VIRGINIA REGISTER OF REGULATIONS

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VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 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. **29:5 VA.R. 1075-1192 November 5, 2012,** refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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.dls.virginia.gov).

January 2015 through March 2016

Volume: Issue	Material Submitted By Noon*	Will Be Published On
31:10	December 22, 2014 **(Monday)**	January 12, 2015
31:11	January 7, 2015	January 26, 2015
31:12	January 21, 2015	February 9, 2015
31:13	February 4, 2015	February 23, 2015
31:14	February 18, 2015	March 9, 2015
31:15	March 4, 2015	March 23, 2015
31:16	March 18. 2015	April 6, 2015
31:17	April 1, 2015	April 20, 2015
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32:7	November 11, 2015	November 30, 2015
32:8	November 24, 2015 **(Tuesday)**	December 14, 2015
32:9	December 9, 2015	December 28, 2015
32:10	December 21, 2015 **(Monday)**	January 11, 2016
32:11	January 6, 2016	January 25, 2016
32:12	January 20, 2016	February 8, 2016
32:13	February 3, 2016	February 22, 2016
32:14	February 17, 2016	March 7, 2016

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF LONG-TERM CARE ADMINISTRATORS

Agency Decision

Title of Regulation: **18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators.**

Statutory Authority: §§ 54.1-2400 and 54.1-3102 of the Code of Virginia.

Name of Petitioner: Bertha Simmons.

Nature of Petitioner's Request: Requesting that regulations be amended to allow all of the continuing education hours to be obtained through self-study or Internet.

Agency Decision: Request denied.

Statement of Reason for Decision: At its meeting on December 16, 2014, the board considered the petition and discussed the advantages and disadvantages of live continuing education versus an online or self-study format. It also reviewed the comments received and decided to retain the current requirements. While members appreciated the petitioner's point of view, it was their conclusion that there is value in face-to-face contact with other administrators, with whom you can share knowledge and experiences. Since the profession is in the business of taking care of people, the current blend of interactive continuing education with online or self-study courses seems beneficial and appropriate.

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

VA.R. Doc. No. R15-08; Filed December 16, 2014, 2:16 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Criminal Justice Services Board intends to consider amending **6VAC20-230, Regulations Relating to Special Conservator of the Peace**. The purpose of the proposed action is to establish the minimum bond amounts and minimum amount and type of liability or self insurance for special conservators of the peace.

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

Statutory Authority: § 9.1-150.2 of the Code of Virginia.

Public Comment Deadline: February 11, 2015.

Agency Contact: Lisa McGee, Regulatory Manager, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344, or email lisa.mcgee@dcjs.virginia.gov.

VA.R. Doc. No. R15-4099; Filed December 15, 2014, 9:18 a.m.

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TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-412, Regulations for Licensure of Abortion Facilities**. The purpose of the proposed action is to amend the regulations based on the findings of a periodic review. As a result of the review, the Department of Health determined it is necessary to use the regulatory process to amend these regulations as follows: (i) clarify the requirements for parental consent; (ii) insert additional best practices regarding medical testing and laboratory services; (iii) insert additional best practices regarding anesthesia service; (iv) align the requirements for administration, storage, and dispensing of drugs more precisely with the Code of Virginia; (v) align the requirements regarding emergency services more specifically with medical best practices; and (vi) update the requirements for facility design and construction.

This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: § 32.1-127 of the Code of Virginia.

Public Comment Deadline: February 11, 2015.

Agency Contact: Susan Horn, Policy Analyst, Licensure and Certification, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email susan.horn@vdh.virginia.gov.

VA.R. Doc. No. R15-4258; Filed December 16, 2014, 2:46 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-135, Demonstration Waiver Services.** The purpose of the proposed action is to establish a new demonstration waiver under the authority of § 1115 of the Social Security Act for adults and children who have serious mental illness to provide primary and acute care services as well as behavioral health services and coordination of those benefits.

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

Statutory Authority: § 32.1-325 of the Code of Virginia; § 1115 of the Social Security Act.

Public Comment Deadline: February 11, 2015.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, Policy and Research Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmas.virginia.gov.

VA.R. Doc. No. R15-4171; Filed December 10, 2014, 3:08 p.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

Titles of Regulations: **2VAC5-60. Rules and Regulations Governing the Operation of Livestock Markets (repealing 2VAC5-60-10 through 2VAC5-60-90).**

2VAC5-61. Regulations Governing Livestock Dealers and Marketing Facilities for the Purpose of Controlling and Eradicating Infectious and Contagious Diseases of Livestock (adding 2VAC5-61-10 through 2VAC5-61-70).

2VAC5-120. Rules and Regulations Governing the Recordkeeping by Virginia Cattle Dealers for the Control or Eradication of Brucellosis of Cattle (repealing 2VAC5-120-10 through 2VAC5-120-80).

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

Public Hearing Information:

March 19, 2015 - 10 a.m. - Virginia State Capitol, Senate Room 3, 1000 Bank Street, Richmond, VA 23219

Public Comment Deadline: March 20, 2015.

Agency Contact: Charles Broaddus, DVM, Program Manager, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, TTY (800) 828-1120, or email charles.broaddus@vdacs.virginia.gov.

Basis:

State Authority: This regulation is promulgated pursuant to the Code of Virginia as detailed below:

1. Section 3.2-6001 of the Code of Virginia authorizes the Commissioner of Agriculture and Consumer Services, the Board of Agriculture and Consumer Services, the State Veterinarian, and all other veterinarians within the Commonwealth to use their best efforts to protect livestock and poultry from contagious and infectious disease and requires the commissioner, board, and State Veterinarian to cooperate with the livestock and poultry disease control officials of other states and with the U.S. Department of Agriculture (USDA) in establishing interstate quarantine lines and regulations so as to best protect the livestock and poultry of the Commonwealth against all contagious and infectious diseases.

2. Section 3.2-6002 of the Code of Virginia provides the State Veterinarian with the authority to take such measures as may be necessary to prevent the spread of and eradicate contagious and infectious livestock and poultry diseases and authorizes the board to adopt regulations as may be necessary to effectuate the purposes of Article 1 (§ 3.2-6000 et seq.) of Chapter 60 of Title 3.2 of the Code of Virginia. The board and commissioner are also authorized to make the regulations adopted under Article 1 (§ 3.2-6000 et seq.) of Chapter 60 of Title 3.2 of the Code of Virginia to conform, insofar as practicable, to those regulations adopted under federal statutes governing animal health.

3. Section 3.2-6012 of the Code of Virginia provides that any person who operates a stockyard, poultry slaughter facility, or any other premises where livestock or poultry are repeatedly assembled to (i) maintain such premises in a sanitary condition as directed by the State Veterinarian; (ii) obey all orders or regulations adopted pursuant to Chapter 60 (§ 3.2-6000 et seq.) of Title 3.2 of the Code of Virginia as to handling livestock or poultry that may be affected with contagious or infectious disease, or that have been exposed to contagious and infectious disease; and (iii) clean and disinfect such premises or vehicles used in connection therewith, or any part thereof, when ordered to do so by the State Veterinarian or his representative.

4. Section 3.2-6016 of the Code of Virginia provides that it shall be unlawful for any person to, unless in accordance with regulations adopted pursuant to Article 1 of Chapter 60 of Title 3.2 of the Code of Virginia, alter, deface, change from one animal to another, mutilate, substitute, remove, misrepresent, or otherwise interfere with any tag, brand, tattoo, mark, or other identification adopted or used by any county, the commissioner, the board, the USDA, or any other state for the identification of any animal in the Commonwealth for the purpose of controlling or eradicating disease.

Federal Authority: Under federal law, implementation of some of the requirements of this regulation is now mandatory. Effective March 11, 2013, the USDA Animal and Plant Health Inspection Service has added new Part 86 to Title 9 of the Code of Federal Regulations, Chapter 1, Subchapter C, which requires that breeding cattle and certain other livestock moving interstate be officially identified and accompanied by an interstate certificate of veterinary inspection or other documentation, with some exemptions.

Purpose: This regulatory action repeals two existing chapters (2VAC5-60 and 2VAC5-120) and adds new chapter 2VAC5-61. The regulatory action addresses the need for updating current state rules for the operation of Virginia's livestock markets and covers recordkeeping by Virginia's cattle dealers and permanent animal identification, as is necessary in order to facilitate animal disease traceability. The intent of the planned action is to update and enhance requirements concerning animal disease traceability and to ensure that state regulations comply with related federal regulations recently issued by USDA. The expected amendments to the current regulations will provide for a timely and accurate tracing of animal disease outbreaks. An efficient system of tracing animal diseases assists in protecting the food supply, thereby protecting public health as well as the welfare of livestock producers and assists in maintaining and strengthening Virginia's reputation as a reliable source of animals for both domestic and international markets.

Substance: Substantive changes to the regulation:

1. Remove the requirement currently in 2VAC5-60 to collect blood samples for brucellosis testing from breeding cattle handled at livestock facilities (this requirement has not been enforced since 2001).

2. Retain the requirement that breeding cattle be officially identified at livestock facilities, as was the case when they were being bled for brucellosis. It is the responsibility of the livestock dealer or livestock marketing facility to place identification, if needed, and maintain a record of it.

3. Require official identification and recordkeeping of dairy type feeder calves. This requirement was included in order to comply with the new USDA animal disease traceability rule.

4. Make this regulation applicable to buying stations, auctions, and other types of sales where livestock from multiple owners are commingled and assembled for sale in addition to livestock markets and other cattle dealers.

Issues: Through the implementation of 2VAC5-141, Health Requirements Governing the Admission of Agricultural Animals, Companion Animals, and Other Animals or Birds into Virginia, the State Veterinarian and the Office of Veterinary Services have laid much of the groundwork over the past several years in supporting livestock marketing facilities and cattle dealers to be compliant with this regulation. The majority of livestock markets in the state are currently working with the Department of Agriculture and Consumer Services (VDACS) to have all breeding cattle handled at these markets to be officially identified. VDACS recognizes that the USDA requirement for official identification on dairy type feeder calves will cause some difficulty for livestock marketing facilities, and VDACS will continue to work to encourage identification of those feeders before arrival at the marketing facility. An efficient system of tracing animal diseases assists in protecting the food supply, thereby protecting public health as well as the welfare of livestock producers and assists in maintaining and strengthening Virginia's reputation as a reliable source of animals for both domestic and international markets.

The primary advantage to the agency of the proposed regulatory action is improved efficiencies in the animal disease traceability system. This regulatory action poses not disadvantages to the Commonwealth.

VDACS will continue to support livestock marketing facilities to maintain the required records for animal disease traceability, especially when that data can be collected and searched electronically.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed changes will expand the applicability of this regulation to buying stations, update official identification and recordkeeping of dairy type feeder calf requirements, and remove the obsolete requirement that breeding cattle sold at livestock markets be tested for brucellosis.

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

Estimated Economic Impact. This regulation establishes the recordkeeping requirements for livestock marketing facilities and dealers as well as the rules for the operation of livestock marketing facilities, including sanitation requirements. The main goal of the regulation is to minimize and control livestock disease outbreaks, which includes being able to effectively trace livestock for the purposes of disease control.

One of the proposed changes will expand the applicability of this regulation to buying stations and other types of sales where livestock from multiple owners are commingled and assembled for sale in addition to livestock markets and other cattle dealers. According to the Department of Agriculture and Consumer Services (DACS), there are five buying stations that have been identified and will be subject to this regulation. The facilities that are not currently in compliance will incur costs to comply with the requirements of this regulation. These compliance costs primarily include recordkeeping costs such as applying government provided metal tags or privately purchased radio frequency tags and reading and recording them to be able to trace animals.

DACS estimates that it may cost up to $1.83 to place a tag.[1] Metal tags are provided by federal government free of charge and placed on livestock by the facilities or the dealers. The radio frequency tags may be purchased by the facility or the dealers, or may be provided by DACS free of charge as funding allows. In addition, it costs $0.09 (for radio frequency tags) to $0.33 (for metal tags) to read and record the tags.[2] Both facility personnel and DACS personnel are likely to read the tags.

However, affected facilities have already been in contact with DACS and most of them have been in compliance with the requirements of this regulation. Thus, size of the additional compliance costs for specific facilities upon promulgation of this regulation will depend on their current compliance level. On the other hand, expansion of the jurisdiction of this rule to buying stations will help to effectively trace livestock for the purposes of minimizing and controlling significant livestock disease outbreaks.

The proposed changes will also update official identification and recordkeeping of dairy type feeder calf requirements concerning animal disease traceability to comply with the new United States Department of Agriculture animal disease traceability rule. The federal animal disease traceability rule applies to covered livestock moved interstate, with the requirement that such covered livestock be officially identified for interstate movement. DACS believes that most of the affected entities have already been in compliance with the proposed changes. Thus, no significant economic effects are expected from this change.

Finally, the proposed regulation removes the current requirement that breeding cattle sold at livestock markets be tested for brucellosis. No significant economic impact is expected from this change since this requirement has not been enforced since 2001 due to regional eradication of brucellosis.

Businesses and Entities Affected. This regulation currently applies to 27 livestock markets and 176 registered livestock dealers. An additional five livestock buying stations will be subject to this regulation.

Localities Particularly Affected. This regulation applies throughout the Commonwealth.

Projected Impact on Employment. Buying stations that are not currently applying and reading tags will be required to do so which would increase their demand for labor.

Effects on the Use and Value of Private Property. Buying stations that are not currently applying and reading tags will be required to do so which would increase their compliance cost and may reduce their asset values.

Small Businesses: Costs and Other Effects. The proposed amendments will require buying stations that are not currently applying and reading tags to do so.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no known alternative that would minimize adverse impact while accomplishing the same goals.

Real Estate Development Costs. The proposed amendments are unlikely to affect real estate development costs.

Legal Mandate.

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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[1] Radio frequency tags are priced $1.50 per tag and it costs approximately $0.33 for two minutes of labor to place the tag.

[2] The cost estimate for reading radio frequency tags is $0.09; $0.04 for 15 seconds of labor to read the tag and $0.05 for reading equipment. The cost estimate for reading metal tags is $0.33 for two minutes of labor to manually record the tag.

Agency's Response to Economic Impact Analysis: The agency concurs with the analysis of the Department of Planning and Budget.

Summary:

This regulation provides recordkeeping requirements for Virginia's livestock dealers and regulations for the operation of Virginia's livestock marketing facilities, including sanitation requirements. The proposed provisions expand the applicability of this regulation to buying stations, update official identification and recordkeeping of dairy type feeder calf requirements, and

remove the obsolete requirement that breeding cattle sold at livestock markets be tested for brucellosis.

CHAPTER 61
REGULATIONS GOVERNING LIVESTOCK DEALERS AND MARKETING FACILITIES FOR THE PURPOSE OF CONTROLLING AND ERADICATING INFECTIOUS AND CONTAGIOUS DISEASES OF LIVESTOCK

2VAC5-61-10. Definitions.

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

"Animal waste" means livestock or poultry excreta and associated feed losses, bedding, litter, or other materials.

"Breeding cattle" means all sexually intact cattle 18 months of age or older as evidenced by the presence of one or more permanent incisor teeth, all female cattle that have produced a calf or are exhibiting signs of pregnancy, all sexually intact females of dairy type regardless of age, and any sexually intact bovine of any age that is purchased or sold with the intent that it be used for breeding purposes.

"Cattle" means all domestic and wild members of the genera bos, bison, and bubalus to include domestic cattle, yak, bison, and water buffalo.

"Certificate of veterinary inspection" means an official document, which may be in an electronic format, issued by a federal, state, tribal, or accredited veterinarian certifying the inspection of animals.

"Dairy type" means all cattle of, or primarily of, a dairy or dual-purpose breed of cattle including but not limited to cattle of the Ayrshire, Brown Swiss, Guernsey, Holstein, Jersey, Milking Shorthorn, or similar breeds to include castrated males of such breeds.

"Dealer" means any person who engages in or facilitates, including by electronic means, the business of buying, selling, auctioning, exchanging, or otherwise transferring ownership of livestock in the Commonwealth for his own account or that of another person. A person who only sells livestock of his own production or who buys livestock only for his own production purposes shall not be considered a dealer under this chapter.

"Feeder cattle" means all cattle other than breeding cattle and slaughter cattle.

"Livestock" means all cattle, sheep, swine, goats, horses, donkeys, mules, camels, llamas, and alpacas.

"Marketing facility" means a livestock market; stockyard; buying station; auction, consignment, or other sale venue; or any other premises including those operating video, web-based, telephone, or other types of electronic sales methods, where livestock from multiple owners are commingled and assembled for sale or exchange in the Commonwealth.

"Official identification" means a unique identification number issued by a state or federal program, or other forms of identification approved by the State Veterinarian.

"Premises" means all grounds, structures, and associated equipment used by the livestock facility including yards, docks, pens, paddocks, alleys, sale rings, chutes, scales, and means of conveyance.

"Slaughter cattle" means those cattle that are purchased by or shipped without diversion to a state or federally inspected slaughter establishment for immediate slaughter.

"State Veterinarian" means the State Veterinarian of the Commonwealth of Virginia or his designee.

"State waters" means all waters of any river, creek, branch, lake, reservoir, pond, bay, roadstead, estuary, inlet, spring, or well and bodies of surface or underground water, natural or artificial, wholly or partially within or bordering the Commonwealth or within its jurisdiction.

2VAC5-61-20. Registration.

A. Each dealer in the Commonwealth shall be registered with the State Veterinarian by application to the State Veterinarian on forms that he provides. Each dealer shall renew his registration by no later than January 8 of each even-numbered year thereafter. Anyone operating as a dealer who fails to register is guilty of a violation of this chapter.

B. The State Veterinarian may, after due notice and opportunity for a hearing, deny, suspend, or cancel the registration of a dealer when the State Veterinarian has determined that the dealer has:

1. Violated state or federal laws or regulations governing the interstate or intrastate movement, shipment, or transportation of livestock;

2. Made false or misleading statements in the application for registration;

3. Removed or altered the official identification of livestock;

4. Failed to carry out the requirements of this chapter; or

5. Made false or misleading entries in the records that are required by this chapter.

2VAC5-61-30. Identification of livestock.

A. All livestock, other than feeder cattle that are not of a dairy type, that are handled by or otherwise under the scope of business of each dealer and marketing facility shall be officially identified. Each dealer and marketing facility shall cause official identification to be applied to any livestock handled by or otherwise under the scope of their business that is not already officially identified.

B. Official identification.

1. Official identification for cattle shall be an ear tag bearing a unique identification number issued by an official state or federal program or other form of identification approved by the State Veterinarian. For

slaughter cattle only that are purchased by a registered dealer, a U.S. Department of Agriculture back tag shall also be considered official identification.

2. Official identification for sheep and goats shall be any form of identification approved by the U.S. Department of Agriculture scrapie eradication program or other form of identification approved by the State Veterinarian.

3. Official identification for swine shall be a unique and permanent group or individual identification number issued by an official state or federal program and applied to each animal or other forms of identification approved by the State Veterinarian.

4. Official identification for alpacas, camels, and llamas shall be a microchip, scrapie serial tag, or other forms of identification approved by the State Veterinarian.

5. Official identification for horses shall be a microchip, registration tattoo, brand, name, and complete physical description as listed or demonstrated by photographs on either a current certificate of veterinary inspection or Coggins test certificate, or other form of identification approved by the State Veterinarian.

C. Official identification shall not be altered or removed.

2VAC5-61-40. Records.

A. Each dealer and marketing facility shall keep records of the following information, which shall be recorded in a timely fashion upon the completion of each transaction:

1. Record of the official identification numbers of all livestock handled or otherwise under the scope of business other than feeder cattle that are not of a dairy type.

2. The name and physical address of the person, firm, or agent from whom each animal was purchased and the date of such purchase.

3. The name and physical address of the person, firm, or agent to whom each animal was sold and the date of such sale.

B. Records required by this section shall be kept for at least five years. Every dealer or marketing facility, during all reasonable hours, shall permit the State Veterinarian to have access to and be able to copy any records made and retained as required by this section.

C. The State Veterinarian may allow for the records required by this section to be submitted to him in an electronic format he prescribes. Such records, properly submitted electronically to the State Veterinarian, are exempt from the requirement that they be retained for at least five years.

2VAC5-61-50. Inspection of marketing facilities.

All marketing facilities shall be under the jurisdiction of the State Veterinarian and available for his inspection. The State Veterinarian shall assign a designee to each marketing facility for the following purposes:

1. To be present before, during, or after the operation of the marketing facility as necessary for the purpose of ensuring compliance with this chapter.

2. To ensure that livestock bear official identification and that proper record is made of each transaction as required by this chapter.

3. To ensure that livestock are handled in accordance with the Virginia Comprehensive Animal Care laws (§ 3.2-6500 et seq. of Title 3.2 of the Code of Virginia).

4. To ensure proper disposition of all sick or diseased livestock offered for sale in accordance with this chapter or other orders of the State Veterinarian.

5. To make a thorough inspection of the marketing facility to determine if the premises are maintained in a clean, sanitary, and orderly manner.

2VAC5-61-60. Operation of marketing facilities.

A. The premises shall be maintained in a state of good repair. The marketing facility shall contain appropriately constructed and well-lighted livestock handling chutes, pens, and alleys for the inspection, identification, vaccination, and testing of livestock. Electrical power shall be provided.

B. The premises shall be maintained in a clean, sanitary, and orderly manner at all times and must be cleaned after each use. The sanitation process shall prevent contamination of state waters, production of noxious odors, and the breeding of insects or vermin. Run-off water shall be diverted from livestock holding areas.

C. The marketing facility shall be sprayed with disinfectant on a monthly basis or as otherwise required by the State Veterinarian. All alleys, scales, docks, pens, and rings in which livestock have been housed since the previous application of disinfectant must be cleaned of all bedding and animal waste so that the base surfaces can be thoroughly sprayed. No area shall be sprayed that has not been properly cleaned.

D. Isolation pens shall be provided that are clearly labeled, adequately drained, constructed of materials able to withstand frequent cleaning and disinfection, and cleaned and disinfected between each use.

E. Condemned and diseased livestock shall be penned separately from other livestock and shall be removed from the premises within 24 hours of the sale. Such pens shall be plainly marked "For Slaughter Only."

F. Dead animals shall be immediately moved to a designated area of the premises out of public view and removed from the premises within 24 hours.

G. The marketing facility shall ensure that feed and water can be provided to livestock in an appropriate manner when needed or as directed by the State Veterinarian.

2VAC5-61-70. Restriction of livestock movement.

A. Shipment of livestock into other states shall be subject to all federal laws and regulations governing the interstate

shipment of livestock and in conformity with the requirements of the state of destination.

B. Whenever the State Veterinarian has reason to suspect or knowledge that a threat to the livestock industry or to public safety exists by the continued conduct of business by a marketing facility or dealer, he may restrict or prohibit the conduct of the marketing facility's or dealer's business for such time as the threat or condition exists.

C. Whenever the sanitation of a marketing facility is not maintained as required in 2VAC5-61-60, the State Veterinarian may, at his discretion, (i) prohibit the use of certain areas of the marketing facility or (ii) limit the activities of such facility with regards to the type or to the destination of livestock sold in such facility. This restriction shall remain in effect until the State Veterinarian has determined that the marketing facility is in compliance.

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

FORMS (2VAC5-61)

Application for Registration: Virginia Livestock/Poultry Dealers and Marketing Facilities, Form VDACS-03214 (eff. 11/13)

VA.R. Doc. No. R13-3709, R13-3710; Filed December 12, 2014, 4:03 p.m.

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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

Title of Regulation: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-50, 4VAC20-252-60, 4VAC20-252-70, 4VAC20-252-110, 4VAC20-252-150, 4VAC20-252-230).**

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

Effective Date: January 1, 2015.

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

Summary:

The amendments (i) establish the Virginia commercial Chesapeake Bay striped bass quota as 1,064,997 pounds, (ii) establish the Virginia commercial coastal striped bass quota as 138,640 pounds, (iii) establish a Virginia recreational coastal striped bass size minimum limit and possession limit that equal a 25% or greater reduction in harvest from the amount of harvest in 2013, (iv) establish a Spring Recreational Striped Bass Trophy Permit for any individual targeting spring trophy striped bass recreationally, (v) establish sanctions pertaining to the failure of any individual to submit mandatory harvest reports for harvested spring recreational trophy striped bass in Virginia, and (vi) clarify that the Striped Bass Charter Boat Permit is for any for-hire vessel fishing for striped bass recreationally.

4VAC20-252-50. Concerning recreational fishing: general.

A. It shall be unlawful for any person fishing recreationally to take, catch, or attempt to take or catch any striped bass by any gear or method other than hook and line, rod and reel, hand line, or spearing.

B. It shall be unlawful for any person fishing recreationally to possess any striped bass while fishing in an area where or at a time when there is no open recreational striped bass season, except as described in 4VAC20-252-115. Striped bass caught contrary to this provision shall be returned to the water immediately.

C. It shall be unlawful for any person fishing recreationally to possess, land, and retain any striped bass in excess of the possession limit applicable for the area and season being fished within the 24-hour period of 12 a.m. through 11:59 p.m. Striped bass taken in excess of the possession limit shall be returned to the water immediately.

When fishing from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by the applicable personal possession limit. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

D. It shall be unlawful to combine possession limits when there is more than one area or season open at the same time.

E. It shall be unlawful for any person while actively fishing pursuant to a recreational fishery to possess any striped bass that are smaller than the minimum size limit or larger than the maximum size limit for the area and season then open and being fished, except as described in 4VAC20-252-115. Any striped bass caught that does not meet the applicable size limit shall be returned to the water immediately.

F. It shall be unlawful for any person to sell, offer for sale, trade or barter any striped bass taken by hook and line, rod

and reel, hand line, or spearing provided, however, this provision shall not apply to persons possessing a commercial hook-and-line license and a striped bass permit and meeting the other requirements of this chapter.

G. It shall be unlawful for any person fishing recreationally to transfer any striped bass to another person, while on the water or while fishing from a pier or shore.

H. It shall be unlawful for the captain of any charter boat or charter vessel to take hook-and-line, rod-and-reel, hand line, or spear fishermen for hire unless the captain has obtained a ~~permit~~ Striped Bass Charter Boat Permit from the commission and is ~~the holder of~~ a Coast Guard charter ~~license~~ licensee.

I. ~~Charter boat captains~~ Striped bass charter boat permittees shall report to the commission, on forms provided by the commission, all daily quantities of striped bass caught and harvested, and daily fishing hours for themselves or their customers, respectively. The written report shall be forwarded to the commission no later than 15 days following the last day of any open season. In addition, ~~charter boat captains~~ striped bass charter boat permittees engaging in the Bay and Coastal Spring Trophy-size Striped Bass Recreational Fishery and the Potomac River Tributaries Spring Striped Bass Recreational Fishery shall provide the report required by 4VAC20-252-60 and 4VAC20-252-70, respectively. ~~Failure to provide these reports is a violation of this chapter.~~

4VAC20-252-60. Bay and Coastal Spring Trophy-size Striped Bass Recreational Fisheries.

A. The open season for the Bay Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through June 15, inclusive; however, the season may be adjusted as set forth in subsection G of this section.

B. The area open for the Bay Spring Trophy-size fishery shall be the Chesapeake Bay and its tributaries, except the spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers.

C. The open season for the Coastal Spring Trophy-size Striped Bass Recreational Fishery shall be May 1 through May 15, inclusive; however, the season may be adjusted as set forth in subsection G of this section.

D. The area open for the Coastal Spring Trophy-size Striped Bass Recreational Fishery is the coastal area as described in 4VAC20-252-20.

E. The minimum size limit for the fisheries described in this section shall be 32 inches total length.

F. The possession limit for the fisheries described in this section shall be one fish per person.

G. The Bay and Coastal Spring Trophy-size fisheries, combined with the fishery defined by 4VAC20-252-70, shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and the Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.

H. ~~Persons engaging in the Bay and Coastal fisheries shall report the retention of any striped bass to the commission. Filing the report shall be the responsibility of the person retaining the striped bass or, in the case of any charter boat or vessel, the captain of the charter boat or vessel. These reports are due 15 days after the close of this fishery and shall be on forms provided by the commission. There will be separate forms for persons and for charter boats or vessels.~~ It shall be unlawful for any person, 16 years of age or older, participating in the Bay and Coastal Spring Trophy-size striped bass recreational fisheries to fail to obtain a Spring Recreational Striped Bass Trophy Permit from the commission prior to any participation, except when fishing from a legally licensed headboat or charter boat.

I. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report the take, harvest, or possession of any trophy-size striped bass, as described in subsection E of this section, on forms provided by the commission by the 15th day after the close of the Bay and Coastal Spring Trophy-size striped bass recreational fisheries. The report requirements shall be as follows:

1. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees shall provide the permittee name, commission permit identification number, the date of any harvest, the water body where the trophy-size striped bass was caught, number of trophy-size striped bass kept or released, and the length of each trophy-size striped bass kept or released. Any weight information on any kept or released trophy-size striped bass may be provided voluntarily by the permittees.

2. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees who did not participate in the Bay and Coastal Spring Trophy-size striped bass recreational seasons shall notify the commission of their lack of participation by the 15th day after the close of the Bay and Coastal Spring Trophy-size striped bass recreational seasons on forms provided by the commission.

J. It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and subsection H of this section, to fail to report either the harvest of trophy-size striped bass or no harvest activity within 15 days of the closing of the Bay and Coastal Spring Trophy-size striped bass recreational seasons.

4VAC20-252-70. Potomac River tributaries spring trophy-size striped bass recreational fishery.

A. The open season for the Potomac River tributaries spring striped bass recreational fishery shall correspond to the open season as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring fishery.

B. The area open for this fishery shall be those tributaries of the Potomac River that are within Virginia's jurisdiction beginning with, and including, Flag Pond thence upstream to the Route 301 bridge.

C. The minimum size limit for this fishery shall correspond to the minimum size limit as established by the Potomac River Fisheries Commission for the mainstem Potomac River spring trophy-size fishery.

D. The possession limit for this fishery shall be one fish per person.

E. This fishery, combined with the fishery defined by 4VAC20-252-60, shall have a target take of 30,000 total fish coming from both the Virginia and Maryland portions of the Chesapeake Bay and any tributaries of the Chesapeake Bay and Potomac River, and includes the area under the jurisdiction of the Potomac River Fisheries Commission. The season for this fishery shall be closed when it is determined that this total target has been reached.

F. ~~Persons engaging in this fishery shall report the retention of any striped bass to the commission. Filing the report shall be the responsibility of the person retaining the striped bass, or, in the case of any charter boat or vessel, the captain of the charter boat or vessel. These reports are due 15 days after the close of this fishery and shall be on forms provided by the commission. There will be separate forms for persons and for charter boats or vessels.~~ It shall be unlawful for any person, 16 years of age or older, participating in the Potomac River tributaries spring trophy-size striped bass recreational fishery to fail to obtain a Spring Recreational Striped Bass Trophy Permit from the commission prior to any participation, except when fishing from a legally licensed headboat or charter boat.

G. It shall be unlawful for any spring recreational striped bass trophy permittee or any charter boat striped bass permittee to fail to report the take, harvest, or possession of any trophy-size striped bass, as described in subsection E of this section, on forms provided by the commission by the 15th day after the close of the Potomac River tributaries spring trophy-size striped bass recreational fishery. The report requirements shall be as follows:

1. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees shall provide the permittee name, commission permit identification number, the date of any harvest, the water body where the trophy-size striped bass was caught, number of trophy-size striped bass kept or released, and the length of each trophy-size striped bass kept or released. Any weight information on any kept or released trophy-size striped bass may be provided voluntarily by the permittees.

2. Any spring recreational striped bass trophy permittees or charter boat striped bass permittees who did not participate in the Potomac River tributaries spring trophy-size striped bass recreational season shall notify the commission of their lack of participation by the 15th day after the close of the Potomac River tributaries spring trophy-size striped bass recreational season on forms provided by the commission.

H. It shall be unlawful for any permittee, as described in 4VAC20-252-50 H and 4VAC20-252-60 H, to fail to report either the harvest of trophy-size striped bass or no harvest activity within 15 days of the closing of the Potomac River tributaries spring trophy-size striped bass recreational season.

4VAC20-252-110. Coastal striped bass recreational fishery.

A. The open seasons for the coastal striped bass recreational fishery shall be January 1 through March 31 and May 16 through December 31, inclusive.

B. The area open for this fishery shall be the coastal area as defined in this chapter.

C. The minimum size limit for this fishery shall be 28 inches total length.

D. The possession limit for this fishery shall be ~~two~~ one fish per person per day.

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

A. The commercial harvest quota for the Chesapeake area shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the Chesapeake Bay and its tributaries and the Potomac River tributaries of Virginia for all open seasons and for all legal gear shall be ~~1,402,325~~ 1,064,997 pounds of whole fish. At such time as the total commercial harvest of striped bass from the Chesapeake area is projected to reach ~~1,402,325~~ 1,064,997 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the Chesapeake area.

B. The commercial harvest quota for the coastal area of Virginia shall be determined annually by the Marine Resources Commission. The total allowable level of all commercial harvest of striped bass from the coastal area for all open seasons and for all legal gear shall be ~~184,853~~ 138,640 pounds of whole fish. At such time as the total commercial harvest of striped bass from the coastal area is projected to reach ~~184,853~~ 138,640 pounds, and announced as such, it shall be unlawful for any person to land or possess striped bass caught for commercial purposes from the coastal area.

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

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

E. For any individual whose reported average coastal area harvest weight of striped bass in the previous fishing year was less than 12 pounds, a 12-pound minimum weight shall be used to convert that individual's harvest quota of striped bass, in pounds of fish, to harvest quota in number of fish.

4VAC20-252-230. Sanctions.

A. Any person failing to submit any report required by this chapter shall be denied ~~a~~ any striped bass permit for the following year.

B. It shall be unlawful for any person with a pending violation of this chapter or found guilty of violating any provision of this chapter to receive or transfer striped bass commercial harvest quota as described in 4VAC20-252-160.

C. It shall be unlawful for any person with a pending violation of this chapter or found guilty of violating any provision of this chapter to receive additional tag distributions as described in 4VAC20-252-160.

D. Any person found guilty of violating any provision of this chapter may have his permit or license revoked at any time upon review by the commission as provided for in § 28.2-232 of the Code of Virginia. If the commission revokes any person's permit for an aquaculture facility, then that person shall not be eligible to apply for a like permit for a period of two years from the date of revocation.

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

FORMS (4VAC20-252)

2015 Striped Bass Charter Boat Fishing Reporting Form (rev. 12/2014)

2015 Trophy-Size Striped Bass Season Charter Boat Fishing Reporting Form (rev. 12/2014)

Spring Striped Bass Recreational Trophy-Size Report Form (rev. 12/2014)

VA.R. Doc. No. R15-4227; Filed December 17, 2014, 12:20 p.m.

Final Regulation

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

Title of Regulation: **4VAC20-280. Pertaining to Speckled Trout and Red Drum (amending 4VAC20-280-50).**

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

Effective Date: January 1, 2015.

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

Summary:

The amendments establish a daily commercial bycatch landing limit for speckled trout as no more than 100 pounds per commercial fisherman registration licensee per day.

4VAC20-280-50. Commercial landings quota and daily bycatch limit.

A. For each 12-month period of September 1 through August 31, the commercial landings of speckled trout shall be limited to 51,104 pounds.

B. When it is projected and announced that 80% of the commercial landings quota has been taken, it shall be unlawful for any commercial fisherman registration licensee to take, harvest, land, or possess a daily bycatch limit of ~~up to~~ greater than 100 pounds of speckled trout, and that daily bycatch landing limit of speckled trout shall consist of at least an equal amount of other fish species.

C. When it is projected that the commercial landings quota will be met by a certain date within the above period, the Marine Resources Commission will provide notice of the closing date for commercial harvest and landing of speckled trout during that period, and it shall be unlawful for any person to harvest or land speckled trout for commercial purposes after such closing date for the remainder of that period.

VA.R. Doc. No. R15-4228; Filed December 17, 2014, 9:01 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-500. Pertaining to the Catching of Eels (amending 4VAC20-500-45).**

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

Effective Date: January 1, 2015.

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

Summary:

The amendments establish (i) an Eel Buyer Permit; (ii) reporting requirements for those who purchase eels from a legally licensed harvester; and (iii) a requirement that any lawful harvester who self-markets or retails eels to any person or business shall obtain an Eel Self-Market Permit.

4VAC20-500-45. Commercial season, permits, and reporting.

A. It shall be unlawful for any individual to harvest, take, catch, possess, or land any eels from September 1 through December 31 from any commercial gear, except from pots and traps.

B. It shall be unlawful for any individual legally licensed as a commercial seafood buyer to purchase or receive any quantity of eel landed in Virginia by any legally licensed harvester without first obtaining an Eel Buyer Permit from the commission.

C. It shall be unlawful for any individual to self-market any eels to any person or business unless that individual possesses a current eel self-market permit obtained from the commission.

D. It shall be unlawful for any eel self-market permittee to fail to report daily landing records of eels to the commission. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the fifth day of the following month.

E. It shall be unlawful for any eel buyer permittee permitted to purchase or receive eels landed in Virginia to fail to provide written reports to the Marine Resources Commission of daily purchases and harvest information on forms provided by the commission. Each eel buyer permittee will provide the commission the date of purchase, the harvester's Commercial Fisherman Registration License number, weight of eels purchased, and gear type. These reports shall be completed in full and submitted monthly to the Marine Resources Commission no later than the fifth day of the following month.

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

FORMS (4VAC20-500)

American Eel Buyer Reporting Form (undated)

VA.R. Doc. No. R15-4229; Filed December 17, 2014, 8:48 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-25).**

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

Effective Date: January 1, 2015.

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

Summary:

The amendments establish the annual Virginia commercial landings quota as 172,828 horseshoe crabs.

4VAC20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any individual to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any individual to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The annual commercial quota of horseshoe crab ~~for 2014~~ shall be 172,828 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any individual to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

1. The horseshoe crab commercial trawl gear quota is equal to 12.488% of the commercial quota of horseshoe crabs described in this subsection or 21,583 horseshoe crabs.

2. The horseshoe crab commercial dredge gear quota is equal to 40.348% of the commercial quota of horseshoe crabs described in this subsection or 69,733 horseshoe crabs.

3. The horseshoe crab commercial hand harvest quota is equal to 22.095% of the commercial quota of horseshoe crabs described in this subsection or 38,186 horseshoe crabs.

4. The horseshoe crab commercial pound net quota is equal to 18.142% of the commercial quota of horseshoe crabs described in this subsection or 31,354 horseshoe crabs.

5. The horseshoe crab commercial general category quota is equal to 6.927% of the commercial quota of horseshoe crabs described in this subsection or 11,972 horseshoe crabs.

E. It shall be unlawful for any individual to harvest or land horseshoe crabs during any calendar year from waters east of the COLREGS Line by any gear after 81,331 male horseshoe crabs have been landed and announced as such, and the following provisions shall also apply:

1. It shall be unlawful for any individual to harvest or land any female horseshoe crabs from waters east of the COLREGS Line.

2. It shall be unlawful for any individual to harvest or land any amount of horseshoe crabs from waters east of the COLREGS Line by any gear, except for trawl or dredge gear.

3. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee or Horseshoe Crab Class A Dredge Permittee to take, catch, possess, or land more than 1,250 male horseshoe crabs from waters east of the COLREGS Line when it is projected and announced that 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line.

4. It shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to take, catch, possess, or land more than 500 male horseshoe crabs from waters east of the COLREGS Line when it is projected and announced that 65,065 male horseshoe crabs have been landed from waters east of the COLREGS Line.

F. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee, as described in 4VAC20-900-21 C, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500 per day. When it is projected and announced that 80% of the horseshoe crab commercial trawl gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Trawl Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,250 per day. When it is projected and announced that 100% of the horseshoe crab commercial trawl quota is taken, it shall be unlawful for any valid Horseshoe Crab Trawl Permittee to possess or land any horseshoe crab taken by trawl gear.

2. It shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500 per day. When it is projected and announced that 80% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,250 per day. When it is projected and announced that 100% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class A Dredge Permittee to possess or land any horseshoe crab taken by dredge gear.

3. It shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000 per day. When it is projected and announced that 80% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per day. When it is projected and announced that 100% of the horseshoe crab commercial dredge gear quota has been taken, it shall be unlawful for any valid Horseshoe Crab Class B Dredge Permittee to possess or land any horseshoe crab taken by dredge gear.

4. It shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee, as described in 4VAC20-900-21 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per 24-hour period, as described in subdivision 9 of this subsection. When it is projected and announced that 80% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per 24-hour period, as described in subdivision 9 of this subsection. When it is projected and announced that 100% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any valid Horseshoe Crab Hand Harvest Permittee to possess or land any horseshoe crab taken by hand.

5. It shall be unlawful for any valid Horseshoe Crab Pound Net Permittee, as described in 4VAC20-900-21 F, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 500 per day. When it is projected and announced that 80% of the horseshoe crab commercial pound net quota has been taken, it shall be unlawful for any valid Horseshoe Crab Pound Net

Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 100% of the horseshoe crab commercial pound net quota has been taken, it shall be unlawful for any valid Horseshoe Crab Pound Net Permittee to possess or land any horseshoe crab taken by pound net.

6. It shall be unlawful for any valid Horseshoe Crab General Category Permittee, as described in 4VAC20-900-21 G, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 250 per day. When it is projected and announced that 80% of the horseshoe crab commercial general category quota has been taken, it shall be unlawful for any valid Horseshoe Crab General Category Permittee to possess aboard any vessel or to land any number of horseshoe crabs in excess of 125 per day. When it is projected and announced that 100% of the horseshoe crab commercial general category quota has been taken, it shall be unlawful for any valid Horseshoe Crab General Category Permittee to possess or land any horseshoe crab taken by gear other than trawl, dredge, pound net, or by hand.

7. It shall be unlawful for any two valid Horseshoe Crab Hand Harvest Permittees when fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per 24-hour period, as described in subdivision 9 of this subsection. When it is projected and announced that 80% of the horseshoe crab commercial hand harvest quota has been taken, it shall be unlawful for any two valid Horseshoe Crab Hand Harvest Permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per 24-hour period, as described in subdivision 9 of this subsection.

8. It shall be unlawful for any valid Horseshoe Crab General Category Permittee to harvest horseshoe crabs by gill net, except as described in this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, after sunrise and before sunset.

b. It shall be unlawful for any individual to harvest or possess horseshoe crabs taken by any gill net that has a stretched mesh measure equal to or greater than six inches, unless the twine size of that gill net is equal to or greater than 0.81 millimeters in diameter (0.031 inches), and that individual possesses his own valid commercial striped bass permit or his own black drum harvesting and selling permit, as well as a Horseshoe Crab General Category Permit.

9. It shall be unlawful for any person permitted for hand harvest of horseshoe crabs to possess or land any horseshoe crabs, except during a 24-hour period that extends from 12 noon on one day to 12 noon the following day.

H. From April 1 through June 30, in the Toms Cove Area, it shall be unlawful for any individual to place, set, or fish any gill net, except as described in this subsection.

1. From April 1 through May 31, any gill net licensed as over 600 feet and up to 1,200 feet in length shall have at least one anchored end 800 feet from the mean low water line.

2. From June 1 through June 30, it shall be unlawful to place, set, or fish any gill net after sunset or before sunrise.

I. It shall be unlawful for any valid Horseshoe Crab Trawl Permittee, Horseshoe Crab Class A Dredge Permittee, or Horseshoe Crab Class B Dredge Permittee to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

VA.R. Doc. No. R15-4231; Filed December 17, 2014, 9:33 a.m.

