

~~15.~~ 14. No operator shall provide any towing and recovery services for vehicles of a gross vehicle weight over 26,000 pounds unless licensed as a Class A operator.

~~16.~~ 15. In addition to the foregoing, the standards of practice for operators require that no operator shall:

(a) Engage in fraud or deceit in the offering or delivering of towing and recovery services.

(b) Conduct his business or offering services in such a manner as to endanger the health and welfare of the public.

(c) Use or allow the use of alcohol or drugs to the extent such use renders the operator or his drivers unsafe to provide towing and recovery services.

(d) Neglect to maintain on record at the licensed operator's principal office a list of all drivers in the employ of the operator. Operators shall be required to notify the board within 30 days of the occurrence of all changes of drivers.

(e) Obtain any fee by fraud or misrepresentation.

(f) Advertise in a way that directly or indirectly deceives, misleads, or defrauds the public.

(g) Advertise or offer services under a name other than one's own name or trade name as set forth on the operator's license.

(h) Fail to accept for payment cash, insurance company check, certified check, money order, at least one of two commonly used, nationally recognized credit cards, or additional methods of payment approved by the board, except that those licensed operators who have an annual gross income of less than $10,000 derived from the performance of towing and recovery services shall not be required to accept credit cards, other than when providing police-requested towing as defined in § 46.2-1217 of the Code of Virginia, but shall be required to accept personal checks.

(i) Fail to display at the licensed operator's principal office in a conspicuous place a listing of all towing, recovery, and processing fees ~~for vehicles of 26,000 pounds gross vehicle weight or less~~.

(j) Fail to have readily available at the customer's request the maximum fees normally charged by the licensed operator for basic services for towing and initial hookup ~~of vehicles of 26,000 pounds gross vehicle weight or less~~.

(k) Fail to provide at the consumer's request the phone number for which consumer complaints may be filed with the board.

(l) Knowingly charge excessive fees for towing, storage, or administrative services or charge fees for services not rendered.

(m) Fail to maintain all towing records, which shall include itemized fees, for a period of one year from the date of service.

(n) Willfully invoice for payment any services not stipulated or otherwise incorporated in a contract for services rendered between the licensed operator and any locality or political subdivision of the Commonwealth~~that has established a local Towing Advisory Board pursuant to § 46.2-1233.2 of the Code of Virginia~~.

(o) Employ any driver required to register as a sex offender as provided in § 9.1-901 of the Code of Virginia.

(p) Remove or tow a trespassing vehicle, as provided in § 46.2-1231 of the Code of Virginia, or a vehicle towed or removed at any request of a law-enforcement officer to any location outside the Commonwealth.

(q) Refuse at the operator's place of business to make change up to $100 for the owner of the vehicle towed without the owner's consent if the owner pays in cash for charges for towing and storage of the vehicle.

(r) Violate, assist, induce, or cooperate with others in violating any provisions of law related to the offering or delivery of towing and recovery services, including the provisions of Chapter 28 (§ 46.2-2800 et seq.) of Title 46.2 of the Code of Virginia and the provisions of these regulations.

(s) Fail to provide the owner of a stolen vehicle written notice of his right under the law to be reimbursed for towing and storage of his vehicle out of the state treasury from the appropriation for criminal charges as required in § 46.2-1209 of the Code of Virginia.

(t) Fail to satisfy the procedural steps, including the timely mailing of all notices, required by §§ 43-32 and 43-34 of the Code of Virginia, in order to perfect and enforce the liens provided therein for towing and recovery and vehicle storage.

24VAC27-30-140. Prerequisites for application for tow truck driver's authorization document.

A. The board shall accept applications for tow truck driver's authorization documents at its office in Richmond or via its website. To be included with the application shall be the board application fee plus the prevailing fee required by state and federal police authorities for reviewing the fingerprints submitted by the applicant and processing the criminal history background checks required by the statutes and these regulations.

B. After the application and fees are received, the applicant shall be issued the board originating number to provide to the entity taking the fingerprints at the time the fingerprints and criminal history background check data are taken before being forwarded to Virginia State Police to be processed. In lieu of inked fingerprints, the board will accept electronically processed fingerprints, such as those available from LiveScan or other electronic systems for processing by state and federal officials.

C. When the results of the criminal history background check are received by the board, they shall be evaluated and the application may either continue to be processed, or, if the results are such that the applicant appears to be ineligible to obtain a driver authorization document under the statutes or these regulations, the applicant shall receive a denial notice from the board.