Emergency Regulation

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

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

Effective Dates: January 1, 2015, to January 31, 2015.

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

Preamble:

The amendments establish the annual commercial harvest quotas for black sea bass directed and bycatch fisheries.

4VAC20-950-47. Commercial harvest quotas.

A. The ~~2014~~ annual commercial black sea bass directed fishery quota is ~~394,000~~ 408,000 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The ~~2014~~ annual commercial black sea bass bycatch fishery quota is 40,000 pounds. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount of the quota overage shall be deducted from the following year's bycatch fishing quota.

VA.R. Doc. No. R15-4233; Filed December 17, 2014, 9:41 a.m.

Final Regulation

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

Title of Regulation: **4VAC20-1270. Pertaining to Atlantic Menhaden (amending 4VAC20-1270-30, 4VAC20-1270-50).**

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

Effective Date: January 1, 2015.

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

Summary:

The amendments modify the reference years for the total allowable landing requirements for Atlantic menhaden.

4VAC20-1270-30. Total allowable landings for menhaden; allocation, accountability, and overages.

A. Section 28.2-400.2 of the Code of Virginia establishes the total allowable commercial landings for menhaden in ~~2013~~ 2015 and ~~2014~~ 2016 in metric tons equivalent to 318,067,167 pounds, and that total amount of allowable landings shall be allocated as quotas among three sectors of the menhaden fishery, as described below, pursuant to § 28.2-400.3 of the Code of Virginia. The purse seine menhaden reduction sector is allocated a quota of 286,396,768 pounds of allowable menhaden landings; the purse seine menhaden bait sector a 26,648,870 pound quota of allowable menhaden landings; and the nonpurse seine menhaden bait sector a 5,021,529 pound quota of allowable menhaden landings.

B. Any menhaden landings on and after January 1, 2013, count towards that particular sector's 2013 commercial quota.

C. Any overages of a sector's commercial quota shall be deducted from the following year's quota for that sector.

4VAC20-1270-50. Nonpurse seine menhaden bait sector quota; allocation and bycatch provisions.

A. For ~~2013~~ 2015 and ~~2014~~ 2016, the nonpurse seine commercial bait sector's allocation shall be by gear type as follows:

1. Cast net:	1,930 pounds.
2. Dredge:	3,069 pounds.
3. Fyke net:	2,115 pounds.
4. Gill net:	1,521,108 pounds.
5. Hook and line:	234 pounds.
6. Pot:	2,064 pounds.
7. Pound net:	3,412,020 pounds.
8. Seine:	20,103 pounds.
9. Trawl:	58,847 pounds.
10. Trot line:	39 pounds.

B. Pursuant to § 28.2-400.4 of the Code of Virginia, once the commissioner announces the date of closure for the nonpurse seine bait fishery, any person licensed in the nonpurse seine menhaden bait sector may possess and land up to 6,000 pounds of menhaden per day.

VA.R. Doc. No. R15-4232; Filed December 17, 2014, 9:54 a.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Proposed Regulation

Titles of Regulations: **8VAC20-30. Regulations Governing Adult High School Programs (amending 8VAC20-30-20).**

8VAC20-680. Regulations Governing the General Achievement Diploma (repealing 8VAC20-680-10, 8VAC20-680-20).

Statutory Authority: §§ 22.1-224 and 22.1-253.13:4 of the Code of Virginia.

Public Hearing Information:

March 26, 2015 - 11 a.m. - 22nd Floor, Conference Room, James Monroe Building, 101 North 14th Street, Richmond, Virginia 23219 (The public hearing will begin immediately following adjournment of the Board of Education business meeting.)

Public Comment Deadline: March 27, 2015.

Agency Contact: Dr. Susan Clair, Director, Adult Education and Literacy, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 786-3347, or email susan.clair@doe.virginia.gov.

Basis: Section 22.1-16 of the Code of Virginia states that the Board of Education may adopt bylaws for its own government and promulgate such regulations as may be necessary to carry out its powers and duties and the provisions of Title 22.1 of the Code of Virginia.

Section 22.1-224 of the Code of Virginia requires the board to promulgate appropriate standards and guidelines for adult education programs.

Section 22.1-253.13:4 of the Code of Virginia requires the board to establish by regulation "requirements for the award of a general achievement adult high school diploma for those persons who are not subject to the compulsory school attendance requirements of § 22.1-254 and have (i) achieved a passing score on a high school equivalency examination approved by the Board of Education; (ii) successfully

completed an education and training program designated by the Board of Education; (iii) earned a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment; and (iv) satisfied other requirements as may be established by the Board for the award of such diploma."

Purpose: The regulations provide adults with the opportunity to earn a General Achievement Adult High School Diploma. Adult learners will be able to earn a diploma that will lead to self-sustaining employment, career and technical skills attainment, and qualification for postsecondary education. The regulations implement the provisions of Chapters 454 and 642 of the 2012 Acts of Assembly, so that there is consistency between the Code of Virginia and the Board of Education's regulations.

Substance: Consistent with changes legislated by Chapters 454 and 642 of the 2012 Acts of Assembly, the Regulations Governing Adult High School Programs describe the requirements for achieving the General Achievement Adult High School Diploma. The regulations stipulate that a general achievement adult high school diploma shall be awarded to a student who is not subject to the compulsory attendance requirements and who:

1. Successfully completes the general educational development (GED) program that meets the requirements of the Board of Education's Regulations Governing General Educational Development Certificates (8VAC20-360) and earns a GED certificate;

2. Earns a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia Workplace Readiness Skills Assessment; and

3. Successfully completes the courses as prescribed by the Board of Education.

The Regulations Governing the General Achievement Diploma are repealed because the General Achievement Diploma was folded into the Adult High School Diploma, which has been renamed the General Achievement Adult High School Diploma.

Issues: The advantages of these regulations to the public are that the regulations are designed to enhance preparedness for the workplace and for postsecondary education and strengthen educational and career opportunities for adult students. They also support expanded learning opportunities for adult students by enhancing workplace skills through the attainment of a career and technical education credential for adult students earning the general achievement adult high school diploma. The regulations align with the Code of Virginia requirements so that there is consistency and no conflicting requirements. This regulatory action comports with the Code of Virginia and poses no disadvantages to the public or Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Chapters 454 and 642 of the 2012 Virginia Acts of Assembly eliminated the General Achievement Diploma by folding it into the Adult High School Diploma, which is re-named the General Achievement Adult High School Diploma. The legislation provided that the General Achievement Adult High School Diploma would include the following requirements:

- Achievement of a passing score on the General Educational Development (GED) test;
- Successful completion of an education and training program designated by the Board of Education;
- Achievement of a Board of Education-approved career and technical education credential such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia workplace readiness skills assessment;
- Completion of other requirements as may be established by the Board.

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

Estimated Economic Impact. The proposed requirements in the regulation do not introduce costs or benefits beyond that which is already specified in the legislation. The proposed regulation is beneficial in that it helps provide clarity.

Businesses and Entities Affected. The proposed amendments affect adult students and the 132 public school divisions in the Commonwealth.

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

Projected Impact on Employment. The proposed amendments are unlikely to significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments are unlikely to significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed amendments are unlikely to significantly affect small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendments will not adversely affect small businesses.

Real Estate Development Costs. The proposed amendments are unlikely to significantly affect real estate development costs.

Legal Mandate.

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis completed by the Department of Planning and Budget.

Summary:

Chapters 454 and 642 of the 2012 Acts of Assembly eliminate the general achievement diploma by folding it into the adult high school diploma, which is renamed the general achievement adult high school diploma. The proposed regulations (i) provide that only students not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia may be enrolled in an adult high school program and awarded a general achievement adult high school diploma and (ii) set forth the education, training, and other requirements to be completed for the general achievement adult high school diploma.

8VAC20-30-20. Minimum requirements for adult high school programs.

Adult high school programs are not part of the 9 through 12 high school program and shall meet the following minimum requirements:

1. Age. ~~An adult student shall be at least 18 years of age. Under circumstances which local school authorities consider justifiable, students of school age may enroll in courses offered by the adult high school. Only in exceptional circumstances should school officials permit a school-aged individual enrolled in grades 9 through 12 to earn credits toward high school graduation in adult classes. All educational alternatives must have been considered prior to placing an enrolled student in an adult class. Such students would be able to earn a diploma, as provided in 8VAC20-131-50, but would not be eligible to earn an adult high school diploma.~~ Only those students not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia shall be enrolled in an adult high school program.

2. Credit.

a. Satisfactory completion of 108 hours of classroom instruction in a subject shall constitute sufficient evidence for one unit of credit toward a high school diploma.

b. When, in the judgment of the principal or the superintendent, an adult not regularly enrolled in the grades 9 through 12 high school program is able to demonstrate by examination or other objective evidence, satisfactory completion of the work, he may receive credit in accordance with policies adopted by the local school board. It is the responsibility of the school issuing the credit to document the types of examinations employed or other objective evidence used, the testing or assessment procedures, and the extent of progress in each case.

c. Credits earned in adult high school programs shall be transferable as prescribed in the Regulations Establishing Standards for Accrediting Public Schools in Virginia within the sponsoring school division and shall be transferable to public secondary schools outside of the sponsoring school division.

3. Diplomas.

a. A diploma, as provided in 8VAC20-131-50, shall be awarded to an adult student who completes all requirements of the diploma regulated by the Board of Education, with the exception of health and physical education requirements, in effect at the time he will graduate.

b. An adult high school diploma shall be awarded to an adult student who completes the course credit requirements in effect for any Board of Education diploma, with the exception of health and physical education course requirements, at the time he first entered the ninth grade. The requirement for specific assessments may be waived if the assessments are no longer administered to students in Virginia public schools.

c. An adult high school diploma shall be awarded to an adult student who demonstrates through applied performance assessment full mastery of the National External Diploma Program ~~Generalized~~ Competencies ~~Correlated with CASAS Competencies, 1996~~, version 5.0, January 2013, a CASAS program, as promulgated by the American Council on Education and validated and endorsed by the ~~United States~~ U.S. Department of Education.

d. ~~A General Achievement Diploma, as provided in 8VAC20-680, shall be awarded to an adult student who completes all requirements of the diploma.~~ A general achievement adult high school diploma shall be awarded to a student who is not subject to the compulsory attendance requirements of § 22.1-254 of the Code of Virginia and who:

(1) Successfully completes the general educational development (GED) program that meets the requirements of the Board of Education's Regulations Governing General Educational Development Certificates (8VAC20-360) and earns a GED certificate;

(2) Earns a Board of Education-approved career and technical education credential, such as the successful completion of an industry certification, a state licensure examination, a national occupational competency assessment, or the Virginia Workplace Readiness Skills Assessment; and

(3) Successfully completes the following courses that incorporate or exceed the applicable Standards of Learning:

Discipline Area	Standard Units of Credit Required
English	4
Mathematics	3
Science	2
History and Social Sciences	2
Electives	9
TOTAL	20

Courses completed to satisfy the requirements in mathematics and science shall include content in courses that incorporate or exceed the content of courses approved by the Board of Education to satisfy any other board-recognized diploma.

Courses completed to satisfy the history and social sciences requirements shall include one unit of credit in Virginia and U.S. history and one unit of credit in Virginia and U.S. government in courses that incorporate or exceed the content of courses approved by the Board of Education to satisfy any other board-recognized diploma.

Courses completed to satisfy the electives requirement shall include at least two sequential electives in an area of concentration or specialization, which may include career and technical education and training.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC20-30)

~~National External Diploma Program Generalized Competencies Correlated with CASAS Competencies, Comprehensive Adult Student Assessment System EDP/CASAS, 1996.~~

National External Diploma Program Competencies, version 5.0, January 2013, a CASAS program, as promulgated by the American Council on Education and validated and endorsed by the U.S. Department of Education

VA.R. Doc. No. R13-3303; Filed December 15, 2014, 10:50 a.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Proposed Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (Rev. C09) (amending 9VAC5-40-7800; adding 9VAC5-40-8380 through 9VAC5-40-8480).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172, and 182); 40 CFR Parts 51 and 60.

Public Hearing Information:

February 26, 2015 - 11 a.m. - Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193

Public Comment Deadline: March 13, 2015.

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

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia) authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling,

and prohibiting air pollution to protect public health and welfare. Written assurance from the Office of the Attorney General that the State Air Pollution Control Board possesses the statutory authority to promulgate the proposed regulation amendments is available upon request.

Specific Federal Requirements.

Ground-level ozone is an air pollutant that forms when volatile organic compounds (VOCs) and nitrogen oxides (NO_X) interact with sunlight. The national standard for ozone measured over an 8-hour period was promulgated by the U.S. Environmental Protection Agency (EPA) on July 18, 1997 (62 FR 38856) at a level of 0.08 parts per million (ppm).

Once EPA establishes a national standard for ozone, it must then designate areas that do not attain the standard (nonattainment areas). In turn, states must develop plans (state implementation plans or SIPs), including regulations, which will enable nonattainment areas to attain and maintain the standard.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the federal Clean Air Act and the associated nonattainment classification under § 181 of the Act or 40 CFR 51.903(a). Virginia's designations are in 40 CFR 81.347. On April 30, 2004 (69 FR 23858), EPA published designations for 0.08 ppm 8-hour ozone nonattainment areas and associated classifications.

On April 30, 2004 (69 FR 23951), EPA promulgated phase 1 of a final rule adding Subpart X to 40 CFR Part 51. Subpart X contains the provisions for the implementation of the 8-hour ozone NAAQS, along with associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81. The remainder of the planning requirements (phase 2) were published on November 29, 2005 (70 FR 71612).

In order to implement the control measures needed to attain and maintain ozone air quality standard, Virginia has established VOC and NO_X emissions control areas. These areas were created to provide a legal mechanism for defining geographic areas in which to implement certain control measures in the nonattainment areas. The emissions control areas may or may not coincide with the nonattainment areas, depending on regional planning requirements.

Section 172(c)(1) of the Act provides that SIPs for nonattainment areas must include "reasonably available control measures" (RACM), including "reasonably available control techniques" (RACT), for sources of emissions. Section 182(b)(2) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by a control techniques guidelines document (CTG) issued after November 15, 1990, and prior to the areas date of attainment.

Section 183(e) directs EPA to list for regulation those categories of products that account for at least 80% of the VOC emissions from commercial products in ozone nonattainment areas. EPA issued such a list on March 23, 1995, and has revised the list periodically. RACT controls for listed source categories controlled by a CTG are known as CTG RACTs. A CTG RACT has been issued for offset lithographic and letterpress printing operations (October 5, 2006, 71 FR 58745). Therefore, states with moderate ozone nonattainment areas must implement these CTG RACTs as part of their attainment SIPs.

General Federal Requirements.

Sections 109 (a) and (b) of the federal Clean Air Act require EPA to prescribe primary and secondary air quality standards to protect public health and welfare. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires EPA to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under § 108.

Once the NAAQS are promulgated pursuant to § 109, § 107(d) sets out a process for designating those areas that are in compliance with the standards (attainment or unclassifiable) and those that are not (nonattainment). Governors make the initial recommendations but EPA makes the final decision. Section 107(d) also sets forth the process for redesignations once the nonattainment areas are in compliance with the applicable NAAQS.

Section 110(a) of the Act mandates that each state adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan (SIP) must include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the Act;

2. Establish schedules for compliance;

3. Prohibit emissions that would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. These requirements mandate that any such plan must include certain provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the

description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each SIP must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;

3. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

4. Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

5. Obtain information necessary to determine whether air pollution sources comply with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;

6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

1. Implementation of all reasonably available control measures as expeditiously as practicable and provide for the attainment of the national ambient air quality standards;

2. Reasonable further progress;

3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

4. Identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

5. A requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

6. Inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

7. If applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

8. Inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements must provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Section 107(d)(3)(D) provides that a state may petition EPA to redesignate a nonattainment area as attainment and EPA may approve the redesignation subject to certain criteria

being met. Section 107(d)(3)(E) stipulates one of these criteria, that EPA must fully approve a maintenance plan that meets the requirements of § 175A. According to § 175A(a), the maintenance plan must be part of a SIP submission, and must provide for maintenance of the NAAQS for at least 10 years after the redesignation. The plan must contain any additional measures needed to ensure maintenance. Section 175A(b) further requires that 8 years after redesignation, a maintenance plan for the next 10 years must then be submitted. As stated in § 175A(c), nonattainment requirements continue to apply until the SIP submittal is approved. Finally, § 175A(d) requires that the maintenance plan contain contingency provisions which will be implemented should the area fail to maintain the NAAQS as provided for in the original plan.

Under Part D, Subpart 2, § 181 sets forth the classifications and nonattainment dates for 1-hour ozone nonattainment areas once they are designated as such under § 107(d).

Section 182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of VOCs in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. EPA has published control techniques guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in § 182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the Act and the associated nonattainment classification (if any) under § 181 of the Act or 40 CFR 51.903(a), as applicable. Subpart X to 40 CFR Part 51 contains the provisions for the implementation of the 8-hour ozone NAAQS, along with associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated.

State Requirements.

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A of the Code of Virginia). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300 of the Code of Virginia).

Purpose: The purpose of the proposed action is to adopt new standards for the control of volatile organic compound (VOC) emissions from (i) offset lithographic printing operations and (ii) letterpress printing operations within the Northern Virginia VOC Emissions Control Area. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 0.08 parts per million (ppm) 8-hour ozone standard. It will contribute to the reduction of ozone air pollution, and thereby improve public health and welfare.

Substance: For existing Article 53 pertaining to earlier standards for lithographic operations in all VOC emissions control areas, applicability provisions for facilities located in the Northern Virginia VOC emissions control area are deleted. Provisions of Article 53 applicable to sources in the Northern Virginia VOC emissions control area are preserved in Article 56.1, most notably (i) offset lithographic printing process dryer control provisions for sources with a facility potential to emit between 10 tons of VOC per year and having individual presses with a theoretical potential to emit 25 tons of VOC per year, and (ii) limits on the VOC content of cleaning materials (30% instead of 70%).

For each new article (Articles 56 and 56.1):

1. An applicability section is established which specifies that facilities in the Northern Virginia VOC emissions control area are affected.

2. Definitions of terms used in the rule are provided.

3. A standard for VOC emissions is established, along with provisions for achieving the standard.

4. Compliance provisions are provided detailing how compliance is determined with the standards.

5. Test methods are provided by which compliance may be determined.

6. Monitoring provisions are provided to ensure that the owner is able to stay in compliance with the standards.

7. Standard provisions are provided for visible emissions; fugitive dust/emissions; odor; toxic pollutants; a compliance schedule; notification, records and reporting; registration; facility and control equipment maintenance or malfunction; and permits.

Issues: The primary advantage to the general public is the reduction of VOC air pollution, which has a negative effect on public health and welfare. Regulated sources may realize cost savings through more effective application procedures and practices. There are no disadvantages to the public.

The primary advantages to the department are that the adoption of these regulations will allow Virginia to attain and maintain air quality standards and improve public health of Virginians. The primary disadvantage to the department is the potential for an increased compliance cost to administer the new regulations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to amend its existing air pollution regulations to add new standards for the control of volatile organic compound (VOC) emissions from letterpress printing, and change the standards for lithographic printing, within the Northern Virginia VOC Emissions Control Area.

Result of Analysis. Because the Department of Environmental Quality (DEQ) does not know with any degree of certainty how many entities these regulatory changes will affect, there is likely insufficient information to decide if benefits outweigh costs.

Estimated Economic Impact. Currently, any lithographic printing operations that have the potential to emit 10 or more tons of VOC are subject to the rules in 9 VAC 5-40. The Board proposes to amend this language so that any operations that actually emit 3 tons or more of VOC will have to abide by the restrictions in these regulations. DEQ reports that these two standards are roughly equivalent and, so, they do not anticipate that many businesses in the Northern Virginia VOC Emissions Control Area will be affected by this change. For any businesses that would newly be subject to these regulations on account of this change, DEQ anticipates that costs added would be approximately $855 per ton of VOC produced.

The Board also proposes to require several new standards for cleaning materials used in lithographic printing operations. Specifically, the Board proposes to require these businesses to 1) store cleaning materials, used shop towels, sponges and other manual cleaning aids in closed containers which are required to remain closed except when cleaners or manual cleaning aids are added or removed and 2) minimize spills of VOC containing cleaners. DEQ reports that these new rules may add additional costs of up to $855 per ton of VOC removed for affected businesses. These costs may be partially or completely offset by savings that businesses will see on account of decreased evaporation of their cleaning products.

Currently, the Boards air pollution control regulations do not include rules for the control of volatile organic compound (VOC) emissions from letterpress printing. The Board proposes to add rules that largely mimic those for lithographic printing. The rules for letterbox printing will be slightly more permissive in that they allow for cleaning materials that have a VOC content of 70% by weight rather than the 30% by weight required for lithographic printing. DEQ estimates that most letterbox printing operations in Northern Virginia very likely already meet the standards that will be set in the proposed regulations. Those that would not already be in compliance may incur costs of $855 per ton of VOC removed.

DEQ will incur costs associated with promulgating these new rules that include the cost of identifying and registering affected businesses. DEQ estimates that these costs will total between $12,144 and $48,576. Affected businesses may incur costs for potentially more expensive low VOC products and, on rarer occasions, for control equipment. DEQ estimates that these costs would add to approximately $855 per ton of VOC removed. The Environmental Protection Agency (EPA) is requiring Virginia to promulgate these regulations under threat of loss of highway funding so one of the benefits of this regulatory action will be the preservation of that highway funding.

Businesses and Entities Affected. DEQ reports that it is impossible to know how many businesses will be affected by these regulations. Given that the products that will be regulated have many applications, there are likely numerous businesses that will be affected. For the portions of these rules that are new, many affected businesses will not have had to register with, or get a permit from, the Board before.

Localities Particularly Affected. Localities in the Northern Virginia non-attainment area (the counties of Arlington, Fairfax, Loudon, Prince William and Stafford as well as the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park) will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Affected small businesses may incur costs from having to change the cleaning products they use or, in rare instances, from having to purchase control equipment. DEQ believes that these costs will be partially offset by savings that businesses will realize from losing less cleaning product to evaporation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There do not appear to be any alternate methods that would both further minimize costs and achieve the aims of the Board.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact

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

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

Summary:

The proposed regulation requires owners to limit emissions from offset lithographic printing operations and letterpress printing operations to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia VOC Emissions Control Area, and establishes standards, control techniques, and provisions for determining compliance. The regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

Article 53

Emission Standards for Lithographic Printing Processes (Rule 4- 53)

9VAC5-40-7800. Applicability and designation of affected facility.

A. Except as provided in subsections C, D, and E of this section, the affected facility to which the provisions of this article apply is each lithographic printing process ~~which~~ that uses a substrate other than a textile.

B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206.

C. Exempted from the provisions of this article are ~~facilities~~ offset lithographic printing operations in the Northern Virginia Volatile Organic Compound Emissions Control Area ~~whose potential to emit is less than 10 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection~~. Provisions applicable to offset lithographic printing operations in the Northern Virginia Volatile Organic Compound Emissions Control Area are provided in Article 56.1 of this part (9VAC5-40-8420 et seq.).

D. Exempted from the provisions of this article are facilities in all volatile organic compound emissions control areas, other than the Northern Virginia Volatile Organic Compound Emissions Control Area, whose potential to emit is less than 100 tons per year of volatile organic compounds, provided the emission rates are determined in a manner acceptable to the board. All volatile organic compound emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in applying the exemption levels specified in this subsection.

E. The provisions of this article do not apply to the following:

1. Printing processes used exclusively for determination of product quality and commercial acceptance provided:

a. The operation is not an integral part of the production process;

b. The emissions from all product quality printing processes do not exceed 400 pounds in any 30 day period; and

c. The exemption is approved by the board.

2. Photoprocessing, typesetting, or imagesetting equipment using water-based chemistry to develop silver halide images.

3. Platemaking equipment using water-based chemistry to remove unhardened image-producing material from an exposed plate.

4. Equipment used to make blueprints.

5. Any sheet-fed offset lithographic press with a cylinder width of 26 inches or less.

Article 56

Emission Standards for Letterpress Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56)

9VAC5-40-8380. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is any letterpress printing operation at a stationary source where the actual emissions of volatile organic compounds (VOCs) from all aspects of letterpress printing operations, including related cleaning activities,

before the consideration of controls, are equal to or exceed 3.0 tons per 12-month rolling period.

B. The provisions of this article apply only to sources of VOCs located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

9VAC5-40-8382. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Cleaning materials" means any washes, cleaners, solvents, or rejuvenators that are used to remove excess printing inks, oils, and residual paper from a press, press equipment, or press parts, or used to remove dried ink from areas around a press. Cleaning materials include solvents and cleaners used for manual cleaning, and cleaning solutions used by automatic cleaning systems such as roller wash and type wash. Cleaning materials do not include cleaners used for cleaning electronic components of a press, pre-press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies such as detergents used to clean the floor (other than to remove dried ink from areas around a press), and cleaning performed in parts washers and cold cleaners subject to Article 47 (9VAC5-40-6820 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources).

"Composite partial vapor pressure" means the sum of the partial pressures of the compounds defined as volatile organic compounds. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

where:

W_i	=	Weight of the "i"th VOC compound, in grams.
W_w	=	Weight of water, in grams.
W_e	=	Weight of exempt compound, in grams.
MW_i	=	Molecular weight of the "i"th VOC compound, in grams/gram-mole.
MW_w	=	Molecular weight of water, in grams/gram-mole.
MW_e	=	Molecular weight of exempt compound, in grams/gram-mole.
PP_c	=	VOC composite partial pressure at 20°C, in millimeters of mercury (mm Hg).
VP_i	=	Vapor pressure of the "i"th VOC compound at 20°C, in mm Hg.

"First installation date" means the date that a control device is first installed for the purpose of controlling emissions. The first installation date does not change if the control device is later moved to a new location or installed on a different press.

"Heatset" means a printing process in which heat from a dryer is used to evaporate ink oils from the substrate.

"Letterpress printing" means a printing process in which the image area is raised relative to the nonimage area and paste ink is transferred to the substrate directly from the image surface.

"Letterpress printing operation" means one or more letterpress printing processes employing letterpress printing on letterpress printing presses and the related processes necessary to directly support the operation of those presses including, but not limited to, cleaning, pre-press, and post-press operations.

"Non-heatset" means a printing process in which the printing inks are set and dried by absorption or oxidation rather than heat. For the purposes of this article, UV-cured and electron beam-cured inks are considered non-heatset.

"Press" means a printing production assembly composed of one or more units to produce a printed substrate (sheet or web).

"Printing" means a photomechanical process in which a transfer of text, designs, and images occurs through contact of an image carrier with a substrate.

"Printing process" means any operation or system wherein printing ink or a combination of printing ink and surface coating is applied, dried, or cured and that is subject to the same emission standard. A printing process may include any equipment that applies, conveys, dries, or cures inks or surface coatings, including, but not limited to, flow coaters, flashoff areas, air dryers, drying areas, and ovens.

"Sheet-fed" means a printing process in which individual sheets of substrate are fed into the press sequentially.

"Theoretical potential to emit" means for the purposes of this article the maximum capacity of a letterpress printing process to emit VOC and shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the heatset web offset lithographic printing process

is subject to state and federally enforceable permit conditions that limit production rates or hours of operation.

"12-month rolling period" means a period that is determined monthly and consists of the previous 12 consecutive calendar months.

"Unit" means the smallest complete printing component, composed of an inking and dampening system, of a printing press.

"VOC" means volatile organic compound.

"Web" means a continuous roll of printing substrate.

9VAC5-40-8384. Standard for volatile organic compounds.

A. No owner or other person shall use or permit the use of any letterpress printing press, letterpress printing process, or other letterpress printing operation that is subject to this article unless that press, process, or operation meets the requirements of this section.

B. The following provisions apply to each dryer on each heatset web letterpress printing process, except that these provisions do not apply to (i) any heatset web letterpress printing process with a theoretical potential to emit less than 25 tons per year of VOC from the dryer, prior to controls; (ii) any heatset web letterpress printing process used exclusively for book printing; or (iii) any heatset web letterpress printing process with a maximum web width of 22 inches or less. These provisions also do not apply to non-heatset web letterpress printing processes or to sheet-fed letterpress printing processes.

1. VOC emissions from the heatset web letterpress printing process dryer shall be controlled as follows:

a. The dryer shall operate at a lower air pressure than the pressroom air pressure at all times when the printing process is operating;

b. Exhaust air from the dryer shall be collected and sent to a control device that operates at all times when the printing process is operating.

c. For a control device whose first installation date is prior to (insert effective date of this article), the control device shall reduce VOC emissions in the dryer air exhaust by at least 90%.

d. For a control device whose first installation date is on or after (insert effective date of this article), the control device shall reduce VOC emissions in the dryer air exhaust by at least 95%.

2. Where the heatset web letterpress printing process control device inlet VOC concentration is too low to achieve the control device efficiency requirements specified in subdivisions 1 c and 1 d of this subsection or there is no identifiable measurable inlet, the control device shall reduce the VOC concentration of the heatset web letterpress printing process dryer exhaust air to 20 parts per million volume (ppmv) or less, as hexane on a dry basis.

3. Federally enforceable limitations on (i) the VOC content of inks and coatings applied, (ii) the total amounts of inks and coatings applied, (iii) the press application rates of inks and coatings, or (iv) the hours of press operation may be used to meet the 25 ton per year exception to this subsection.

C. Cleaning materials used at each letterpress printing operation shall meet one of the following limits, as applied, except that 110 gallons of cleaning materials that meet neither limit may be used per 12-month rolling period:

1. A VOC content of 70% by weight; or

2. A composite vapor pressure of 10 mm Hg at 20°C.

D. The following work practices shall be implemented:

1. Cleaning materials, inks, and coatings containing VOCs shall be kept in closed containers at all times unless filling, draining, or performing cleaning operations.

2. Shop towels, sponges, and other manual cleaning aids (i) that have been used for picking up excess ink and other coatings containing VOCs or (ii) that have been used with cleaning materials containing VOCs shall be kept in closed containers.

3. Spills of cleaning materials, fountain solution, inks, varnishes, and other coatings containing VOCs shall be minimized and shall be cleaned up promptly.

9VAC5-40-8386. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8388. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8390. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8394. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8396. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. An emission test of the control device installed on a heatset web letterpress printing process dryer shall be performed to demonstrate compliance with the provisions of 9VAC5-40-8384 B and 9VAC5-40-8398. The negative dryer pressure shall be established during the initial test using an airflow direction indicator, such as a smoke stick or aluminum ribbons, or a differential pressure gauge.

C. Once initial compliance has been demonstrated with the heatset web letterpress printing process dryer control requirements of 9VAC5-40-8384 B through performance testing of an catalytic or thermal oxidation control device, continuing compliance with the heatset web letterpress printing process dryer control requirements in 9VAC5-40-

8384 B shall be demonstrated for the catalytic or thermal oxidation control device by monitoring the control device in accordance with 9VAC5-40-8410 B. The owner shall maintain the 3-hour average of the monitored temperature at a temperature no less than 50°F below the 3-hour average temperature that was recorded during the most recent performance test during which compliance was demonstrated.

9VAC5-40-8398. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than (insert a date corresponding to the first day of the 12th month after the effective date of this article).

9VAC5-40-8400. Test methods and procedures.

A. The provisions of 9VAC5-40-30 (Emission testing) apply.

B. The following EPA test methods shall be used to demonstrate compliance with the heatset web letterpress printing process dryer control device control requirements in 9VAC5-40-8384 B.

1. Reference Method 1 or 1A, as appropriate, shall be used to select the sampling sites.

2. Reference Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the velocity and volumetric flow rate of the exhaust stream.

3. Reference Method 3 or 3A, as appropriate, shall be used to determine the concentration of O_2 and CO_2.

4. Reference Method 4 shall be used to determine moisture content.

5. Reference Methods 18, 25, or 25A shall be used to determine the VOC concentration of the dryer exhaust stream entering and exiting the control device, unless the alternate limit in 9VAC5-40-8384 B 2 is being met, in which case only the VOC concentration of the dryer exhaust control device outlet shall be determined.

6. Reference Method 25A shall be used to determine the dryer exhaust control device inlet and outlet VOC concentrations when the control device outlet concentration is less than 50 ppmv VOC as carbon.

7. If the control device is an oxidizer, the combustion chamber temperature or catalyst bed inlet temperature corresponding to destruction efficiencies that meet the requirements of 9VAC5-40-8384 B shall be recorded.

C. The VOC content of as-applied inks, coatings, and cleaning materials shall be determined using Reference Method 24.

1. The analysis of as-supplied materials may be performed by the manufacturer or the supplier. Formulation information from the manufacturer may be used in lieu of Reference Method 24 analysis unless the board or the owner has reason to believe that the formulation information provided by the manufacturer is inaccurate.

2. The owner may use VOC content information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the MSDS sheet to document the VOC content of the as-supplied material.

3. If cleaning materials are diluted by the owner prior to use, a calculation that combines the as-supplied VOC content information provided by the manufacturer or supplier, the VOC content of the diluent, and the proportions in which they are mixed may be used to make a determination of VOC content of the as-applied cleaning material in lieu of Reference Method 24.

4. The owner shall conduct Reference Method 24 testing of any as-applied cleaning material used for letterpress printing operations at any time at the board's request. The owner shall be prepared to sample as-applied fountain solution or cleaning materials at all times.

D. The VOC composite partial vapor pressure of cleaning solutions shall be determined using the formula provided in 9VAC5-40-8382 C or by an appropriate test method approved by the board.

1. The determination VOC composite partial vapor pressure for as-supplied cleaning solutions may be performed by the manufacturer or the supplier. The determination of as-applied composite vapor pressure based upon the manufacturer's instructions for dilution may be performed by the manufacturer or supplier.

2. The owner may use VOC composite partial vapor pressure information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the Material Safety Data Sheet (MSDS) to document the VOC composite partial vapor pressure of the as-supplied or as-applied cleaning materials.

3. The following provisions apply to the determination of VOC composite partial vapor pressure for cleaning materials that are diluted by the owner prior to use:

a. If the dilution is made according to the manufacturer's instructions, the VOC composite partial vapor pressure for the as-applied cleaning material provided by the manufacturer or supplier may be used.

b. If a dilution is made and an as-applied VOC composite partial vapor pressure has not been provided by the manufacturer or supplier, or if the dilution is not made according to the manufacturer's instructions, then the owner shall determine the VOC composite partial vapor pressure using the calculation method provided in 9VAC5-40-8382 C or by an appropriate test method approved by the board.

4. The owner shall conduct testing of any as-applied cleaning materials used for letterpress printing operations at any time at the board's request. The owner shall be prepared to sample as-applied cleaning materials at all times.

9VAC5-40-8410. Monitoring.

A. The provisions of 9VAC5-40-40 (Monitoring) apply.

B. Periodic monitoring of letterpress printing operations shall be conducted as follows:

1. The temperature of a catalytic or thermal oxidation control device shall be monitored at least once every 15 minutes while the printing process is operating, and that temperature shall be recorded by an analog or digital recording device.

a. For a catalytic oxidizer, the dryer exhaust temperature upstream of the catalyst bed shall be monitored and recorded.

b. For a thermal oxidizer, the combustion chamber temperature of the oxidizer shall be monitored and recorded.

2. Catalyst bed material in a catalytic oxidation control device shall be inspected annually for general catalyst condition and any signs of potential catalyst depletion. Sampling and evaluation of the catalyst bed material shall be conducted whenever the results of the inspection indicate signs of potential catalyst depletion or poor catalyst condition based on manufacturer's recommendations, but not less than once per year.

3. If a heatset web letterpress printing process is interlocked to ensure that the control device is operating and airflow is present when the printing process is operating, then periodic monitoring of dryer air flow is not required. If no interlock is present, then the printing process dryer air flow shall be verified and recorded once per operating day.

9VAC5-40-8412. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

9VAC5-40-8414. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8416. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8418. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

Article 56.1
Emission Standards for Offset Lithographic Printing Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-56.1)

9VAC5-40-8420. Applicability and designation of affected facility.

A. The affected facility to which the provisions of this article apply is any offset lithographic printing operation at a stationary source where the actual emissions of volatile organic compounds (VOCs) from all aspects of offset lithographic printing operations, including related cleaning activities, before the consideration of controls are equal to or exceed 3.0 tons per 12-month rolling period.

B. The provisions of this article apply only to sources of VOCs located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

9VAC5-40-8422. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Alcohol" means any of the following compounds when used as a fountain solution additive: ethanol, n-propanol, and isopropanol.

"Alcohol substitute" means any nonalcohol additive that contains volatile organic compounds and is used in the fountain solution.

"Batch" means a supply of fountain solution that is prepared and used without alteration until completely used or removed from the printing process.

"Cleaning materials" means any washes, cleaners, solvents, or rejuvenators that are used to remove (i) excess printing inks, oils, and residual paper from a press, press equipment, or press parts or (ii) dried ink from areas around a press. Cleaning materials include solvents and cleaners used for manual cleaning and cleaning solutions used by automatic cleaning systems such as blanket wash, plate cleaner, metering roller cleaner, impression cylinder washes, rubber rejuvenators, and roller wash. Cleaning

materials do not include cleaners used for cleaning electronic components of a press, pre-press cleaning operations (e.g., platemaking), post-press cleaning operations (e.g., binding), cleaning supplies such as detergents used to clean the floor (other than to remove dried ink from areas around a press), and cleaning performed in parts washers and cold cleaners subject to Article 47 (9VAC5-40-6820 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources).

"Composite partial vapor pressure" means the sum of the partial pressures of the compounds defined as volatile organic compounds. Composite partial vapor pressure is calculated as follows:

$$PP_c = \sum_{i=1}^{n} \frac{(W_i)(VP_i)/MW_i}{\frac{W_w}{MW_w} + \frac{W_e}{MW_e} + \sum_{i=1}^{n} \frac{W_i}{MW_i}}$$

where:

W_i	=	Weight of the "i"th VOC compound, in grams.
W_w	=	Weight of water, in grams.
W_e	=	Weight of exempt compound, in grams.
MW_i	=	Molecular weight of the "i"th VOC compound, in grams/gram-mole.
MW_w	=	Molecular weight of water, in grams/gram-mole.
MW_e	=	Molecular weight of exempt compound, in grams/gram-mole.
PP_c	=	VOC composite partial pressure at 20°C, in millimeters of mercury (mm Hg).
VP_i	=	Vapor pressure of the "i"th VOC compound at 20°C, in mm Hg.

"First installation date" means the date that a control device is first installed for the purpose of controlling emissions. The first installation date does not change if the control device is later moved to a new location or installed on a different press.

"Fountain solution" means any mixture of water, volatile and nonvolatile chemicals, and additives applied to a lithographic plate to repel ink from the nonimage area on the plate.

"Heatset" means a printing process in which heat from a dryer is used to evaporate ink oils from the substrate.

"Heatset web offset lithographic printing dryer" means the dryer or dryers installed as part of a heatset web offset lithographic printing process that dries or cures inks or surface coatings.

"Lithographic printing" means a planographic printing process in which the image and nonimage areas are chemically differentiated with the image area being oil receptive and the nonimage area being water receptive. This process differs from other printing processes, where the image is a raised or recessed surface.

"Non-heatset" means a printing process in which the printing inks are set and dried by absorption or oxidation rather than heat. For the purposes of this article, UV-cured and electron beam-cured inks are considered non-heatset.

"Offset lithographic printing" means a printing process that transfers the ink film from the lithographic plate to an intermediary surface (blanket), which, in turn, transfers the ink film to the substrate.

"Offset lithographic printing operation" means one or more printing processes employing offset lithographic printing on offset lithographic printing presses and includes the related processes necessary to directly support the operation of those offset lithographic printing processes including, but not limited to, pre-press and post-press operations. Varnishes, glues, and other coatings that are applied by an offset lithographic printing process are part of offset lithographic printing operations and are not considered as a separate process (e.g., paper coating).

"Press" means a printing production assembly composed of one or more units to produce a printed substrate (sheet or web).

"Printing" means a photomechanical process in which a transfer of text, designs, and images occurs through contact of an image carrier with a substrate.

"Printing process" means any operation or system wherein printing ink or a combination of printing ink and surface coating is applied, dried, or cured and that is subject to the same emission standard. A printing process may include any equipment that applies, conveys, dries, or cures inks or surface coatings, including, but not limited to, flow coaters, flashoff areas, air dryers, drying areas, and ovens.

"Sheet-fed" means a printing process in which individual sheets of substrate are fed into the press sequentially.

"Theoretical potential to emit" means for the purposes of this article the maximum capacity of a heatset web offset lithographic printing process to emit VOC and shall be based on emissions at design capacity or maximum production and maximum operating hours (8,760 hours/year) before add-on controls, unless the heatset web offset lithographic printing process is subject to state and federally enforceable permit conditions that limit production rates or hours of operation.

"12-month rolling period" means a period that is determined monthly and consists of the previous 12 consecutive calendar months.

"Unit" means the smallest complete printing component, composed of an inking and dampening system, of a printing press.

"VOC" means volatile organic compound.

"Web" means a continuous roll of printing substrate.

9VAC5-40-8424. Standard for volatile organic compounds.

A. No owner or other person shall use or permit the use of any offset lithographic printing press, offset lithographic printing process, or other offset lithographic printing operation that is subject to this article unless that press, process, or operation meets the requirements of this section.

B. Except as provided in subdivision 3 of this subsection, the following provisions apply to each heatset offset lithographic printing process at a facility whose potential to emit is greater than or equal to 10 tons per year of VOC, provided that the emission rates are determined in a manner acceptable to the board. All VOC emissions from printing inks, coatings, cleaning solutions, and fountain solutions shall be considered in determining the potential to emit for this subsection.

1. VOC emissions from the heatset web offset lithographic printing process dryer shall be controlled as follows:

a. The dryer shall operate at a lower air pressure than the pressroom air pressure at all times when the printing process is operating.

b. Exhaust air from the dryer shall be collected and sent to a control device that operates at all times when the printing process is operating.

c. The control device shall reduce VOC emissions in the dryer air exhaust by at least 90%.

2. Where the heatset web offset lithographic printing process control device inlet VOC concentration is too low to achieve the control device efficiency requirements specified in subdivisions 1 c of this subsection or there is no identifiable measurable inlet, the control device shall reduce the VOC concentration of the heatset web offset lithographic printing process dryer exhaust air to 50 parts per million volume (ppmv) or less, as carbon (minus methane and ethane).

3. The provisions in subdivisions 1 and 2 of this subsection do not apply to the following:

a. Any heatset web offset lithographic printing process with a theoretical potential to emit of 25 tons per year of VOC or more from the heatset web offset lithographic printing dryer. VOC standards for heatset web offset lithographic printing process with a theoretical potential to emit of 25 tons per year of VOC or more are provided in subsection C of this section.

b. Printing processes used exclusively for determination of product quality and commercial acceptance provided:

(1) The operation is not an integral part of the production process;

(2) The emissions from all product quality printing processes do not exceed 400 pounds in any 30-day period; and

(3) The exemption is approved by the board.

c. Photoprocessing, typesetting, or imagesetting equipment using water-based chemistry to develop silver halide images.

d. Platemaking equipment using water-based chemistry to remove unhardened image-producing material from an exposed plate.

e. Equipment used to make blueprints.

f. Any sheet-fed offset lithographic press with a cylinder width of 26 inches or less.