D. A denied applicant may appeal such denial by requesting review by the board in accordance with informal proceeding provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) within 30 days of the denial notice.

E. Results of the criminal history background check shall be sent directly to the board office and maintained confidentially unless its contents are used to reject or place conditions upon a driver's authorization document. An applicant shall not be refused a tow truck driver's authorization document by the board solely because of a prior criminal conviction against such applicant unless the criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of such services offered by a licensee or holder of a tow truck driver's authorization document. However, the board shall refuse to issue a tow truck driver's authorization document if, based upon all the information available, including the record of prior convictions of the applicant, it finds that the applicant is unfit or unsuited to engage in providing towing and recovery services as a tow truck driver.

1. The board shall consider the following criteria in determining whether a criminal conviction directly relates to the provision of towing and recovery services or the safety of the users of towing and recovery services by a tow truck driver:

a. The nature and seriousness of the crime;

b. The relationship of the crime to the purpose for requiring a license or tow truck driver's authorization document to provide towing and recovery services, which includes protecting the safety of users of such services;

c. The extent to which providing towing and recovery services might offer an opportunity to engage in further criminal activity of the same type as that in which the convicted person had been involved;

d. The relationship of the crime to the ability, capacity or fitness required to perform the duties and discharge the responsibilities of providing towing and recovery services;

e. The extent and nature of the person's past criminal activity;

f. The age of the person at the time of the commission of the crime;

g. The amount of time that has elapsed since the person's last involvement in the commission of the crime;

h. The conduct and work activity of the person prior to and following the criminal activity; and

i. Evidence of the person's rehabilitation or rehabilitative effort while incarcerated or following release or at any time following the conviction.

2. The following criminal convictions shall not be considered a bar to authorization by the board, meaning that the inclusion of these items on a criminal history record shall not be sufficient as the sole grounds for denial of a tow truck driver's authorization document:

a. Felony convictions more than 10 years old with no subsequent reportable convictions, unless the conviction resulted in incarceration where the release date is less than three years from the date of the application. This does not include convictions involving murder, manslaughter, sexual assault, rape, robbery, or indecent liberties.

b. Misdemeanor convictions more than three years old from the date of application.

c. Convictions of grand larceny, breaking and entering, or burglary or all of these convictions, more than five years old with no subsequent convictions, provided such convictions did not result in incarceration where the release date is less than three years from the application date.

d. Driving-under-the-influence (DUI) convictions where the applicant has completed Virginia Alcohol Safety Action Program (VASAP) or another similar program accepted by the court after the latest conviction. However, no tow truck driver's authorization document shall be issued, and none shall continue to be valid, during any time period for which (i) the person's driver's license is suspended or revoked or (ii) the person has been authorized only a restricted license during a period of suspension or revocation resulting from a conviction or convictions for DUI or any DUI-related offense, except that if the driver demonstrates that he is not required to possess a commercial driver's license in order to drive a tow truck, then an authorization document can be issued for the period during which he has a restricted license if it authorizes the driver to drive only tow trucks for which a commercial drivers license is not required.

3. The applicant must possess a valid driver's license at the time of the application. The driver shall be required to possess a commercial driver's license if applicable to the class of operator the driver is to be employed by or the type of tow truck to be driven.

4. Applicants shall be required to sign a statement verifying they are not currently on any state or federal list as a sex offender and are not required to register as a sex offender under any state, federal or local law, or the law of any foreign country.

5. A tow truck driver's authorization documents shall be valid for one year and shall be subject to annual renewal by ~~December 31~~ June 30 of each year. After the initial authorization, the applicant is required to submit criminal history background checks with fingerprints every three years thereafter as a part of the renewal. Driver authorization documents issued on or after ~~October~~ April 1 of any year, with the payment of a full year's fee, shall be valid until ~~December 31~~ June 30 of the following year.

24VAC27-30-150. Exemptions from tow truck driver authorizations.

A tow truck driver's authorization document shall be required for operation of a tow truck in Virginia only if such operation is for hire and involves a pick up of the towed vehicle in Virginia. Driving a tow truck into or through Virginia while towing a vehicle picked up outside of Virginia shall not require a driver's authorization document. Driving a tow truck out of or through Virginia while towing a vehicle picked up in Virginia also shall not require a driver's authorization document, so long as there is no drop off of the vehicle in Virginia.

24VAC27-30-160. Requirements for drivers.