C. Except as provided in subdivisions 4 and 5 of this subsection, the following provisions apply to each heatset web offset lithographic printing process with a theoretical potential to emit of 25 tons per year of VOC or more from the dryer. These provisions do not apply to non-heatset web offset lithographic printing processes or to sheet-fed offset lithographic printing processes.

1. VOC emissions from the heatset web offset lithographic printing process dryer shall be controlled as follows:

a. The dryer shall operate at a lower air pressure than the pressroom air pressure at all times when the printing process is operating.

b. Exhaust air from the dryer shall be collected and sent to a control device that operates at all times when the printing process is operating.

c. For a control device whose first installation date is prior to (insert effective date of this article), the control device shall reduce VOC emissions in the dryer air exhaust by at least 90%.

d. For a control device whose first installation date is on or after (insert effective date of this article), the control device shall reduce VOC emissions in the dryer air exhaust by at least 95%.

2. Where the heatset web offset lithographic printing process control device inlet VOC concentration is too low to achieve the control device efficiency requirements specified in subdivisions 1 c and 1 d of this subsection or there is no identifiable measurable inlet, the control device shall reduce the VOC concentration of the heatset web offset lithographic printing process dryer exhaust air to 20 parts per million volume (ppmv) or less, as hexane on a dry basis.

3. Federally enforceable limitations on (i) the VOC content of inks, varnishes, and other coatings applied; (ii) the total amounts of inks, varnishes, and other coatings applied; (iii) the press application rates of inks, varnishes, and other

coatings; or (iv) the hours of press operation may be used to meet the 25 ton per year exception to this subsection.

4. The provisions of subdivisions 1 and 2 of this subsection do not apply to (i) any heatset web offset lithographic printing process constructed on or after (insert effective date of this article) and used exclusively for book printing or (ii) any heatset web offset lithographic printing process constructed on or after (insert effective date of this article) with a maximum web width of 22 inches or less.

5. The heatset web offset lithographic printing process dryer control device provisions of subdivision 1 d of this subsection do not apply to (i) any heatset web offset lithographic printing process used exclusively for book printing; or (ii) any heatset web offset lithographic printing process with a maximum web width of 22 inches or less.

D. The following provisions shall apply to fountain solution applied to each offset lithographic printing press, except that these provisions shall not apply to (i) sheet-fed offset lithographic printing processes with a sheet size of 11 inches by 17 inches or smaller or (ii) sheet-fed offset lithographic printing processes with a total fountain solution reservoir of less than one gallon.

1. For each heatset web press:

a. When the fountain solution contains alcohol:

(1) The fountain solution, as applied, shall contain no more than 1.6% volatile organic compounds by weight; or

(2) The temperature of the fountain solution shall be maintained at or below 60°F and the fountain solution, as applied, shall contain no more than 3.0% VOCs by weight; or

b. When the fountain solution contains no alcohol, the fountain solution, as applied, shall contain no more than 5.0% VOCs by weight.

2. For each non-heatset web press, the fountain solution, as applied, shall contain no alcohol and shall contain no more than 5.0% VOCs by weight.

3. For each sheet-fed press:

a. The fountain solution, as applied, shall contain no more than 5.0% VOCs by weight; or

b. The temperature of the fountain solution shall be maintained at or below 60°F and the fountain solution, as applied, shall contain no more than 8.5% VOCs by weight.

E. Cleaning materials used at each offset lithographic printing operation shall meet one of the following limits, as applied:

1. A VOC content of 30% by weight; or

2. A composite vapor pressure of 10 mm Hg at 20°C (68°F).

F. The following work practices shall be implemented.

1. Cleaning materials, fountain solution, inks, varnishes, and coatings containing VOCs shall be kept in closed containers at all times unless filling, draining, or performing cleaning operations.

2. Shop towels, sponges, and other manual cleaning aids that (i) have been used for picking up excess ink, fountain solution, varnishes, and other coatings containing VOCs or (ii) have been used with cleaning materials containing VOCs shall be kept in closed containers.

3. Spills of cleaning materials, fountain solution, inks, varnishes, and other coatings containing VOCs shall be minimized and shall be cleaned up promptly.

9VAC5-40-8426. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8428. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8430. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8432. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8434. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. An emission test of the control device installed on a heatset web offset lithographic printing process dryer shall be performed to demonstrate compliance with the provisions of 9VAC5-40-8424 B and C and 9VAC5-40-8436. The negative dryer pressure shall be established during the initial test using an airflow direction indicator, such as a smoke stick or aluminum ribbons, or a differential pressure gauge.

C. Once initial compliance has been demonstrated with the heatset web offset lithographic printing process dryer control requirements of 9VAC5-40-8424 B and C through performance testing of an catalytic or thermal oxidation control device, continuing compliance with the heatset web offset lithographic printing process dryer control requirements in 9VAC5-40-8424 B and C shall be demonstrated for the catalytic or thermal oxidation control device by monitoring the control device in accordance with 9VAC5-40-8440 B 3, B 4, and B 5. The owner shall maintain the 3-hour average of the monitored temperature at a temperature no less than 50°F below the 3-hour average temperature that was recorded during the most recent performance test during which compliance was demonstrated.

9VAC5-40-8436. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than (insert a

date corresponding to the first day of the 12th month after the effective date of this article).

Statutory Authority

9VAC5-40-8438. Test methods and procedures.

A. The provisions of 9VAC5-40-30 (Emission testing) apply.

B. The following EPA test methods shall be used to demonstrate compliance with the heatset web offset lithographic printing process dryer control device control requirements in 9VAC5-40-8424 B and C.

1. Reference Method 1 or 1A, as appropriate, shall be used to select the sampling sites.

2. Reference Method 2, 2A, 2C, or 2D, as appropriate, shall be used to determine the velocity and volumetric flow rate of the exhaust stream.

3. Reference Method 3 or 3A, as appropriate, shall be used to determine the concentration of O_2 and CO_2.

4. Reference Method 4 shall be used to determine moisture content.

5. Reference Methods 18, 25, or 25A shall be used to determine the VOC concentration of the dryer exhaust stream entering and exiting the control device, unless the alternate limit in 9VAC5-40-8424 B 2 or C 2 is being met, in which case only the VOC concentration of the dryer exhaust control device outlet shall be determined.

6. Reference Method 25A shall be used to determine the dryer exhaust control device inlet and outlet VOC concentrations when the control device outlet concentration is less than 50 ppmv VOC as carbon.

7 If the control device is an oxidizer, the combustion chamber temperature or catalyst bed inlet temperature corresponding to destruction efficiencies that meet the requirements of 9VAC5-40-8424 B or C, as appropriate, shall be recorded.

C. The VOC content of as-applied inks, varnishes and other coatings, fountain solutions, and cleaning materials shall be determined using Reference Method 24.

1. The analysis of as-supplied materials may be performed by the manufacturer or the supplier. Formulation information from the manufacturer may be used in lieu of Reference Method 24 analysis unless the board or the owner has reason to believe that the formulation information provided by the manufacturer is inaccurate.

2. The owner may use VOC content information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the MSDS sheet to document the VOC content of the as-supplied material.

3. If fountain solution or cleaning materials are diluted by the owner prior to use, a calculation that combines the as-supplied VOC content information provided by the manufacturer or supplier, the VOC content of the diluent, and the proportions in which they are mixed may be used to make a determination of VOC content of the as-applied fountain solution or cleaning material in lieu of Reference Method 24.

4. The owner shall conduct Reference Method 24 testing of any as-applied fountain solution or cleaning material used for offset lithographic printing operations at any time at the board's request. The owner shall be prepared to sample as-applied fountain solution or cleaning materials at all times.

D. A thermometer or other temperature detection device capable of reading the temperature of the fountain solution to within 0.5°F shall be used to determine compliance with fountain solution temperature requirements in 9VAC5-40-8424 D.

E. The VOC composite partial vapor pressure of cleaning solutions shall be determined using the formula provided in 9VAC5-40-8422 C or by an appropriate test method approved by the board.

1. The determination VOC composite partial vapor pressure for as-supplied cleaning solutions may be performed by the manufacturer or the supplier. The determination of as-applied composite vapor pressure based upon the manufacturer's instructions for dilution may be performed by the manufacturer or supplier.

2. The owner may use VOC composite partial vapor pressure information provided by the manufacturer or supplier, such as the container label, the product data sheet, or the Material Safety Data Sheet (MSDS), to document the VOC composite partial vapor pressure of the as-supplied or as-applied cleaning materials.

3. The following provisions apply to the determination of VOC composite partial vapor pressure for cleaning materials that are diluted by the owner prior to use:

a. If the dilution is made according to the manufacturer's instructions, the VOC composite partial vapor pressure for the as-applied cleaning material provided by the manufacturer or supplier may be used.

b. If a dilution is made and an as-applied VOC composite partial vapor pressure has not been provided by the manufacturer or supplier, or if the dilution is not made according to the manufacturer's instructions, then the owner shall determine the VOC composite partial vapor pressure using the calculation method provided in 9VAC5-40-8422 C.

4. The owner shall conduct testing of any as-applied cleaning materials used for offset lithographic printing operations at any time at the board's request. The owner shall be prepared to sample as-applied cleaning materials at all times.

9VAC5-40-8440. Monitoring.

A. The provisions of 9VAC5-40-40 (Monitoring) apply.

B. Periodic monitoring of offset lithographic printing operations shall be conducted as follows:

1. The alcohol concentration of offset lithographic printing process fountain solution shall be monitored with a hydrometer, equipped with temperature correction or with readings adjusted for temperature, and recorded at least once per shift or once per batch, whichever is longer. A standard solution shall be used to calibrate the hydrometer for the type of alcohol used in the fountain.

2. The temperature of refrigerated fountain solution shall be measured at the recirculating tank at least once per operating day.

3. The temperature of a catalytic or thermal oxidation control device shall be monitored at least once every 15 minutes while the printing process is operating, and that temperature shall be recorded by an analog or digital recording device.

a. For a catalytic oxidizer, the dryer exhaust temperature upstream of the catalyst bed shall be monitored and recorded.

b. For a thermal oxidizer, the combustion chamber temperature of the oxidizer shall be monitored and recorded.

4. Catalyst bed material in a catalytic oxidation control device shall be inspected annually for general catalyst condition and any signs of potential catalyst depletion. Sampling and evaluation of the catalyst bed material shall be conducted whenever the results of the inspection indicate signs of potential catalyst depletion or poor catalyst condition based on manufacturer's recommendations, but not less than once per year.

5. If a heatset web offset lithographic printing process is interlocked to ensure that the control device is operating and airflow is present when the printing process is operating, then periodic monitoring of dryer air flow is not required. If no interlock is present, then the printing process dryer air flow shall be verified and recorded once per operating day.

9VAC5-40-8450. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records, and reporting) apply.

9VAC5-40-8460. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8470. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8480. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

VA.R. Doc. No. R10-2126; Filed December 18, 2014, 8:00 a.m.

Proposed Regulation

Title of Regulation: **9VAC5-40. Existing Stationary Sources (Rev. D09) (adding 9VAC5-40-8510 through 9VAC5-40-8800).**

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172, and 182); 40 CFR Parts 51 and 60.

Public Hearing Information:

February 26, 2015 - 11 a.m. - Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193

Public Comment Deadline: March 13, 2015.

Agency Contact: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or email karen.sabasteanski@deq.virginia.gov.

Basis:

State Requirements.

Section 10.1-1308 of the Virginia Air Pollution Control Law (Chapter 13 of Title 10.1 of the Code of Virginia) gives the State Air Pollution Control Board the discretionary authority to promulgate regulations abating, controlling, and prohibiting air pollution throughout or in any part of the Commonwealth. Section 10.1-1300 of the Code of Virginia defines air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people of life or property."

These specific amendments are not required by state mandate.

Specific Federal Requirements.

Ground-level ozone is an air pollutant that forms when volatile organic compounds (VOCs) and nitrogen oxides (NO_X) interact with sunlight. The national standard for ozone measured over an 8-hour period was promulgated by the U.S. Environmental Protection Agency (EPA) on July 18, 1997 (62 FR 38856), at a level of 0.08 parts per million (ppm).

Once EPA establishes a national standard for ozone, it must then designate areas that do not attain the standard (nonattainment areas). In turn, states must develop plans (state implementation plans, or SIPs), including regulations, which will enable nonattainment areas to attain and maintain the standard.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the federal Clean Air Act and the associated nonattainment classification under § 181 of the Act or 40 CFR 51.903(a). Virginia's designations are in 40 CFR 81.347. On April 30, 2004 (69 FR 23858), EPA published designations for 0.08 ppm 8-hour ozone nonattainment areas and associated classifications.

On April 30, 2004 (69 FR 23951), EPA promulgated phase 1 of a final rule adding Subpart X to 40 CFR Part 51. Subpart X contains the provisions for the implementation of the 8-hour ozone NAAQS, along with associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81. The remainder of the planning requirements (phase 2) were published on November 29, 2005 (70 FR 71612).

In order to implement the control measures needed to attain and maintain the ozone air quality standard, Virginia has established VOC and NO_X emissions control areas. These areas were created to provide a legal mechanism for defining geographic areas in which to implement certain control measures in the nonattainment areas. The emissions control areas may or may not coincide with the nonattainment areas, depending on regional planning requirements.

Section 172(c)(1) of the Act provides that SIPs for nonattainment areas must include "reasonably available control measures" (RACM), including "reasonably available control techniques" (RACT), for sources of emissions. Section 182(b)(2) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by a control techniques guidelines document (CTG) issued after November 15, 1990, and prior to the areas date of attainment.

Section 183(e) directs EPA to list for regulation those categories of products that account for at least 80% of the VOC emissions from commercial products in ozone nonattainment areas. EPA issued such a list on March 23, 1995, and has revised the list periodically. RACT controls for listed source categories controlled by a CTG are known as CTG RACTs. CTG RACTs have been issued for industrial solvent cleaning operations (October 5, 2006, 71 FR 58745) and miscellaneous industrial adhesive application processes (July 14, 2008, 73 FR 40230). Therefore, states with moderate ozone nonattainment areas must implement these CTG RACTs as part of their attainment SIPs.

General Federal Requirements.

Sections 109 (a) and (b) of the federal Clean Air Act require EPA to prescribe primary and secondary air quality standards to protect public health and welfare. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires EPA to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under § 108.

Once the NAAQS are promulgated pursuant to § 109, § 107(d) sets out a process for designating those areas that are in compliance with the standards (attainment or unclassifiable) and those that are not (nonattainment). Governors make the initial recommendations, but EPA makes the final decision. Section 107(d) also sets forth the process for redesignations once the nonattainment areas are in compliance with the applicable NAAQS.

Section 110(a) of the Act mandates that each state adopt and submit to EPA a plan that provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan (SIP) must include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the Act;

2. Establish schedules for compliance;

3. Prohibit emissions that contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. These requirements mandate that any such plan must include certain provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing, inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each SIP must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;

3. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

4. Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

5. Obtain information necessary to determine whether air pollution sources comply with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;

6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

1. Implementation of all reasonably available control measures as expeditiously as practicable and provide for the attainment of the national ambient air quality standards;

2. Reasonable further progress;

3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

4. Identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

5. A requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

6. Inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

7. If applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

8. Inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements must provide for controls that are not less stringent than the controls applicable to these same areas before such relaxation.

Section 107(d)(3)(D) provides that a state may petition EPA to redesignate a nonattainment area as attainment and EPA may approve the redesignation subject to certain criteria being met. Section 107(d)(3)(E) stipulates one of these criteria, that EPA must fully approve a maintenance plan that meets the requirements of § 175A. According to § 175A(a), the maintenance plan must be part of a SIP submission, and must provide for maintenance of the NAAQS for at least 10 years after the redesignation. The plan must contain any additional measures needed to ensure maintenance. Section 175A(b) further requires that eight years after redesignation, a maintenance plan for the next 10 years must then be submitted. As stated in § 175A(c), nonattainment requirements continue to apply until the SIP submittal is approved. Finally, § 175A(d) requires that the maintenance

plan contain contingency provisions that will be implemented should the area fail to maintain the NAAQS as provided for in the original plan.

Under Part D, Subpart 2, § 181 sets forth the classifications and nonattainment dates for 1-hour ozone nonattainment areas once they are designated as such under § 107(d).

Section 182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of VOCs in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. EPA has published control techniques guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in § 182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the Act and the associated nonattainment classification (if any) under § 181 of the Act or 40 CFR 51.903(a), as applicable. Subpart X to 40 CFR Part 51 contains the provisions for the implementation of the 8-hour ozone NAAQS, along with associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated.

Purpose: The purpose of the proposed action is to adopt new standards for the control of volatile organic compound (VOC) emissions from (i) industrial solvent cleaning operations and (ii) miscellaneous industrial adhesive application processes within the Northern Virginia VOC Emissions Control Area. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 0.08 parts per million (ppm) 8-hour ozone standard. It will contribute to the reduction of ozone air pollution and thereby improve public health and welfare.

Substance: Each proposed new article contains: (i) an applicability section that specifies the affected source population; (ii) definitions of terms used in the rule; (iii) a standard for VOC emissions along with provisions for achieving the standard; and (iv) provisions for visible emissions, fugitive dust/emissions, odor, toxic pollutants, compliance, a compliance schedule, test methods and procedures, monitoring, registration, facility and control equipment maintenance or malfunction, permits and notification, records, and reporting.

Issues: The primary advantage to the general public is the reduction of VOC air pollution, which has a negative effect on public health and welfare. Regulated sources may realize cost savings through more effective application procedures and practices. There are no disadvantages to the public.

The primary advantages to the department are that the adoption of these regulations will allow Virginia to attain and maintain air quality standards and improve public health of Virginians. The primary disadvantage to the department is the potential for an increased compliance cost to administer the new regulations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to amend its existing air pollution regulations to add new standards for the control of volatile organic compound (VOC) emissions from industrial solvent cleaning operations and miscellaneous industrial adhesive application processes within the Northern Virginia VOC Emissions Control Area.

Result of Analysis. Because the Department of Environmental Quality (DEQ) does not know with any degree of certainty how many entities these regulatory changes will affect, there is likely insufficient information to decide if benefits outweigh costs.

Estimated Economic Impact. Currently, the Board's air pollution control regulations do not include rules for the control of volatile organic compound (VOC) emissions from industrial solvent cleaning operations and miscellaneous industrial adhesive application processes. The Board proposes to add rules that are partially new and partially taken from the already promulgated consumer products rules. For solvent cleaners, the parts of these rules that are completely new require businesses to 1) store cleaning materials and used shop towels in closed containers which are required to remain closed except when cleaners or towels are added or removed, 2) minimize spills of VOC containing cleaners, 3) move VOC containing cleaners from one place to another in closed containers or pipes and 4) clean equipment without atomizing the cleaners and capture all spent solvent in closed containers. For adhesives, the parts of these rules that are completely new require businesses to 1) store all VOC containing adhesives, adhesive primers and process-related waste materials in closed containers which are required to remain closed except when materials are being added or removed, 2) minimize spills of adhesives, adhesive primers and process-related waste materials and 3) move these materials from one place to another in closed containers or pipes.

DEQ will incur costs associated with promulgating these new rules that include the cost of identifying and registering affected businesses. DEQ estimates that these costs will total between $12,144 and $48,576. Affected businesses may incur

costs for potentially more expensive low VOC products and, on rarer occasions, for control equipment. DEQ estimates that these costs would add to approximately $265 per ton of VOC but believe that these costs will be partially or completely offset by savings that businesses will see on account of decreased evaporation of their cleaning or adhesive products. In any case, the Environmental Protection Agency (EPA) is requiring Virginia to promulgate these regulations under threat of loss of highway funding so one of the benefits of this regulatory action will be the preservation of that highway funding.

Businesses and Entities Affected. DEQ reports that it is impossible to know how many businesses will be affected by these regulations. Given that the products that will be regulated have many applications, there are likely numerous businesses that will be affected. Because these rules will be new, many affected businesses will not have had to register with, or get a permit from, the Board before.

Localities Particularly Affected. Localities in the Northern Virginia non-attainment area (the counties of Arlington, Fairfax, Loudon, Prince William and Stafford as well as the cities of Alexandria, Fairfax, Falls Church, Manassas and Manassas Park) will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Affected small businesses may incur costs from having to change the solvent/adhesive products that they use or, in rare instances, from having to purchase control equipment. DEQ believes that these costs will be offset by savings that businesses will realize from losing less product to evaporation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There do not appear to be any alternate methods that would both further minimize costs and achieve the aims of the Board.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed regulation requires owners to limit emissions of air pollution from industrial solvent cleaning operations and miscellaneous industrial adhesive application processes to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The proposed regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area and establishes standards, control techniques, and provisions for determining compliance. The proposed regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

Article 57
Emission Standards for Industrial Solvent Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-57)

9VAC5-40-8510. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this article apply is each facility that uses organic solvent for cleaning unit operations such as mixing vessels (tanks), spray booths, and parts cleaners and that emits, before consideration of controls, at least 6.8 kilograms per day (15 pounds per day) of volatile organic compounds (VOCs). Such operations include, but are not limited to, spray gun cleaning, spray booth cleaning, large manufactured components cleaning, parts cleaning, equipment cleaning, line cleaning, floor cleaning, tank cleaning, and small manufactured components cleaning.

B. The provisions of this article apply only to affected facilities located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

C. Exempted from the provisions of this article are solvent cleaning operations (i) for cleaning of electrical and electronic components; (ii) for cleaning of high precision optics and cleaning of cotton swabs to remove cottonseed oil before cleaning of high precision optics; (iii) for cleaning of numismatic dies; (iv) for cleaning of resin, coating, ink, and adhesive mixing, molding, and application equipment; (v) in research and development laboratories; (vi) in manufacturing medical devices or pharmaceutical products; (vii) related to performance or quality assurance testing of coatings, inks, or adhesives.

D. The provisions of this article do not apply to the following:

1. Surface preparation and solvent cleaning operations associated with the surface coating, application of adhesive, sealants and their primers or printing operations subject to Article 26 (Large Appliance Coatings, 9VAC5-40-3560 et seq.), Article 28 (Automobile and Light Duty Truck Coating Applications, 9VAC5-40-3860 et seq.), Article 33 (Metal Furniture Coating Application Systems, 9VAC5-40-4610 et seq.), Article 34 (Miscellaneous Metal Parts/Products Coating Application, 9VAC5-40-4760), Article 35 (Flatwood Paneling Coating Application Systems, 9VAC5-40-4910 et seq.), Article 53 (Lithographic Printing Processes, 9VAC5-40-7800 et seq.), Article 56 (Letterpress Printing Operations, 9VAC5-40-8380 et seq.), Article 56.1 (Lithographic Printing Operations, 9VAC5-40-8420 et seq.), Article 58 (Miscellaneous Industrial Adhesive Application Processes, 9VAC5-40-8660 et seq.), and Article 59 (Miscellaneous Metal Parts and Products Coating Application Systems, 9VAC5-40-8810 et seq.) of 9VAC5-40 (Existing Stationary Sources).

2. The use of janitorial supplies used for cleaning offices, bathrooms, or other similar areas.

3. Stripping of cured inks, coatings, and adhesives.

4. Surface preparation and solvent cleaning operations associated with the surface coating, application of adhesive, sealants and their primers, or printing operations of the following product categories or processes: aerospace coatings, wood furniture coatings, shipbuilding and repair coatings, flexible packaging printing materials, paper film and foil coating, plastic parts coating, and fiberglass boat manufacturing materials.

5. Solvent metal cleaning operations subject to Article 47 (Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area, 9VAC5-40-6820 et seq.) of 9VAC5-40 (Existing Stationary Sources).

9VAC5-40-8520. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"Aerospace coatings" means materials that are applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself at a facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Electrical and electronic components" means components and assemblies of components that generate, convert, transmit, or modify electrical energy. Electrical and electronic components include, but are not limited to, wires, windings, stators, rotors, magnets, contacts, relays, printed circuit boards, printed wire assemblies, wiring boards, integrated circuits, resistors, capacitors, and transistors but does not include the cabinets in which electrical and electronic components are housed.

"Fiberglass boat manufacturing materials" means materials utilized at facilities that manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks. Fiberglass boat manufacturing materials are not materials used at facilities that manufacture solely parts of boats (such as hatches, seats, or lockers) or boat trailers, but do not (i) manufacture hulls or decks of boats from fiberglass or (ii) build molds to make fiberglass boat hulls or decks.

"Flexible packaging printing materials" means materials used in the manufacture of any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners, and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

"High precision optics" means an optical element used in an electro-optical device and is designed to sense, detect, or transmit light energy, including specific wavelengths of light energy and changes in light energy levels.

"Industrial cleaning solvents" means products used to remove contaminants such as adhesives, inks, paint, dirt, soil, oil, and grease from parts, products, tools, machinery, equipment, vessels, floors, walls, and other work production related work areas for reasons such as safety, operability, and to avoid product contamination. The cleaning solvents used in these operations may be

generally available bulk solvents that are used for a multitude of applications in addition to cleaning, such as for paint thinner, or as an ingredient used in the manufacture of a coating, such as paint.

"Medical device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar article, including any component or accessory that is (i) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of diseases; or (ii) intended to affect the structure or any function of the body.

"Paper, film, and foil coating" means coating that is applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry sectors: pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels); photographic film; industrial and decorative laminates; abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of nonwoven polymer substrates for use in flexible packaging). Paper and film coating also includes coatings applied during miscellaneous coating operations for several products including: corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

"Pharmaceutical product" means a preparation or compound, which includes any drug, analgesic, decongestant, antihistamine, cough suppressant, vitamin, mineral or herb supplement intended for human or animal consumption and used to cure, mitigate or treat disease or improve or enhance health.

"Plastic parts coating" means a coating that is applied to the surfaces of a varied range of plastic parts and products. Such parts or products are constructed either entirely or partially from metal or plastic. These parts include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles, lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and numerous other industrial and household products.

"Shipbuilding and repair coating" means material that can be applied as a thin layer to a substrate and which cures to form a continuous solid film, and is used in the building, repair, repainting, converting, or alteration of ships.

"Solvent cleaning operation" means the employment of industrial cleaning solvents to remove loosely held uncured adhesives, uncured inks, uncured coatings, and contaminants which include, but are not limited to, dirt, soil, and grease from parts, products, tools, machinery, equipment, and general work areas and includes but is not limited to activities such as wipe cleaning, solvent flushing, or spraying and each distinct method of cleaning in a cleaning process, which consists of a series of cleaning methods, constitute a separate solvent cleaning operation.

"Solvent flushing" means the use of a solvent to remove uncured adhesives, uncured inks, uncured coatings, or contaminants from the internal surfaces and passages of the equipment by flushing solvent through the equipment.

"Surface preparation" means the cleaning of surfaces prior to coating, further treatment, sale, or intended use.

"VOC" means volatile organic compound.

"Wipe cleaning" means the method of cleaning a surface by physically rubbing it with a material such as a rag, paper, sponge, or a cotton swab moistened with a solvent.

"Wood furniture coatings" means protective, decorative, or functional films applied in thin layers to a surface used in the manufacture of wood furniture or wood furniture components. Such coatings include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

9VAC5-40-8530. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit to be discharged into the atmosphere any VOC emissions from any solvent cleaning operation employing industrial cleaning solvents in excess of both of the following limits:

1. A VOC content limit of 50 grams per liter (0.42 pounds per gallon) of industrial cleaning solvent shall apply unless emissions are controlled by an emission control system with an overall control efficiency of at least 85%; and

2. A composite vapor pressure limit of 8 millimeters of mercury at 20°C.

B. VOC emissions from the use, handling, storage, and disposal of industrial cleaning solvents and shop towels shall be controlled by the following work practices:

1. Open containers and used applicators shall be covered.

2. Air circulation around cleaning operations shall be minimized.

3. Used solvent and shop towels shall be disposed of properly.

4. Equipment practices that minimize emissions (including but not limited to keeping arts cleaners covered and

maintaining cleaning equipment to repair solvent leaks) shall be implemented.

9VAC5-40-8540. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8550. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8560. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC-40 (Existing Stationary Sources) apply.

9VAC5-40-8570. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8580. Compliance.

The provisions of 9VAC5-40-20 (Compliance) apply.

9VAC5-40-8590. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than (insert date one year after the effective date of this article).

9VAC5-40-8600. Test methods and procedures.

A. The provisions of 9VAC5-40-30 (Emission testing) apply.

B. The composite vapor pressure of organic compounds in cleaning materials shall be determined by quantifying the amount of each compound in the blend using ASTM "Standard Practice for Packed Column Gas Chromatography" for organics and ASTM "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph" for water content (see 9VAC5-20-21), as applicable, and the following equation:

$$Ppc = \frac{\sum_{i=1}^{n} (Wi)(VPi) / Mwi}{Ww / Mww + \sum_{i=1}^{n} We / Mwe + \sum_{i=1}^{n} Wi / Mwi}$$

where:

Ppc = VOC composite partial pressure at 20ºC, in mm Hg.

Wi = Weight of the "i"th VOC compound, in grams, as determined by

ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-

21).

Ww = Weight of water, in grams as determined by ASTM "Standard Test

Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph"

(see 9VAC5-20-21).

We = Weight of the "i"th exempt compound, in grams, as determined by

ASTM "Standard Practice for Packed Column Gas Chromatography" (see 9VAC5-20-21).

Mwi = Molecular weight of the "i"th VOC compound, in grams per g-mole,

as given in chemical reference literature.

Mww = Molecular weight of water, 18 grams per g-mole.

Mwe = Molecular weight of the "i"th exempt compound, in grams per gmole,

as given in chemical reference literature.

VPi = Vapor pressure of the "i"th VOC compound at 20ºC, in mm Hg, as determined by subsection C of this section.

C. The vapor pressure of each single component compound may be determined from ASTM "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (see 9VAC5-20-21), from chemical reference literature, or from additional sources acceptable to the board.

9VAC5-40-8610. Monitoring.

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-8620. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

9VAC5-40-8630. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8640. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8650. Permits.

A permit may be required prior to beginning any of the activities specified below if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

Article 58

Emission Standards for Miscellaneous Industrial Adhesive Application Processes in the Northern Virginia Volatile

Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-58)

9VAC5-40-8660. Applicability and designation of affected facility.

A. Except as provided in subsection C of this section, the affected facility to which the provisions of this article apply is each miscellaneous industrial adhesive application process at a facility where the total actual volatile organic compound (VOC) emissions from all miscellaneous industrial adhesive application processes, including related cleaning activities and related application of adhesive primers, are, before consideration of controls, either (i) equal to or exceed 6.8 kilograms per day (15 pounds per day) or (ii) 3 tons per 12-month rolling period.

B. The provisions of this article apply only to sources of VOCs located in the Northern Virginia VOC Emissions Control Area designated in 9VAC5-20-206 1 a.

C. The provisions of this article do not apply to the following.

1. Miscellaneous industrial adhesive application process operations subject to Article 6 (Rubber Tire Manufacturing Operations, 9VAC5-40-5810 et seq.), Article 26 (Large Appliance Coatings, 9VAC5-40-3560 et seq.), Article 28 (Automobile and Light Duty Truck Coating Applications, 9VAC5-40-3860 et seq.), Article 30 (Metal Coil Coating Application Systems, 9VAC5-40-4160 et seq.), Article 31 Paper and Fabric Coating Application Systems, 9VAC5-40-4310 et seq.) Article 33 (Metal Furniture Coating Application Systems, 9VAC5-40-4610 et seq.), Article 35 (Flatwood Paneling Coating Application Systems, 9VAC5-40-4910 et seq.), Article 53 (Lithographic Printing Processes, 9VAC5-40-7800 et seq.), Article 56 (Letterpress Printing Operations, 9VAC5-40-8380 et seq.), Article 56.1 (Lithographic Printing Operations, 9VAC5-40-8420 et seq.), and Article 57 (Industrial Solvent Cleaning Operations, 9VAC5-40-8510 et seq.), of 9VAC5-40 (Existing Stationary Sources).

2. Miscellaneous industrial adhesive application process operations associated with the following product categories or processes: aerospace coatings, flexible packaging printing materials, paper film and foil coating, and fiberglass boat manufacturing materials.

D. The provisions of Article 6 (Emission Standards for Adhesives and Sealants, (9VAC5-45-620 et seq.) of 9VAC5-45 (Consumer and Commercial Products) may apply. In the case of a conflict between these articles, the more restrictive provisions shall apply.

9VAC5-40-8670. Definitions.

A. For the purpose of applying this article in the context of the regulations for the control and abatement of air pollution and related uses, the words or terms shall have the meanings given them in subsection C of this section.

B. Unless otherwise required by context, all terms not defined in this section shall have the meanings given them in 9VAC5-170 (Regulation for General Administration), 9VAC5-10 (General Definitions), or commonly ascribed to them by recognized authorities, in that order of priority.

C. Terms defined.

"ABS welding" means any process to weld acrylonitrile-butadiene-styrene pipe.

"Adhesive" means any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Adhesive primer" means any product intended by the manufacturer for application to a substrate, prior to the application of an adhesive, to provide a bonding surface.

"Aerosol adhesive or adhesive primer" means an adhesive or adhesive primer packaged as an aerosol product in which the spray mechanism is permanently housed in a nonrefillable can designed for handheld application without the need for ancillary hoses or spray equipment.

"Aerospace coatings" means materials that are applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself at a facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Application process" means a series of one or more adhesive applicators and any associated drying area or oven in which an adhesive is applied, dried, or cured. An application process ends at the point where the adhesive is dried or cured, or prior to any subsequent application of a different adhesive. It is not necessary for an application process to have an oven or flash-off area.

"Ceramic tile installation adhesive" means any adhesive intended by the manufacturer for use in the installation of ceramic tiles.

"Chlorinated polyvinyl chloride plastic" or "CPVC plastic welding" means a polymer of the vinyl chloride monomer that contains 67% chlorine and is normally identified with a CPVC marking.

"Chlorinated polyvinyl chloride welding" or "CPVC welding" means an adhesive labeled for welding of chlorinated polyvinyl chloride plastic.

"Cleaning activities" means activities other than surface preparation and priming that use cleaning materials to remove adhesive residue or other unwanted materials from equipment related to application operations, as well as the cleaning of spray guns, transfer lines (such as tubing or piping), tanks, and the interior of spray booths.

"Contact adhesive" means an adhesive that (i) is designed for application to both surfaces to be bonded together, (ii) is allowed to dry before the two surfaces are placed in contact with each other, (iii) forms an immediate bond that

is impossible, or difficult, to reposition after both adhesive-coated surfaces are placed in contact with each other, and (iv) does not need sustained pressure or clamping of surfaces after the adhesive-coated surfaces have been brought together using sufficient momentary pressure to establish full contact between both surfaces. Contact adhesive does not include rubber cements that are primarily intended for use on paper substrates or vulcanizing fluids that are designed and labeled for tire repair only.

"Cove base" means a flooring trim unit, generally made of vinyl or rubber, having a concave radius on one edge and a convex radius on the opposite edge that is used in forming a junction between the bottom wall course and the floor or to form an inside corner.

"Cove base installation adhesive" means any adhesive intended by the manufacturer to be used for the installation of cove base or wall base on a wall or vertical surface at floor level.

"Cyanoacrylate adhesive" means any adhesive with a cyanoacrylate content of at least 95% by weight.

"Fiberglass boat manufacturing facility" means a facility that manufactures hulls or decks of boats from fiberglass or builds molds to make fiberglass boat hulls or decks and does not include a facility that solely manufactures parts of boats (such as hatches, seats, or lockers) or boat trailers, that is, which does not also manufacture hulls or decks of boats from fiberglass or builds molds to make fiberglass boat hulls or decks.

"Fiberglass boat manufacturing materials" means materials utilized at fiberglass boat manufacturing facilities to manufacture hulls or decks of boats from fiberglass, and parts of boats (such as hatches, seats, or lockers), or to build molds to make fiberglass boat hulls or decks.

"Flexible packaging printing materials" means materials used in the manufacture of any package or part of a package the shape of which can be readily changed. Flexible packaging includes, but is not limited to, bags, pouches, liners, and wraps utilizing paper, plastic, film, aluminum foil, metalized or coated paper or film, or any combination of these materials.

"Flexible vinyl" means nonrigid polyvinyl chloride plastic with a 5.0% by weight plasticizer content.

"Indoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of wood flooring, carpet, resilient tile, vinyl tile, vinyl backed carpet, resilient sheet and roll, or artificial grass. Adhesives used to install ceramic tile and perimeter bonded sheet flooring with vinyl backing onto a nonporous substrate, such as flexible vinyl, are excluded from this category.

"Industrial adhesives" means adhesives used for joining surfaces in assembly and construction of a large variety of products. Adhesives may be generally classified as solution/waterborne, solvent-borne, solventless or solid (such as hot melt adhesives), pressure sensitive, hot-melt, or reactive (such as epoxy adhesives and ultraviolet-curable adhesives). Adhesives may also be generally classified according to whether they are structural or nonstructural. Structural adhesives are commonly used in industrial assembly processes and are designed to maintain product structural integrity.

"Medical equipment manufacturing" means the manufacture of medical devices, such as, but not limited to, catheters, heart valves, blood cardioplegia machines, tracheostomy tubes, blood oxygenators, and cardiatory reservoirs.

"Metal to urethane/rubber molding or casting adhesive" means any adhesive intended by the manufacturer to bond metal to high density or elastomeric urethane or molded rubber materials, in heater molding or casting processes, to fabricate products such as rollers for computer printers or other paper handling equipment.

"Motor vehicle adhesive" means an adhesive, including glass bonding adhesive, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied for the purpose of bonding two vehicle surfaces together without regard to the substrates involved.

"Motor vehicle glass bonding primer" means a primer, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to windshield or other glass, or to body openings, to prepare the glass or body opening for the application of glass bonding adhesives or the installation of adhesive bonded glass. Motor vehicle glass bonding primer includes glass bonding/cleaning primers that perform both functions (cleaning and priming of the windshield or other glass, or body openings) prior to the application of adhesive or the installation of adhesive bonded glass.

"Motor vehicle weatherstrip adhesive" means an adhesive, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to weatherstripping materials for the purpose of bonding the weatherstrip material to the surface of the vehicle.

"Multipurpose construction adhesive" means any adhesive intended by the manufacturer for use in the installation or repair of various construction materials, including but not limited to drywall, subfloor, panel, fiberglass reinforced plastic (FRP), ceiling tile, and acoustical tile.

"Outdoor floor covering installation adhesive" means any adhesive intended by the manufacturer for use in the installation of floor covering that is not in an enclosure and that is exposed to ambient weather conditions during normal use.

"Paper, film, and foil coating" means coating that is applied to paper, film, or foil surfaces in the manufacturing

of several major product types for the following industry sectors: pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels); photographic film; industrial and decorative laminates; abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of nonwoven polymer substrates for use in flexible packaging). Paper and film coating also includes coatings applied during miscellaneous coating operations for several products including: corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

"Perimeter bonded sheet flooring installation" means the installation of sheet flooring with vinyl backing onto a nonporous substrate using an adhesive designed to be applied only to a strip of up to four inches wide around the perimeter of the sheet flooring.

"Plastic" means a synthetic material chemically formed by the polymerization of organic (carbon-based) substances. Plastics are usually compounded with modifiers, extenders, and/or reinforcers and are capable of being molded, extruded, cast into various shapes and films or drawn into filaments.

"Plastic solvent welding adhesive" means any adhesive intended by the manufacturer for use to dissolve the surface of plastic to form a bond between mating surfaces.

"Plastic solvent welding adhesive primer" means any primer intended by the manufacturer for use to prepare plastic substrates prior to bonding or welding.

"Polyvinyl chloride plastic" or "PVC" means a polymer of the chlorinated vinyl monomer that contains 57% chlorine.

"Polyvinyl chloride welding adhesive" or "PVC welding adhesive" means any adhesive intended by the manufacturer for use in the welding of PVC plastic pipe.

"Porous material" means a substance that has tiny openings, often microscopic, in which fluids may be absorbed or discharged, including, but not limited to, paper and corrugated paperboard. For the purposes of this article, porous material does not include wood.

"Reactive adhesive" means adhesive systems composed, in part, of volatile monomers that react during the adhesive curing reaction, and, as a result, do not evolve from the film during use. These volatile components instead become integral parts of the adhesive through chemical reaction. At least 70% of the liquid components of the system, excluding water, react during the process.

"Reinforced plastic composite" means a composite material consisting of plastic reinforced with fibers.

"Rubber" means any natural or manufactured rubber substrate, including but not limited to, styrene-butadiene rubber, polychloroprene (neoprene), butyl rubber, nitrile rubber, chlorosulfonated polyethylene, and ethylene propylene diene terpolymer.

"Sheet rubber lining installation" means the process of applying sheet rubber liners by hand to metal or plastic substrates to protect the underlying substrate from corrosion or abrasion. These operations also include laminating sheet rubber to fabric by hand.

"Single-ply roof membrane" means a prefabricated single sheet of rubber, normally ethylene-propylenediene terpolymer, that is field-applied to a building roof using one layer of membrane material. For the purposes of this article, single-ply roof membrane does not include membranes prefabricated from ethylene-propylenediene monomer (EPDM).

"Single-ply roof membrane adhesive primer" means any primer labeled for use to clean and promote adhesion of the single-ply roof membrane seams or splices prior to bonding.

"Single-ply roof membrane installation and repair adhesive" means any adhesive labeled for use in the installation or repair of single-ply roof membrane. Installation includes, as a minimum, attaching the edge of the membrane to the edge of the roof and applying flashings to vents, pipes, and ducts that protrude through the membrane. Repair includes gluing the edges of torn membrane together, attaching a patch over a hole and reapplying flashings to vents, pipes, or ducts installed through the membrane.

"Structural glazing" means a process that includes the application of adhesive to bond glass, ceramic, metal, stone, or composite panels to exterior building frames.

"Thin metal laminating adhesive" means any adhesive intended by the manufacturer for use in bonding multiple layers of metal to metal or metal to plastic in the production of electronic or magnetic components in which the thickness of the bond line or lines is less than 0.25 mils.

"Tire repair" means a process that includes expanding a hole, tear, fissure, or blemish in a tire casing by grinding, gouging, or applying adhesive and filling the hole or crevice with rubber.

"Undersea-based weapons systems components" means the fabrication of parts, assembly of parts or completed units of any portion of a missile launching system used on undersea ships.

"VOC" means volatile organic compound.

"Waterproof resorcinol glue" means a two-part resorcinol-resin-based adhesive designed for applications where the bond line must be resistant to conditions of continuous immersion in fresh or salt water.

9VAC5-40-8680. Standard for volatile organic compounds.

A. No owner or other person shall perform miscellaneous industrial adhesive application processes in excess of the following limits.

1. Facilities opting to meet specific emissions limits in lieu of the control efficiency in subdivision 2 of this subsection shall meet the applicable emissions limits in Table 4-58A.