A tow truck driver shall:

1. Possess a valid and appropriate driver's license and tow truck driver's authorization document while operating a tow truck for hire in Virginia when the pick up of the towed vehicle takes place in Virginia, unless exempted under 24VAC27-30-150.

~~2. Provide evidence at time of application for a tow truck driver's authorization document that he is employed or about to be employed by a licensed operator and the name and address of that operator.~~

~~3.~~ 2. Maintain in his possession and have readily available for inspection when providing towing and recovery services his board-issued tow truck driver's authorization document. The driver's authorization document shall include the name of the driver and the driver's license

number and the name of the state in which he holds a valid driver's license.

~~4.~~ 3. Notify the board within five business days upon the driver being convicted of any criminal offense, including any offense for which the driver is required to register as a sex offender under any state, federal or local law, or the law of any foreign country.

~~5.~~ 4. Provide towing and recovery services in a safe manner.

~~6.~~ 5. Review and read all regulations and laws related to standards of practice, unprofessional conduct and safety prior to operating a tow truck or providing towing and recovery services. The driver shall sign a statement to be retained by the operator who employs the driver verifying the driver's compliance with this subsection.

~~7.~~ 6. Surrender his tow truck driver's authorization document should the board rescind, cancel, suspend, revoke or deny such tow truck driver's authorization document upon a determination by the board that the driver has violated laws or regulations governing towing and recovery services or otherwise has become unqualified to hold a tow truck authorization document.

24VAC27-30-170. Renewal of licensure; reinstatement; renewal of fees.

A. All those licensed by the board as a towing and recovery operator shall, on or before ~~December 31~~ June 30 of every year, submit a completed renewal application and pay the prescribed annual licensure fee.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current mailing address. All changes of mailing addresses or change of name shall be furnished to the board within 30 days after the change occurs. All notices to an operator or driver from the board are to be deemed validly tendered when mailed to the address given by the licensee to the board, and the licensee shall not be relieved of the obligation to comply with any notice so mailed if there has been a failure to notify the board of changes.

C. The license of every operator who does not submit the completed form and fee or forms and fees, as applicable, by ~~December 31~~ June 30 of each year may be allowed to apply for renewal for up to two months after that date by paying the prescribed renewal fee and late fee. However, if the renewal has not been received by the board within two months after the ~~December 31~~ June 30 due date, then on and after ~~March~~ September 1 of that year the operator's license is expired and cannot be renewed. Engaging in towing and recovery services with an expired license constitutes operating without a license and may subject the licensee to disciplinary action and civil penalties imposed by the board.

D. An operator whose license has expired and who wishes to resume providing services as a towing and recovery operator shall apply for a new operator's license.

VA.R. Doc. No. R10-2067; Filed March 24, 2010, 8:34 a.m.

STATE CORPORATION COMMISSION

Bureau of Insurance

March 15, 2010

Administrative Letter 2010-02

TO: All Entities with Authority to Appoint Producers in Virginia and Other Interested Parties

RE: Online Printing of Producers Licenses

The purpose of this Administrative Letter is to advise insurers and insurance producers that they may now print licenses online. The implementation of this functionality has been the most frequently requested service enhancement by insurers and producers since the Bureau of Insurance (Bureau) implemented the Sircon for States system. We are pleased to make this feature available.

Currently, when the Bureau of Insurance issues a license, it is mailed to the producer. Effective immediately, the Bureau will no longer mail licenses.

Electronic applications for licensure are submitted to the Bureau through either Sircon's Compliance Express (CX) or the National Insurance Producer Registry (NIPR). For applications submitted through CX, Sircon sends an email notification to the producer when the license has been issued. The producer will then print the license at www.sircon.com/virginia. This service is free for up to 30 days after the license application submitted through CX has been approved. After 30 days, the licenses and/or duplicate licenses may be printed for a Sircon service fee, which is currently $5.50.

For applications submitted through NIPR, an email notification is not sent to the producer when the license has been issued. Producers may check their licensing status through the Bureau's "Producer Lookup" feature at scc.virginia.gov/division/boi/webpages/ConsumerInquiry/ProducerSearch.aspx. When the license status reflects that the license has been issued, the producer will then print the license at www.sircon.com/virginia. The Sircon service fee (currently $5.50) will be applied.

Producers are encouraged to review licensing information in the pamphlet, General Information Pertaining to All Licenses, on the Bureau's website at www.scc.virginia.gov/division/boi/webpages/licenseforms/licenseinfo.pdf.

This Administrative Letter has been posted on the Bureau of Insurance website at http://www.scc.virginia.gov/division/boi/webpages/boiadministrativeltrs.htm. Please distribute to the appropriate personnel within your company and notify producers of the changes. Questions relating to this Administrative Letter should be directed to: J. Preston Winn, Supervisor, Agents Licensing Section, Bureau of Insurance, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9631, FAX (804) 371-9290.

/s/ Alfred W. Gross
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Restore Water Quality for Mill Creek

Public meeting: Wednesday April 28, 2010, at the Northumberland Public Library, 7204 Northumberland Hwy., Heathsville, VA 23473. An afternoon public meeting will be held at 1 p.m. and an evening public meeting from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation are announcing the completion of a study to restore water quality for an impaired creek in Northumberland County, a public comment opportunity, and two public meetings.

Meeting description: Final public meetings on a study to restore water quality of the recreation/swimming use of non-tidal Mill Creek which is impaired due to bacterial violations. The watershed area includes an unnamed tributary to Kissinger Millpond and Kissinger Millpond.

Description of study: Virginia agencies have been working to identify sources of the bacterial contamination in Mill Creek. The impairment spans approximately 4 stream miles in Northumberland County. This stream is impaired for failure to meet the recreational (swimming) designated use because of bacterial water quality standard violations.

Stream	County	Impairment Length (mi)	Impairment
Mill Creek	Northumberland	3.94	Recreational (swimming) Use

The study reports on the current status of the creek via sampling performed by the Virginia Department of Environmental Quality and the possible sources of bacterial contamination. The study recommends Total Maximum Daily Loads (TMDLs) for the impaired creek. 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 expires on May 28, 2010. DEQ also accepts

written and oral comments at the public meetings announced in this notice.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949 A Cox Road, Glen Allen, VA, 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

Proposed Consent Special Order for Radford Army Ammunition Plant

An enforcement action has been proposed for the Radford Army Ammunition Plant for violations in Montgomery County, Virginia. The Special Order by Consent will address and resolve violations of environmental law and regulations. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Jerry Ford, Jr. will accept comments by email to jerry.ford@deq.virginia.gov or postal mail to Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019, from April 13, 2010, to May 12, 2010.

Total Maximum Daily Load for Slate River

The Department of Conservation and Recreation (DCR) and the Department of Environmental Quality (DEQ) seek input from local citizens on the development of an implementation plan (IP) for bacteria Total Maximum Daily Loads (TMDLs) on the following impaired stream segments - 6.14 miles of Austin Creek, 3.83 miles of Frisby Branch, 8.44 miles of North River, 0.95 mile of Troublesome Creek, 16.92 miles of the Slate River, and 8.84 miles of Rock Island Creek in Buckingham County. The Slate River empties into the James River, and Rock Island Creek, a tributary of the James River, empties into the James River west of the confluence of the Slate and James Rivers. TMDLs for these six segments were included in the TMDL study completed for the Slate River in March 2007. The TMDLs were approved by EPA, a copy of which can be found on DEQ's website at http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/jmslate.pdf.

Section 62.1-44.19:7 C of the Code of Virginia requires the development of an 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.

The first public meeting on the development of the IP for the above impaired segments will be held on Thursday, April 22, 2010, at 6:30 p.m. at the Buckingham Agricultural Center, 54 Administration Lane, Buckingham, VA. After a one-hour public meeting, stakeholders will break into working group sessions to begin the public participation input process for the implementation plan.

The public comment period will end on May 24, 2010. A fact sheet on the development of an IP for the above impaired stream segments is available upon request. Questions or information requests should be addressed to Ram Gupta, Department of Conservation and Recreation, 101 North 14th St., 11th Floor, Monroe Building, Richmond, VA 23219, telephone (804) 371-0991, or email ram.gupta@dcr.virginia.gov. Written comments and inquiries should include the name, address, and telephone number of the person submitting the comments and should be sent to Mr. Gupta.