TABLE 4-58A. VOC EMISSION LIMITS FOR GENERAL AND SPECIALTY ADHESIVE APPLICATION PROCESSES

General Adhesive Application Processes	VOC Emission Limit	
	grams per liter (g/l)	pounds per gallon (lb/gal)
Reinforced plastic composite	200	1.7
Flexible vinyl	250	2.1
Metal	30	0.3
Porous material (except wood)	120	1.0
Rubber	250	2.1
Wood	30	0.3
Other substrates	250	2.1
Specialty Adhesive Application Processes	VOC Emission Limit	
	(g/l)	(lb/gal)
Ceramic tile installation adhesive	130	1.1
Contact adhesive	250	2.1
Cove base installation adhesive	150	1.3
Indoor floor covering installation adhesive	150	1.3
Outdoor floor covering installation adhesive	250	2.1
Perimeter bonded sheet floor covering installation	660	5.5
Metal to urethane/rubber molding or casting adhesive	850	7.1
Motor vehicle adhesive	250	2.1
Motor vehicle weatherstrip adhesive	750	6.3
Multipurpose construction adhesive	200	1.7
ABS welding adhesive	400	3.3
Plastic solvent welding (except ABS) adhesive	500	4.2
Sheet rubber lining installation	850	7.1
Single-ply roof membrane installation and repair adhesive (except EPDM)	250	2.1
Structural glazing	100	0.8
Thin metal laminating adhesive	780	6.5
Tire repair	100	0.8
Waterproof resorcinol glue	170	1.4
Adhesive Primer Application Processes	VOC Emission Limit	
	(g/l)	(lb/gal)
Motor vehicle glass bonding primer	900	7.5
Plastic solvent welding adhesive primer	650	5.4
Single-ply roof membrane adhesive primer	250	2.1
Other adhesive primer	250	2.1

For the purposes of this table, emission limits are mass of VOC per volume of adhesive or adhesive primer excluding water and exempt compounds, as applied.

a. The VOC content limits in Table 4-58A for adhesives applied to particular substrates shall apply as follows:

(1) If an owner or other person uses an adhesive or sealant subject to a specific VOC content limit for such adhesive or sealant in Table 4-58A, such specific limit is applicable rather than an adhesive-to-substrate limit.

(2) If an adhesive is used to bond dissimilar substrates together, the applicable substrate category with the highest VOC content shall be the limit for such use.

b. The emission limits in Table 4-58A shall be met by averaging the VOC content of materials used on a single application process unit for each day (i.e., daily within-application process unit averaging). Cross-application process unit averaging (i.e., averaging across multiple application units) shall not be used to determine these emission limits.

c. VOC content shall be determined as follows:

(1) For adhesives that are not reactive adhesives, VOC content shall be determined using Reference Method 24.

(2) For reactive adhesives, VOC content shall be determined using the procedure for reactive adhesives in Appendix A of subpart PPPP of 40 CFR Part 63.

(3) As an alternative to the methods in subdivisions (1) and (2) of this subdivision A 1 c, the manufacturer's formulation data may be used. If there is a disagreement between manufacturer's formulation data and the results of a subsequent test, the test method results shall be used unless the facility can demonstrate to the board's satisfaction that the manufacturer's formulation data are correct.

2. Facilities opting to meet a control efficiency in lieu of the specific emission limits in subdivision 1 of this subsection shall meet an overall control efficiency of 85%.

3. The following materials shall not be subject to the limits and controls found in subdivisions 1 and 2 of this subsection but shall be subject to the work practices found in subdivision B 3 of this section:

a. Adhesives or adhesive primers being tested or evaluated in any research and development, quality assurance, or analytical laboratory.

b. Adhesives or adhesive primers used in the assembly, repair, or manufacture of aerospace or undersea-based weapon systems.

c. Adhesives or adhesive primers used in medical equipment manufacturing operations.

d. Cyanoacrylate adhesive application processes.

e. Application of aerosol adhesives and adhesive primers applied with a handheld, disposable can that is pressured and that dispenses an adhesive or adhesive primer by means of a propellant. Aerosol adhesives are regulated by VOC Emission Standards for Consumer Products, subpart C of 40 CFR Part 59. Aerosol adhesive primers are regulated as "primers" under VOC Emission Standards for Aerosol Coatings, subpart E of 40 CFR Part 59.

f. Processes using polyester bonding putties to assemble fiberglass parts at fiberglass boat manufacturing facilities and at other reinforced plastic composite manufacturing facilities.

g. Processes using adhesives and adhesive primers that are supplied by the manufacturer in containers with a net volume of 16 ounces or less, or a net weight of one pound or less.

h. Cleaning materials.

B. The owner of a facility subject to this article shall implement the following control options as applicable:

1. A facility using low-VOC adhesives or adhesive primers shall use one of the following application methods:

a. Electrostatic spray;

b. HVLP spray;

c. Flow coat;

d. Roll coat or hand application, including nonspray application methods similar to hand or mechanically powered caulking gun, brush, or direct hand application;

e. Dip coat, including electrodeposition;

f. Airless spray;

g. Air-assisted airless spray; or

h. Other adhesive application method capable of achieving a transfer efficiency equivalent to or better than that achieved by HVLP spraying.

2. A facility with product performance requirements or other needs that dictate the use of higher-VOC materials than those that would meet the emission limits in Table 4-58A shall either (i) use add-on control equipment with an overall control efficiency of 85% or (ii) use a combination of adhesives and add-on control equipment on an application process unit to meet the emission limits in Table 4-58A. Add-on devices may include oxidizers, adsorbers, absorbers, and concentrators.

3. The following work practices for the application of adhesives, adhesive primers, and process-related waste materials, shall be used:

a. All VOC-containing adhesives, adhesive primers, and process-related waste materials shall be stored in closed containers.

b. Mixing and storage containers used for VOC-containing adhesives, adhesive primers, and process-related waste materials shall be kept closed at all times except when these materials are being deposited or removed.

c. Spills of VOC-containing adhesives, adhesive primers, and process-related waste materials shall be minimized.

d. VOC-containing adhesives, adhesive primers, and process-related waste materials shall be conveyed from one location to another in closed containers or pipes.

4. The following work practices for cleaning activities shall be used:

a. All VOC-containing cleaning materials and used shop towels shall be stored in closed containers.

b. Storage containers used for VOC-containing cleaning materials shall be kept closed at all times except when these materials are deposited or removed.

c. Spills of VOC-containing cleaning materials shall be minimized.

d. VOC-containing cleaning materials shall be conveyed from one location to another in closed containers or pipes.

e. VOC emissions from cleaning of application, storage, mixing, and conveying equipment shall be minimized by performing equipment cleaning without atomizing the

cleaning solvent and by capturing all spent solvent in closed containers.

5. The application of adhesives and adhesive primers applied with a handheld, disposable can that is pressured and that dispenses an adhesive or adhesive primer by means of a propellant shall not be subject to the application method limits and controls found in subdivisions 1, 2, and 4 of this subsection but shall be subject to the work practices found in subdivisions 3 and 4 of this subsection.

9VAC5-40-8690. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8700. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of Part II of 9VAC5-40 (Existing Stationary Sources) apply.

9VAC5-40-8710. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of Part II of 9VAC-40 (Existing Stationary Sources) apply.

9VAC5-40-8720. Standard for toxic pollutants.

The provisions of Article 4 (9VAC5-60-200 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8730. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. The emission standards in 9VAC5-40-4330 apply to coating by coating or to the volume weighted average of coatings where the coatings are used on a single coating application system and the coatings are the same type or perform the same function. Such averaging shall not exceed 24 hours.

C. Compliance determinations for control technologies not based on compliant coatings (i.e., coating formulation alone) shall be based on the applicable standard in terms of pounds of VOCs per gallon solids or pounds of VOCs per gallon solids applied according to the applicable procedure in 9VAC5-20-121. Compliance may also be based on transfer efficiency greater than the baseline transfer efficiency of 9VAC5-40-8680 B if demonstrated by methods acceptable to the board according to the applicable procedure in 9VAC5-20-121.

9VAC5-40-8740. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than (insert date one year after the effective date of this article).

9VAC5-40-8750. Test methods and procedures.

The provisions of 9VAC5-40-30 (Emission testing) apply.

9VAC5-40-8760. Monitoring.

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-8770. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, records and reporting) apply.

9VAC5-40-8780. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8790. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and control equipment maintenance or malfunction) apply.

9VAC5-40-8800. Permits.

A permit may be required prior to beginning any of the activities specified in this section if the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) apply. Owners contemplating such action should review those provisions and contact the appropriate regional office for guidance on whether those provisions apply.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

6. Operation of a facility.

VA.R. Doc. No. R10-2124; Filed December 18, 2014, 8:07 a.m.

Proposed Regulation

Titles of Regulations: **9VAC5-20. General Provisions (Rev. E09) (amending 9VAC5-20-21).**

9VAC5-40. Existing Stationary Sources (Rev. E09) (amending 9VAC5-40-4760; adding 9VAC5-40-8810 through 9VAC5-40-8950).

Statutory Authority: § 10.1-1308 of the Code of Virginia; federal Clean Air Act (§§ 110, 111, 123, 129, 171, 172, and 182); 40 CFR Parts 51 and 60.

Public Hearing Information:

February 26, 2015 - 11 a.m. - Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193

Public Comment Deadline: March 13, 2015.

Agency Contact: Mary E. Major, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Basis: Section 10.1-1308 of the Virginia Air Pollution Control Law, Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia, authorizes the State Air Pollution Control Board to promulgate regulations abating, controlling, and prohibiting air pollution in order to protect public health and welfare.

Specific Federal Requirements.

Ground-level ozone is an air pollutant that forms when volatile organic compounds (VOCs) and nitrogen oxides

(NO_X) interact with sunlight. The national standard for ozone measured over an eight-hour period was promulgated by the U.S. Environmental Protection Agency (EPA) on July 18, 1997 (62 FR 38856), at a level of 0.08 parts per million (ppm).

Once EPA establishes a national standard for ozone, it must then designate areas that do not attain the standard (nonattainment areas). In turn, states must develop plans (state implementation plans or SIPs), including regulations, which will enable nonattainment areas to attain and maintain the standard.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the federal Clean Air Act and the associated nonattainment classification under § 181 of the Act or 40 CFR 51.903(a). Virginia's designations are in 40 CFR 81.347. On April 30, 2004 (69 FR 23858), EPA published designations for 0.08 ppm eight-hour ozone nonattainment areas and associated classifications.

On April 30, 2004 (69 FR 23951), EPA promulgated phase 1 of a final rule adding Subpart X to 40 CFR Part 51. Subpart X contains the provisions for the implementation of the eight-hour ozone NAAQS, along with associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for eight-hour ozone nonattainment areas once they are designated as such under 40 CFR Part 81. The remainder of the planning requirements (phase 2) were published on November 29, 2005 (70 FR 71612).

In order to implement the control measures needed to attain and maintain ozone air quality standard, Virginia has established VOC and NO_X emissions control areas. These areas were created to provide a legal mechanism for defining geographic areas in which to implement certain control measures in the nonattainment areas. The emissions control areas may or may not coincide with the nonattainment areas, depending on regional planning requirements.

Section 172(c)(1) of the Act provides that SIPs for nonattainment areas must include "reasonably available control measures" (RACM), including "reasonably available control techniques" (RACT), for sources of emissions. Section 182(b)(2) provides that for certain nonattainment areas, states must revise their SIPs to include RACT for sources of VOC emissions covered by a control techniques guidelines document (CTG) issued after November 15, 1990 and prior to the areas date of attainment.

Section 183(e) directs EPA to list for regulation those categories of products that account for at least 80% of the VOC emissions from commercial products in ozone nonattainment areas. EPA issued such a list on March 23, 1995, and has revised the list periodically. RACT controls for listed source categories controlled by a CTG are known as CTG RACTs. A CTG RACT has been issued for miscellaneous metal and plastic parts coating operations (October 7, 2008, 73 FR 58481). Therefore, states with moderate ozone nonattainment areas must implement this CTG RACT as part of their attainment SIP.

General Federal Requirements.

Sections 109(a) and (b) of the federal Clean Air Act require EPA to prescribe primary and secondary air quality standards to protect public health and welfare. These standards are known as the National Ambient Air Quality Standards (NAAQS). Section 109 (c) requires EPA to prescribe such standards simultaneously with the issuance of new air quality criteria for any additional air pollutant. The primary and secondary air quality criteria are authorized for promulgation under 108.

Once the NAAQS are promulgated pursuant to § 109, § 107(d) sets out a process for designating those areas that are in compliance with the standards (attainment or unclassifiable) and those that are not (nonattainment). Governors make the initial recommendations but EPA makes the final decision. Section 107(d) also sets forth the process for redesignations once the nonattainment areas are in compliance with the applicable NAAQS.

Section 110(a) of the Act mandates that each state adopt and submit to EPA a plan which provides for the implementation, maintenance, and enforcement of each primary and secondary air quality standard within each air quality control region in the state. The state implementation plan (SIP) must include provisions to accomplish, among other tasks, the following:

1. Establish enforceable emission limitations and other control measures as necessary to comply with the Act;

2. Establish schedules for compliance;

3. Prohibit emissions which would contribute to nonattainment of the standards or interference with maintenance of the standards by any state; and

4. Require sources of air pollution to install, maintain, and replace monitoring equipment as necessary and to report periodically on emissions-related data.

40 CFR Part 50 specifies the NAAQS for sulfur dioxide, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead.

40 CFR Part 51 sets out requirements for the preparation, adoption, and submittal of SIPs. These requirements mandate that any such plan must include certain provisions, including those summarized below.

Subpart G (Control Strategy) specifies the description of control measures and schedules for implementation, the description of emissions reductions estimates sufficient to attain and maintain the standards, time periods for demonstrations of the control strategy's adequacy, an emissions inventory, an air quality data summary, data availability, special requirements for lead emissions, stack height provisions, and intermittent control systems.

Subpart K (Source Surveillance) specifies procedures for emissions reports and recordkeeping, procedures for testing,

inspection, enforcement, and complaints, transportation control measures, and procedures for continuous emissions monitoring.

Subpart L (Legal Authority) specifies the requirements for legal authority to implement plans. Section 51.230 under Subpart L specifies that each SIP must show that the state has the legal authority to carry out the plan, including the authority to perform the following actions:

1. Adopt emission standards and limitations and any other measures necessary for the attainment and maintenance of the national ambient air quality standards;

2. Enforce applicable laws, regulations, and standards, and seek injunctive relief;

3. Abate pollutant emissions on an emergency basis to prevent substantial endangerment to the health of persons;

4. Prevent construction, modification, or operation of a facility, building, structure, or installation, or combination thereof, which directly or indirectly results or may result in emissions of any air pollutant at any location which will prevent the attainment or maintenance of a national standard;

5. Obtain information necessary to determine whether air pollution sources comply with applicable laws, regulations, and standards, including authority to require recordkeeping and to make inspections and conduct tests of air pollution sources;

6. Require owners or operators of stationary sources to install, maintain, and use emission monitoring devices and to make periodic reports to the state on the nature and amounts of emissions from such stationary sources; and

7. Make emissions data available to the public as reported and as correlated with any applicable emission standards or limitations.

Section 51.231 under Subpart L requires the identification of legal authority: (i) the provisions of law or regulation which the state determines provide the authorities required under this section must be specifically identified, and copies of such laws or regulations must be submitted with the plan; and (ii) the plan must show that the legal authorities specified in this subpart are available to the state at the time of submission of the plan.

Subpart N (Compliance Schedules) specifies legally enforceable compliance schedules, final compliance schedule dates, and conditions for extensions beyond one year.

Part D describes how nonattainment areas are established, classified, and required to meet attainment. Subpart 1 provides the overall framework of what nonattainment plans are to contain, while Subpart 2 provides more detail on what is required of areas designated nonattainment for ozone.

Section 171 defines "reasonable further progress," "nonattainment area," "lowest achievable emission rate," and "modification."

Section 172(a) authorizes EPA to classify nonattainment areas for the purpose of assigning attainment dates. Section 172(b) authorizes EPA to establish schedules for the submission of plans designed to achieve attainment by the specified dates. Section 172(c) specifies the provisions to be included in each attainment plan, as follows:

1. Implementation of all reasonably available control measures as expeditiously as practicable and provide for the attainment of the national ambient air quality standards;

2. Reasonable further progress;

3. A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutants in the nonattainment area;

4. Identification and quantification of allowable emissions from the construction and modification of new and modified major stationary sources in the nonattainment area;

5. A requirement for permits for the construction and operations of new and modified major stationary sources in the nonattainment area;

6. Inclusion of enforceable emission limitations and such other control measures (including economic incentives such as fees, marketable permits, and auctions of emission rights) as well as schedules for compliance;

7. If applicable, the proposal of equivalent modeling, emission inventory, or planning procedures; and

8. Inclusion of specific contingency measures to be undertaken if the nonattainment area fails to make reasonable further progress or to attain the national ambient air quality standards by the attainment date.

Section 172(d) requires that attainment plans be revised if EPA finds inadequacies. Section 172(e) authorizes the issuance of requirements for nonattainment areas in the event of a relaxation of any national ambient air quality standard. Such requirements must provide for controls which are not less stringent than the controls applicable to these same areas before such relaxation.

Section 107(d)(3)(D) provides that a state may petition EPA to redesignate a nonattainment area as attainment and EPA may approve the redesignation subject to certain criteria being met. Section 107(d)(3)(E) stipulates one of these criteria, that EPA must fully approve a maintenance plan that meets the requirements of § 175A. According to § 175A(a), the maintenance plan must be part of a SIP submission, and must provide for maintenance of the NAAQS for at least 10 years after the redesignation. The plan must contain any additional measures needed to ensure maintenance. Section 175A(b) further requires that eight years after redesignation, a maintenance plan for the next 10 years must then be submitted. As stated in § 175A(c), nonattainment requirements continue to apply until the SIP submittal is approved. Finally, § 175A(d) requires that the maintenance plan contain contingency provisions which will be

implemented should the area fail to maintain the NAAQS as provided for in the original plan.

Under Part D, Subpart 2, § 181 sets forth the classifications and nonattainment dates for 1-hour ozone nonattainment areas once they are designated as such under § 107(d).

Section 182(a)(2)(A) requires that the existing regulatory program requiring reasonably available control technology (RACT) for stationary sources of VOCs in marginal nonattainment areas be corrected by May 15, 1991, to meet the minimum requirements in existence prior to the enactment of the 1990 amendments. EPA has published control techniques guidelines (CTGs) for various types of sources, thereby defining the minimum acceptable control measure or RACT for a particular source type.

Section 182(b) requires stationary sources in moderate nonattainment areas to comply with the requirements for sources in marginal nonattainment areas. The additional, more comprehensive control measures in § 182(b)(2)(A) require that each category of VOC sources employ RACT if the source is covered by a CTG document issued between enactment of the 1990 amendments and the attainment date for the nonattainment area. Section 182(b)(2)(B) requires that existing stationary sources emitting VOCs for which a CTG existed prior to adoption of the 1990 amendments also employ RACT.

40 CFR Part 81 specifies the designations of areas made under § 107(d) of the Act and the associated nonattainment classification (if any) under § 181 of the Act or 40 CFR 51.903(a), as applicable. Subpart X to 40 CFR Part 51 contains the provisions for the implementation of the eight-hour ozone NAAQS, along with associated planning requirements. Specifically, 40 CFR 51.903(a) sets forth the classification criteria and nonattainment dates for 8-hour ozone nonattainment areas once they are designated.

State Requirements.

These specific amendments are not required by state mandate. Rather, Virginia's Air Pollution Control Law gives the State Air Pollution Control Board the discretionary authority to promulgate regulations "abating, controlling and prohibiting air pollution throughout or in any part of the Commonwealth" (§ 10.1-1308 A of the Code of Virginia). The law defines such air pollution as "the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare or safety, to animal or plant life, or to property, or which unreasonably interfere with the enjoyment by the people or life or property" (§ 10.1-1300 of the Code of Virginia).

Purpose: The purpose of the proposed action is to adopt new standards for the control of volatile organic compound (VOC) emissions from miscellaneous metal and plastic parts coating operations within the Northern Virginia VOC Emissions Control Area. This action is being taken to allow Virginia to meet its obligation to implement control measures in areas designated as nonattainment under the 0.08 parts per million (ppm) eight-hour ozone standard. It will contribute to the reduction of ozone air pollution, and thereby improve public health and welfare.

Substance:

1. An applicability section is established, which specifies the affected source population.

2. Definitions of terms used in the rule are provided.

3. A standard for VOC emissions is established, along with provisions for achieving the standard.

4. Standard provisions are provided for visible emissions; fugitive dust/emissions; odor; toxic pollutants; compliance; a compliance schedule; test methods and procedures; monitoring; notification, records and reporting; registration; facility and control equipment maintenance or malfunction; and permits.

Issues: The primary advantage to the general public is the reduction of VOC air pollution, which has a negative effect on public health and welfare. Regulated sources may realize cost savings through more effective application procedures and practices. There are no disadvantages to the public.

The primary advantages to the department are that the adoption of these regulations will allow Virginia to attain and maintain air quality standards and improve public health of Virginians. The primary disadvantage to the department is the potential for an increased compliance cost to administer the new regulations.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Air Pollution Control Board (Board) proposes to amend its existing air pollution regulations to add new standards for the control of volatile organic compound (VOC) emissions from industrial solvent miscellaneous metal and plastic parts coating processes within the Northern Virginia VOC Emissions Control Area. The Board also proposes to update references to the Code of Federal Regulations (CFR).

Result of Analysis. Because the Department of Environmental Quality (DEQ) does not know with any degree of certainty how many entities these regulatory changes will affect, there is likely insufficient information to decide if benefits outweigh costs.

Estimated Economic Impact. Currently, the Board's air pollution control regulations do not include rules for the control of volatile organic compound (VOC) emissions from industrial solvent cleaning operations and miscellaneous industrial adhesive application processes. The Board proposes to add rules that are partially new and partially taken from the already promulgated consumer products rules. For cleaning materials, the parts of these rules that are completely new require businesses to 1) store cleaning materials and used shop towels in closed containers which are required to remain closed except when cleaners or towels are added or removed, 2) minimize spills of VOC containing cleaners, 3) move VOC

containing cleaners from one place to another in closed containers or pipes and 4) clean equipment without atomizing the cleaners and capture all spent solvent in closed containers. For coatings, thinners, and coating-related waste materials, the parts of these rules that are completely new require businesses to 1) store all VOC containing coatings, thinners, and coating-related waste materials in closed containers which are required to remain closed except when materials are being added or removed 2) minimize spills of VOC containing coatings, thinners, and coating-related waste materials and 3) move VOC containing coatings, thinners, and coating-related waste materials from one place to another in closed containers or pipes.

DEQ will incur costs associated with promulgating these new rules that include the cost of identifying and registering affected businesses. DEQ estimates that these costs will total between $12,144 and $48,576. Affected businesses may incur costs for potentially more expensive low VOC products and, on rarer occasions, for control equipment. DEQ estimates that these costs would add to approximately $265 per ton of VOC but believe that these costs will be partially or completely offset by savings that businesses will see on account of decreased evaporation of their cleaning or adhesive products. In any case, the Environmental Protection Agency (EPA) is requiring Virginia to promulgate these regulations under threat of loss of highway funding so one of the benefits of this regulatory action will be the preservation of that highway funding.

Businesses and Entities Affected. DEQ reports that it is impossible to know how many businesses will be affected by these regulations. Given that the products that will be regulated have many applications, there are likely numerous businesses that will be affected. Because these rules will be new, many affected businesses will not have had to register with, or get a permit from, the Board before.

Localities Particularly Affected. Localities in the Northern Virginia non-attainment area (the counties of Arlington, Fairfax, Loudon, Prince William and Stafford as well as the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park) will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This regulatory action will likely have little impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have little effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. Affected small businesses may incur costs from having to change the coating products that they use or, in rare instances, from having to purchase control equipment. DEQ believes that these costs will be offset by savings that businesses will realize from losing less product to evaporation.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There do not appear to be any alternate methods that would both further minimize costs and achieve the aims of the Board.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The proposed regulation requires owners to limit emissions of air pollution from miscellaneous metal and plastic parts coating operations to the level necessary for the protection of public health and welfare and the attainment and maintenance of the air quality standards. The regulation applies to sources within the Northern Virginia Volatile Organic Compound Emissions Control Area, and establishes standards, control techniques, and provisions for determining compliance. The regulation also includes provisions for visible emissions, fugitive dust, odor, toxic pollutants, compliance, test methods and procedures, monitoring, notification, registration, malfunctions, and permits.

9VAC5-20-21. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents

by reference. Throughout these regulations, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in these regulations to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the CFR (2013) in effect July 1, 2013. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in the regulations shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Eighth Floor, 629 East Main Street, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference.

(1) 40 CFR Part 50 -- National Primary and Secondary Ambient Air Quality Standards.

(a) Appendix A-1 -- Reference Measurement Principle and Calibration Procedure for the Measurement of Sulfur Dioxide in the Atmosphere (Ultraviolet Fluorescence Method).

(b) Appendix A-2 -- Reference Method for the Determination of Sulfur Dioxide in the Atmosphere (Pararosaniline Method).

(c) Appendix B -- Reference Method for the Determination of Suspended Particulate Matter in the Atmosphere (High-Volume Method).

(d) Appendix C -- Measurement Principle and Calibration Procedure for the Continuous Measurement of Carbon Monoxide in the Atmosphere (Non-Dispersive Infrared Photometry).

(e) Appendix D -- Measurement Principle and Calibration Procedure for the Measurement of Ozone in the Atmosphere.

(f) Appendix E -- Reserved.

(g) Appendix F -- Measurement Principle and Calibration Procedure for the Measurement of Nitrogen Dioxide in the Atmosphere (Gas Phase Chemiluminescence).

(h) Appendix G -- Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air.

(i) Appendix H -- Interpretation of the National Ambient Air Quality Standards for Ozone.

(j) Appendix I -- Interpretation of the 8-Hour Primary and Secondary National Ambient Air Quality Standards for Ozone.

(k) Appendix J -- Reference Method for the Determination of Particulate Matter as PM_{10} in the Atmosphere.

(l) Appendix K -- Interpretation of the National Ambient Air Quality Standards for Particulate Matter.

(m) Appendix L -- Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere.

(n) Appendix M -- Reserved.

(o) Appendix N -- Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$.

(p) Appendix O -- Reference Method for the Determination of Coarse Particulate Matter as PM in the Atmosphere.

(q) Appendix P -- Interpretation of the Primary and Secondary National Ambient Air Quality Standards for Ozone.

(r) Appendix Q -- Reference Method for the Determination of Lead in Suspended Particulate Matter as PM_{10} Collected from Ambient Air.

(s) Appendix R -- Interpretation of the National Ambient Air Quality Standards for Lead.

(t) Appendix S -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Nitrogen (Nitrogen Dioxide).

(u) Appendix T -- Interpretation of the Primary National Ambient Air Quality Standards for Oxides of Sulfur (Sulfur Dioxide).

(2) 40 CFR Part 51 -- Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

(a) Appendix M -- Recommended Test Methods for State Implementation Plans.

(b) Appendix S -- Emission Offset Interpretive Ruling.

(c) Appendix W -- Guideline on Air Quality Models (Revised).

(d) Appendix Y -- Guidelines for BART Determinations Under the Regional Haze Rule.

(3) 40 CFR Part 55 -- Outer Continental Shelf Air Regulations.

(4) 40 CFR Part 58 -- Ambient Air Quality Surveillance.

Appendix A -- Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring.

(5) 40 CFR Part 59 -- National Volatile Organic Compound Emission Standards for Consumer and Commercial Products.

(a) Subpart C -- National Volatile Organic Compound Emission Standards for Consumer Products.

(b) Subpart D -- National Volatile Organic Compound Emission Standards for Architectural Coatings, Appendix A -- Determination of Volatile Matter Content of Methacrylate Multicomponent Coatings Used as Traffic Marking Coatings.

(6) 40 CFR Part 60 -- Standards of Performance for New Stationary Sources.

The specific provisions of 40 CFR Part 60 incorporated by reference are found in Article 5 (9VAC5-50-400 et seq.) of Part II of 9VAC5-50 (New and Modified Sources).

(7) 40 CFR Part 61 -- National Emission Standards for Hazardous Air Pollutants.

The specific provisions of 40 CFR Part 61 incorporated by reference are found in Article 1 (9VAC5-60-60 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(8) 40 CFR Part 63 -- National Emission Standards for Hazardous Air Pollutants for Source Categories.

The specific provisions of 40 CFR Part 63 incorporated by reference are found in Article 2 (9VAC5-60-90 et seq.) of Part II of 9VAC5-60 (Hazardous Air Pollutant Sources).

(9) 40 CFR Part 64 -- Compliance Assurance Monitoring.

(10) 40 CFR Part 72 -- Permits Regulation.

(11) 40 CFR Part 73 -- Sulfur Dioxide Allowance System.

(12) 40 CFR Part 74 -- Sulfur Dioxide Opt-Ins.

(13) 40 CFR Part 75 -- Continuous Emission Monitoring.

(14) 40 CFR Part 76 -- Acid Rain Nitrogen Oxides Emission Reduction Program.

(15) 40 CFR Part 77 -- Excess Emissions.

(16) 40 CFR Part 78 -- Appeal Procedures for Acid Rain Program.

(17) 40 CFR Part 152 Subpart I -- Classification of Pesticides.

(18) 49 CFR Part 172 -- Hazardous Materials Table. Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements, Subpart E, Labeling.

(19) 29 CFR Part 1926 Subpart F -- Fire Protection and Prevention.

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 783-3238.

2. U.S. Environmental Protection Agency.

a. The following documents from the U.S. Environmental Protection Agency are incorporated herein by reference:

(1) Reich Test, Atmospheric Emissions from Sulfuric Acid Manufacturing Processes, Public Health Service Publication No. PB82250721, 1980.

(2) Compilation of Air Pollutant Emission Factors (AP-42). Volume I: Stationary and Area Sources, stock number 055-000-00500-1, 1995; Supplement A, stock number 055-000-00551-6, 1996; Supplement B, stock number 055-000-00565, 1997; Supplement C, stock number 055-000-00587-7, 1997; Supplement D, 1998; Supplement E, 1999.

(3) "Guidelines for Determining Capture Efficiency" (GD-35), Emissions Monitoring and Analysis Division, Office of Air Quality Planning and Standards, January 9, 1995.

b. Copies of the document identified in subdivision E 2 a (1) of this subdivision, and Volume I and Supplements A through C of the document identified in subdivision E 2 a (2) of this subdivision, may be obtained from: U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161; phone 1-800-553-6847. Copies of Supplements D and E of the document identified in subdivision E 2 a (2) of this subdivision may be obtained online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/index.html. Copies of the document identified in subdivision E 2 a (3) of this subdivision are only available online from EPA's Technology Transfer Network at http://www.epa.gov/ttn/emc/guidlnd.html.

3. U.S. government.

a. The following document from the U.S. government is incorporated herein by reference: Standard Industrial Classification Manual, 1987 (U.S. Government Printing Office stock number 041-001-00-314-2).

b. Copies may be obtained from: Superintendent of Documents, P.O. Box 371954, Pittsburgh, Pennsylvania 15250-7954; phone (202) 512-1800.

4. American Society for Testing and Materials (ASTM).

a. The documents specified below from the American Society for Testing and Materials are incorporated herein by reference.

(1) D323-99a, "Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method)."

(2) D97-96a, "Standard Test Method for Pour Point of Petroleum Products."

(3) D129-00, "Standard Test Method for Sulfur in Petroleum Products (General Bomb Method)."

(4) D388-99, "Standard Classification of Coals by Rank."

(5) D396-98, "Standard Specification for Fuel Oils."

(6) D975-98b, "Standard Specification for Diesel Fuel Oils."

(7) D1072-90(1999), "Standard Test Method for Total Sulfur in Fuel Gases."

(8) D1265-97, "Standard Practice for Sampling Liquefied Petroleum (LP) Gases (Manual Method)."

(9) D2622-98, "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry."

(10) D4057-95(2000), "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(11) D4294-98, "Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-Ray Fluorescence Spectroscopy."

(12) D523-89, "Standard Test Method for Specular Gloss" (1999).

(13) D1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products" (2002).

(14) D1640-95, "Standard Test Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature" (1999).

(15) E119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials" (2000).

(16) E84-01, "Standard Test Method for Surface Burning Characteristics of Building Construction Materials" (2001).

(17) D4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films" (1998).

(18) D86-04b, "Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure" (2004).

(19) D4359-90, "Standard Test Method for Determining Whether a Material is a Liquid or a Solid" (reapproved 2000).

(20) E260-96, "Standard Practice for Packed Column Gas Chromatography" (reapproved 2001).

(21) D3912-95, "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants" (reapproved 2001).

(22) D4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants."

(23) F852-99, "Standard Specification for Portable Gasoline Containers for Consumer Use" (reapproved 2006).

(24) F976-02, "Standard Specification for Portable Kerosine and Diesel Containers for Consumer Use."

(25) D4457-02, "Standard Test Method for Determination of Dichloromethane and 1,1,1-Trichloroethane in Paints and Coatings by Direct Injection into a Gas Chromatograph" (reapproved 2008).

(26) D3792-05, "Standard Test Method for Water Content of Coatings by Direct Injection Into a Gas Chromatograph."

(27) D2879-97, "Standard Test Method for Vapor Pressure-Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope" (reapproved 2007).

b. Copies may be obtained from: American Society for Testing Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; phone (610) 832-9585.

5. American Petroleum Institute (API).

a. The following document from the American Petroleum Institute is incorporated herein by reference: Evaporative Loss from Floating Roof Tanks, API MPMS Chapter 19, April 1, 1997.

b. Copies may be obtained from: American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005; phone (202) 682-8000.

6. American Conference of Governmental Industrial Hygienists (ACGIH).

a. The following document from the ACGIH is incorporated herein by reference: 1991-1992 Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices (ACGIH Handbook).

b. Copies may be obtained from: ACGIH, 1330 Kemper Meadow Drive, Suite 600, Cincinnati, Ohio 45240; phone (513) 742-2020.

7. National Fire Prevention Association (NFPA).

a. The documents specified below from the National Fire Prevention Association are incorporated herein by reference.

(1) NFPA 385, Standard for Tank Vehicles for Flammable and Combustible Liquids, 2000 Edition.

(2) NFPA 30, Flammable and Combustible Liquids Code, 2000 Edition.

(3) NFPA 30A, Code for Motor Fuel Dispensing Facilities and Repair Garages, 2000 Edition.

b. Copies may be obtained from the National Fire Prevention Association, One Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101; phone (617) 770-3000.

8. American Society of Mechanical Engineers (ASME).

a. The documents specified below from the American Society of Mechanical Engineers are incorporated herein by reference.

(1) ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1-1964 (R1991).

(2) ASME Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters, 6th edition (1971).

(3) Standard for the Qualification and Certification of Resource Recovery Facility Operators, ASME QRO-1-1994.

b. Copies may be obtained from the American Society of Mechanical Engineers, Three Park Avenue, New York, New York 10016; phone (800) 843-2763.

9. American Hospital Association (AHA).

a. The following document from the American Hospital Association is incorporated herein by reference: An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, AHA Catalog no. W5-057007, 1993.

b. Copies may be obtained from: American Hospital Association, One North Franklin, Chicago, IL 60606; phone (800) 242-2626.

10. Bay Area Air Quality Management District (BAAQMD).

a. The following documents from the Bay Area Air Quality Management District are incorporated herein by reference:

(1) Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride" (December 20, 1995).

(2) Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials" (November 6, 1996).

b. Copies may be obtained from: Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109, phone (415) 771-6000.

11. South Coast Air Quality Management District (SCAQMD).

a. The following documents from the South Coast Air Quality Management District are incorporated herein by reference:

(1) Method 303-91, "Determination of Exempt Compounds," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(2) Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(3) Rule 1174 Ignition Method Compliance Certification Protocol (February 28, 1991).

(4) Method 304-91, "Determination of Volatile Organic Compounds (VOC) in Various Materials," in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(5) Method 316A-92, "Determination of Volatile Organic Compounds (VOC) in Materials Used for Pipes and Fittings" in Manual SSMLLABM, "Laboratory Methods of Analysis for Enforcement Samples" (1996).

(6) "General Test Method for Determining Solvent Losses from Spray Gun Cleaning Systems," October 3, 1989.

b. Copies may be obtained from: South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765, phone (909) 396-2000.

12. California Air Resources Board (CARB).

a. The following documents from the California Air Resources Board are incorporated herein by reference:

(1) Test Method 510, "Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(2) Test Method 511, "Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" (July 6, 2000).

(3) Method 100, "Procedures for Continuous Gaseous Emission Stack Sampling" (July 28, 1997).

(4) Test Method 513, "Determination of Permeation Rate for Spill-Proof Systems" (July 6, 2000).

(5) Method 310, "Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products (Including Appendices A and B)" (May 5, 2005).

(6) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 1, § 94503.5 (2003).

(7) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 2, §§ 94509 and 94511 (2003).

(8) California Code of Regulations, Title 17, Division 3, Chapter 1, Subchapter 8.5, Article 4, §§ 94540-94555 (2003).

(9) "Certification Procedure 501 for Portable Fuel Containers and Spill-Proof Spouts, CP-501" (July 26, 2006).

(10) "Test Procedure for Determining Integrity of Spill-Proof Spouts and Spill-Proof Systems, TP-501" (July 26, 2006).

(11) "Test Procedure for Determining Diurnal Emissions from Portable Fuel Containers, TP-502" (July 26, 2006).

b. Copies may be obtained from: California Air Resources Board, P.O. Box 2815, Sacramento, CA 95812, phone (906) 322-3260 or (906) 322-2990.

13. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification 2604-02, "Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels" (2002).

(2) Voluntary Specification 2605-02, "Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels" (2002).

b. Copies may be obtained from: American Architectural Manufacturers Association, 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173, phone (847) 303-5664.

14. American Furniture Manufacturers Association.

a. The following document from the American Furniture Manufacturers Association is incorporated herein by reference: Joint Industry Fabrics Standards Committee, Woven and Knit Residential Upholstery Fabric Standards and Guidelines (January 2001).

b. Copies may be obtained from: American Furniture Manufacturers Association, P.O. Box HP-7, High Point, NC 27261; phone (336) 884-5000.

15. American Architectural Manufacturers Association.

a. The following documents from the American Architectural Manufacturers Association are incorporated herein by reference:

(1) Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2604-05.

(2) Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels, publication number AAMA 2605-05.

b. Copies may be obtained from: American Architectural Manufacturers Association, P 1827 Walden Office Square, Suite 550, Schaumburg, IL 60173-4268; phone 847-303-5774.

Article 34

Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems (Rule 4-34)

9VAC5-40-4760. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this article apply is each miscellaneous metal parts and products coating application system.

B. The provisions of this article apply only to sources of volatile organic compounds in volatile organic compound emissions control areas designated in 9VAC5-20-206. After (insert date one year from effective date of this article) they do not apply to sources in the Northern Virginia Volatile Organic Compound Emissions Control Area designated in 9VAC5-20-206. These sources are subject to Article 59 (9VAC5-40-8810 et seq.) of this part.

C. Exempted from the provisions of this article are coating plants whose emissions of volatile organic compounds are not more than 2.7 tons per year, 15 pounds per day and three pounds per hour, based on the actual emission rate. All volatile organic compound emissions from purging or washing solvents shall be considered in applying the exemption levels specified in this subsection.

D. The provisions of this article do not apply to the following:

1. Coating application systems used exclusively for determination of product quality and commercial acceptance provided:

a. The operation is not an integral part of the production process;

b. The emissions from all product quality coating application systems do not exceed 400 pounds in any 30 day period; and

c. The exemption is approved by the board.

2. Vehicle refinishing operations.

3. Vehicle customized coating operations, if production is less than 20 vehicles per day.

4. Fully assembled aircraft and marine vessel exterior coating operations.

Article 59

Emission Standards for Miscellaneous Metal Parts and Products Coating Application Systems in the Northern Virginia Volatile Organic Compound Emissions Control Area, 8-hour Ozone Standard (Rule 4-59)

9VAC5-40-8810. Applicability and designation of affected facility.

A. Except as provided in subsections C and D of this section, the affected facility to which the provisions of this article apply is each miscellaneous metal product and plastic parts surface coating operation at a facility where the total actual emissions of volatile organic compounds (VOCs) from

all miscellaneous metal product and plastic parts surface coating operations, including related cleaning activities, at that facility are equal to or exceed 6.8 kilograms per day (15 pounds per day), or an equivalent level of 2.7 tons per 12-month rolling period, before consideration of controls.

B. The provisions of this article apply only to affected facilities located in the Northern Virginia VOC Emissions Control Area designated in subdivision 1 a of 9VAC5-20-206.

C. Facilities that coat bodies or body parts for new heavier vehicles (including all vehicles that meet the definition of the term "other motor vehicles" as defined in 40 CFR 63.3176 of the National Emission Standards for Surface Coating of Automobile and Light-Duty Trucks) may, in lieu of complying with the provisions of this article, opt to comply with Article 28 (Emission Standards for Automobile And Light Duty Truck Coating Application Systems, 9VAC5-40-3860 et seq.) of 9VAC5-40 (Existing Stationary Sources).

D. The provisions of this article do not apply to the following:

1. Miscellaneous metal product and plastic parts surface coating operations subject to Article 26 (Large Appliance Coatings, 9VAC5-40-3560 et seq.), Article 27 (Emission Standards for Magnet Wire Coating Application Systems, 9VAC5-40-3710 et seq.), Article 29 (Emission Standards for Can Coating Application Systems, 9VAC5-40-4010 et seq.), Article 30 (Emission Standards for Metal Coil Coating Application Systems, 9VAC5-40-4160), Article 31 (Emission Standards for Paper and Fabric Coating Application Systems, 9VAC5-40-4310), Article 33 (Metal Furniture Coating Application Systems, 9VAC5-40-4610 et seq.), and Article 48 (Emission Standards for Mobile Equipment Repair and Refinishing Operations, 9VAC5-40-6970 et seq.) of 9VAC5-40 (Existing Stationary Sources); and Article 5 (Emission Standards for Architectural and Industrial Maintenance Coatings, 9VAC5-45-520 et seq.) of 9VAC5-45 (Consumer and Commercial Products).

2. Coating application systems used exclusively for determination of product quality and coatings that are applied to test panels and coupons as part of research and development, quality control, or performance testing activities at paint research or manufacturing facilities.

3. Coatings applied using a handheld, pressurized, nonrefillable container that expels coatings from the container in a finely divided spray when a valve on the container is depressed.

4. Miscellaneous metal product and plastic parts surface coating operations associated with the following product categories or processes: aerospace coatings; wood furniture coatings; fiberglass boat manufacturing materials; and paper, film, and foil coatings not otherwise regulated under Article 31 (Emission Standards For Paper and Fabric Coating Application Systems, 9VAC5-40-4310) of 9VAC5-40 (Existing Stationary Sources).

9VAC5-40-8820. Definitions.

A. For the purpose of this article and subsequent amendments or any orders issued by the board, the words or terms shall have the meaning given them in subsection C of this section.

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

C. Terms defined.

"Aerospace coatings" means materials that are applied to the surface of an aerospace vehicle or component to form a decorative, protective, or functional solid film, or the solid film itself at a facility that produces, reworks, or repairs in any amount any commercial, civil, or military aerospace vehicle or component.

"Air-dried coating" means:

1. For general use, a coating that is cured at a temperature below 90°C (194°F).

2. For automotive/transportation and business machine use, a coating that is dried by the use of air or forced warm air at temperatures up to 90°C (194°F).

"Antifoulant coating" means any coating applied to the underwater portion of a pleasure craft to prevent or reduce the attachment of biological organisms, and registered with the U.S. Environmental Protection Agency (EPA) as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (7 USC § 136).

"Baked coating" means a coating that is cured at a temperature at or above 90°C (194°F).

"Black automotive coating" means a coating that meets both of the following criteria: (i) maximum lightness of 23 units and (ii) saturation of less than 2.8, where saturation equals the square root of $A^2 + B^2$. These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, maximum lightness is 33 units.

"Business machine" means a device that uses electronic or mechanical methods to process information, perform calculations, print or copy information, or convert sound into electrical impulses for transmission, including devices listed in Standard Industrial Classification numbers 3572, 3573, 3574, 3579, and 3661 and photocopy machines, a subcategory of Standard Industrial Classification number 3861.

"Camouflage coating" means a coating used, principally by the military, to conceal equipment from detection.

"Clear coating" means:

1. For general use, a colorless coating that contains binders, but no pigment, and is formulated to form a transparent film.

2. For automotive/transportation and business machine use, a coating that lacks color and opacity or is

transparent and that uses the undercoat as a reflectant base or undertone color.

"Coating unit" means a series of one or more coating applicators and any associated drying area or oven wherein a coating is applied, dried, or cured. A coating unit ends at the point where the coating is dried or cured, or prior to any subsequent application of a different coating. It is not necessary for a coating unit to have an oven or flash-off area.

"Drum" means any cylindrical metal shipping container larger than 12 gallons capacity but no larger than 110 gallons capacity.

"Electric dissipating coating" means a coating that rapidly dissipates a high-voltage electric charge.

"Electric-insulating varnish" means a nonconvertible-type coating applied to electric motors, components of electric motors, or power transformers to provide electrical, mechanical, and environmental protection or resistance.

"Etching filler" means a coating that contains less than 23% solids by weight and at least 0.5% acid by weight and is used instead of applying a pretreatment coating followed by a primer.

"Extreme high-gloss coating" means:

1. For general use, a coating that when tested by the American Society for Testing and Materials (ASTM) Standard Test Method for Specular Gloss (see 9VAC5-20-21) shows a reflectance of 75 or more on a 60° meter.

2. For pleasure craft surface coating, any coating that achieves at least 95% reflectance on a 60° meter when tested by ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"Extreme performance coating" means a coating used on a metal or plastic surface where the coated surface is, in its intended use, subject to the following:

1. Chronic exposure to corrosive, caustic, or acidic agents, chemicals, chemical fumes, chemical mixtures, or solutions;

2. Repeated exposure to temperatures in excess of 250°F; or

3. Repeated heavy abrasion, including mechanical wear and repeated scrubbing with industrial grade solvents, cleansers, or scouring agents.

Extreme performance coatings include, but are not limited to, coatings applied to locomotives, railroad cars, farm machinery, and heavy duty trucks.

"Fiberglass boat manufacturing materials" means materials utilized at facilities that manufacture hulls or decks of boats from fiberglass or build molds to make fiberglass boat hulls or decks. Fiberglass boat manufacturing materials are not materials used at facilities that manufacture solely parts of boats (i.e., hatches, seats, or lockers) or boat trailers, but do not (i) manufacture hulls or decks of boats from fiberglass or (ii) build molds to make fiberglass boat hulls or decks.

"Finish primer/surfacer" means a coating applied with a wet film thickness of less than 10 mils prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, a moisture barrier, or promotion of a uniform surface necessary for filling in surface imperfections.

"Flexible coating" means any coating that is required to comply with engineering specifications for impact resistance, mandrel bend, or elongation as defined by the original equipment manufacturer.

"Fog coat" means a coating that is applied to a plastic part for the purpose of color matching without masking a molded-in texture. A fog coat shall not be applied at a thickness of more than 0.5 mils of coating solids.

"Heat-resistant coating" means a coating that must withstand a temperature of at least 400°F during normal use.

"High bake coating" means a coating that is designed to cure only at temperatures of more than 90°C (194°F).

"High build primer/surfacer" means a coating applied with a wet film thickness of 10 mils or more prior to the application of a topcoat for purposes of providing corrosion resistance, adhesion of subsequent coatings, or a moisture barrier, or promoting a uniform surface necessary for filling in surface imperfections.

"High gloss" means any coating that achieves at least 85% reflectance on a 60° meter when tested by ASTM Standard Test Method for Specular Gloss (see 9VAC5-20-21).

"High performance architectural coating" means a coating used to protect architectural subsections and that meets the requirements of the Architectural Aluminum Manufacturer Association's publication number AAMA 2604-05 (Voluntary Specification, Performance Requirements and Test Procedures for High Performance Organic Coatings on Aluminum Extrusions and Panels) or 2605-05 (Voluntary Specification, Performance Requirements and Test Procedures for Superior Performing Organic Coatings on Aluminum Extrusions and Panels).

"High temperature coating" means a coating that is certified to withstand a temperature of 1000°F for 24 hours.

"Metallic coating" means a coating that contains more than 5 grams of metal particles per liter of coating as applied. "Metal particles" are pieces of a pure elemental metal or a combination of elemental metals.

"Military specification coating" means a coating that has a formulation approved by a United States military agency for use on military equipment.

"Miscellaneous metal parts and products" means a varied range of metal and plastic parts and products that are

constructed either entirely or partially from metal or plastic. These miscellaneous metal products and plastic parts include, but are not limited to, metal and plastic components of the following types of products as well as the products themselves: fabricated metal products, molded plastic parts, small and large farm machinery, commercial and industrial machinery and equipment, automotive or transportation equipment, interior or exterior automotive parts, construction equipment, motor vehicle accessories, bicycles and sporting goods, toys, recreational vehicles, pleasure craft (recreational boats), extruded aluminum structural components, railroad cars, heavier vehicles (as defined in 40 CFR 63.3176), lawn and garden equipment, business machines, laboratory and medical equipment, electronic equipment, steel drums, metal pipes, and numerous other industrial and household products.

"Miscellaneous metal product and plastic parts coating" means coatings that include paints, sealants, caulks, inks, and maskants (decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered miscellaneous metal or plastic part coatings). The paints include several categories of primers, topcoats, and specialty coatings, typically defined by the coating's function. The types of coating technologies used by miscellaneous metal product and plastic part surface coating facilities include higher solids, waterborne, and powder coatings, as well as conventional solvent-borne coatings. Decorative, protective, or functional materials that consist only of protective oils for metal, acids, bases, or any combination of these substances are not considered miscellaneous metal or plastic part coatings.

"Miscellaneous metal product and plastic parts surface coating operation" means the application of surface coatings by the manufacturer of miscellaneous metal and plastic parts to the parts it produces, and by facilities that perform surface coating of miscellaneous metal and plastic parts on a contract basis.

"Mold seal coating" means the initial coating applied to a new mold or a repaired mold to provide a smooth surface that, when coated with a mold release coating, prevents products from sticking to the mold.

"Motor vehicle bedliner" means a multi-component coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to a cargo bed after the application of topcoat to provide additional durability and chip resistance.

"Motor vehicle cavity wax" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied into the cavities of the vehicle primarily for the purpose of enhancing corrosion protection.

"Motor vehicle deadener" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to selected vehicle surfaces primarily for the purpose of reducing the sound of road noise in the passenger compartment.

"Motor vehicle gasket/sealing material" means a fluid, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to coat a gasket or replace and perform the same function as a gasket. Automobile and light-duty truck gasket/gasket sealing material includes room temperature vulcanization (RTV) seal material.

"Motor vehicle lubricating wax/compound" means a protective lubricating material, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to vehicle hubs and hinges.

"Motor vehicle sealer" means a high viscosity material, used at a facility that is not an automobile or light-duty truck assembly coating facility, generally, but not always, applied in the paint shop after the body has received an electrodeposition primer coating and before the application of subsequent coatings (e.g., primer-surfacer). The primary purpose of automobile and light-duty truck sealer is to fill body joints completely so that there is no intrusion of water, gases or corrosive materials into the passenger area of the body compartment. Such materials are also referred to as sealant, sealant primer, or caulk.

"Motor vehicle trunk interior coating" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to the trunk interior to provide chip protection.

"Motor vehicle underbody coating" means a coating, used at a facility that is not an automobile or light-duty truck assembly coating facility, applied to the undercarriage or firewall to prevent corrosion and/or provide chip protection.

"Multi-colored coating" means a coating that exhibits more than one color when applied, and which is packaged in a single container and applied in a single coat.

"Multi-component coating" means a coating requiring the addition of a separate reactive resin, commonly known as a catalyst or hardener, before application to form an acceptable dry film.

"One-component coating" means a coating that is ready for application as it comes out of its container to form an acceptable dry film. A thinner, necessary to reduce the viscosity, is not considered a component.

"Optical coating" means a coating applied to an optical lens.

"Pan-backing coating" means a coating applied to the surface of pots, pans, or other cooking implements that are exposed directly to a flame or other heating elements.

"Paper, film, and foil coating" means coating that is applied to paper, film, or foil surfaces in the manufacturing of several major product types for the following industry

sectors: pressure sensitive tape and labels (including fabric coated for use in pressure sensitive tapes and labels); photographic film; industrial and decorative laminates; abrasive products (including fabric coated for use in abrasive products); and flexible packaging (including coating of nonwoven polymer substrates for use in flexible packaging). Paper and film coating also includes coatings applied during miscellaneous coating operations for several products including: corrugated and solid fiber boxes; die-cut paper paperboard, and cardboard; converted paper and paperboard not elsewhere classified; folding paperboard boxes, including sanitary boxes; manifold business forms and related products; plastic aseptic packaging; and carbon paper and inked ribbons.

"Pleasure craft" means vessels that are manufactured or operated primarily for recreational purposes, or leased, rented, or chartered to a person or business for recreational purposes. The owner of such vessels shall be responsible for certifying that the intended use is for recreational purposes.

"Pleasure craft coating" means any marine coating, except unsaturated polyester resin (fiberglass) coatings, applied by brush, spray, roller, or other means to a pleasure craft.

"Prefabricated architectural component coatings" means coatings applied to metal parts and products that are to be used as an architectural structure.

"Pretreatment coating" means a coating that contains no more than 12% solids by weight, and at least 0.5% acid, by weight, is used to provide surface etching, and is applied directly to metal surfaces to provide corrosion resistance, adhesion, and ease of stripping.

"Pretreatment wash primer" means a coating that contains no more than 12% solids, by weight, and at least 0.5% acids, by weight; is used to provide surface etching; and is applied directly to fiberglass and metal surfaces to provide corrosion resistance and adhesion of subsequent coatings.

"Red automotive coating" means a coating that meets all of the following criteria:

1. Yellow limit: the hue of hostaperm scarlet.

2. Blue limit: the hue of monastral red-violet.

3. Lightness limit for metallics: 35% aluminum flake.

4. Lightness limit for solids: 50% titanium dioxide white.

5. Solid reds: hue angle of -11 to 38 degrees and maximum lightness of 23 to 45 units.

6. Metallic reds: hue angle of -16 to 35 degrees and maximum lightness of 28 to 45 units.

These criteria are based on Cielab color space, 0/45 geometry. For spherical geometry, specular included, the upper limit is 49 units. The maximum lightness varies as the hue moves from violet to orange. This is a natural consequence of the strength of the colorants, and real colors show this effect.

"Repair coating" means a coating used to re-coat portions of a previously coated product that has sustained mechanical damage to the coating following normal coating operations.

"Shock-free coating" means a coating applied to electrical components to protect the user from electric shock. The coating has characteristics of being of low capacitance and high resistance, and having resistance to breaking down under high voltage.

"Silicone release coating" means any coating that contains silicone resin and is intended to prevent food from sticking to metal surfaces such as baking pans.

"Solar-absorbent coating" means a coating that has as its prime purpose the absorption of solar radiation.

"Texture coating" means a coating that is applied to a plastic part that, in its finished form, consists of discrete raised spots of the coating.

"Topcoat" means any final coating applied to the interior or exterior of a pleasure craft.

"Touchup coating" means a coating used to cover minor coating imperfections appearing after the main coating operation.

"Vacuum-metalizing coating means:

1. For general use, the undercoat applied to the substrate on which the metal is deposited or the overcoat applied directly to the metal film. Vacuum metalizing/physical vapor deposition (PVD) is the process whereby metal is vaporized and deposited on a substrate in a vacuum chamber.

2. For automotive/transportation and business machine use, topcoats and basecoats that are used in the vacuum-metalizing process.

"VOC" means volatile organic compound.

"Wood furniture coatings" means protective, decorative, or functional films applied in thin layers to a surface used in the manufacture of wood furniture or wood furniture components. Such coatings include, but are not limited to, paints, topcoats, varnishes, sealers, stains, washcoats, basecoats, enamels, inks, and temporary protective coatings.

9VAC5-40-8830. Standard for volatile organic compounds.

A. No owner or other person shall cause or permit the discharge into the atmosphere from a coating application system any volatile organic compound in excess of the limits contained in Tables 4-59A through 4-59E. The VOC content limits are mass VOC per gallon of coating less water and exempt solvents and are based on low-VOC coatings. If more than one emission limitation in this subsection applies to a specific coating, then the least-stringent emission limitation shall be applied.

TABLE 4-59A.
METAL PARTS AND PRODUCTS VOC CONTENT LIMITS

Coating Category	Air-dried Coating		Baked Coating	
	kg VOC/l coating	lb VOC/gal coating	kg VOC/l coating	lb VOC/gal coating
General one component	0.34	2.8	0.28	2.3
General multi-component	0.34	2.8	0.28	2.3
Camouflage	0.42	3.5	0.42	3.5
Electric-insulating harnish	0.42	3.5	0.42	3.5
Etching filler	0.42	3.5	0.42	3.5
Extreme high-gloss	0.42	3.5	0.36	3.0
Extreme performance	0.42	3.5	0.36	3.0
Heat-resistant	0.42	3.5	0.36	3.0
High performance architectural	0.42	3.5	0.42	3.5
High temperature	0.42	3.5	0.42	3.5
Metallic	0.42	3.5	0.42	3.5
Military specification	0.34	2.8	0.28	2.3
Mold seal	0.42	3.5	0.42	3.5
Pan-backing	0.42	3.5	0.42	3.5
Prefabricated architectural multi-component	0.42	3.5	0.28	2.3
Prefabricated architectural one-component	0.42	3.5	0.28	2.3
Pretreatment coatings	0.42	3.5	0.42	3.5
Repair and touch-up	0.42	3.5	0.36	3.0
Silicone release	0.42	3.5	0.42	3.5
Solar-absorbent	0.42	3.5	0.36	3.0
Vacuum-metalizing	0.42	3.5	0.42	3.5
Drum coating, new, exterior	0.34	2.8	0.34	2.8
Drum coating, new, interior	0.42	3.5	0.42	3.5
Drum coating, reconditioned, exterior	0.42	3.5	0.42	3.5
Drum coating, reconditioned, interior	0.50	4.2	0.50	4.2

TABLE 4-59B. PLASTIC PARTS AND PRODUCTS VOC CONTENT LIMITS

Coating Category	kg VOC/liter coating	lbs VOC/gal coating
General one component	0.28	2.3
General multi-component	0.42	3.5
Electric dissipating and shock-free	0.80	6.7
Extreme performance	0.42 (2-pack coatings/multi-component)	3.5 (2-pack coatings/multi-component)
Metallic	0.42	3.5
Military specification	0.34 (1 pack/1 component) 0.42 (2 pack/multi-component)	2.8 (1 pack/1 component) 3.5 (2 pack/multi-component)
Mold seal	0.76	6.3
Multi-colored	0.68	5.7
Optical	0.80	6.7
Vacuum-metalizing	0.80	6.7

TABLE 4-59C. AUTOMOTIVE/TRANSPORTATION AND BUSINESS MACHINE PLASTIC PARTS VOC CONTENT LIMITS

Coating Category	kg VOC/liter coating	lbs VOC/gal coating
Automotive/Transportation Coatings (For red, yellow, and black automotive coatings, except touch up and repair coatings, the recommended limit is determined by multiplying the appropriate limit in this table by 1.15.)		
I. High Bake Coatings - Interior and Exterior Parts		
Flexible	0.54	4.5
Nonflexible	0.42	3.5
Base coating	0.52	4.3
Clear coating	0.48	4.0
Non-basecoat/clear coat	0.52	4.3
II. Low Bake/Air-dried Coatings - Exterior Parts		
Primers	0.58	4.8
Base coating	0.60	5.0
Clear coatings:	0.54	4.5
Non-basecoat/clear coat	0.60	5.0
III. Low Bake/Air-dried Coatings - Interior Parts	0.60	5.0
IV. Touchup and Repair Coatings	0.62	5.2
Business Machine Coatings		
I. Primers	0.35	2.9

II. Topcoat	0.35	2.9
III. Texture Coat	0.35	2.9
IV. Fog Coat	0.26	2.2
V. Touchup and Repair	0.35	2.9

TABLE 4-59D. PLEASURE CRAFT SURFACE COATING VOC CONTENT LIMITS

Coating Category	kg VOC/liter coating	lbs VOC/gal coating
Extreme high-gloss topcoat	0.49	4.1
High gloss topcoat	0.42	3.5
Pretreatment wash primers	0.78	6.5
Finish primer/surfacer	0.42	3.5
High build primer/surfacer	0.34	2.8
Aluminum substrate antifoulant coating	0.56	4.7
Other substrate antifoulant coating	0.33	2.8
All other pleasure craft surface coatings for metal or plastic	0.42	3.5

TABLE 4-59E. MOTOR VEHICLE MATERIALS VOC CONTENT LIMITS

Coating Category	kg VOC/liter coating	lbs VOC/gal coating
Motor vehicle cavity wax	0.65	5.4
Motor vehicle sealer	0.65	5.4
Motor vehicle deadener	0.65	5.4
Motor vehicle gasket/gasket sealing material	0.20	1.7
Motor vehicle underbody coating	0.65	5.4
Motor vehicle trunk interior coating	0.65	5.4
Motor vehicle bedliner	0.20	1.7
Motor vehicle lubricating wax/compound	0.70	5.8

B. No owner or other person shall cause or permit the discharge into the atmosphere from a coating application system any volatile organic compound in excess of the limits contained in Tables 4-59F through 4-59I. The emission rate limits are based on low-VOC coatings and add-on controls on a VOC per volume solids basis. If more than one emission limitation in this subsection applies to a specific coating, then the least stringent emission limitation shall be applied.

TABLE 4-59F.
METAL PARTS AND PRODUCTS VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

Coating Category	Air-dried		Baked	
	kg VOC/l solids	lb VOC/gal solids	Kg VOC/l solids	lb VOC/gal solids
General one component	0.54	4.52	0.40	3.35
General multi-component	0.54	4.52	0.40	3.35
Camouflage	0.80	6.67	0.80	6.67
Electric-insulating varnish	0.80	6.67	0.80	6.67
Etching filler	0.80	6.67	0.80	6.67
Extreme high-gloss	0.80	6.67	0.61	5.06
Extreme performance	0.80	6.67	0.61	5.06
Heat-resistant	0.80	6.67	0.61	5.06
High performance architectural	0.80	6.67	0.80	6.67
High temperature	0.80	6.67	0.80	6.67
Metallic	0.80	6.67	0.80	6.67
Military specification	0.54	4.52	0.40	3.35
Mold-seal	0.80	6.67	0.80	6.67
Pan-backing	0.80	6.67	0.80	6.67
Prefabricated architectural multi-component	0.80	6.67	0.40	3.35
Prefabricated architectural one-component	0.80	6.67	0.40	3.35
Pretreatment coatings	0.80	6.67	0.80	6.67
Silicone release 0.80	0.80	6.67	0.80	6.67
Solar-absorbent	0.80	6.67	0.61	5.06
Vacuum-metalizing	0.80	6.67	0.80	6.67
Drum coating, new, exterior	0.54	4.52	0.54	4.52
Drum coating, new, interior	0.80	6.67	0.80	6.67
Drum coating, reconditioned, exterior	0.80	6.67	0.80	6.67
Drum coating, reconditioned, interior	1.17	9.78	1.17	9.78

TABLE 4-59G.
PLASTIC PARTS AND PRODUCTS VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

Coating Category	kg VOC/liter solids	lbs VOC/gal solids
General one component	0.40	3.35
General multi-component	0.80	6.67
Electric dissipating coatings and shock-free	8.96	74.7
Extreme performance	0.80 (2-pack coatings/multi-component)	6.67 (2-pack coatings/multi-component)
Metallic	0.80	6.67
Military specification	0.54 (1 pack/1 component) 0.80 (2 pack/multi-component	4.52 (1 pack/1 component) 6.67 (2 pack/multi-component)
Mold seal	5.24	43.7
Multi-colored	3.04	25.3
Optical	8.96	74.7
Vacuum-metalizing	8.96	74.7

TABLE 4-59H.
AUTOMOTIVE/TRANSPORTATION AND BUSINESS MACHINE PLASTIC PARTS VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

Coating Category	kg VOC/liter solids	lbs VOC/gal solids
Automotive/Transportation Coatings (For red, yellow, and black automotive coatings, except touch up and repair coatings, the recommended limit is determined by multiplying the appropriate limit in this table by 1.15.)		
I. High Bake Coatings - Interior and Exterior Parts		
Flexible primer	1.39	11.58
Nonflexible primer	0.80	6.67
Base coats	1.24	10.34
Clear coat	1.05	8.76
Non-basecoat/clear coat	1.24	10.34
II. Low Bake/Air-dried Coatings - Exterior Parts		
Primers	1.66	13.80
Basecoat	1.87	15.59
Clearcoats	1.39	11.58
Non-basecoat/clearcoat	1.87	15.59
III. Low Bake/Air-dried Coatings - Interior Parts	1.87	15.59

IV. Touchup and Repair Coatings	2.13	17.72
Business Machine Coatings		
I. Primers	0.57	4.80
II. Topcoat	0.57	4.80
III. Texture Coat	0.57	4.80
IV. Fog Coat	0.38	3.14
V. Touchup and Repair	0.57	4.80

TABLE 4-59I.
PLEASURE CRAFT SURFACE COATING VOC EMISSION RATE LIMITS
(VOC PER VOLUME SOLIDS)

Coating Category	kg VOC/liter solids	lbs VOC/gal solids
Extreme high-gloss topcoat	1.10	9.2
High gloss topcoat	0.80	6.7
Pretreatment wash primer	6.67	55.6
Finish primer/surfacer	0.80	6.7
High build primer surfacer	0.55	4.6
Aluminum substrate antifoulant coating	1.53	12.8
Other substrate antifoulant coating	0.53	4.4
All other pleasure craft surface coatings for metal or plastic	0.80	6.7

C. Should product performance requirements or other needs dictate the use of higher-VOC materials than those that would meet the emission limits of subsections A and B of this section, an affected facility may opt to use add-on control equipment with an overall control efficiency of 90% in lieu of using low-VOC coatings and required application methods in subsection E of this section. Add-on devices include but are not limited to oxidizers, adsorbers, absorbers, and concentrators. Add-on devices coupled with capture systems to collect the VOC being released at the affected facilities shall achieve an overall control efficiency of no less than 90%.

D. In addition to the emissions limitations described in subsections A through C of this section, the following work practices for storage, mixing operations, and handling operations for coatings, thinners, and coating-related waste materials shall be utilized:

1. All VOC-containing coatings, thinners, and coating-related waste materials shall be stored in closed containers.

2. Mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste materials shall be kept closed at all times except when depositing or removing these materials.

3. Spills of VOC-containing coatings, thinners, and coating-related waste materials shall be minimized.

4. VOC-containing coatings, thinners, and coating-related waste materials shall be conveyed from one location to another in closed containers or pipes.

E. In addition to the work practices described in subsection D of this section, the following work practices for cleaning materials, used to clean surfaces before coating (surface preparation) and to clean application equipment between coating jobs, shall be utilized:

1. All VOC-containing cleaning materials and used shop towels shall be stored in closed containers.

2. Storage containers used for VOC-containing cleaning materials shall be kept closed at all times except when depositing or removing these materials.

3. Spills of VOC-containing cleaning materials shall be minimized.

4. VOC-containing cleaning materials shall be conveyed from one location to another in closed containers or pipes

5. VOC emissions from cleaning of application, storage, mixing, and conveying equipment shall be minimized by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

F. One or more of the following application techniques shall be used to apply any finish material listed in Tables 4-59A through 4-59I:

1. Flow/curtain coating;

2. Dip coating;

3. Roller coating;

4. Brush coating;

5. Electrodeposition coating;

6. High volume low pressure (HVLP) spraying;

7. Electrostatic spray;

8. Airless spray;

9. Air-assisted airless spray; or

10. Other coating application methods that achieve emission reductions equivalent to or greater than those achieved by HVLP or electrostatic spray application methods.

9VAC5-40-8840. Standard for visible emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-40-8850. Standard for fugitive dust/emissions.

The provisions of Article 1 (9VAC5-40-60 et seq.) of this chapter (Emission Standards for Visible Emissions and Fugitive Dust/Emissions, Rule 4-1) apply.

9VAC5-40-8860. Standard for odor.

The provisions of Article 2 (9VAC5-40-130 et seq.) of this chapter (Emission Standards for Odor, Rule 4-2) apply.

9VAC5-40-8870. Standard for toxic pollutants.

The provisions of Article 4 of 9VAC5-60 (Hazardous Air Pollutant Sources) apply.

9VAC5-40-8880. Compliance.

A. The provisions of 9VAC5-40-20 (Compliance) apply.

B. Compliance may be demonstrated (i) on a mass VOC per gallon of coating less water and exempt solvents basis under 9VAC5-40-8830 A, (ii) on a mass VOC per volume of solids basis under 9VAC5-40-8830 B, or (iii) the overall control basis of under 9VAC5-40-8830 C.

C. The emission standards in 9VAC5-40-8830 A and 9VAC5-40-8830 B apply coating by coating or to the volume weighted average of coatings where the coatings are used on a single coating application system and the coatings are the same type or perform the same function. Such averaging shall not exceed 24 hours.

D. Compliance determinations for control technologies not based on compliant coatings (i.e., coating formulation alone) shall be based on the applicable emission standards in 9VAC5-40-8830 B and the procedures of 9VAC5-20-121.

9VAC5-40-8890. Compliance schedule.

The owner shall comply with the provisions of this article as expeditiously as possible but in no case later than (one year after the effective date of this article).

9VAC5-40-8900. Test methods and procedures.

The provisions of 9VAC5-40-30 (Emission Testing) apply.

9VAC5-40-8910. Monitoring.

The provisions of 9VAC5-40-40 (Monitoring) apply.

9VAC5-40-8920. Notification, records, and reporting.

The provisions of 9VAC5-40-50 (Notification, Records and Reporting) apply.

9VAC5-40-8930. Registration.

The provisions of 9VAC5-20-160 (Registration) apply.

9VAC5-40-8940. Facility and control equipment maintenance or malfunction.

The provisions of 9VAC5-20-180 (Facility and Control Equipment Maintenance or Malfunction) apply.

9VAC5-40-8950. Permits.

A permit may be required prior to beginning any of the activities specified below and the provisions of 9VAC5-50 (New and Modified Stationary Sources) and 9VAC5-80 (Permits for Stationary Sources) may apply. Owners contemplating such action should contact the appropriate regional office for guidance.

1. Construction of a facility.

2. Reconstruction (replacement of more than half) of a facility.

3. Modification (any physical change to equipment) of a facility.

4. Relocation of a facility.

5. Reactivation (re-startup) of a facility.

VA.R. Doc. No. R10-2125; Filed December 18, 2014, 8:11 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exclusion from Article 2 of 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 State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **12VAC5-381. Regulations for the Licensure of Home Care Organizations (amending 12VAC5-381-10, 12VAC5-381-20, 12VAC5-381-110, 12VAC5-381-190, 12VAC5-381-210, 12VAC5-381-220).**

Statutory Authority: §§ 32.1-12 and 32.1-162.12 of the Code of Virginia.

Effective Date: February 12, 2015.

Agency Contact: Susan Horn, Policy Analyst, Department of Health, 3600 West Broad Street, Richmond, VA 23230-4920, telephone (804) 367-2157, FAX (804) 367-2149, or email susan.horn@vdh.virginia.gov.

Summary:

The amendments conform the Regulations for the Licensure of Home Care Organizations (12VAC5-381) with §§ 32.1-162.9, 32.1-162.9:1, and 32.1-162.11 of the Code of Virginia by incorporating the following changes: (i) adding the requirement that every applicant for an initial license to establish or operate a home care organization shall include as part of his application proof of initial reserve operating funds in an amount determined by the board that shall be sufficient to ensure operation of the home care organization for the three-month period after a license to operate has been issued; (ii) removing the requirement that separate licenses be required for home care organizations maintained at separate locations, clarifying that the Commissioner may issue a license to a home care organization authorizing the licensee to provide services at one or more branch offices, and defining the term "branch office"; (iii) adding the requirement that no employee is permitted to work in a position that involves direct contact with a patient until an original criminal record report has been received unless such person works under the direct supervision of another employee for whom a background check has been completed; and (iv) removing the definition of "surety bond," replacing it with definitions of "blanket fidelity bond" and "third-party crime insurance," removing the requirement that a home care organization obtain a surety bond, and replacing it with a requirement that the home care organization obtain a third-party crime insurance policy or blanket fidelity bond.

Part I

Definitions and General Information

12VAC5-381-10. Definitions.

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

"Activities of daily living ~~(ADLs)~~" or "ADLs" means bathing, dressing, toileting, transferring, bowel control, bladder control and eating/feeding. A person's degree of independence in performing these activities is part of determining the appropriate level of care and services. A need for assistance exists when the client is unable to complete an activity due to cognitive impairment, functional disability, physical health problems, or safety. The client's functional level is based on the client's need for assistance most or all of the time to perform personal care tasks in order to live independently.

"Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion or any other means, to the body of a client by (i) a practitioner or by his authorized agent and under his direction or (ii) the client at the direction and in the presence of the practitioner as defined in § 54.1-3401 of the Code of Virginia.

"Administrator" means a person designated in writing by the governing body as having the necessary authority for the day-to-day management of the organization. The administrator must be an employee of the organization. The administrator, the director of nursing, or other clinical director may be the same individual if that individual is dually qualified.

"Available at all times during operating hours" means an individual is readily available on the premises or by telecommunications.

"Barrier crimes" means certain offenses, specified in § 32.1-162.9:1 of the Code of Virginia, that automatically bar an individual convicted of those offenses from employment with a home care organization.

"Blanket fidelity bond" means a bond that provides coverage that protects an organization's losses as a result of employee theft or fraud.

"Branch office" means a geographically separate office of the home care organization that performs all or part of the primary functions of the home care organization on a smaller scale.

"Chore services" means assistance with nonroutine, heavy home maintenance for persons unable to perform such tasks. Chore services include minor repair work on furniture and appliances; carrying coal, wood and water; chopping wood; removing snow; yard maintenance; and painting.

"Client record" means the centralized location for documenting information about the client and the care and services provided to the client by the organization. A client record is a continuous and accurate account of care or services, whether hard copy or electronic, provided to a client, including information that has been dated and signed by the individuals who prescribed or delivered the care or service.

"Client's residence" means the place where the individual or client makes his home such as his own apartment or house, a relative's home or an assisted living facility, but does not include a hospital, nursing facility or other extended care facility.

"Commissioner" means the State Health Commissioner.

"Companion services" means assisting persons unable to care for themselves without assistance. Companion services

include transportation, meal preparation, shopping, light housekeeping, companionship, and household management.

"Contract services" means services provided through agreement with another agency, organization, or individual on behalf of the organization. The agreement specifies the services or personnel to be provided on behalf of the organization and the fees to provide these services or personnel.

"Criminal record report" means the statement issued by the Central Criminal Record Exchange, Virginia Department of State Police.

"Department" means the Virginia Department of Health.

"Discharge or termination summary" means a final written summary filed in a closed client record of the service delivered, goals achieved and final disposition at the time of client's discharge or termination from service.

"Dispense" means to deliver a drug to an ultimate user by or pursuant to the lawful order of a practitioner, including the prescribing and administering, packaging, labeling or compounding necessary to prepare the substance for that delivery.

"Drop site" means a location that HCO staff use in the performance of daily tasks such as obtaining supplies, using fax and copy machines, charting notes on care or services provided, and storing client records. These locations may also be called charting stations, workstations, or convenience sites.

"Employee" means an individual who has the status of an employee as defined by the U.S. Internal Revenue Service.

"Functional limitations" means the level of a client's need for assistance based on an assessment conducted by the supervising nurse. There are three criteria to assessing functional status: (i) the client's impairment level and need for personal assistance, (ii) the client's lack of capacity, and (iii) how the client usually performed the activity over a period of time. If a person is mentally and physically free of impairment, there is not a safety risk to the individual, or the person chooses not to complete an activity due to personal preference or choice, then that person does not need assistance.

"Governing body" means the individual, group or governmental agency that has legal responsibility and authority over the operation of the home care organization.

"Home attendant" means a nonlicensed individual performing skilled, pharmaceutical and personal care services, under the supervision of the appropriate health professional, to a client in the client's residence. Home attendants are also known as certified nurse aides or CNAs, home care aides, home health aides, or personal care aides.

"Home care organization" or "HCO" means a public or private entity providing an organized program of home health, pharmaceutical or personal care services, according to § 32.1-162.1 of the Code of Virginia in the residence of a client or individual to maintain the client's health and safety in his home. A home care organization does not include any family members, relatives or friends providing caregiving services to persons who need assistance to remain independent and in their own homes.

"Home health agency" means a public or private agency or organization, or part of an agency or organization, that meets the requirements for participation in Medicare under 42 CFR 440.70 (d), by providing skilled nursing services and at least one other therapeutic service, ~~e.g.~~ for example, physical, speech, or occupational therapy; medical social services; or home health aide services, and also meets the capitalization requirements under 42 CFR 489.28.

"Homemaker services" means assistance to persons with the inability to perform one or more instrumental activities of daily living. Homemaker services may also include assistance with bathing areas the client cannot reach, fastening client's clothing, combing hair, brushing dentures, shaving with an electric razor, and providing stabilization to a client while walking. Homemaker services do not include feeding, bed baths, transferring, lifting, putting on braces or other supports, cutting nails or shaving with a blade.

"Infusion therapy" means the procedures or processes that involve the administration of injectable medications to clients via the intravenous, subcutaneous, epidural, or intrathecal routes. Infusion therapy does not include oral, enteral, or topical medications.

"Instrumental activities of daily living" means meal preparation, housekeeping/light housework, shopping for personal items, laundry, or using the telephone. A client's degree of independence in performing these activities is part of determining the appropriate level of care and services.

"Licensed practical nurse" means a person who holds a current license issued by the Virginia Board of Nursing or a current multistate licensure privilege to practice nursing in Virginia as a licensed practical nurse.

"Licensee" means a licensed home care provider.

"Medical plan of care" means a written plan of services, and items needed to treat a client's medical condition, that is prescribed, signed and periodically reviewed by the client's primary care physician.

"Nursing services" means client care services, including, but not limited to, the curative, restorative, or preventive aspects of nursing that are performed or supervised by a registered nurse according to a medical plan of care.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Operator" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that is responsible for the day-to-day administrative management and operation of the organization.

"Organization" means a home care organization.

"Person" means any individual, partnership, association, trust, corporation, municipality, county, local government agency or any other legal or commercial entity that operates a home care organization.

"Personal care services" means the provision of nonskilled services, including assistance in the activities of daily living, and may include instrumental activities of daily living, related to the needs of the client, who has or is at risk of an illness, injury or disabling condition. A need for assistance exists when the client is unable to complete an activity due to cognitive impairment, functional disability, physical health problems, or safety. The client's functional level is based on the client's need for assistance most or all of the time to perform the tasks of daily living in order to live independently.

"Primary care physician" means a physician licensed in Virginia, according to Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code of Virginia, or licensed in an adjacent state and identified by the client as having the primary responsibility in determining the delivery of the client's medical care. The responsibility of physicians contained in this chapter may be implemented by nurse practitioners or physician assistants as assigned by the supervising physician and within the parameters of professional licensing.

"Qualified" means meeting current legal requirements of licensure, registration or certification in Virginia or having appropriate training, including competency testing, and experience commensurate with assigned responsibilities.

"Quality improvement" means ongoing activities designed to objectively and systematically evaluate the quality of client care and services, pursue opportunities to improve client care and services, and resolve identified problems. Quality improvement is an approach to the ongoing study and improvement of the processes of providing health care services to meet the needs of clients and others.

"Registered nurse" means a person who holds a current license issued by the Virginia Board of Nursing or a current multistate licensure privilege to practice nursing in Virginia as a registered nurse.

"Service area" means a clearly delineated geographic area in which the organization arranges for the provision of home care services, personal care services, or pharmaceutical services to be available and readily accessible to persons.

"Skilled services" means the provision of the home health services listed in 12VAC5-381-300.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular, documented, face-to-face guidance and instruction.

~~"Surety bond" means a consumer safeguard that directly protects clients from injuries and losses resulting from the negligent or criminal acts of contractors of the home care organization that are not covered under the organization's liability insurance. A fidelity type of surety bond, which covers dishonest acts such as larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction or willful misapplication, will meet the requirements of surety bond coverage for the purposes of this chapter.~~

"Sworn disclosure statement" means a document disclosing an applicant's criminal convictions and pending criminal charges occurring in Virginia or any other state.

"Third-party crime insurance" means insurance coverage that protects an organization's losses as a result of employee theft or fraud.

12VAC5-381-20. License.

A. A license to operate a home care organization is issued to a person. However, no license shall be issued to a person who has been sanctioned pursuant to 42 USC § 1320a-7b. Persons planning to seek federal certification or national accreditation pursuant to § 32.1-162.8 of the Code of Virginia must first obtain state licensure.

B. The commissioner shall issue or renew a license to establish or operate a home care organization if the commissioner finds that the home care organization is in compliance with the law and this regulation.

C. ~~A separate license shall be required for home care organizations maintained at separate locations, even though they are owned or are operated under the same management.~~ The commissioner may issue a license to a home care organization authorizing the licensee to provide services at one or more branch offices serving portions of the total geographic area served by the licensee, provided each branch office operates under the supervision and administrative control of the licensee. The address of each branch office at which services are provided by the licensee shall be included on any license issued to the licensee.

D. Every home care organization shall be designated by an appropriate name. The name shall not be changed without first notifying the OLC.

E. Licenses shall not be transferred or assigned.

F. Any person establishing, conducting, maintaining, or operating a home care organization without a license shall be guilty of a Class 6 felony according to § 32.1-162.15 of the Code of Virginia.

12VAC5-381-110. Criminal records checks.

A. Section 32.1-162.9:1 of the Code of Virginia requires home care providers, as defined in § 32.1-162.7 of the Code of Virginia, to obtain a criminal record report on applicants for compensated employment from the Virginia Department of State Police. Section 32.1-162.9:1 of the Code of Virginia also requires that all applicants for employment in home care organizations provide a sworn disclosure statement regarding their criminal history.

B. The criminal record report shall be obtained within 30 days of employment. It shall be the responsibility of the

organization to ensure that its employees have not been convicted of any of the barrier crimes listed in § 32.1-162.9:1 of the Code of Virginia.

C. The organization shall not accept a criminal record report dated more than 90 days prior to the date of employment.

D. Only the original criminal record report shall be accepted. An exception is permitted for organizations using temporary staffing agencies for the provision of substitute staff. The organization shall obtain a letter from the temporary staffing agency containing the following information:

1. The name of the substitute staffing person;

2. The date of employment by the temporary staffing agency; and

3. A statement verifying that the criminal record report has been obtained within 30 days of employment, is on file at the temporary staffing agency, and does not contain any barrier crimes listed in § 32.1-162.9:1 of the Code of Virginia.

E. No employee shall be permitted to work in a position that involves direct contact with a patient until an original criminal record report has been received by the home care organization or temporary staffing agency, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with subsection B of this section.

~~E.~~ F. A criminal record report remains valid as long as the employee remains in continuous service with the same organization.

~~F.~~ G. A new criminal record report and sworn statement shall be required when an individual terminates employment at one home care organization and begins work at another home care organization. The following exceptions are permitted:

1. When an employee transfers within 30 days to an organization owned and operated by the same entity. The employee's file shall contain a statement that the original criminal record report has been transferred or forwarded to the new work location.

2. When an individual takes a leave of absence, the criminal record report and sworn statement will remain valid as long as the period of separation does not exceed six consecutive months. If six consecutive months have passed, a new criminal record report and sworn disclosure statement are required.

~~G.~~ H. A sworn disclosure statement shall be completed by all applicants for employment. The sworn disclosure statement shall be attached to and filed with the criminal record report.

~~H.~~ I. Any applicant denied employment because of convictions appearing on his criminal record report shall be provided a copy of the report by the hiring organization.

~~I.~~ J. All criminal record reports shall be confidential and maintained in locked files accessible only to the administrator or designee.

~~J.~~ K. Further dissemination of the criminal record report and sworn disclosure statement information is prohibited other than to the commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

12VAC5-381-190. Financial controls.

A. Every applicant for an initial license to establish or operate a home care organization shall include as part of his application a detailed operating budget showing projected operating expenses for the three-month period after a license to operate has been issued. Further, every applicant for an initial license to establish or operate a home care organization shall include as part of his application proof of initial reserve operating funds in the amount sufficient to ensure operation of the home care organization for the three-month period after a license to operate has been issued. Such funds may include:

1. Cash;

2. Cash equivalents that are readily convertible to known amounts of cash and that present insignificant risk of change in value;

3. Borrowed funds that are immediately available to the applicant; or

4. A line of credit that is immediately available to the applicant.

Proof of funds sufficient to meet these requirements shall include a current balance sheet demonstrating the availability of funds, a letter from the officer of the bank or other financial institution where the funds are held, or a letter of credit from a lender demonstrating the current availability of and amount of a line of credit.

B. The organization shall document financial resources to operate based on a working budget showing projected revenue and expenses.

~~B.~~ C. All financial records shall be kept according to generally accepted accounting principles (GAAP).

~~C.~~ D. All financial records shall be audited at least triennially by an independent certified public accountant (CPA) or audited as otherwise provided by law.

~~D.~~ E. The organization shall have documented financial controls to minimize risk of theft or embezzlement.

12VAC5-381-210. Indemnity coverage.

A. The governing body shall ensure the organization and its contractors have appropriate indemnity coverage to compensate clients for injuries and losses resulting from services provided.

B. The organization shall purchase and maintain the following types and minimum amounts of indemnity coverage at all times:

1. Malpractice insurance consistent with § 8.01-581.15 of the Code of Virginia;

2. General liability insurance covering personal property damages, bodily injuries, product liability, and libel and slander of at least $1 million comprehensive general liability per occurrence; and

3. ~~Surety bond coverage~~ Third-party crime insurance or a blanket fidelity bond of $50,000 minimum.

12VAC5-381-220. Contract services.

A. There shall be a written agreement for the provision of services not provided by employees of the organization.

B. The written agreement shall include, but is not limited to:

1. The services to be furnished by each party to the contract;

2. The contractor's responsibility for participating in developing plans of care or service;

3. The manner in which services will be controlled, coordinated, and evaluated by the primary home care organization;

4. The procedures for submitting notes on the care or services provided, scheduling of visits, and periodic client evaluation;

5. The process for payment for services furnished under the contract; and

6. Adequate liability insurance and ~~surety~~ third-party crime insurance or a blanket fidelity bond ~~coverage~~.

C. The organization shall have a written plan for provision of care or services when a contractor is unable to deliver services.

D. The contractor shall conform to applicable organizational policies and procedures as specified in the contract, including the required sworn disclosure statement and criminal record check.