STATE LOTTERY DEPARTMENT

Director's Order

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on March 16, 2010, and March 23, 2010. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Final Rules for Game Operation:

Director's Order Number Thirty-Three (10)

Virginia's Instant Game Lottery 1166; "Virginia's $250,000 Jackpot" Final Rules for Game Operation (effective 3/16/10)

Director's Order Number Thirty-Five (10)

Virginia Lottery's "Megapower Sweepstakes" Final Rules for Game Operation (effective 3/22/10)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Reimbursement for Inpatient Services for Residential Treatment Facilities

Notice is hereby given that the Department of Medical Assistance Services (DMAS) intends to modify its reimbursement methodology for inpatient services in a residential treatment facility pursuant to the Department's authority under Title XIX of the Social Security Act. This notice is intended to satisfy the requirements of 42 CFR 447.205 and of § 1902(a)(13) of the Social Security Act (42 USC § 1396a(a)(13)). All of the changes contained in this public notice are occurring in response to the Interim Final Rule with Comment Period published by the Centers for Medicare and Medicaid Services (CMS) on December 4, 2007.

The current reimbursement methodology for inpatient services in a residential treatment facility under the State Plan for Medical Assistance Services is codified in state regulations at 12VAC30-80-21. DMAS reimburses a daily

rate that covers the cost for inpatient services. Under federal law, residential treatment facilities are institutions for mental disease (IMD) which are subject to special rules. Under CMS interpretation of federal law, the rate for all services furnished in and by an IMD, not just inpatient services, must be paid to the IMD to be covered under Medicaid. Therefore, DMAS will modify its reimbursement for residential treatment centers to cover the cost for all services furnished in and by an IMD consistent with CMS interpretation of federal law and any court decisions regarding that interpretation.

This amendment is estimated to neither increase nor decrease total annual Medicaid spending.

A copy of this notice is available for public review from William Lessard, Director, Provider Reimbursement Division, DMAS, 600 East Broad Street, Suite 1300, Richmond, VA 23219, and at any local social service office. Addresses for local social service offices may be obtained by contacting Mr. Lessard or the local city or county government. Comments or inquiries may be submitted, in writing, by May 12, 2010, to Mr. Lessard and such comments are available for review at the same address.

Contact Information: 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, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Notice of Periodic Review

The Virginia Board for Waste Management Facility Operators invites public comment on 18VAC155-20, Virginia Board for Waste Management Facility Operators Regulations. The review is being conducted under Executive Order 107.

The board welcomes written comments on the performance and effectiveness of the regulation in achieving the following goals:

To ensure that only regulations that are necessary to interpret the law or to protect the public health, safety, and welfare have been promulgated; to regulate the waste management facility operators profession in the most efficient and cost effective manner possible; and to ensure that the regulations are clearly written and easily understandable.

Copies of the regulation may be obtained from the Department of Professional and Occupational Regulation's website at www.dpor.virginia.gov or by contacting the board at the address below. Written comments will be received until 5 p.m. on Monday, May 3, 2010. Comments or questions should be sent to David E. Dick, Executive Director, Virginia Board for Waste Management Facility Operators, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2648, FAX (804) 527-4297, or email wastemgt@dpor.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Action - Town of Brookneal

An enforcement action has been proposed for the Town of Brookneal for violations at the Falling River and Staunton River Lagoon Wastewater Treatment facilities. The proposed enforcement action contains a schedule of compliance which details the corrective action required. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. G. Marvin Booth, III, will accept comments by email at marvin.booth@deq.virginia.gov, FAX at (434) 582-5125 or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 7705 Timberlake Road, Lynchburg, VA 24502 from April 12, 2010, to May 13, 2010.

Proposed Consent Special Order for Shine Transportation, Inc.

An enforcement action has been proposed for Shine Transportation, Inc., for violations of State Water Control Law and regulations resulting from an oil release into state waters stemming from a tanker truck accident in Loudoun County. The consent order describes a settlement to resolve these violations. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Daniel Burstein will accept comments by email at daniel.burstein@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from April 13, 2010, to May 13, 2010.

Proposed Enforcement Action for Western Virginia Water Authority

An enforcement action has been proposed for the Western Virginia Water Authority, regarding the Falling Creek Water Filtration Plant, for alleged violations of the State Water Control Law. The proposed enforcement action requires a civil charge and corrective action. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019 from April 12, 2010, to May 12, 2010.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at http://register.dls.virginia.gov/cumultab.htm.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall 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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

Title of Regulation: **4VAC20-490. Pertaining to Sharks.**

Publication: 26:14 VA.R. 2242 - 2245 March 15, 2010.

Correction to Final Regulation:

Page 2245, 4VAC20-490-41, subsection I, line 6, after "harvest of" change "the" to "any."

VA.R. Doc. No. R10-2300; Filed March 25, 2010, 11:08 a.m.