VA.R. Doc. No. R15-4157; Filed December 17, 2014, 11:12 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-900, 12VAC30-120-920, 12VAC30-120-925, 12VAC30-120-930; adding 12VAC30-120-905, 12VAC30-120-924, 12VAC30-120-935, 12VAC30-120-945, 12VAC30-120-990, 12VAC30-120-995; repealing 12VAC30-120-910, 12VAC30-120-940 through 12VAC30-120-980).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: February 12, 2015.

Agency Contact: Nichole Martin, RN, Long Term Care Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 371-5016, FAX (804) 786-1680, or email nichole.martin@dmas.virginia.gov.

Summary:

The amendments (i) allow licensed practical nurses to supervise personal care aides under agency-directed personal care and respite care services, (ii) allow providers more time to secure service verification signatures, (iii) permit providers to document reasonable variances from waiver individuals' plans of care, (iv) allow longer periods of time between nurse supervisory visits, (v) include provisions for electronic information exchange between the local departments of social services, the Department of Medical Assistance Services, and enrolled service providers for determination of the patient pay requirement for waiver services, (vi) require the fiscal agent instead of the service facilitator to obtain criminal record checks for personal care aides in consumer-directed services, (vii) allow involuntary disenrollment from consumer-directed model if consumer-directed services are not working well for a recipient, (viii) incorporate provisions for person-centered planning, (ix) reorganize the existing requirements to be consistent with other waiver regulations, and (x) restore the yearly maximum expenditure limit for environmental modifications and assistive technology to $5,000.

The changes made since publication of the proposed regulation include the following: (i) providers are required to document, in the individual's record, that agency-directed care was selected by the individual; (ii) the service limit of 56 hours for agency-directed personal care services is moved; (iii) the respite service limit of 480 hours changes from calendar year to state fiscal year in conformance with a legislative mandate; (iv) the currently effective knowledge, skills, and abilities of consumer-directed services facilitators are restored; (v) the registered nurse supervisor employed by the personal care agency shall evaluate the licensed practical nurse supervisor's work performance every 90 days instead of every six months; (vi) all dual references to prior authorization/service authorization are changed to service authorization; (vii) special actions required for Medicaid individuals who have cognitive impairments are removed; (viii) prospective employers' checks of sex offender registries are removed as duplicative of barrier crimes checks; (ix) parents of adult waiver individuals can be reimbursed by Medicaid for caring for their child as long as the parents meet the attendant qualifications, and (xii) editorial changes are made for improved readability, clarity, and accuracy.

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

Part IX
Elderly or Disabled with Consumer Direction Waiver

12VAC30-120-900. Definitions.

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

[~~"Abuse" means, for the purposes of this waiver, the infliction of injury, unreasonable confinement, intimidation, punishment, mental anguish, sexual abuse, or exploitation of any person. Types of abuse include (i) physical abuse (a physical act by a person that may cause physical injury to an individual); (ii) psychological abuse (an act, other than verbal, that may inflict emotional harm, invoke fear, or humiliate, intimidate, degrade, or demean an individual); (iii) sexual abuse (an act or attempted act such as rape, incest, sexual molestation, sexual exploitation, sexual harassment, or inappropriate or unwanted touching of an individual, or any or all of these); and (iv) verbal abuse (using words to threaten, coerce, intimidate, degrade, demean, harass, or humiliate an individual).~~]

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

"Adult day health care ~~center~~" or "ADHC" means ~~a DMAS-enrolled provider that offers~~ long-term maintenance or supportive services offered by a DMAS-enrolled community-based day care program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those ~~elderly and disabled~~ waiver individuals who are elderly or who have a disability and who are at risk of placement in a nursing facility [(NF)]. The ~~ADHC must~~ program shall be licensed by ~~DSS~~ the Virginia Department of Social Services (VDSS) as an ~~ADHC~~ adult day care center (ADCC). The services offered by the center shall be required by the waiver individual in order to permit the individual to remain in his home rather than entering a nursing facility. ADHC can also refer to the center where this service is provided.

~~"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and coordination of rehabilitation services in a congregate daytime setting.~~

"Agency-directed model of [~~services"~~ service"] means ~~services provided by a personal care agency~~ a model of service delivery where an agency is responsible for providing direct support staff, for maintaining individuals' records, and for scheduling the dates and times of the direct support staff's presence in the individuals' homes for personal and respite care.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC § 12101 et seq.

"Annually" means a period of time covering 365 consecutive calendar days or 366 consecutive days in the case of leap years.

"Appeal" means the process used to challenge ~~adverse~~ actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" [or "AT"] means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable waiver individuals who are participating in the Money Follows the Person demonstration program pursuant to [Part XX ( ] 12VAC30-120-2000 [et seq.)] to increase their abilities to perform activities of daily living~~,~~ or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment. ~~12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.~~

"Barrier crime" means those crimes as defined at § [~~§~~] 32.1-162.9:1 [~~and 63.2-1719~~] of the Code of Virginia that would prohibit the continuation of employment if a person is found through a Virginia State Police criminal record check to have been convicted of such a crime.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

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

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

"Conservator" means a person appointed by a court to manage the estate and financial affairs of an incapacitated individual.

"Consumer-directed (CD) model of [~~services"~~ service"] means the model of service delivery for which the waiver individual or the individual's employer of record, as appropriate, are responsible for hiring, training, supervising, and firing of the person or persons who actually render the services that are reimbursed by DMAS.

~~"Consumer-directed (CD) services facilitator" or "facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and~~

~~family/caregiver, by ensuring the development and monitoring of the Consumer Directed Services Plan of Care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services.~~

"Day" means, for the purposes of reimbursement, a 24-hour period beginning at 12 a.m. and ending at 11:59 p.m.

["DBHDS" means the Department of Behavioral Health and Developmental Services.]

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

"Direct marketing" means ~~either~~ any of the following: (i) conducting either directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) using direct mailing; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) providing continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

[~~"DBHDS" means the Department of Behavioral Health and Developmental Services.~~]

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

~~"DRS" means the Department of Rehabilitative Services.~~

~~"DSS" means the Department of Social Services.~~

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD [~~waiver~~ Waiver]" means the CMS-approved waiver that covers a range of community support services offered to waiver individuals who are elderly or ~~disabled~~ who have a disability who would otherwise require a nursing facility level of care.

"Employer of record" or "EOR" means the person who performs the functions of the employer in the consumer-directed model of service delivery. The EOR may be [the individual enrolled in the waiver,] a family member [~~or,~~] caregiver, [~~as appropriate , when the waiver individual is unwilling or unable to perform the employer functions~~ or another person].

"Environmental modifications" [or "EM"] means physical adaptations to ~~a house, place of residence,~~ an individual's primary home or primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC § 1201 et seq.), [~~and~~] which are necessary to ensure the ~~individuals'~~ individual's [~~waiver~~] health and safety or enable functioning with greater independence ~~when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service. This service shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration~~ and shall be of direct medical or remedial benefit to individuals who are participating in the Money Follows the Person demonstration program pursuant to [Part XX ( ] 12VAC30-120-2000 [et seq.)]. Such physical adaptations shall not be authorized for Medicaid payment when the adaptation is being used to bring a substandard dwelling up to minimum habitation standards.

~~"Fiscal agent" means an agency or division within DMAS or entity contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal care services and respite services.~~

"Fiscal/employer agent" means a state agency or other entity as determined by DMAS that meets the requirements of 42 CFR 441.484 and the Virginia Public Procurement Act, § 2.2-4300 et seq. of the Code of Virginia.

"Guardian" means a person appointed by a court to manage the personal affairs of an incapacitated individual pursuant to [Chapter 20 ( ] § 64.2-2000 et seq. [ ) of Title 64.2] of the Code of Virginia [~~, including responsibility for making decisions regarding the waiver individual's support, care, health, safety, habilitation, education, therapeutic treatment, and residence~~].

"Health, safety, and welfare standard" means, for the purposes of this waiver, that an individual's right to receive an EDCD Waiver service is dependent on a determination that the waiver individual needs the service based on appropriate assessment criteria and a written plan of care [, including having a backup plan of care,] that demonstrates medical necessity and that services can be safely provided in the community or through the model of care selected by the individual.

"Home and community-based waiver services" or "waiver services" means the range of community support services approved by the CMS pursuant to § 1915(c) of the Social Security Act to be offered to ~~persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid reimbursed home and community care~~ individuals as an alternative to institutionalization.

"Individual" means the person ~~receiving the services established in these regulations~~ who has applied for and been approved to receive these waiver services.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping and laundry. An individual's degree of independence in performing these activities is a part of determining appropriate ~~level of care and~~ service needs.

"Level of care" or "LOC" means the specification of the minimum amount of assistance an individual [~~must require~~ requires] in order to receive services in an institutional setting under the State Plan or to receive waiver services.

"License" means proof of official or legal permission issued by the government for an entity or person to perform an activity or service such that, in the absence of an official license, the entity or person is debarred from performing the activity or service.

"Licensed Practical Nurse" or "LPN" means a person who is licensed or holds multi-state licensure [to practice nursing] pursuant to [Chapter 30 ( ] § 54.1-3000 et seq. [ ) of Title 54.1] of the Code of Virginia [~~to practice nursing~~].

"Live-in caregiver" means a personal caregiver who resides in the same household as the [~~waiver~~] individual who is receiving waiver services.

"Long-term care" or "LTC" means a variety of services that help individuals with health or personal care needs and activities of daily living over a period of time. Long-term care can be provided in the home, in the community, or in various types of facilities, including nursing facilities and assisted living facilities.

[~~"Medication administration" means the direct administration of medications by injection, inhalation, or ingestion or any other means to a waiver individual by either (i) the waiver individual or (ii) persons legally permitted to administer medications.~~]

"Medicaid Long-Term Care (LTC) Communication Form" or "DMAS-225" means the form used by the long-term care provider to report information about changes in an individual's eligibility and financial circumstances.

"Medication monitoring" means an electronic device, which is only available in conjunction with Personal Emergency Response Systems, that enables certain waiver individuals who are at ~~high~~ risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Money Follows the Person" or "MFP" means the [demonstration] program [~~of transition services~~], as set out in 12VAC30-120-2000 and 12VAC30-120-2010.

"Participating provider" or "provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement, including managed care organizations, with DMAS.

"Patient pay amount" means the portion of the [~~long-term care~~] individual's income that must be paid as his share of the long-term care services and is calculated by the local department of social services based on the individual's documented monthly income and permitted deductions.

"Personal care agency" means a participating provider that provides personal care services.

"Personal care aide" or "aide" means a person employed by an agency who provides personal care or unskilled respite services. The aide shall have successfully completed an educational curriculum of at least 40 hours of study related to the needs of individuals who are either elderly or who have disabilities as further set out in 12VAC30-120-935. Such successful completion may be evidenced by the existence of a certificate of completion, which is provided to DMAS during provider audits, issued by the training entity.

"Personal care attendant" or "attendant" means a person who provides personal care or respite services that are directed by a consumer, family member/caregiver, or employer of record under the CD model of service delivery.

"Personal care services" means ~~long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. Services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities~~ a range of support services necessary to enable the waiver individual to remain at or return home rather than enter a nursing facility and that includes assistance with activities of daily living (ADLs), instrumental activities of daily living (IADLs), access to the community, self-administration of medication, or other medical needs, supervision, and the monitoring of health status and physical condition. Personal care services shall be provided by aides, within the scope of their licenses/certificates, as appropriate, under the agency-directed model or by personal care attendants under the CD model of service delivery.

"Personal emergency response [~~system (PERS)"~~ system" or "PERS"] means an electronic device and monitoring service that [~~enable~~ enables] certain waiver individuals, who are at least 14 years of age, at ~~high~~ risk of institutionalization to secure help in an emergency. PERS services ~~are~~ shall be limited to those waiver individuals who live alone or who are alone for significant parts of the day and who have no regular caregiver for extended periods of time [~~, and who would otherwise require extensive routine supervision~~].

"PERS provider" means a certified home health or a personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ~~ability~~ responsibility to ~~provide~~ furnish, install, maintain, test, monitor, and service PERS equipment, direct services (i.e., installation, equipment maintenance, and services calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"Plan of care" or "POC" means the written plan developed ~~by~~ collaboratively by the waiver individual and the waiver individual's family/caregiver, as appropriate, and the provider related solely to the specific services ~~required by~~ necessary for the individual ~~to ensure optimal~~ to remain in the community while ensuring his health ~~and~~, safety ~~while remaining in the community~~, and welfare.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening for [certain] long-term care services [requiring NF eligibility]; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) ~~refer~~ provide a list to individuals ~~to the~~ of appropriate ~~provider~~ providers for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening ~~Committee/Team~~ Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to § 32.1-330 of the Code of Virginia.

"Primary caregiver" means the ~~primary~~ person who consistently assumes the ~~rule~~ primary role of providing direct care and support of the waiver individual to live successfully in the community without receiving compensation for providing such care. Such person's name [, if applicable,] shall be documented by the RN or services facilitator in the waiver individual's record. [Waiver individuals are not required to have a primary caregiver in order to participate in the EDCD waiver.]

[~~"Prior authorization" or "PA" (also "service authorization" or "Srv Auth") means the process of approving either by DMAS, its prior authorization (or service authorization) contractor, or DMAS-designated entity for the purposes of reimbursement for the service for the individual before it is rendered or reimbursed.~~

~~"Prior (or service) authorization contractor" means DMAS or the entity that has been contracted by DMAS to perform prior, or service, authorization for medically necessary Medicaid covered home and community-based services.~~]

"Registered nurse" or "RN" means a person who is licensed or who holds multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice nursing.

"Respite care agency" ~~or "respite care facility"~~ means a participating provider that renders respite services.

"Respite services" means ~~those short-term personal care~~ services provided to waiver individuals who are unable to care for themselves that are furnished on a short-term basis because of the absence of or need for the relief of ~~those~~ the unpaid ~~caregivers~~ primary caregiver who normally ~~provide~~ provides the care.

"Service authorization" or "Srv Auth" [~~(also "prior authorization")~~] means the process of approving either by DMAS, its service authorization [~~(or prior authorization)~~] contractor, or DMAS-designated entity, for the purposes of reimbursement for a service for the individual before it is rendered or reimbursed.

["Service authorization contractor" means DMAS or the entity that has been contracted by DMAS to perform service authorization for medically necessary Medicaid covered home and community-based services.]

"Services facilitation" means a service that assists the waiver individual (or family/caregiver, as appropriate) in arranging for, directing, training, and managing services provided through the consumer-directed model of service.

"Services facilitator" means a DMAS-enrolled provider or DMAS-designated entity [~~who~~ that] is responsible for supporting the individual and the individual's family/caregiver or EOR, as appropriate, by ensuring the development and monitoring of the CD services plans of care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services. Services facilitator shall be deemed to mean the same thing as consumer-directed services facilitator.

["Skilled respite services" means temporary skilled nursing services that are provided to waiver individuals who need such services and that are performed by a LPN for the relief of the unpaid primary caregiver who normally provides the care.]

"State Plan for Medical Assistance" or "State Plan" means the ~~regulations~~ Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

[~~"Skilled respite services" means temporary skilled nursing services that are provided to waiver individuals who need such services and that are performed by a LPN for the relief of the unpaid primary caregiver who normally provides the care.~~]

"Transition coordinator" means the ~~DMAS enrolled provider who is responsible for supporting the individual and family/caregiver, as appropriate, with the activities associated with transitioning from an institution to the community. 12VAC30-120-2000 provides the service description, criteria, service units and limitations, and provider requirements for~~

~~this service~~ person [~~as~~] defined [~~at~~ in] 12VAC30-120-2000 who facilitates MFP transition.

"Transition services" means set-up expenses for ~~individuals who are transitioning from an institution or licensed or certified provider operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service~~ individuals as defined at 12VAC30-120-2010.

~~"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the Preadmission Screening Team that assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the nursing facility level of care.~~

["VDH" means the Virginia Department of Health.]

"VDSS" means the Virginia Department of Social Services.

"Virginia Uniform Assessment Instrument" or "UAI" means the standardized multidimensional comprehensive assessment that is completed by the Preadmission Screening Team or approved hospital discharge planner that assesses an individual's physical health, mental health, and psycho/social and functional abilities to determine if the individual meets the nursing facility level of care.

"Weekly" means a span of time covering seven consecutive calendar days.

12VAC30-120-905. Waiver description and legal authority.

A. The Elderly [~~and~~ or] Disabled with Consumer Direction (EDCD) Waiver operates under the authority of § 1915 (c) of the Social Security Act and 42 CFR 430.25(b) [,] which permit the waiver of certain State Plan requirements. These federal statutory and regulatory provisions permit the establishment of Medicaid waivers to afford the states with greater flexibility to devise different approaches to the provision of long-term care (LTC) services. Under this § 1915(c) waiver, DMAS waives § 1902(a)(10)(B) and (C) of the Social Security Act related to comparability of services.

B. This waiver provides Medicaid individuals who are elderly or who have a disability with supportive services to enable such individuals to remain in their communities thereby avoiding institutionalization.

C. Federal waiver requirements provide that the current aggregate average cost of care fiscal year expenditures under this waiver shall not exceed the average per capita expenditures in the aggregate for the level of care (LOC) provided in a nursing facility (NF) under the State Plan that would have been provided had the waiver not been granted.

D. DMAS shall be the single state agency authority pursuant to 42 CFR 431.10 responsible for the processing and payment of claims for the services covered in this waiver and for obtaining federal financial participation from CMS.

E. [~~EDCD services shall not be offered or provided to an individual who resides outside of the physical boundaries of the United States. With the exception of brief illnesses or vacations, coverage of waiver services may be provided during brief absences from the Commonwealth and requires prior authorization (PA) by either DMAS or its designated prior authorization contractor.~~ Payments for EDCD Waiver services shall not be provided to any financial institution or entity located outside of the United States pursuant to § 1902(a)(80) of the Social Security Act. Payments for EDCD Waiver services furnished in another state shall be (i) provided for an individual who meets the requirements of 42 CFR 431.52 and (ii) limited to the same service limitations that exist when services are rendered within the Commonwealth's political boundaries.] Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility (NF), [~~Intermediate Care Facility for the Mentally Retarded (ICF/MR)~~ intermediate care facility for individuals with intellectual disabilities (ICF/IID)], inpatient rehabilitation facility, assisted living facility licensed by VDSS that serves five or more individuals, or a group home licensed by DBHDS.

F. An individual shall not be simultaneously enrolled in more than one waiver program but may be listed on the waiting list for another waiver program as long as criteria are met for both waiver programs.

G. DMAS shall be responsible for assuring appropriate placement of the individual in home and community-based waiver services and shall have the authority to terminate such services for the individual for the reasons set out below.

[~~H. No waiver~~ 1. Waiver] services shall [not] be reimbursed until [~~after both~~] the provider [~~enrollment process~~ is enrolled] and [the] individual eligibility process [~~have been completed~~ is complete].

[~~I.~~ 2.] DMAS payment for services under this waiver shall be considered payment in full and no balance billing by the provider to the waiver individual, family/caregiver, employer of record (EOR), or any other family member of the waiver individual shall be permitted.

[3.] Additional voluntary payments or gifts from family members shall not be accepted by providers of services.

[~~J.~~ 4.] DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973 (29 USC § 794). EDCD services shall not be authorized if another entity is required to provide the services, (e.g., schools, insurance [~~, etc.~~]) because these waiver services shall not duplicate payment for services available through other programs or funding streams.

[~~K.~~ H.] In the case of termination of home and community-based waiver services by DMAS, individuals shall be notified of their appeal rights pursuant to 12VAC30-110. DMAS, or the designated [~~PA~~ Srv Auth] contractor, shall have the

responsibility and the authority to terminate the receipt of home and community-based care services by the waiver individual for any of the following reasons:

1. The home and community-based care services are no longer the critical alternative to prevent or delay institutional placement within 30 days;

2. The waiver individual is no longer eligible for Medicaid;

3. The waiver individual no longer meets the NF criteria;

4. The waiver individual's environment in the community does not provide for his health, safety, [~~and~~ or] welfare; [~~or~~]

5. [The waiver individual does not have a backup plan for services in the event the provider is unable to provide services; or

6.] Any other circumstances (including hospitalization) that cause services to cease or be interrupted for more than 30 consecutive [calendar] days. In such cases, such individuals shall be referred back to the local department of social services for redetermination of their [Medicaid] eligibility.

12VAC30-120-910. ~~General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services.~~ (Repealed.)

~~A. EDCD Waiver services populations. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to be eligible for waiver services and to require the level of care provided in a nursing facility:~~

~~1. Individuals who are elderly as defined by § 1614 of the Social Security Act; or~~

~~2. Individuals who are disabled as defined by § 1614 of the Social Security Act.~~

~~B. Covered services.~~

~~1. Covered services shall include: adult day health care, personal care (both consumer-directed and agency-directed), respite services (consumer-directed, agency-directed, and facility-based), PERS, assistive technology, environmental modifications, transition coordinator and transition services. Assistive technology and environmental modification services shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.~~

~~2. These services shall be medically appropriate and medically necessary to maintain the individual in the community and prevent institutionalization.~~

~~3. A recipient of EDCD Waiver services may receive personal care (agency- and consumer-directed), respite care (agency- and consumer-directed), adult day health care, transition services, transition coordination, assistive technology, environmental modifications, and PERS services in conjunction with hospice services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Assistive technology and environmental modification services shall be available only to those EDCD waiver enrollees who are participants in the Money Follows the Person demonstration.~~

~~4. Under this § 1915(c) waiver, DMAS waives §§ 1902(a)(10)(B) and (C) of the Social Security Act related to comparability of services.~~

12VAC30-120-920. Individual eligibility requirements.

A. Home and community-based waiver services shall be available through a § 1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to be eligible for waiver services and to require the level of care provided in a nursing facility (NF):

1. Individuals who are elderly as defined by § 1614 of the Social Security Act; or

2. Individuals who have a disability as defined by § 1614 of the Social Security Act.

~~A.~~ B. The Commonwealth has elected to cover low-income families with children as described in § 1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver group under 42 CFR 435.217; and the medically needy groups specified in 42 CFR 435.320, 435.322, 435.324, and 435.330.

1. Under this waiver, the coverage groups authorized under § 1902(a)(10)(A)(ii)(VI) of the Social Security Act ~~will~~ shall be considered as if they were institutionalized in a NF for the purpose of applying institutional deeming rules. All ~~recipients under~~ individuals in the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care (LOC) criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the waiver individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and § 1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS ~~will~~ shall reduce its payment for home and community-based waiver services by the amount that remains after the following deductions:

a. For waiver individuals to whom § 1924(d) applies (Virginia waives the requirement for comparability

pursuant to § 1902(a)(10)(B)), deduct the following in the respective order:

(1) An amount for the maintenance needs of the waiver individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for waiver individuals employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI and (ii) for waiver individuals employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. [However, in no case]~~,~~ [shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI.] If the waiver individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the waiver individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI~~. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)~~;

(2) For ~~an~~ a waiver individual with only a spouse at home, the community spousal income allowance is determined in accordance with § 1924(d) of the Social Security Act;

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family is determined in accordance with § 1924(d) of the Social Security Act; and

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under the state law but not covered under the State Plan.

b. For waiver individuals to whom § 1924(d) of the Social Security Act does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the waiver individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for waiver individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for waiver individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. [However, in no case]~~,~~ [shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI.] If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI~~. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.)~~;

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family that shall be equal to the medically needy income standard for a family of the same size; and

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Plan.

~~B.~~ C. Assessment and authorization of home and community-based services.

1. To ensure that Virginia's home and community-based waiver programs serve only Medicaid eligible individuals who would otherwise be placed in a ~~nursing facility~~ NF, home and community-based waiver services shall be considered only for individuals who are eligible for admission [within 30 calendar days] to a ~~nursing facility~~ NF. Home and community-based waiver services shall be the critical service to enable the individual to remain at home and in the community rather than being placed in a ~~nursing facility~~ NF.

2. The individual's eligibility for home and community-based services shall be determined by the Preadmission Screening Team or DMAS-enrolled hospital provider after completion of a thorough assessment of the individual's needs and available support. If an individual meets ~~nursing facility~~ NF criteria and in the absence of community-based services, is at risk of NF placement within 30 days, the Preadmission Screening Team or DMAS-enrolled hospital provider shall provide the individual and family/caregiver with the choice of ~~Elderly or Disabled with Consumer Direction~~ EDCD Waiver services ~~or nursing facility~~, other appropriate services, NF placement, or Program of All Inclusive Care for the Elderly (PACE) enrollment [for people 55 years of age or older], where available.

3. The Preadmission Screening Team or DMAS-enrolled hospital provider shall explore alternative settings or services to provide the care needed by the individual. ~~When~~ If Medicaid-funded home and community-based

care services are selected by the individual and when such services are determined to be the critical services necessary to delay or avoid ~~nursing facility~~ NF placement, the Preadmission Screening Team or DMAS-enrolled hospital provider shall initiate referrals for such services.

4. Medicaid ~~will~~ shall not pay for any home and community-based care services delivered prior to the individual establishing Medicaid eligibility and prior to the date of the preadmission screening by the Preadmission Screening Team or DMAS-enrolled hospital provider and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96).

5. Before Medicaid ~~will~~ shall assume payment responsibility of home and community-based services, ~~preauthorization~~ [~~prior authorization/service~~ service] authorization must be obtained from DMAS or the DMAS designated ~~preauthorization~~ [~~PA/Srv~~ Srv] Auth contractor ~~on~~, in accordance with DMAS policy, for all services requiring ~~preauthorization~~ [~~prior authorization/service~~ service] authorization. Providers ~~must~~ shall submit all required information to DMAS or the designated ~~preauthorization~~ [~~PA/Srv~~ Srv] Auth contractor within 10 business days of initiating care or within 10 business days of receiving verification of Medicaid eligibility from the local ~~DSS~~ department of social services. If the provider submits all required information to DMAS or the designated ~~preauthorization~~ [~~PA/Srv~~ Srv] Auth contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the ~~Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96)~~ DMAS 96 form. If the provider does not submit all required information to DMAS or the designated ~~preauthorization~~ [~~PA/Srv~~ Srv] Auth contractor within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by DMAS or the designated ~~preauthorization~~ [~~PA/Srv~~ Srv] Auth contractor, but in no event preceding the date of the ~~Preadmission Screening Team~~ physician's signature on the DMAS-96 form.

6. Once ~~services for the individual have been authorized by the designated preauthorization contractor~~ waiver eligibility has been determined by the Preadmission Screening Team or DMAS-enrolled hospital provider and referrals have been initiated, the [~~provider/services facilitator~~ provider] ~~will~~ shall submit a ~~Patient Information Form (DMAS-122),~~ Medicaid LTC Communication Form (DMAS-225) ~~along with a written confirmation of level of care eligibility from the designated preauthorization contractor,~~ to the local ~~DSS~~ department of social services to determine financial eligibility for the waiver program and any patient pay responsibilities. If the waiver individual who is receiving EDCD Waiver services has a patient pay amount, a provider shall use the electronic patient pay process for the required monthly monitoring of relevant changes. Local departments of social services shall enter data regarding a waiver individual's patient pay amount obligation into the Medicaid Management Information System (MMIS) at the time action is taken on behalf of the individual either as a result of an application for LTC services, redetermination of eligibility, or reported change or changes in a waiver individual's situation. Procedures for the verification of a waiver individual's patient pay obligation are available in the appropriate Medicaid provider manual.

7. After the [~~provider/services facilitator~~ provider] has received ~~written~~ notification ~~of Medicaid eligibility~~ via the DMAS-225 process by ~~DSS~~ the local department of social services and ~~written~~ enrollment confirmation from DMAS or the designated ~~preauthorization~~ [~~PA/Srv~~ Srv] Auth contractor, the [~~provider/services facilitator~~ provider] shall inform the individual or family/caregiver so that services may be initiated.

~~7. The provider/services facilitator with the most billable hours must request an updated DMAS-122 form from the local DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.~~

8. The [~~provider/services facilitator~~ provider] shall be responsible for notifying the local department of social services via the DMAS-225 when there is an interruption of services for 30 consecutive calendar days or upon discharge from the [~~provider/services facilitator's~~ provider's] services.

~~8.~~ 9. Home and community-based care services shall not be offered or provided to any individual who resides in a ~~nursing facility~~ NF, an ~~intermediate care facility for the mentally retarded~~ [~~ICF/MR~~ ICF/IID], a hospital, an assisted living facility licensed by ~~DSS~~ VDSS that serves five or more individuals, or a group home licensed by [~~the Department of~~] ~~Mental Health, Mental Retardation and Substance Abuse Services~~ [~~Behavioral Health and Developmental Services with the exception of transition~~ DBHDS. Transition] coordination and transition services [~~which shall~~ may] be [~~provided only~~ available] to individuals residing in [~~a NF or ICF/MR~~ some settings as approved by CMS through the Money Follows the Person demonstration program]. ~~Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of time may include, but are not necessarily restricted to, vacation or illness.~~

~~9.~~ 10. Certain home and community-based services shall not be available to individuals residing in an assisted living facility licensed by ~~DSS~~ VDSS that serves four or fewer individuals. These services are: respite, PERS, ADHC,

environmental modifications and transition services. Personal care services ~~are~~ shall be covered for individuals living in these facilities but shall be limited to [~~ADL~~ personal] care not to exceed five hours per day ~~of ADL care~~. Personal care services shall be authorized based on the waiver individual's documented need for care over and above that provided by the facility.

11. Individuals who are receiving Auxiliary Grants shall not be eligible for EDCD enrollment or services.

~~C. Appeals. Recipient appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.~~

D. Waiver individual responsibilities under the consumer-directed (CD) model.

1. The individual [~~must~~ shall] be authorized for CD services and [the EOR shall] successfully complete [~~consumer/management~~ consumer employee management] training performed by the CD services facilitator before the waiver [~~individual~~ individual/EOR] shall be permitted to hire a personal care attendant for Medicaid reimbursement. Any services rendered by an attendant prior to dates authorized by Medicaid shall not be eligible for reimbursement by Medicaid. Individuals who are eligible for CD services [~~must~~ shall] have the capability to hire and train their own personal care attendants and supervise the attendants' performance including, but not limited to, creating and maintaining complete and accurate timesheets. Individuals [~~with cognitive impairments who are unable to manage their own care~~] may have a [~~family/caregiver~~ family member, caregiver, or another person] serve as the EOR on their behalf.

2. The [~~family/caregiver that~~ person who] serves as the EOR on behalf of the waiver individual shall not be permitted to be [(i)] the paid attendant for respite services [or] personal care services or [(ii)] the services facilitator.

3. Individuals will acknowledge that they will not knowingly continue to accept CD personal care services when the service is no longer appropriate or necessary for their care needs and shall inform the services facilitator. If CD services continue after services have been terminated by DMAS or the designated [~~PA~~ Srv Auth] contractor, the waiver individual shall be held liable for attendant compensation.

4. Individuals shall notify the CD services facilitator of all hospitalizations and admission to any rehabilitation facility, rehabilitation unit, or NF. Failure to do so may result in the waiver individual being liable for employee compensation.

12VAC30-120-924. Covered services; limits on covered services.

A. Covered services in the EDCD Waiver shall include: adult day health care, personal care (both consumer-directed and agency-directed), respite services (both consumer-directed and agency-directed), PERS, PERS medication monitoring, limited assistive technology, limited environmental modifications, transition coordination, and transition services.

1. The services covered in this waiver shall be appropriate and medically necessary to maintain the individual in the community in order to prevent institutionalization and shall be cost effective in the aggregate as compared to the alternative NF placement.

2. EDCD services shall not be authorized if another entity is required to provide the services (e.g., schools, insurance [~~, etc.~~]). Waiver services shall not duplicate services available through other programs or funding streams.

3. Assistive technology and environmental modification services shall be available only to those EDCD Waiver individuals who are also participants in the Money Follows the Person (MFP) [~~(12VAC30-120-2000)~~] demonstration program [pursuant to Part XX (12VAC30-120-2000 et seq.)].

4. An individual receiving EDCD Waiver services who is also getting hospice care may receive Medicaid-covered personal care (agency-directed and consumer-directed), respite care (agency-directed and consumer-directed), adult day health care, transition services, transition coordination, and PERS services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Such dual waiver/hospice individuals shall only be able to receive assistive technology and environmental modifications if they are also participants in the MFP demonstration program.

B. Voluntary/involuntary disenrollment from consumer-directed services. In either voluntary or involuntary disenrollment situations, the waiver individual shall be permitted to select an agency from which to receive his agency-directed personal care and respite services.

1. A waiver individual may be found to be ineligible [~~, under certain circumstances,~~ for CD services] by either the Preadmission Screening Team, DMAS-enrolled hospital provider, DMAS, its designated agent, or the CD services facilitator [~~, to~~. An individual may not] begin [~~to receive~~] or [~~to~~] continue to receive CD services if there are circumstances where the waiver individual's health, safety, or welfare cannot be assured, including but not limited to:

a. It is determined that the waiver individual cannot be the EOR and no one else is able to assume this role;

b. The waiver individual cannot [~~assure~~ ensure] his own health, safety, or welfare or develop an emergency [~~back-up POC~~ backup plan] that will [~~assure~~ ensure] his health, safety, or welfare; or

c. The waiver individual has medication or skilled nursing needs or medical or behavioral conditions that cannot be met through CD services [or other services].

2. The waiver individual may be involuntarily disenrolled from consumer direction if he or the EOR, as appropriate, is consistently unable to retain or manage the attendant as may be demonstrated by, but not necessarily limited to, a pattern of serious discrepancies with the attendant's timesheets.

3. In situations where either (i) the waiver individual's health, safety, or welfare cannot be assured or (ii) attendant timesheet discrepancies are known, the services facilitator shall assist as requested with the waiver individual's transfer to agency-directed services as follows:

a. Verify that essential training has been provided to the waiver individual or EOR;

b. Document, in the waiver individual's case record, the conditions creating the necessity for the involuntary disenrollment and actions taken by the services facilitator;

c. Discuss with the waiver individual or the EOR, as appropriate, the agency-directed option that is available and the actions needed to arrange for such services and offer choice of potential providers, and

d. Provide written notice to the waiver individual [~~and EOR, as appropriate,~~] of the right to appeal such involuntary termination of consumer direction. Such notice shall be given at least 10 [calendar] days prior to the effective date of this change. [In cases when the individual's or the provider personnel's safety may be jeopardy, the 10 calendar days notice shall not apply.]

C. Adult day health care (ADHC) services. ADHC services shall only be offered to waiver individuals who meet preadmission screening criteria as established in [~~12VAC30-60-300~~ 12VAC30-60-303 and 12VAC30-60-307] and for whom ADHC services shall be an appropriate and medically necessary alternative to institutional care. ADHC services may be offered to individuals in a VDSS-licensed adult day care center (ADCC) congregate setting. ADHC may be offered either as the sole home and community-based care service or in conjunction with personal care (either agency-directed or consumer-directed), respite care (either agency-directed or consumer-directed), or PERS. A multi-disciplinary approach to developing, implementing, and evaluating each waiver individual's POC shall be essential to quality ADHC services.

1. ADHC services shall be designed to prevent institutionalization by providing waiver individuals with health care services, maintenance of their physical and mental conditions, and [coordination of] rehabilitation services [~~, as may be appropriate,~~] in a congregate daytime setting and shall be tailored to their unique needs. The minimum range of services that shall be made available to every waiver individual shall be: assistance with ADLs, nursing services, coordination of rehabilitation services, [~~transportation,~~] nutrition, social services, recreation, and socialization services.

a. Assistance with ADLs shall include supervision of the waiver individual and assistance with management of the individual's POC.

b. Nursing services shall include the periodic evaluation, at least every 90 days, of the waiver individual's nursing needs; provision of indicated nursing care and treatment; responsibility for monitoring, recording, and administering prescribed medications; supervision of the waiver individual in self-administered medication; support of families in their home care efforts for the waiver individuals through education and counseling; and helping families identify and appropriately utilize health care resources. [Periodic evaluations may occur more frequently than every 90 days if indicated by the individual's changing condition.] Nursing services shall also include the general supervision of provider staff, who are certified through the Board of Nursing, in medication management and administering medications.

c. Coordination and implementation of rehabilitation services to ensure the waiver individual receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include physical therapy, occupational therapy, and speech therapy.

d. Nutrition services shall be provided to include, but not necessarily [be] limited to, one meal per day that meets the daily nutritional requirements pursuant to 22VAC40-60-800. Special diets and nutrition counseling shall be provided as required by the waiver individuals.

e. Recreation and social activities shall be provided that are suited to the needs of the waiver individuals and shall be designed to encourage physical exercise, prevent physical and mental deterioration, and stimulate social interaction.

f. ADHC coordination shall involve implementing the waiver individuals' POCs, updating such plans, recording 30-day progress notes, and reviewing the waiver individuals' daily logs each week.

2. Limits on covered ADHC services.

a. A day of ADHC services shall be defined as a minimum of six hours.

b. [~~Centers~~ ADCCs] that do not employ professional nursing staff on site shall not be permitted to admit waiver individuals who require skilled nursing care to their centers. Examples of skilled nursing care may include: (i) tube feedings; (ii) Foley catheter irrigations;

(iii) sterile dressing changing; or (iv) any other procedures that require sterile technique. The ADCC shall not permit its aide employees to perform [~~such~~ skilled nursing] procedures.

c. At any time that the center is no longer able to provide reliable, continuous care to any of the center's waiver individuals for the number of hours per day or days per week as contained in the individuals' POCs, then the center shall contact the waiver individuals or [~~family/caregivers/EORs~~ family/caregivers], as appropriate, to initiate other care arrangements for these individuals. The center may either subcontract with another ADCC or may transfer the waiver individual to another ADCC. The center may discharge waiver individuals from the center's services but not from the waiver. Written notice of discharge shall be provided, with the specific reason or reasons for discharge, at least 10 calendar days prior to the effective date of the discharge. In cases when the individual's or the center personnel's safety may be jeopardy, the 10 calendar days notice shall not apply.

d. ADHC services shall not be provided, for the purpose of Medicaid reimbursement, to individuals who reside in NFs, [~~ICFs/MR~~ ICFs/IID], hospitals, assisted living facilities that are licensed by VDSS, or group homes that are licensed by DBHDS.

D. Agency-directed personal care services. Agency-directed personal care services shall only be offered to persons who meet the preadmission screening criteria at [~~12VAC30-60-300~~ 12VAC30-60-303 and 12VAC30-60-307] and for whom it shall be an appropriate alternative to institutional care. Agency-directed personal care services shall be comprised of hands-on care of either a supportive or health-related nature and shall include, but shall not necessarily be limited to, assistance with ADLs, access to the community, [~~monitoring of self-administered~~ assistance with] medications [in accordance with VDH licensing requirements] or other medical needs, supervision, and the monitoring of health status and physical condition. Where the individual requires assistance with ADLs, and when specified in the POC, such supportive services may include assistance with IADLs. This service shall not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC90-20. Agency-directed personal care services may be provided in a home or community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community-based care service or in conjunction with adult day health care, respite care (agency-directed or consumer-directed), or PERS. [The provider shall document, in the individual's medical record, the waiver individual's choice of the agency-directed model.]

1. Criteria. In order to qualify for this service, the waiver individual shall have met the NF LOC criteria as set out in [~~12VAC30-60-300 that shall be~~ 12VAC30-60-303 and 12VAC30-60-307 as] documented on the UAI assessment form [, and for whom it shall be an appropriate alternative to institutional care].

a. A waiver individual may receive both CD and agency-directed personal care services if the individual meets the criteria. Hours received by the individual who is receiving both CD and agency-directed services shall not exceed the total number of hours that would be needed if the waiver individual were receiving personal care services through a single delivery model.

b. CD and agency-directed services shall not be simultaneously provided but may be provided sequentially or alternately from each other.

c. The individual or family/caregiver shall have a [~~back-up~~ backup] plan for the provision of services in the event the agency is unable to provide an aide.

2. Limits on covered agency-directed personal care services.

a. DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973 (29 USC § 794).

b. DMAS shall reimburse for services delivered, consistent with the approved POC, for personal care that the personal care aide provides to the waiver individual to assist him while he is at work or postsecondary school.

[~~(1) Agency-directed personal care services shall be limited to 56 hours of services per week for 52 weeks per year. Individual exceptions may be granted based on criteria established by DMAS.~~

~~(2)~~ (1)] DMAS or the designated [~~PA/Srv Auth~~ Srv Auth] contractor shall review the waiver individual's needs and the complexity of the disability, as applicable, when determining the services that are provided to him in the workplace or postsecondary school or both.

[~~(3)~~ (2)] DMAS shall not pay for the personal care aide to assist the enrolled waiver individual with any functions or tasks related to the individual completing his job or postsecondary school functions or for supervision time during either work or postsecondary school or both.

c. Supervision services shall only be authorized to ensure the health, safety, or welfare of the waiver individual who cannot be left alone at any time or is unable to call for help in case of an emergency, and when there is no one else in the home competent and able to call for help in case of an emergency.

d. There shall be a [maximum] limit of eight hours per 24-hour day for supervision services [~~included~~. Supervision services shall be documented] in the POC [as needed by the individual].

[e. Agency-directed personal care services shall be limited to 56 hours of services per week for 52 weeks per year. Individual exceptions may be granted based on criteria established by DMAS.]

E. Agency-directed respite services. Agency-directed respite care services shall only be offered to waiver individuals who meet the preadmission screening criteria at [~~12VAC30-60-300~~ 12VAC30-60-303 and 12VAC30-60-307] and for whom it shall be an appropriate alternative to institutional care. Agency-directed respite care services may be either skilled nursing or unskilled care and shall be comprised of hands-on care of either a supportive or health-related nature and may include, but shall not be limited to, assistance with ADLs, access to the community, [~~monitoring of self-administration of~~ assistance with] medications [in accordance with VDH licensing requirements] or other medical needs, supervision, and monitoring health status and physical condition.

1. Respite care shall only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the waiver individual. Respite care services may be provided in the individual's home or other community settings.

2. When the individual requires assistance with ADLs, and where such assistance is specified in the waiver individual's POC, such supportive services may also include assistance with IADLs.

3. The unskilled care portion of this service shall not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC90-20.

4. Limits on service.

a. The unit of service shall be one hour. Respite services shall be limited to 480 hours per individual per [~~calendar~~ state fiscal] year, to be [~~prior~~ service] authorized. If an individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours beyond the 480 maximum limit shall be approved for payment for individuals who change waiver programs. Additionally, individuals who are receiving respite services in this waiver through both the agency-directed and CD models shall not exceed 480 hours per [~~calendar~~ state fiscal] year combined.

b. If agency-directed respite service is the only service received by the waiver individual, it must be received at least as often as every 30 days. If this service is not required at this minimal level of frequency, then the provider agency shall notify the local department of social services for its redetermination of eligibility for the waiver individual.

c. The individual or family/caregiver shall have a backup plan for the provision of services in the event the agency is unable to provide an aide.

F. Services facilitation for consumer-directed services. Consumer-directed personal care and respite care services shall only be offered to persons who meet the preadmission screening criteria at [~~12VAC30-60-300~~ 12VAC30-60-303 and 12VAC30-60-307] and for whom there shall be appropriate alternatives to institutional care.

1. Individuals who choose CD services shall receive support from a DMAS-enrolled CD services facilitator as required in conjunction with CD services. The services facilitator shall document the waiver individual's choice of the CD model and whether there is a need for [~~a family/caregiver~~ another person] to serve as the EOR on behalf of the individual. The CD services facilitator shall be responsible for assessing the waiver individual's particular needs for a requested CD service, assisting in the development of the POC, providing training to the [~~waiver individual and family/caregiver/EOR on their~~ EOR on his] responsibilities as an employer, and for providing ongoing support of the CD services.

2. Individuals who are eligible for CD services shall have, or have [~~a family/caregiver~~ an EOR] who has, the capability to hire and train the personal care attendant or attendants and supervise the attendant's performance, including approving the attendant's timesheets.

a. If a waiver individual is unwilling or unable to direct his own care or is younger than 18 years of age, a family/caregiver/designated person shall serve as the EOR on behalf of the waiver individual in order to perform these supervisory and approval functions.

b. Specific employer duties shall include checking references of personal care attendants [~~,~~ and] determining that personal care attendants meet [~~basic~~] qualifications [~~, and maintaining copies of attendants' timesheets to have available for review, on a consistent and timely basis, by the CD services facilitator, the fiscal employer/agent, DMAS, or DMAS' contracted entity~~].

3. The individual or family/caregiver shall have a backup plan for the provision of services in case the attendant does not show up for work as scheduled or terminates employment without prior notice.

4. The CD services facilitator shall not be the waiver individual, [a CD attendant,] a provider of other Medicaid-covered services, spouse of the individual, parent of the individual who is a minor child, or the [~~family/caregiver/EOR~~ EOR] who is employing the CD attendant.

5. DMAS shall either provide for fiscal employer/agent services or contract for the services of a fiscal employer/agent for CD services. The fiscal employer/agent shall be reimbursed by DMAS or DMAS contractor (if the fiscal/employer agent service is contracted) to perform certain tasks as an agent for [~~either~~] the [~~waiver individual who is receiving CD services or the~~] EOR. The fiscal employer/agent shall handle responsibilities for the

waiver individual including, but not limited to, employment taxes and background checks for attendants [~~, etc~~]. The fiscal employer/agent shall seek and obtain all necessary authorizations and approvals of the Internal Revenue Service in order to fulfill all of these duties.

G. Consumer-directed personal care services. CD personal care services shall be comprised of hands-on care of either a supportive or health-related nature and shall include assistance with ADLs and may include, but shall not be limited to, access to the community, monitoring of self-administered medications or other medical needs, supervision, and monitoring health status and physical condition. Where the waiver individual requires assistance with ADLs and when specified in the POC, such supportive services may include assistance with IADLs. This service shall not include skilled nursing services with the exception of skilled nursing tasks (e.g. catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC 90-20 and as permitted by [~~Chapter 790 of the 2010 Acts of Assembly~~ Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia]. CD personal care services may be provided in a home or community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community-based service or in conjunction with adult day health care, respite care (agency-directed or consumer-directed), or PERS.

1. In order to qualify for this service, the waiver individual shall have met the NF LOC criteria as set out in [~~12VAC30-60-300 that shall be~~ 12VAC30-60-303 and 12VAC30-60-307 as] documented on the UAI assessment instrument [, and for whom it shall be an appropriate alternative to institutional care].

a. A waiver individual may receive both CD and agency-directed personal care services if the individual meets the criteria. Hours received by the waiver individual who is receiving both CD and agency-directed services shall not exceed the total number of hours that would be otherwise authorized had the individual chosen to receive personal care services through a single delivery model.

b. CD and agency-directed services shall not be simultaneously provided but may be provided sequentially or alternately from each other.

2. Limits on covered CD personal care services.

a. DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973 (29 USC § 794).

b. There shall be a limit of eight hours per 24-hour day for supervision services included in the POC. Supervision services shall be authorized to ensure the health, safety, or welfare of the waiver individual who cannot be left alone at any time or is unable to call for help in case of an emergency, and when there is no one else in the home who is competent and able to call for help in case of an emergency.

c. Consumer-directed personal care services shall be limited to 56 hours of services per week for 52 weeks per year. Individual exceptions may be granted based on criteria established by DMAS.

3. CD personal care services at work or school shall be limited as follows:

a. DMAS shall reimburse for services delivered, consistent with the approved POC, for CD personal care that the attendant provides to the waiver individual to assist him while he is at work or postsecondary school or both.

b. DMAS or the designated [~~PA/Srv~~ Srv] Auth contractor shall review the waiver individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

c. DMAS shall not pay for the personal care attendant to assist the waiver individual with any functions or tasks related to the individual completing his job or postsecondary school functions or for supervision time during work or postsecondary school or both.

H. Consumer-directed respite services. CD respite care services are unskilled care and shall be comprised of hands-on care of either a supportive or health-related nature and may include, but shall not be limited to, assistance with ADLs, access to the community, monitoring of self-administration of medications or other medical needs, supervision, monitoring health status and physical condition, and personal care services in a work environment.

1. In order to qualify for this service, the waiver individual shall have met the NF LOC criteria as set out in [~~12VAC30-60-300 that shall be~~ 12VAC30-60-303 and 12VAC30-60-307 as] documented on the UAI assessment instrument [, and for whom it shall be an appropriate alternative to institutional care].

2. CD respite services shall only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the waiver individual. This service shall be provided in the waiver individual's home or other community settings.

3. When the waiver individual requires assistance with ADLs, and where such assistance is specified in the individual's POC, such supportive services may also include assistance with IADLs.

4. Limits on covered CD respite care services.

a. The unit of service shall be one hour. Respite services shall be limited to 480 hours per waiver individual per [~~calendar~~ state fiscal] year. If a waiver individual changes waiver programs, this same maximum number of respite hours shall apply. No additional respite hours

beyond the 480 maximum limit shall be approved for payment. Individuals who are receiving respite services in this waiver through both the agency-directed and CD models shall not exceed 480 hours per [~~calendar~~ state fiscal] year combined.

b. CD respite care services shall not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to Part VIII (18VAC90-20-420 through 18VAC90-20-460) of 18VAC90-20 and as permitted by [~~Chapter 790 of the 2010 Acts of Assembly~~ Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia)].

c. If consumer-directed respite service is the only service received by the waiver individual, it shall be received at least as often as every 30 days. If this service is not required at this minimal level of frequency, then the services facilitator shall refer the waiver individual to the local department of social services for its redetermination of eligibility for the waiver individual.

I. Personal emergency response system (PERS).

1. Service description. PERS is a service that monitors waiver individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line or system. PERS may also include medication monitoring devices.

a. PERS may be authorized only when there is no one else in the home with the waiver individual who is competent or continuously available to call for help in an emergency or when the individual is in imminent danger.

b. The use of PERS equipment shall not relieve the backup caregiver of his responsibilities.

c. Service units and service limitations.

(1) PERS shall be limited to waiver individuals who are ages 14 years and older who also either live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time [~~and who may otherwise require extensive routine supervision~~]. PERS shall only be provided in conjunction with receipt of personal care services (either agency-directed or consumer-directed), respite services (either agency-directed or consumer-directed), or adult day health care. A waiver individual shall not receive PERS if he has a cognitive impairment as defined in 12VAC30-120-900.

(2) A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, monitoring, and adjustments of the PERS. A unit of service shall be the one-month rental price set by DMAS in its fee schedule. The one-time installation of the unit shall include installation, account activation, individual and family/caregiver instruction, and subsequent removal of PERS equipment when it is no longer needed.

(3) PERS services shall be capable of being activated by a remote wireless device and shall be connected to the waiver individual's telephone line or system. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be (i) waterproof, (ii) able to automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, (iii) able to be worn by the waiver individual [~~:~~] and (iv) automatically reset by the response center after each activation, thereby ensuring that subsequent signals can be transmitted without requiring manual resetting by the waiver individual.

(4) All PERS equipment shall be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard.

(5) Medication monitoring units shall be physician ordered. In order to be approved to receive the medication monitoring service, a waiver individual shall also receive PERS services. Physician orders shall be maintained in the waiver individual's record. In cases where the medical monitoring unit must be filled by the provider, the person who is filling the unit shall be either an RN or an LPN. The units may be filled as frequently as a minimum of every 14 days. There must be documentation of this action in the waiver individual's record.

J. Transition coordination and transition services. Transition coordination and transition services, as defined at 12VAC30-120-2000 and 12VAC30-120-2010, provide for applicants to move from institutional placements or licensed or certified provider-operated living arrangements to private homes or other qualified settings. The applicant's transition from an institution to the community shall be coordinated by the facility's discharge planning team. The discharge planner shall coordinate with the transition coordinator to ensure that EDCD Waiver eligibility criteria shall be met.

[~~a.~~ 1.] Transition coordination and transition services shall be authorized by DMAS or its designated agent in order for reimbursement to occur.

[~~b.~~ 2.] For the purposes of transition services, an institution [~~means an ICF/MR, as defined at 42 CFR 435.1010, a long stay hospital, or NF~~ must meet the requirements as specified by CMS in the Money Follows the Person demonstration program at http://www.ssa.gov/OP_Home/comp2/F109-171.html#ft262].

[~~c.~~ 3.] Transition coordination shall be authorized for a maximum of 12 consecutive months upon discharge from an institutional placement and shall be initiated within 30 days of discharge from the institution.

[~~d.~~ 4.] Transition coordination and transition services shall be provided in conjunction with personal care (agency-directed or consumer-directed), respite (agency-directed or consumer-directed), or adult day health care services.

K. Assistive technology (AT).

1. Service description. Assistive technology (AT), as defined [~~herein~~ in 12VAC30-120-900], shall only be available to waiver individuals who are participating in the MFP program pursuant to [Part XX ( ] 12VAC30-120-2000 [et seq.)].

2. In order to qualify for these services, the individual shall have a demonstrated need for equipment for remedial or direct medical benefit primarily in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. AT shall be covered in the least expensive, most cost-effective manner.

3. Service units and service limitations.

a. [~~AT shall be available to individuals receiving transition coordination through the MFP program.~~] All requests for AT shall be made by the transition coordinator to DMAS or the [~~PA/Srv~~ Srv] Auth contractor.

b. [~~Effective July 1, 2011, the~~ The] maximum funded expenditure per individual for all AT covered procedure codes (combined total of AT items and labor related to these items) shall be [~~$3,000~~ $5,000] per [~~calendar~~] year for individuals regardless of waiver, or regardless of whether the individual changes waiver programs, for which AT is approved. [~~Requests made for reimbursement between January 1, 2011, and June 30, 2011, shall be subject to a $5,000 annual maximum; requests made for reimbursement between July 1, 2011, and December 31, 2011, shall be subject to $3,000 annual maximum, and shall consider, against the $3,000 limit, any relevant expenditure from the first six months of the calendar year. Expenditures made in the first six months of CY 2011 (subject to the $5,000 limit) shall count against the $3,000 limit applicable in the second six months of CY 2011. For subsequent calendar years, the limit shall be $3,000 throughout the time period.~~] The service unit shall always be one, for the total cost of all AT being requested for a specific timeframe.

c. AT may be provided in the individual's home or community setting.

[~~d. A maximum expenditure limit shall be consistent with 12VAC30-120-762 during the MFP enrollment period (maximum of 12 months).~~]

[~~e.~~ d.] AT shall not be approved for purposes of convenience of the caregiver/provider or restraint of the individual.

[~~f.~~ e.] An independent, professional consultation shall be obtained from [a] qualified [~~professionals~~ professional] who [~~are~~ is] knowledgeable of that item for each AT request prior to approval by the [~~PA/Srv Auth agent~~ Srv Auth contractor] and may include training on such AT by the qualified professional. [The consultation shall not be performed by the provider of AT to the individual.]

[~~g.~~ f.] All AT shall be prior authorized by the [~~PA/Srv Auth agent~~ Srv Auth contractor] prior to billing.

[~~h.~~ g.] Excluded shall be items that are reasonable accommodation requirements [, for example,] of the Americans with Disabilities Act, the Virginians with Disabilities Act [(§ 51.5-1 et seq. of the Code of Virginia)], or the Rehabilitation Act [(20 USC § 794)] or that are required to be provided through other funding sources [~~(insurance, schools, etc.)~~].

[~~i.~~ h.] AT services or equipment shall not be rented but shall be purchased.

L. Environmental modifications (EM).

1. Service description. Environmental modifications (EM), as defined herein, shall only be available to waiver individuals who are participating in the MFP program pursuant to [Part XX ( ] 12VAC30-120-2000 [et seq.)]. Adaptations shall be documented in the waiver individual's POC and may include, but shall not necessarily be limited to, the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electrical and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the waiver individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, flooring, roof repairs, central air conditioning, [~~etc~~ or decks]. Adaptations that add to the total square footage of the home shall be excluded from this benefit, except when necessary to complete an [authorized] adaptation, as determined by DMAS or its designated agent. All services shall be provided in the individual's primary home in accordance with applicable state or local building codes. All modifications must be prior authorized by the [~~PA/Srv Auth agent~~ Srv Auth contractor]. Modifications may only be made to a vehicle if it is the primary vehicle being used by the waiver individual. This service does not include the purchase or lease of vehicles.

2. In order to qualify for these services, the waiver individual [~~must~~ shall] have a demonstrated need for modifications of a remedial or medical benefit offered in [~~an individual's~~ his] primary home or primary vehicle

used by the waiver individual to [ensure his health, welfare, or safety or] specifically [to] improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program. EM shall be covered in the least expensive, most cost-effective manner.

3. Service units and service limitations. [~~EM shall be available to individuals who are receiving transition coordination.~~]

a. All requests for EM shall be made by the MFP transition coordinator to DMAS or the [~~PA/Srv~~ Srv] Auth contractor.

b. [~~Effective July 1, 2011, the~~ The] maximum funded expenditure per individual for all EM covered procedure codes (combined total of EM items and labor related to these items) shall be [~~$3,000~~ $5,000] per [~~calendar~~] year for individuals regardless of waiver, or regardless of whether the individual changes waiver programs, for which EM is approved. [~~Requests made for reimbursement between January 1, 2011, and June 30, 2011, shall be subject to a $5,000 annual maximum; requests made for reimbursement between July 1, 2011, and December 31, 2011, shall be subject to $3,000 annual maximum, and shall consider, against the $3,000 limit, any relevant expenditure from the first six months of the calendar year. Expenditures made in the first six months of CY 2011 (subject to the $5,000 limit) shall count against the $3,000 limit applicable in the second six months of CY 2011. For subsequent calendar years, the limit shall be $3,000 throughout the time period.~~] The service unit shall always be one, for the total cost of all EM being requested for a specific timeframe.

[~~c. To receive environmental modifications in the EDCD waiver, the individual shall be receiving at least one other waiver service.~~

~~d. A maximum expenditure limit for EM services shall be consistent with 12VAC30-120-758 per the 12 month MFP enrollment period (12 months maximum).~~

~~e.~~ c.] All EM shall be [~~prior~~] authorized by the [~~PA/Srv Auth agent~~ Srv Auth contractor] prior to billing.

[~~f.~~ d.] Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded shall be modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act [(§ 51.5-1 et seq. of the Code of Virginia)], and the Rehabilitation Act [(20 USC § 794)].

[~~g.~~ e.] Transition coordinators shall, upon completion of each modification, meet face-to-face with the waiver individual and his family/caregiver, as appropriate, to ensure that the modification is completed satisfactorily and is able to be used by the individual.

[~~h.~~ f.] EM shall not be approved for purposes of convenience of the caregiver/provider or restraint of the waiver individual.

[12VAC30-120-925. Respite coverage in children's residential facilities.

A. Individuals with special needs who are enrolled in the EDCD ~~waiver~~ Waiver and who have a diagnosis of intellectual disability (ID) shall be eligible to receive respite services in children's residential facilities that are licensed for respite services for children with ID.

B. These respite services shall be covered consistent with the requirements of ~~12VAC30-120-925 or 12VAC30-120-960~~ 12VAC30-120-924, 12VAC30-120-930, and 12VAC30-120-935, whichever is in effect at the time of service delivery.]

12VAC30-120-930. General requirements for home and community-based participating providers.

A. Requests for participation ~~will~~ shall be screened by DMAS or the designated DMAS contractor to determine whether the [~~provider/services facilitator~~ provider] applicant meets ~~these basic~~ the requirements for participation, as set out in the provider agreement, and demonstrates the abilities to perform, at a minimum, the following activities:

1. Screen all new and existing employees and contractors to determine whether any are excluded from eligibility for payment from federal health care programs, including Medicaid (i.e., via the United States Department of Health and Human Services Office of Inspector General List of Excluded Individuals or Entities (LEIE) website). Immediately report in writing to DMAS any exclusion information discovered to: DMAS, ATTN: Program Integrity/Exclusions, 600 East Broad Street, Suite 1300, Richmond, VA 23219, or email to providerexclusions@dmas.virginia.gov.

~~1.~~ 2. Immediately notify DMAS in writing of any change in the information that the provider previously submitted to DMAS;

~~2. Assure~~ 3. Except for waiver individuals who are subject to the DMAS Client Medical Management program Part VIII (12VAC30-130-800 et seq.) of 12VAC30-130 or are enrolled in a Medicaid managed care program, [ensure] freedom of choice to individuals in seeking services from any institution, pharmacy, practitioner, or other provider qualified to perform the service or services required and participating in the Medicaid Program at the time the service or services are performed;

~~3.~~ 4. [~~Assure~~ Ensure] the individual's freedom to refuse medical care, treatment, and services;

~~4.~~ 5. Accept referrals for services only when staff is available to initiate and perform such services on an ongoing basis;

~~5.~~ 6. Provide services and supplies to individuals in full compliance with Title VI (42 USC § 2000d et seq.) of the Civil Rights Act of 1964 which prohibits discrimination on the grounds of race, color, religion, or national origin; the Virginians with Disabilities Act (§ 51.5-1 et seq. of the Code of Virginia); § 504 of the Rehabilitation Act of 1973 (29 USC § 794), which prohibits discrimination on the basis of a disability; and the Americans with Disabilities Act of 1990 (42 USC § 12101 et seq.), which provides comprehensive civil rights protections to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications;

~~6.~~ 7. Provide services and supplies to individuals of the same quality and in the same mode of delivery as ~~is~~ are provided to the general public;

~~7.~~ 8. Submit charges to DMAS for the provision of services and supplies to individuals in amounts not to exceed the provider's usual and customary charges to the general public and accept as payment in full the amount established by DMAS payment methodology beginning with the individual's authorization date for the waiver services;

~~8.~~ 9. Use only DMAS-designated forms for service documentation. The provider ~~must~~ shall not alter the DMAS forms in any manner ~~unless~~ without prior written approval from DMAS ~~is obtained prior to using the altered forms~~;

~~9.~~ 10. Use DMAS-designated billing forms for submission of charges;

~~10. Not perform any~~ 11. Perform no type of direct marketing activities to Medicaid individuals;

~~11.~~ 12. Maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

a. In general, such records shall be retained for a period of at least six years from the last date of service or as provided by applicable federal and state laws, whichever period is longer. However, if an audit is initiated within the required retention period, the records shall be retained until the audit is completed and every exception resolved. Records of minors shall be kept for a period of at least six years after such minor has reached 18 years of age.

b. Policies regarding retention of records shall apply even if the provider discontinues operation. DMAS shall be notified in writing of the storage location and procedures for obtaining records for review should the need arise. The location, agent, or trustee shall be within the Commonwealth;

~~12.~~ 13. Furnish information on the request of and in the form requested to DMAS, the Attorney General of Virginia or ~~his~~ their authorized representatives, federal personnel, and the state Medicaid Fraud Control Unit. The Commonwealth's right of access to provider agencies and records shall survive any termination of the provider agreement;

~~13.~~ 14. Disclose, as requested by DMAS, all financial, beneficial, ownership, equity, surety, or other interests in any and all firms, corporations, partnerships, associations, business enterprises, joint ventures, agencies, institutions, or other legal entities providing any form of health care services to recipients of Medicaid;

~~14. Pursuant to 42 CFR 431.300 et seq., 12VAC30-20-90, and any other applicable federal or state law, hold confidential and use for authorized DMAS purposes only all medical assistance information regarding individuals served. A provider shall disclose information in his possession only when the information is used in conjunction with a claim for health benefits or the data is necessary for the functioning of DMAS in conjunction with the cited laws;~~

15. Pursuant to 42 CFR 431.300 et seq., § 32.1-325.3 of the Code of Virginia, and the Health Insurance Portability and Accountability Act (HIPAA), [safeguard and hold confidential] all information associated with an applicant or enrollee or individual that could disclose the applicant's/enrollee's/individual's identity [~~is confidential and shall be safeguarded~~]. Access to information concerning the applicant/enrollee/individual shall be restricted to persons or agency representatives who are subject to the standards of confidentiality that are consistent with that of the agency and any such access must be in accordance with the provisions found in 12VAC30-20-90;

~~15.~~ 16. When ownership of the provider changes, notify DMAS in writing at least 15 calendar days before the date of change;

~~16.~~ 17. Pursuant to §§ [63.2-100,] 63.2-1509 [,] and 63.2-1606 of the Code of Virginia, if a participating provider or the provider's staff knows or suspects that a home and community-based waiver services individual is being abused, neglected, or exploited, the party having knowledge or suspicion of the abuse, neglect, or exploitation ~~must~~ shall report this immediately from first knowledge or suspicion of such knowledge to the local ~~DSS~~ department of social services adult or child protective services worker as applicable or to the toll-free, 24-hour hotline as described on the local department of social services' website. Employers shall ensure and document that their staff is aware of this requirement;

~~17.~~ 18. In addition to compliance with the general conditions and requirements, adhere to the conditions of participation outlined in the individual provider's participation agreements ~~and~~, in the applicable DMAS provider manual, and in other DMAS laws, regulations, and policies. DMAS shall conduct ongoing monitoring of

compliance with ~~provider's~~ provider participation standards and DMAS policies. A provider's noncompliance with DMAS policies and procedures may result in a retraction of Medicaid payment or termination of the provider agreement, or both; ~~and~~

~~18.~~ 19. Meet minimum qualifications of staff. ~~All employees must have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime as defined herein. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks.~~

a. For reasons of Medicaid individuals' safety and welfare, all employees shall have a satisfactory work record, as evidenced by at least two references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children [~~(including a founded adult protective services complaint)~~]. In instances of employees who have worked for only one employer, such employees shall be permitted to provide one [appropriate] employment reference and one [appropriate] personal reference [including no evidence of abuse, neglect, or exploitation of incapacitated or older adults or children].

b. [~~The criminal~~ Criminal] record [~~and sex offender registry check results~~ checks] for both employees and volunteers [~~as~~] conducted by the Virginia State Police [. Proof that these checks were performed with satisfactory results] shall be available for review by DMAS staff or its designated agent who are authorized by the agency to review these files. DMAS shall not reimburse the provider for any services provided by an employee or volunteer who has been convicted of committing a barrier crime as defined in § 32.1-162.9:1 [~~or 63.2-1719~~] of the Code of Virginia. Providers shall be responsible for complying with [~~§§~~ §] 32.1-162.9:1 [~~and 63.2-1719~~] of the Code of Virginia regarding criminal record checks. Provider staff shall not be reimbursed for services provided to the waiver individual effective on the date and thereafter that the criminal record check [~~or sex offender register check~~] confirms the provider's staff person or volunteer was convicted of a barrier crime [~~or is listed in any sex offender registry~~].

c. Provider staff and volunteers [~~that~~ who] serve waiver individuals who are minor children shall also be screened through the VDSS Child Protective Services (CPS) Central Registry. Provider staff and volunteers shall not be reimbursed for services provided to the waiver individual effective on the date and thereafter that the VDSS CPS Central Registry check confirms the provider's staff person or volunteer has a finding.

B. ~~For DMAS to approve provider agreements with home and community based waiver providers, providers must meet staffing, financial solvency, disclosure of ownership, and assurance of comparability of services requirements as specified in the applicable provider manual.~~ DMAS shall terminate the [~~provider's/services facilitator's~~ provider's] Medicaid provider agreement pursuant to § 32.1-325 of the Code of Virginia and as may be required for federal financial participation. A provider who has been convicted of a felony, or who has otherwise pled guilty to a felony, in Virginia or in any other of the 50 states, the District of Columbia, or the U.S. territories shall within 30 days of such conviction notify DMAS of this conviction and relinquish its provider agreement. Such provider agreement terminations, subject to applicable appeal rights, shall conform to § 32.1-325 D and E of the Code of Virginia and Part [~~VII~~ XII] (12VAC30-20-500 et seq.) of 12VAC30-20.

C. For DMAS to approve [~~provider/services facilitator~~ provider] agreements with home and community-based waiver providers, the following standards shall be met:

1. Staffing, financial solvency, disclosure of ownership, and [~~assurance of~~ ensuring] comparability of services requirements as specified in the applicable provider manual;

2. The ability to document and maintain waiver individuals' case records in accordance with state and federal requirements;

3. Compliance with all applicable laws, regulations, and policies pertaining to EDCD Waiver services.

~~C.~~ D. The waiver individual shall have the option of selecting the provider of his choice from among those [~~providers/services facilitators~~ providers] who are approved and who can appropriately meet his needs.

~~D.~~ E. A participating [~~provider/services facilitator~~ provider] may voluntarily terminate his participation in Medicaid by providing 30 days' written notification to DMAS.

~~E.~~ F. DMAS may terminate at-will a [~~provider's/services facilitator's~~ provider's] participation agreement on 30 days' written notice as specified in the DMAS participation agreement. DMAS may immediately terminate a [~~provider's/services facilitator's~~ provider's] participation agreement if the [~~provider/services facilitator~~ provider] is no longer eligible to participate in the Medicaid program. Such action precludes further payment by DMAS for services provided to individuals on or after the date specified in the termination notice.

~~F. A provider shall have the right to appeal adverse actions taken by DMAS. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.~~

~~G. The Medicaid provider agreement shall terminate upon conviction of the provider of a felony pursuant to § 32.1 325 of the Code of Virginia. A provider convicted of a felony in Virginia or in any other of the 50 states, the District of Columbia or, the U.S. territories, must, within 30 days notify the Virginia Medicaid Program of this conviction and relinquish the provider agreement.~~

~~H.~~ G. The [~~provider/services facilitator~~ provider] ~~is~~ shall be responsible for ~~the Patient Information Form (DMAS-122)~~ completing the DMAS-225 form. The ~~service~~ [~~provider/services~~] ~~facilitator's provider~~ [~~facilitator~~ provider] shall notify the designated ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor, as appropriate, and the local ~~DSS, and DMAS,~~ department of social services, in writing, when any of the following ~~circumstances~~ events occur. Furthermore, it shall be the responsibility of the designated ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor to also update DMAS, as requested, when any of the following events occur:

1. Home and community-based waiver services are implemented;

2. ~~An~~ A waiver individual dies;

3. ~~An~~ A waiver individual is discharged from [the provider's] EDCD [~~waiver~~ Waiver] services;

4. Any other ~~circumstances~~ events (including hospitalization) that cause home and community-based waiver services to cease or be interrupted for more than 30 consecutive calendar days; or

5. The initial selection by the waiver individual or family/caregiver of a [~~provider/services facilitator~~ provider] to provide services, or a change by the waiver individual or family/caregiver of a [~~provider/services facilitator~~ provider], if it affects the individual's patient pay amount.

~~I.~~ H. Changes or termination of services.

1. The [~~provider/services facilitator~~ provider] may decrease the amount of authorized care if the revised ~~plan of care~~ POC is appropriate and based on the medical needs of the waiver individual. ~~If the individual disagrees with the proposed decrease, the individual has the right to appeal to DMAS.~~ The participating [~~provider/services facilitator~~ provider] ~~is responsible for developing the new plan of care and calculating the new hours of service delivery~~ shall collaborate with the waiver individual or the family/caregiver/EOR, or both as appropriate, to develop the new POC and calculate the new hours of service delivery. The ~~individual or person responsible for supervising the individual's care~~ [~~provider/services facilitator~~ provider] shall discuss the decrease in care with the waiver individual or family/caregiver/EOR, document the conversation in the waiver individual's record, and notify the designated ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor. The ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor ~~will notify~~ shall process the decrease request and the waiver individual [~~or family~~ ~~family/caregiver/EOR~~] shall be notified of the change by letter. This letter shall clearly state the waiver individual's right to appeal this change.

2. If a change in the waiver individual's condition necessitates an increase in care, the participating [~~provider/services facilitator~~ provider] ~~must~~ shall assess the need for the increase and, [~~if appropriate,~~] collaborate with the waiver individual and [~~family/caregiver~~ family/caregiver/EOR], as appropriate, to develop a ~~plan of care~~ POC for services to meet the changed needs. The [~~provider/services facilitator~~ provider] may implement the increase in personal/respite care hours without approval from DMAS, or the designated ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor, if the amount of services does not exceed the total amount established by DMAS~~, or the designated preauthorization contractor,~~ as the maximum for the level of care designated for that individual on the plan of care.

3. Any increase to [~~an~~ a] waiver individual's ~~plan of care~~ POC that exceeds the number of hours allowed for that individual's level of care or any change in the waiver individual's level of care ~~must~~ shall be ~~preauthorized~~ authorized by DMAS or the designated ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor prior to the increase and be accompanied by adequate documentation justifying the increase.

~~3.~~ 4. In an emergency situation when either the health ~~and,~~ safety, or welfare of the waiver individual or provider personnel is endangered, or both, DMAS, or the designated ~~preauthorization~~ [~~PA/Serv Auth~~ Srv Auth] contractor, ~~must~~ shall be notified prior to discontinuing services. The written notification period set out below shall not be required. If appropriate, ~~the~~ local ~~DSS~~ department of social services adult or child protective services ~~department must,~~ as may be appropriate, shall be notified immediately. Appeal rights shall be afforded to the waiver individual.

~~4.~~ 5. In a nonemergency situation, ~~i.e.,~~ when neither the health ~~and,~~ safety, nor welfare of the waiver individual or [~~provider/services facilitator~~ provider] personnel is ~~not~~ endangered, the participating provider~~, other than a PERS provider,~~ shall give the waiver individual [~~or family/caregiver, or both,~~] at least 10 calendar days' written notification (plus three days ~~for mailing~~ [~~(~~] for mail transit [~~)~~] for a total of 13 calendar days from the letter's date) of the intent to discontinue services. The notification letter shall provide the reasons for and the effective date the provider ~~is~~ will be discontinuing services. ~~The effective date shall be at least 10 days plus three days for mailing from the date of the notification letter. A PERS provider shall give the individual or family/caregiver at least 14 days' prior written notification of the intent to discontinue services. The letter shall~~

~~provide the reasons for and the effective date of the action. The effective date shall be at least 14 days from the date of the notification letter.~~ Appeal rights shall be afforded to the waiver individual.

~~5. In the case of termination of home and community-based waiver services by DMAS or the designated preauthorization contractor, individuals shall be notified of their appeal rights pursuant to 12VAC30-110. DMAS, or the designated preauthorization contractor, has the responsibility and the authority to terminate the receipt of home and community based care services by the individual for any of the following reasons:~~

~~a. The home and community based care services are no longer the critical alternative to prevent or delay institutional placement;~~

~~b. The individual is no longer eligible for Medicaid;~~

~~c. The individual no longer meets the nursing facility criteria; or~~

~~d. The individual's environment does not provide for his health, safety, and welfare.~~

~~J. DMAS will conduct annual level of care reviews for all waiver recipients.~~

I. Staff education and training requirements.

1. RNs shall [(i)] be currently licensed to practice in the Commonwealth as an RN, or shall hold multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia [~~, and~~; (ii)] have at least one year of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, or NF, or as an LPN who worked for at least one year in one of these settings [~~.~~; and (iii) submit to a criminal records check and consent to a search of the VDSS Child Protective Services Central Registry if the waiver individual is a minor child. The RN shall not be compensated for services provided to the waiver individual if this record check verifies that the RN has been convicted of a barrier crime described in § 32.1-162.9:1 of the Code of Virginia or if the RN has a founded complaint confirmed by the VDSS Child Protective Services Central Registry.]

2. LPNs shall work under supervision as set out in [~~18VAC90-20-270~~ 18VAC90-20-37]. LPNs shall [(i)] be currently licensed to practice in the Commonwealth as an LPN, or shall hold multi-state licensure privilege pursuant to Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia [~~, and~~; (ii)] shall have at least one year of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, or NF. The LPN shall meet the qualifications and skills, prior to being assigned to care for the waiver individual, that are required by the individual's POC [~~.~~; and (iii) submit to a criminal records check and consent to a search of the VDSS Child Protective Services Central Registry if the waiver individual is a minor child. The LPN shall not be compensated for services provided to the waiver individual if this record check verifies that the LPN has been convicted of a barrier crime described in § 32.1-162.9:1 of the Code of Virginia or if the LPN has a founded complaint confirmed by the VDSS Child Protective Services Central Registry.]

3. Personal care aides who are employed by personal care agencies that are licensed by [~~the Virginia Department of Health (VDH)~~ VDH] shall meet the requirements [~~resulting from Chapter 790 of the 2010 Acts of Assembly~~ of 12VAC5-381]. In addition, personal care aides shall also [~~be required to physically attend~~ receive] annually a minimum of 12 [documented] hours of agency-provided training in the performance of these services. [~~On-line computer classes shall not satisfy this training requirement.~~]

4. Personal care aides who are employed by personal care agencies that are not licensed by the VDH shall have completed an educational curriculum of at least 40 hours of study related to the needs of individuals who are either elderly or who have disabilities, as ensured by the provider prior to being assigned to the care of an individual, and shall have the required skills and training to perform the services as specified in the waiver individual's POC and related supporting documentation.

a. Personal care aides' required initial (that is, at the onset of employment) training, as further detailed in the applicable provider manual, shall be met in one of the following ways: (i) registration with the Board of Nursing as a certified nurse aide; (ii) graduation from an approved educational curriculum as listed by the Board of Nursing; or (iii) completion of the provider's educational curriculum, [~~that~~ which] must be a minimum of 40 hours in duration, as taught by an RN who meets the same requirements as the RN listed in subdivision 1 of this subsection.

b. In addition, personal care aides shall also be required to [~~physically attend~~ receive] annually a minimum of 12 [documented] hours of agency-provided training in the performance of these services. [~~On-line computer classes shall not satisfy this training requirement.~~]

[~~c.~~ 5.] Personal care aides shall:

[~~(1)~~ a.] Be at least 18 years of age or older;

[~~(2)~~ b.] Be able to read and write English to the degree necessary to perform the expected tasks and create and maintain the required documentation;

[~~(3)~~ c.] Be physically able to perform the required tasks and have the required skills to perform services as specified in the waiver individual's supporting documentation;

[~~(4)~~ d.] Have a valid social security number that has been issued to the personal care aide by the Social Security Administration;

[~~(5)~~ e.] Submit to a criminal records check and, if the waiver individual is a minor, consent to a search of the VDSS Child Protective Services Central Registry. The aide shall not be compensated for services provided to the waiver individual [~~if this~~ effective the date in which the] record check verifies that the aide has been convicted of barrier crimes described in § 32.1-162.9:1 [~~or 63.2-1719~~] of the Code of Virginia or if the aide has a founded complaint confirmed by the VDSS Child Protective Services Central Registry;

[~~(6) Submit to a check of records by a local department of social services to determine if he has been found to have abused, neglected, or exploited an adult 60 years of age or older or an adult who is 18 years of age or older and who is also incapacitated. The aide shall not be compensated for services provided to the waiver individual beginning with the date that such records are located;~~

~~(7)~~ f.] Understand and agree to comply with the DMAS EDCD Waiver requirements; and

[~~(8)~~ g.] Receive tuberculosis (TB) screening as specified in the criteria used by the VDH.

[~~5.~~ 6.] Consumer-directed personal care attendants shall:

a. Be 18 years of age or older;

[b. Be able to read and write in English to the degree necessary to perform the tasks expected and create and maintain the required documentation;]

[~~b.~~ c.] Be physically able to perform the [~~work~~ required tasks] and have the required skills to perform consumer-directed services as specified in the waiver individual's supporting documentation;

[~~c. Be able to read and write in English to the degree necessary to perform the tasks expected and create and maintain the required documentation;~~]

d. Have a valid social security number that has been issued to the personal care attendant by the Social Security Administration;

e. Submit to a criminal records check and, if the waiver individual is a minor, consent to a search of the VDSS Child Protective Services Central Registry. The attendant shall not be compensated for services provided to the waiver individual [~~, after the individual has been notified, if this~~ effective the date in which the] record check verifies that the attendant has been convicted of barrier crimes described in § 32.1-162.9:1 [~~or 63.2-1719~~] of the Code of Virginia or if the attendant has a founded complaint confirmed by the VDSS Child Protective Services Central Registry;

[~~f. Submit to a check of records by a local department of social services to determine if he has been found to have abused, neglected, or exploited an adult 60 year of age or older or an adult who is 18 years of age or older and who is also incapacitated. The attendant shall not be compensated for services provided to the waiver individual beginning with the date that such records are located;~~

~~g. Be willing to attend training at the individual's or family/caregiver's request;~~

~~h.~~ f.] Understand and agree to comply with the DMAS EDCD Waiver requirements; [~~and~~

~~i.~~ g.] Receive tuberculosis (TB) screening as specified in the criteria used by the VDH; [~~.~~ and

h. Be willing to attend training at the individual's or family/caregiver's request.]

12VAC30-120-935. Participation standards for specific covered services.

A. The personal care [providers], respite [care providers], [~~and~~] ADHC providers [, and CD services facilitators] shall develop an individualized POC that addresses the waiver individual's service needs. Such plan [~~must~~ shall] be developed in collaboration with the waiver individual or the individual's family/caregiver/EOR, as appropriate.

B. Agency providers shall employ appropriately licensed professional staff [~~to~~ who can] provide the covered waiver services [~~as may be~~] required by the waiver individuals. [~~RNs/LPNs shall either be licensed as nursing professionals by the Commonwealth of Virginia or they shall hold multi-state licensing privilege pursuant to Chapter 30 (§ 54.1-3000 et. seq.) of Title 54.1 of the Code of Virginia.~~] Providers shall require that the supervising RN/LPN be available by phone at all times that the LPN/attendant [and consumer-directed services facilitators], as appropriate, [~~is~~ are] providing services to the waiver individual.

C. Agency staff (RN, LPNs, or aides) or CD employees (attendants) shall not be reimbursed by DMAS for services rendered to waiver individuals when the agency staff or the CD employee is either (i) the spouse [~~:~~ of the waiver individual] or (ii) [the] parent (biological, adoptive, legal guardian) or other legal guardian of the minor child waiver individual [~~or an adult waiver individual~~].

D. Failure to meet the documentation standards as stated herein may result in DMAS charging audited providers with overpayments and requiring the return of the overpaid funds.

E. In addition to meeting the general conditions and requirements, home and community-based services participating providers shall also meet the following requirements:

1. ADHC services provider. In order to provide these services, the ADCC shall:

a. Make available a copy of the current VDSS license for DMAS' review and verification purposes prior to the provider applicant's enrollment as a Medicaid provider.

b. Adhere to VDSS' ADCC standards as defined in 22VAC40-60 including, but not limited to, provision of activities for waiver individuals; and

c. Employ the following:

(1) A director who shall be responsible for overall management of the center's programs and employees pursuant to 22VAC40-60-320. The director shall be the provider contact person for DMAS and the designated [~~PA/Serv Auth~~ Srv Auth] contractor and shall be responsible for responding to communication from DMAS and the designated [~~PA/Serv Auth~~ Srv Auth] contractor. The director shall be responsible for [~~assuring~~ ensuring] the development of the POCs for waiver individuals. The director shall assign either himself, the activities director if there is one, RN, or therapist to act as the care coordinator for each waiver individual and shall document in the individual's medical record the identity of the care coordinator. The care coordinator shall be responsible for management of the waiver individual's POC and for its review with the program aides and any other staff, as necessary.

(2) A RN [who] shall be responsible for administering to and monitoring the health needs of [~~the~~] waiver individuals. The RN may also contract with the center. The RN shall be responsible for the planning and implementation of the POC involving multiple services where specialized health care knowledge may be needed. The RN shall be present a minimum of eight hours each month at the center. DMAS may require the RN's presence at the center for more than this minimum standard depending on the number of waiver individuals who are in attendance and according to the medical and nursing needs of the waiver individuals who attend the center. Although DMAS does not require that the RN be a full-time staff position, there shall be a RN available, either in person or by telephone, to the center's waiver individuals and staff during all times that the center is in operation. The RN shall be responsible for:

(a) Providing periodic evaluation, at least every 90 days, of the nursing needs of each waiver individual;

(b) Providing the nursing care and treatment as documented in individuals' POCs; and

(c) Monitoring, recording, and administering of prescribed medications or supervising the waiver individual in self-administered medication.

(3) Personal care aides who shall be responsible for overall care of waiver individuals such as assistance with ADLs, social/recreational activities, and other health and therapeutic-related activities. Each program aide hired by the provider shall be screened to ensure compliance with training and skill mastery qualifications required by DMAS. The aide shall, at a minimum, have the following qualifications:

(a) Be 18 years of age or older;

(b) Be able to read and write in English to the degree necessary to perform the tasks expected and create and maintain the required waiver individual documentation of services rendered;

(c) Be physically able to perform the work and have the skills required to perform the tasks required in the waiver individual's POC;

(d) Have a valid social security number issued to the program aide by the Social Security Administration;

(e) Have satisfactorily completed an educational curriculum as set out in [clauses (i), (ii), and (iii) of] this subdivision E 1 c 3 (e). Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by DMAS' staff. Prior to assigning a program aide to a waiver individual, the center shall ensure that the aide has either (i) registered with the Board of Nursing as a certified nurse aide; (ii) graduated from an approved educational curriculum as listed by the Board of Nursing; or (iii) completed the provider's educational curriculum, at least 40 hours in duration, as taught by an RN who is licensed in the Commonwealth or who holds a multi-state licensing privilege.

(4) The ADHC coordinator [who] shall coordinate, pursuant to 22VAC40-60-695, the delivery of the activities and services as prescribed in the waiver individuals' POCs and keep such plans updated, record 30-day progress notes [concerning each waiver individual], and review the waiver individuals' daily records each week. If a waiver individual's condition changes more frequently, more frequent reviews and recording of progress notes shall be required to reflect the individual's changing condition.

2. Recreation and social activities responsibilities. The center shall provide planned recreational and social activities suited to the waiver individuals' needs and interests and designed to encourage physical exercise, prevent deterioration of each waiver individual's condition, and stimulate social interaction.

3. The center shall maintain all records of each Medicaid individual. These records shall be reviewed periodically by DMAS staff or its designated agent who is authorized by DMAS to review these files. At a minimum, these records shall contain, but shall not necessarily be limited to:

a. DMAS required forms as specified in the center's provider-appropriate guidance documents:

b. Interdisciplinary POCs developed, in collaboration with the waiver individual or family/caregiver, or both as may be appropriate, by the center's director, RN, and

therapist, as may be appropriate, and any other relevant support persons;

c. Documentation of interdisciplinary staff meetings that shall be held at least every three months to reassess each waiver individual and evaluate the adequacy of the POC and make any necessary revisions;

d. At a minimum, 30-day goal-oriented progress notes recorded by the designated ADHC care coordinator. If a waiver individual's condition and treatment POC changes more often, progress notes shall be written more frequently than every 30 days;

e. The daily record of services provided shall contain the specific services delivered by center staff. The record shall also contain the arrival and departure times of the waiver individual and shall be signed weekly by either the director, activities director, RN, or therapist employed by the center. The record shall be completed on a daily basis, neither before nor after the date of services delivery. At least once a week, a staff member shall chart significant comments regarding care given to the waiver individual. If the staff member writing comments is different from the staff signing the weekly record, that staff member shall sign the weekly comments. A copy of this record shall be given weekly to the waiver individual or family/caregiver [~~,~~] and it shall also be maintained in the waiver individual-specific medical record; and

f. All contacts shall be documented in the waiver individual's medical record, including correspondence made to and from the individual with family/caregivers, physicians, DMAS, the designated [~~PA/Serv Auth~~ Srv] Auth contractor, formal and informal services providers, and all other professionals related to the waiver individual's Medicaid services or medical care.

F. Agency-directed personal care services. The personal care provider agency shall hire or contract with and directly supervise a RN who provides ongoing supervision of all personal care aides and LPNs. LPNs may supervise [, pursuant to their licenses,] personal care aides based upon RN assessment of the waiver individuals' health, safety, and welfare needs.

1. The RN supervisor shall make an initial home assessment visit on or before the start of care for all individuals admitted to personal care [,] when a waiver individual is readmitted after being discharged from services [,] or if he is transferred from another provider, ADHC, or from a CD services program.

2. [~~The~~ During a home visit, the] RN supervisor shall evaluate, at least every [~~six months~~ 90 days], the LPN supervisor's performance and the waiver individual's needs to ensure the LPN supervisor's abilities to function competently and shall provide training as necessary. This shall be documented in the waiver individual's record. [A reassessment of the individual's needs and review of the POC shall be performed and documented during these visits.]

3. The RN/LPN supervisor shall also make supervisory visits based on the assessment and evaluation of the care needs of waiver individuals as often as needed and as defined in this subdivision to ensure both quality and appropriateness of services.

a. The personal care provider agency shall have the responsibility of determining when supervisory visits are appropriate for the waiver individual's health, safety, and welfare. Supervisory visits shall be at least every 90 days. This determination must be documented in the waiver individuals' records by the RN on the initial assessment and in the ongoing [assessment] records.

b. If DMAS determines that the waiver individual's health, safety, or welfare is in jeopardy, DMAS may require the provider's RN or LPN supervisor to supervise the personal care aides more frequently than once every 90 days. These visits shall be conducted at this designated increased frequency until DMAS determines that the waiver individual's health, safety, or welfare is no longer in jeopardy. This shall be documented by the provider and entered into the individual's record.

c. During visits to the waiver individual's home, the RN/LPN supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status and medical and social needs. The personal care aide's record shall be reviewed and the waiver individual's or family's/caregiver's, or both, satisfaction with the type and amount of services discussed.

d. If the supervising RN/LPN must be delayed in conducting the regular supervisory visit, such delay shall be documented in the waiver individual's record with the reasons for the delay. Such supervisory visits shall be conducted within 15 calendar days of the waiver individual's first availability.

e. A RN/LPN supervisor shall be available to the personal care aide for conferences pertaining to waiver individuals being served by the aide.

(1) The RN/LPN supervisor shall be available to the aide by telephone at all times that the aide is providing services to waiver individuals.

(2) The RN/LPN supervisor shall evaluate the personal care aide's performance and the waiver individual's needs to identify any insufficiencies in the personal care aide's abilities to function competently and shall provide training as indicated. This shall be documented in the waiver individual's record.

f. Licensed practical nurses (LPNs). As permitted by his license, the LPN may supervise personal care aides. To ensure both quality and appropriateness of services, the

LPN supervisor shall make supervisory visits of the aides as often as needed, but no fewer visits than provided in waiver individuals' POCs as developed by the RN in collaboration with individuals and the individuals' family/caregivers, or both, as appropriate.

(1) During visits to the waiver individual's home, a LPN-supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services [~~with regard to,~~] the individual's current functioning status and social needs. The personal care aide's record shall be reviewed and the waiver individual's or family/caregiver's, or both, satisfaction with the type and amount of services discussed.

(2) The LPN supervisor shall evaluate the personal care aide's performance and the waiver individual's needs to identify any insufficiencies in the aide's abilities to function competently and shall provide training as required to resolve the insufficiencies. This shall be documented in the waiver individual's record and reported to the RN supervisor.

(3) An LPN supervisor shall be available to personal care aides for conferences pertaining to waiver individuals being served by them.

g. Personal care aides. The agency provider [~~shall~~ may] employ and the RN/LPN supervisor shall directly supervise personal care aides who provide direct care to waiver individuals. Each aide hired to provide personal care shall be evaluated by the provider agency to ensure compliance with qualifications and skills required by DMAS pursuant to 12VAC30-120-930.

4. Payment [~~may~~ shall not] be made for services furnished by [~~live in~~ family members or] caregivers [~~or family members~~ who are living under the same roof as the waiver individual receiving services], [~~other than the (i) spouse of the waiver individual; (ii) parent or parents of the waiver individual; or (iii) legal guardian who are functioning as personal care aides when~~ unless] there is objective written documentation as to why there are no other providers or [~~,~~] aides available to provide the care. [The provider shall initially make this determination and document it fully in the waiver individual's record.]

[~~These family members who may be appropriate to be reimbursed by DMAS for personal care aide services shall meet the same education~~ and physical requirements ~~as aides who are not family members. The provider shall initially make the determination that a family member may be permitted to serve as the personal care aide and document it fully in the waiver individual's record. DMAS shall make the final determination of the appropriateness of such family members providing these services during its reviews.~~]

5. Required documentation for waiver individuals' records. The provider shall maintain all records for each individual receiving personal care services. These records shall be separate from those of non-home and community-based care services, such as companion or home health services. These records shall be reviewed periodically by DMAS or its designated agent. At a minimum, the record shall contain:

[~~(a)~~ a.] All personal care aides' records (DMAS-90) to include (i) the specific services delivered to the waiver individual by the aide; (ii) the personal care aide's actual daily arrival and departure times; (iii) the aide's weekly comments or observations about the waiver individual, including observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and (iv) any other information appropriate and relevant to the waiver individual's care and need for services.

[~~(b)~~ b.] The personal care aide's and individual's or responsible caregiver's signatures, including the date, shall be recorded on these records verifying that personal care services have been rendered during the week of the service delivery.

[~~(i)~~ (1)] An employee of the provider shall not sign for the waiver individual unless he is a family member or unpaid caregiver of the waiver individual.

[~~(ii)~~ (2)] Signatures, times, and dates shall not be placed on the personal care aide record earlier than the last day of the week in which services were provided nor later than seven calendar days from the date of the last service.

G. Agency-directed respite care services.

1. To be approved as a respite care provider with DMAS, the respite care agency provider shall:

a. Employ or contract with and directly supervise either a RN or LPN, or both, who will provide ongoing supervision of all respite care aides/LPNs, as appropriate. A RN shall provide supervision to all direct care and supervisory LPNs.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of the required RN/LPN supervisor's visits shall not exceed every 90 days, based on the initial assessment. If an individual is also receiving personal care services, the respite care RN/LPN supervisory visit may coincide with the personal care RN/LPN supervisory visits. However, the RN/LPN supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same individual record may be used with a separate section for respite care documentation.

(2) When respite care services are not received on a routine basis but are episodic in nature, a RN/LPN supervisor shall [~~not be required to conduct a supervisory visit within a specified number of days. Instead, a RN/LPN supervisor shall conduct the home supervisory visit with the aide/LPN on or before the start~~

~~of care and make a second home supervisory visit during the second respite care visit.~~ conduct the home supervisory visit with the aide/LPN on or before the start of care. The RN/LPN shall review the utilization of respite services either every six months or upon the use of half of the approved respite hours, whichever comes first.] If a waiver individual is also receiving personal care services, the respite care RN/LPN supervisory visit may coincide with the personal care RN/LPN supervisory visit.

(3) During visits to the waiver individual's home, the RN/LPN supervisor shall observe, evaluate, and document the adequacy and appropriateness of respite care services [~~with regard~~] to the waiver individual's current functioning status and medical and social needs. The aide's/LPN's record shall be reviewed along with the waiver individual's or family's/caregiver's, or both, satisfaction with the type and amount of services discussed.

(4) Should the required RN/LPN supervisory visit be delayed, the reason for the delay shall be documented in the waiver individual's record. This visit shall be completed within 15 days of the waiver individual's first availability.

b. Employ or contract with aides to provide respite care services who shall meet the same education and training requirements as personal care aides.

c. Not hire respite care aides for DMAS' reimbursement for services that are rendered to waiver individuals when the aide is either (i) the spouse of the waiver individual or (ii) the parent (biological, adoptive, legal guardian) or other guardian of the minor child waiver individual.

d. Employ an LPN to perform skilled respite care services. Such services shall be reimbursed by DMAS under the following circumstances:

(1) The waiver individual shall have a documented need for routine skilled respite care that cannot be provided by unlicensed personnel, such as an aide. These waiver individuals would typically require a skilled level of care involving, for example but not necessarily limited to, ventilators for assistance with breathing or either nasogastric or gastrostomy feedings;

(2) No other person in the waiver individual's support system is willing and able to supply the skilled component of the individual's care during the primary caregiver's absence; and

(3) The waiver individual is unable to receive skilled nursing visits from any other source that could provide the skilled care usually given by the caregiver.

e. Document in the waiver individual's record the circumstances that require the provision of services by an LPN. At the time of the LPN's service, the LPN shall also provide all of the services normally provided by an aide.

2. Payment shall not be made for services furnished by other family members or [~~live in~~] caregivers who are living under the same roof as the waiver individual receiving services unless there is objective written documentation as to why there are no other providers or aides available to provide the care. [The provider shall initially make this determination and document it fully in the waiver individual's record.]

[~~Other family members or live-in caregivers of the waiver individual who are approved to provide paid respite services shall meet the same training and physical standard requirements as those who are employed by an agency. The provider shall initially make this determination and document it fully in the waiver individual's record. DMAS shall make the final determination of the appropriateness of such family members providing these services during reviews.~~]

3. Required documentation for waiver individuals' records. The provider shall maintain all records for each waiver individual receiving respite services. These records shall be separate from those of non-home and community-based care services, such as companion or home health services. These records shall be reviewed periodically either by the DMAS staff or a contracted entity who is authorized by DMAS to review these files. At a minimum these records shall contain:

a. Forms as specified in the DMAS guidance documents;

b. All respite care LPN/aide records shall contain:

(1) The specific services delivered to the waiver individual by the LPN/aide;

(2) The respite care LPN's/aide's daily arrival and departure times;

(3) Comments or observations recorded weekly about the waiver individual. LPN/aide comments shall include, but shall not be limited to, observation of the waiver individual's physical and emotional condition, daily activities, the individual's response to services rendered, and documentation of vital signs if taken as part of the POC.

c. All respite care LPN records (DMAS-90A) shall be reviewed and signed by the supervising RN and shall contain:

[~~d.~~ (1)] The respite care LPN/aide's and [waiver] individual's or responsible family/caregiver's signatures, including the date, verifying that respite care services have been rendered during the week of service delivery as documented in the record.

[~~(1)~~ (2)] An employee of the provider shall not sign for the waiver individual unless he is a family member or unpaid caregiver of the waiver individual.

[~~(2)~~ (3)] Signatures, times, and dates shall not be placed on the respite care LPN/aide record earlier than the last day of the week in which services were provided [~~nor.~~

Nor] shall signatures be placed on the respite care LPN/aide records later than seven calendar days from the date of the last service.

H. Consumer-directed (CD) services facilitation for personal care and respite services.

1. Any services rendered by attendants prior to dates authorized by DMAS or the [~~PA/Serv~~ Srv] Auth contractor shall not be eligible for Medicaid reimbursement and shall be the responsibility of the waiver individual.

2. The CD services facilitator shall meet the following qualifications:

a. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient knowledge, skills, and abilities to perform the activities required of such providers. In addition, the CD services facilitator shall have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.

b. [It is preferred that the CD services facilitator possess, at a minimum, an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have at least two years of satisfactory experience in a human services field working with individuals who are disabled or elderly. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities described below in this subdivision H 2 b. Such knowledge, skills, and abilities must be documented on the CD services facilitator's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

(1) Knowledge of:

(a) Types of functional limitations and health problems that may occur in individuals who are elderly or individuals with disabilities, as well as strategies to reduce limitations and health problems;

(b) Physical care that may be required by individuals who are elderly or individuals with disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications that may be required by individuals who are elderly or individuals with disabilities that reduce the need for human help and improve safety;

(d) Various long-term care program requirements, including nursing facility and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care and respite services;

(e) Elderly or Disabled with Consumer-Direction Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(f) How to conduct assessments (including environmental, psychosocial, health, and functional factors) and their uses in services planning;

(g) Interviewing techniques;

(h) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving time sheets of, and firing an aide;

(i) The principles of human behavior and interpersonal relationships; and

(j) General principles of record documentation.

(2) Skills in:

(a) Negotiating with individuals, family/caregivers, and service providers;

(b) Assessing, supporting, observing, recording, and reporting behaviors;

(c) Identifying, developing, or providing services to individuals who are elderly or individuals with disabilities; and

(d) Identifying services within the established services system to meet the individual's needs.

(3) Abilities to:

(a) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(b) Demonstrate a positive regard for individuals and their families;

(c) Be persistent and remain objective;

(d) Work independently, performing position duties under general supervision;

(e) Communicate effectively orally and in writing; and

(f) Develop a rapport and communicate with individuals from diverse cultural backgrounds.

c.] If the CD services facilitator is not a RN, the CD services facilitator shall inform the waiver individual's primary health care provider that services are being provided and request consultation as needed. These contacts shall be documented in the waiver individual's record.

3. Initiation of services and service monitoring.

a. For CD services, the CD services facilitator shall make an initial comprehensive in-home visit at the primary residence of the waiver individual to collaborate with the waiver individual or family/caregiver to identify the needs, assist in the development of the POC with the

waiver individual or family/caregiver, as appropriate, and provide employer of record (EOR) [employee management] training within seven days of the initial visit. The initial comprehensive home visit shall be conducted only once upon the waiver individual's entry into CD services. If the waiver individual changes, either voluntarily or involuntarily, the CD services facilitator, the new CD services facilitator must complete a reassessment visit in lieu of an initial comprehensive visit.

b. After the initial comprehensive visit, the CD services facilitator shall continue to monitor the POC on an as-needed basis, but in no event less frequently than every 90 days for personal care, and shall conduct face-to-face meetings with the waiver individual and [may include the] family/caregiver. The CD services facilitator shall review the utilization of CD respite services, either every six months or upon the use of half of the approved respite services hours, whichever comes first, and shall conduct a face-to-face meeting with the waiver individual [~~or~~ and may include the] family/caregiver [~~, or both~~].

c. During visits with the waiver individual, the CD services facilitator shall observe, evaluate, and consult with the [~~individual or~~ individual/EOR and may include the] family/caregiver, and document the adequacy and appropriateness of CD services with regard to the waiver individual's current functioning, cognitive status, and medical and social needs. The CD services facilitator's written summary of the visit shall include, but shall not necessarily be limited to:

(1) A discussion with the waiver individual or family/caregiver/EOR concerning whether the service is adequate to meet the waiver individual's needs;

(2) Any suspected abuse, neglect, or exploitation and to whom it was reported;

(3) Any special tasks performed by the attendant and the attendant's qualifications to perform these tasks;

(4) The waiver individual's or family/caregiver's/EOR's satisfaction with the service;

(5) Any hospitalization or change in medical condition, functioning, or cognitive status; and

(6) The presence or absence of the attendant in the home during the CD services facilitator's visit.

4. DMAS, its designated contractor, or the fiscal/employer agent shall request a criminal record check and a check of the VDSS Child Protective Services Central Registry [if the waiver individual is a minor child], in accordance with 12VAC30-120-930, pertaining to the attendant on behalf of the waiver individual and report findings of these records checks to the [~~waiver individual or the family/caregiver or~~] EOR.

5. The CD services facilitator shall review copies of timesheets during the face-to-face visits to ensure that the hours approved in the POC are being provided and are not exceeded. If discrepancies are identified, the CD services facilitator shall discuss these with the waiver individual [~~, family/caregiver,~~] or EOR to resolve discrepancies and shall notify the fiscal/employer agent. The CD services facilitator shall also review the waiver individual's POC to [~~assure~~ ensure] that the waiver individual's needs are being met.

6. The CD services facilitator shall maintain records of each waiver individual that he serves. At a minimum, these records shall contain:

a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. The personal care POC [~~goals, objectives, and activities~~]. Such plans shall be reviewed by the provider every 90 days, annually, and more often as needed, and modified as appropriate. [~~Respite~~ The respite services] POC [~~goals, objectives, and activities~~ shall be included in the record and] shall be reviewed by the provider every six months or when half of the approved respite service hours have been used [whichever comes first]. For the annual review and in cases where [either] the [personal care or respite care] POC is modified, the POC shall be reviewed with the waiver individual, the family/caregiver, and EOR, as appropriate;

c. CD services facilitator's dated notes documenting any contacts with the waiver individual or family/caregiver/EOR and visits to the individual;

d. All contacts, including correspondence, made to and from the waiver individual, [~~with~~ EOR,] family/caregiver, physicians, DMAS, the designated [~~PA/Serv~~ Srv] Auth contractor, formal and informal services provider, and all other professionals related to the individual's Medicaid services or medical care;

e. All employer management training provided to the waiver individual or [~~family/caregiver/EOR~~ EOR] to include, but not necessarily be limited to (i) the individual's or [~~family/caregiver's/EOR's~~ EOR's] receipt of training on their responsibilities for the accuracy of the attendant's timesheets and (ii) the availability of the Consumer-Directed Waiver Services Employer Manual available at www.dmas.virginia.gov;

f. All documents signed by the waiver individual [~~, the family/caregiver,~~] or EOR, as appropriate, that acknowledge the responsibilities as the employer; and

g. The DMAS required forms as specified in the agency's waiver-specific guidance document.

[~~7. Waiver individuals shall not employ attendants for DMAS reimbursement for services rendered to themselves when the attendant is (i) the spouse of the waiver individual; (ii) parent (biological, adoptive, legal guardian)~~

~~or other guardian of the minor child waiver individual; or (iii) family/caregiver or caregivers/EOR who may be directing the waiver individual's care.~~

~~8.~~ 7.] Payment shall not be made for services furnished by other [~~family/caregivers/EOR~~ family members or caregivers who are] living under the same roof as the waiver individual [~~being served~~ receiving services] unless there is objective written documentation by the CD services facilitator as to why there are no other providers [or aides] available to provide the required care. [~~Other family members who are approved to provide paid attendant services shall meet the previously specified education and physical qualifications for attendants. The CD services facilitator shall make and document the determination that specific other family members can be permitted to be paid attendants. DMAS staff shall also review and make a final determination of the appropriateness of such family members to provide these services during provider reviews.~~

~~9.~~ 8.] In instances when either the waiver individual is consistently unable to hire and retain the employment of a personal care attendant to provide CD personal care or respite services such as, but not limited to, a pattern of discrepancies with the attendant's timesheets, the CD services facilitator shall make arrangements, after conferring with DMAS, to have the needed services transferred to an agency-directed services provider of the individual's choice or discuss with the waiver individual or family/caregiver/EOR, or both, other service options.

[~~10.~~ 9.] Waiver individual responsibilities.

a. The waiver individual shall be authorized for CD services and [the EOR shall] successfully complete [~~consumer/management~~ consumer/employee-management] training performed by the CD services facilitator before the individual shall be permitted to hire [~~a personal care~~ an] attendant for Medicaid reimbursement. Any services that may be rendered by an attendant prior to authorization by Medicaid shall not be eligible for reimbursement by Medicaid. Waiver individuals who are eligible for CD services shall have the capability to hire and train their own [~~personal care~~] attendants and supervise the attendants' performance. Waiver individuals [~~with cognitive impairments who are unable to manage their own care~~] may have a family/caregiver [or other designated person] serve as the EOR on their behalf. The [~~family/caregiver who serves as the~~] EOR [~~on behalf of the waiver individual~~] shall be prohibited from also being the Medicaid-reimbursed attendant for respite or personal care or the services facilitator for the waiver individual.

b. Waiver individuals shall acknowledge that they will not knowingly continue to accept CD personal care services when the service is no longer appropriate or necessary for their care needs and shall inform the services facilitator of their change in care needs. If CD services continue after services have been terminated by DMAS or the designated [~~PA/Serv~~ Srv] Auth contractor, the waiver individual shall be held liable for attendant compensation.

c. Waiver individuals shall notify the CD services facilitator of all hospitalizations or admissions, such as but not necessarily limited to, [~~to~~] any rehabilitation facility [~~or,~~] rehabilitation unit [,] or NF as CD attendant services shall not be reimbursed during such admissions. Failure to do so may result in the waiver individual being held liable for attendant compensation.

[d. Waiver individuals shall not employ attendants for DMAS reimbursement for services rendered to themselves when the attendant is the (i) spouse of the waiver individual; (ii) parent (biological, adoptive, legal guardian) or other guardian of the minor child waiver individual; or (iii) family/caregiver or caregivers/EOR who may be directing the waiver individual's care.]

I. Personal emergency response systems. In addition to meeting the general conditions and requirements for home and community-based waiver participating providers as specified in 12VAC30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider shall be either, but not necessarily limited to, a personal care agency, a durable medical equipment provider, a licensed home health provider, or a PERS manufacturer. All such providers shall have the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider shall provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year, as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider shall comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider shall have the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the waiver individual's notification of a malfunction of the console unit, activating devices, or medication monitoring unit and shall provide temporary equipment, as may be necessary for the waiver individual's health, safety, and welfare, while the original equipment is being repaired [or replaced];

5. The PERS provider shall install, consistent with the manufacturer's instructions, all PERS equipment into a waiver individual's functioning telephone line or system within seven days of the request of such installation unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider shall furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider shall test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit shall have priority over the telephone connected to the console unit should the telephone be off the hook or in use when the unit is activated;

7. A PERS provider shall maintain a data record for each waiver individual at no additional cost to DMAS or the waiver individual. The record shall document all of the following:

a. Delivery date and installation date of the PERS equipment;

b. Waiver [~~individual/caregiver/EOR~~ individual/caregiver] signature verifying receipt of the PERS equipment;

c. Verification by a test that the PERS device is operational and the waiver individual is still using it monthly or more frequently as needed;

d. Waiver individual contact information, to be updated annually or more frequently as needed, as provided by the individual or the individual's caregiver/EOR;

e. A case log documenting the waiver individual's utilization of the system, all contacts, and all communications with the individual, caregiver/EOR, and responders;

f. Documentation that the waiver individual is able to use the PERS equipment through return demonstration; and

g. Copies of all equipment checks performed on the PERS unit;

8. The PERS provider shall have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. The emergency response activator shall be capable of being activated either by breath, touch, or some other means and shall be usable by waiver individuals who are visually or hearing impaired or physically disabled. The emergency response communicator shall be capable of operating without external power during a power failure at the waiver individual's home for a minimum period of 24 hours. The emergency response console unit shall also be able to self-disconnect and redial the backup monitoring site without the waiver individual resetting the system in the event it cannot get its signal accepted at the response center;

10. PERS providers shall be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It shall be the PERS provider's responsibility to ensure that the monitoring agency and the monitoring agency's equipment meets the following requirements. The PERS provider shall be capable of simultaneously responding to multiple signals for help from the waiver individuals' PERS equipment. The PERS provider's equipment shall include the following:

a. A primary receiver and a backup receiver, which shall be independent and interchangeable;

b. A backup information retrieval system;

c. A clock printer, which shall print out the time and date of the emergency signal, the waiver individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

d. A backup power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or backup response center; and

g. A telephone line monitor, which shall give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

11. The PERS provider shall maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

12. The PERS provider shall document and furnish within 30 days of the action taken, a written report for each emergency signal that results in action being taken on behalf of the waiver individual. This excludes test signals or activations made in error. This written report shall be furnished to (i) the personal care provider; (ii) the respite care provider; (iii) the CD services facilitation provider; (iv) in cases where the individual only receives ADHC services, to the ADCC provider; or (v) to the transition coordinator for the service in which the individual is enrolled; and

13. The PERS provider shall obtain and keep on file a copy of the most recently completed DMAS-225 form. Until the PERS provider obtains a copy of the DMAS-225 form, the PERS provider shall clearly document efforts to obtain the completed DMAS-225 form from the personal care provider, respite care provider, CD services facilitation provider, or ADCC provider.

J. Assistive technology (AT) and environmental modification (EM) services. AT and EM shall be provided only to waiver individuals who also participate in the MFP demonstration program by providers who have current

provider participation agreements with DMAS. [~~AT shall be provided consistent with the limits contained in 12VAC30-120-762. EM shall be provided consistent with the limits contained in 12VAC30-120-758.~~]

1. AT shall be rendered by providers having a current provider participation agreement with DMAS as durable medical equipment and supply providers. An independent, professional consultation shall be obtained, as may be required, from qualified professionals who are knowledgeable of that item for each AT request prior to approval by either DMAS or the [~~PA/Serv Auth agent~~ Srv Auth contractor] and may include training on such AT by the qualified professional. Independent, professional consultants shall include, but shall not necessarily be limited to, speech/language therapists, physical therapists, occupational therapists, physicians, behavioral therapists, certified rehabilitation specialists, or rehabilitation engineers. Providers that supply AT for a waiver individual may not perform assessment/consultation, write specifications, or inspect the AT for that individual. Providers of services shall not be (i) spouses of the waiver individual or (ii) parents (biological, adoptive, foster, or legal guardian) of the waiver individual. AT shall be delivered within [~~a year~~ 60 days] from the start date of the authorization. [The AT provider shall ensure that the AT functions properly.]

2. In addition to meeting the general conditions and requirements for home and community-based waiver services participating providers as specified in 12VAC30-120-930, as appropriate, environmental modifications shall be provided in accordance with all applicable state or local building codes by contractors who have [~~a~~] provider [~~agreement~~ agreements] with DMAS. Providers of services shall not be (i) [~~spouses~~ the spouse] of the waiver individual or (ii) the parent (biological, adoptive, foster, or legal guardian) of the waiver individual [who is a minor child]. Modifications shall be completed within a year of the start date of the authorization.

3. Providers of AT and EM services shall not be permitted to recover equipment that has been provided to waiver individuals whenever the provider has been charged, by either DMAS or its designated service authorization agent, with overpayments and is therefore being required to return payments to DMAS.

K. Transition coordination. This service shall be provided consistent with 12VAC30-120-2000 and 12VAC30-120-2010.

L. Transition services. This service shall be provided consistent with 12VAC30-120-2000 and 12VAC30-120-2010.

12VAC30-120-940. ~~Adult day health care services.~~ (Repealed.)

~~A. This section contains specific requirements governing the provision of adult day health care (ADHC).~~

~~B. Adult day health care services may be offered to individuals in an ADHC setting. Adult day health care may be offered either as the sole home and community-based care service or in conjunction with personal care (agency or consumer directed), respite care (agency or consumer directed), or PERS.~~

~~C. Special provider participation conditions. In order to be a participating provider, the adult day health care center shall:~~

~~1. Be an adult day care center licensed by DSS. A copy of the current license shall be available to DMAS for verification purposes prior to the applicant's enrollment as a Medicaid provider and shall be available for DMAS review;~~

~~2. Adhere to DSS adult day health care center standards;~~

~~3. Adhere to and meet the following DMAS special participation standards that are imposed in addition to DSS standards:~~

~~a. Provide a separate room or an area equipped with one bed, cot, or recliner for every 12 Medicaid adult day health care participants;~~

~~b. Employ sufficient interdisciplinary staff to adequately meet the health, maintenance, and safety needs of each participant;~~

~~c. Maintain a minimum staff to participant ratio of at least one staff member to every six participants. This includes Medicaid and other participants;~~

~~d. Provide at least two staff members awake and on duty at the ADHC at all times when there are Medicaid participants in attendance;~~

~~e. In the absence of the director, designate the activities director, registered nurse, or therapist to supervise the program;~~

~~f. May include volunteers in the staff-to-participant ratio if these volunteers meet the qualifications and training requirements for compensated employees, and, for each volunteer so counted, include at least one compensated employee in the staff-to-participant ratio;~~

~~g. For any center that is co-located with another facility, count only its own separate identifiable staff in the center's staff-to-participant ratio; and~~

~~h. Employ the following:~~

~~(1) A director who shall be responsible for overall management of the center's programs. The director shall be the provider contact person for DMAS and the designated preauthorization contractor and shall be responsible for responding to communication from DMAS and the designated preauthorization contractor.~~

~~(a) The director shall be responsible for assuring the development of the plan of care for adult day health care individuals. The director has ultimate responsibility for directing the center program and supervision of its~~

employees. The director can also serve as the activities director if they meet the qualifications for that position.

(b) The director shall assign himself, the activities director, registered nurse or therapist to act as adult day health care coordinator for each participant and shall document in the participant's file the identity of the care coordinator. The adult day health care coordinator shall be responsible for management of the participant's plan of care and for its review with the program aides.

(c) The director shall meet the qualifications specified in the DSS standards for adult day health care for directors.

(2) An activities director who shall be responsible for directing recreational and social activities for the adult day health care participants. The activities director shall:

(a) Have a minimum of 48 semester hours or 72 quarter hours of postsecondary education from an accredited college or university with a major in recreational therapy, occupational therapy, or a related field such as art, music, or physical education; and

(b) Have one year of related experience, which may include work in an acute care hospital, rehabilitation hospital, nursing facility, or have completed a course of study including any prescribed internship in occupational, physical, and recreational therapy or music, dance, art therapy, or physical education.

(3) Program aides who shall be responsible for overall care and maintenance of the participant (assistance with activities of daily living, social/recreational activities, and other health and therapeutic related activities). Each program aide hired by the provider shall be screened to ensure compliance with qualifications required by DMAS. The aide shall, at a minimum, have the following qualifications:

(a) Be at least 10 years of age or older;

(b) Be able to read and write in English to the degree necessary to perform the tasks expected;

(c) Be physically able to do the work;

(d) Have satisfactorily completed an educational curriculum related to the needs of the elderly and disabled. Acceptable curriculums are offered by educational institutions, nursing facilities, and hospitals. Training consistent with DMAS training guidelines may also be given by the center's professional staff. Curriculum titles include: Nurses Aide, Geriatric Nursing Assistant, and Home Health Aide. Documentation of successful completion shall be maintained in the aide's personnel file and be available for review by DMAS staff who are authorized by DMAS to review these files. Prior to assigning a program aide to a participant, the ADHC shall ensure that the aide has satisfactorily completed a DMAS-approved training program.

(4) A registered nurse (RN) employed or contracted with the center who shall be responsible for administering to and monitoring the health needs of the participants. The nurse shall be responsible for the planning and implementation of the plan of care involving multiple services where specialized health care knowledge is needed. The nurse shall be present a minimum of eight hours each month at the center. DMAS may require the nurse's presence at the adult day health care center for more than this minimum standard depending on the number of participants in attendance and according to the medical and nursing needs of the participants. Although DMAS does not require that the registered nurse be a full-time staff position, there shall be a registered nurse available, either in person or by telephone, to the center's participants and staff during all times that the center is in operation. The registered nurse shall:

(a) Be registered and licensed as a registered nurse to practice nursing in the Commonwealth; and

(b) Have two years of related clinical experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN.

D. Service responsibilities of the adult day health care center and staff shall be:

1. Aide responsibilities. The aide shall be responsible for assisting with activities of daily living, supervising the participant, and assisting with the management of the participant's plan of care.

2. RN responsibilities. The RN shall be responsible for:

a. Providing periodic evaluation of the nursing needs of each participant;

b. Providing the indicated nursing care and treatment; and

c. Monitoring, recording, and administering of prescribed medications or supervising the participant in self-administered medication.

3. Rehabilitation services coordination responsibilities. These services are designed to ensure the participant receives all rehabilitative services deemed necessary to improve or maintain independent functioning, to include the coordination and implementation of physical therapy, occupational therapy, and speech language therapy. Rendering of the specific rehabilitative therapy is not included in the center's fee for services but must be rendered as a separate service by a rehabilitative provider.

4. Nutrition responsibilities. The center shall provide one meal per day that supplies one-third of the daily nutritional requirements established by the U.S. Department of Agriculture. Special diets and counseling shall be provided to Medicaid participants as necessary.

5. Adult day health care coordination. The designated adult day health care coordinator shall coordinate the delivery of the activities as prescribed in the participants' plans of care and keep them updated, record 30-day progress notes, and

~~review the participants' daily records each week. If the individual's condition changes more frequently, more frequent reviews and recording of progress notes shall be required to reflect the participant's changing condition.~~

~~6. Recreation and social activities responsibilities. The center shall provide planned recreational and social activities suited to the individuals' needs and designed to encourage physical exercise, prevent deterioration of the individual's condition, and stimulate social interaction.~~

~~E. Documentation required. The ADHC shall maintain all records of each Medicaid participant. These records shall be reviewed periodically by DMAS staff who are authorized by DMAS to review these files. At a minimum, these records shall contain:~~

~~1. The Long Term Care Uniform Assessment Instrument, the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care for Medicaid Funded Long Term Care form (DMAS-97), the DMAS-101A and the DMAS-101B forms (if applicable), and the most recent patient information from the DMAS-122 form;~~

~~2. Interdisciplinary plans of care developed by the ADHC's director, registered nurse, or therapist and relevant support persons, in conjunction with the participant;~~

~~3. Documentation of interdisciplinary staff meetings that shall be held at least every three months to reassess each participant and evaluate the adequacy of the adult day health care plan of care and make any necessary revisions;~~

~~4. At a minimum, 30 day goal oriented progress notes recorded by the designated adult day health care coordinator. If a participant's condition and treatment plan changes more often, progress notes shall be written more frequently than every 30 days;~~

~~5. The rehabilitative progress report and updated treatment plan from all professional disciplines involved in the participant's care obtained every 30 days (physical therapy, speech therapy, occupational therapy, home health, and others);~~

~~6. Daily records of services provided. The daily record shall contain the specific services delivered by ADHC staff. The record shall also contain the arrival and departure times of the participant and be signed weekly by the director, activities director, registered nurse, or therapist employed by the center. The daily record shall be completed on a daily basis, neither before nor after the date of services delivery. At least once a week, a staff member shall chart significant comments regarding care given to the participant. If the staff member writing comments is different from the staff signing the weekly record, that staff member shall sign the weekly comments. A copy of this record must be given to the participant or family/caregiver weekly; and~~

~~7. All correspondence to the individual, DMAS, and the designated preauthorization contractor.~~

12VAC30-120-945. Payment for covered services.

A. DMAS shall not reimburse providers, either agency-directed or consumer-directed, for any staff training required by these waiver regulations or any other training that may be required.

B. All services provided in the EDCD Waiver shall be reimbursed at a rate established by DMAS in its agency fee schedule.

1. DMAS shall reimburse a per diem fee for ADHC services that shall be considered as payment in full for all services rendered to that waiver individual as part of the individual's approved ADHC plan of care.

2. Agency personal care/respite care services shall be reimbursed on an hourly basis consistent with the agency's fee schedule.

3. Consumer-directed personal care/respite care services shall be reimbursed on an hourly basis consistent with the agency's fee schedule.

4. Transition services. The total costs of these transition services shall be limited to $5,000 per waiver individual per lifetime and shall be expended within nine months from the [start] date of authorization.

5. Reimbursement for assistive technology (AT) and environmental modification (EM) services shall be limited to those waiver individuals who are also [~~receiving transition coordination services and shall be limited as follows~~ participating in the MFP demonstration program]:

a. All AT services provided in the EDCD Waiver shall be reimbursed as a service limit of one. AT services in this waiver shall be reimbursed up to a per individual annual MFP enrollment period not to exceed 12 months [~~pursuant to 12VAC30-120-762~~]. These limits shall apply regardless of whether the waiver individual remains in this waiver or changes to another waiver program.

b. All EM services provided in the EDCD Waiver shall be reimbursed [~~pursuant to 12VAC30-120-758~~] per individual annual MFP enrollment period not to exceed 12 months [~~regardless of waiver year as long as such services are not duplicative~~]. All EM services shall be reimbursed at the actual cost of material and labor and no mark ups shall be permitted.

[~~c. Providers of all EDCD Waiver AT and EM services shall not be permitted to recover any equipment that has been provided to waiver individuals subsequent to provider audits in which DMAS or its designated contractor has recovered payments made to providers.~~]

6. DMAS shall reimburse a monthly fee for transition coordination consistent with the agency's fee schedule.

7. PERS monthly fee payments shall be consistent with the agency's fee schedule.

C. Duplication of services.

1. DMAS shall not duplicate services that are required as a reasonable accommodation as a part of the American with Disabilities Act (42 USC §§ 12131 through 12165), the Rehabilitation Act of 1973 [(29 USC § 794)], or the Virginians with Disabilities Act [(§ 51.5-1 et seq. of the Code of Virginia)].

2. Payment for waiver services shall not duplicate payments made to public agencies or private entities under other program authorities for this same purpose. All private insurance benefits for these waiver covered services shall be exhausted before Medicaid reimbursement can occur as Medicaid shall be the payer of last resort.

3. DMAS payments for EM services shall not be duplicative in homes where multiple waiver individuals reside. [~~For example, one waiver individual may be approved for required medically necessary bathroom modifications while a second waiver individual in the same household would be approved for a medically necessary access ramp but not additional improvements to the same bathroom.~~]

12VAC30-120-950. ~~Agency directed personal care services.~~ (Repealed.)

~~A. This section contains requirements governing the provision of agency directed personal care services.~~

~~B. Service description. Personal care services are comprised of hands on care of either a supportive or health based nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460. It may be provided in a home and community setting to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities. Personal care may be offered either as the sole home and community based care service or in conjunction with adult day health care, respite care (agency or consumer directed), or PERS.~~

~~1. Effective July 1, 2011, agency directed personal care services shall be limited to 56 hours of services per week for 52 weeks per year.~~

~~2. Individual exceptions may be granted based on criteria established by DMAS.~~

~~C. Criteria. In order to qualify for these services, the individual must demonstrate a need for care with activities of daily living.~~

~~1. DMAS will also pay, consistent with the approved plan of care, for personal care that the personal care aide provides to the enrolled individual to assist him at work or postsecondary school. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973.~~

~~2. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.~~

~~3. DMAS will not pay for the personal care aide to assist the enrolled individual with any functions related to the individual completing his job or postsecondary school functions or for supervision time during work or school or both.~~

~~4. There shall be a limit of eight hours per 24 hour day for supervision services.~~

~~5. The provider must develop an individualized plan of care that addresses the individual's needs at home and work and in the community.~~

~~D. Special provider participation conditions. The personal care provider shall:~~

~~1. Operate from a business office.~~

~~2. Employ persons who have a satisfactory work record, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by DMAS to review these files.~~

~~3. Hire employees (or contract with) and directly supervise a registered nurse who will provide ongoing supervision of all personal care aides.~~

~~a. The registered nurse shall be currently licensed to practice in the Commonwealth as an RN and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as a licensed practical nurse (LPN).~~

~~b. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for all individuals admitted to personal care, when an individual is readmitted after being discharged from services, or if he is transferred from another provider, ADHC, or from a consumer directed services program.~~

c. The registered nurse supervisor shall make supervisory visits as often as needed, but no fewer visits than provided as follows, to ensure both quality and appropriateness of services:

(1) A minimum frequency of these visits is every 30 days for individuals with a cognitive impairment and every 90 days for individuals who do not have a cognitive impairment, as defined herein. The provider agency shall have the responsibility of determining if 30 day registered nurse supervisory visits are appropriate for the individual.

(2) The initial home assessment visit by the registered nurse shall be conducted to create the plan of care and assess the individual's needs. The registered nurse shall return for a follow up visit within 30 days after the initial visit to assess the individual's needs and make a final determination that there is no cognitive impairment. This determination must be documented in the individual's record by the registered nurse. Individuals who are determined to have a cognitive impairment will continue to have supervisory visits every 30 days.

(3) If there is no cognitive impairment, the registered nurse may give the individual or family/caregiver the option of having the supervisory visit every 90 days or any increment in between, not to exceed 90 days, or the provider may choose to continue the 30 day supervisory visits based on the needs of the individual. The registered nurse supervisor must document in the individual's record this conversation and the option that was chosen. The individual or the family/caregiver must sign and date this document.

(4) If an individual's personal care aide is supervised by the provider's registered nurse supervisor less frequently than every 30 days and DMAS, or the designated preauthorization contractor, determines that the individual's health, safety, or welfare is in jeopardy, DMAS, or the designated preauthorization contractor, may require the provider's registered nurse supervisor to supervise the personal care aide every 30 days or more frequently than has been determined by the registered nurse supervisor. This will be documented by the provider and entered in the individual's record.

d. During visits to the individual's home, a registered nurse supervisor shall observe, evaluate, and document the adequacy and appropriateness of personal care services with regard to the individual's current functioning status, and medical and social needs. The personal care aide's record shall be reviewed and the individual's or family's/caregiver's satisfaction with the type and amount of services discussed. The registered nurse supervisor's summary shall note:

(1) Whether personal care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes are indicated in the plan;

(3) Any special tasks performed by the personal care aide and the personal care aide's qualifications to perform these tasks;

(4) The individual's satisfaction with the services;

(5) Whether the individual has been hospitalized or there has been a change in the medical condition or functional status of the individual;

(6) Other services received by the individual and the amount; and

(7) The presence or absence of the personal care aide in the home during the registered nurse supervisor's visit.

e. A registered nurse supervisor shall be available to the personal care aide for conferences pertaining to individuals being served by the aide and shall be available to the aide by telephone at all times that the aide is providing services to individuals.

f. The registered nurse supervisor shall evaluate the personal care aide's performance and the individual's needs to identify any insufficiencies in the personal care aide's abilities to function competently and shall provide training as indicated. This shall be documented in the individual's record.

g. If there is a delay in the registered nurses' supervisory visits because the individual was unavailable, the reason for the delay must be documented in the individual's record.

4. Employ and directly supervise personal care aides who provide direct care to individuals. Each aide hired for personal care shall be evaluated by the provider agency to ensure compliance with qualifications required by DMAS. Each personal care aide shall:

a. Be at least 18 years of age or older;

b. Be able to read and write in English to the degree necessary to perform the expected tasks;

c. Complete a minimum of 40 hours of training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider agency shall ensure that the personal care aide has satisfactorily completed a DMAS approved training program consistent with DMAS standards;

d. Be physically able to do the work; and

e. Not be (i) the parents of minor children who are receiving waiver services or (ii) spouses of individuals who are receiving waiver services.

Payment may be made for services furnished by other family members when there is objective written documentation as to why there are no other providers or aides available to provide the care. These family members must meet the same requirements as personal care aides who are not family members.

E. Required documentation for individuals' records. The provider shall maintain all records for each individual receiving personal care services. These records shall be separate from those of nonhome and community based care services, such as companion or home health services. These records shall be reviewed periodically by DMAS. At a minimum, the record shall contain:

1. The most recently updated Long Term Care Uniform Assessment Instrument, the Medicaid Funded Long Term Care Service Authorization Form (DMAS 96), the Screening Team Plan of Care for Medicaid Funded Long Term Care (DMAS 97), all Provider Agency Plans of Care (DMAS 97A), all Patient Information Forms (DMAS 122), and all DMAS 101A and 101B forms (if applicable);

2. The initial assessment by a registered nurse or a RN supervisor completed prior to or on the date that services are initiated;

3. Registered nurse supervisor's notes recorded and dated during significant contacts with the personal care aide and during supervisory visits to the individual's home;

4. All correspondence to the individual, DMAS, and the designated preauthorization contractor;

5. Reassessments made during the provision of services;

6. Significant contacts made with family/caregivers, physicians, DMAS, the designated preauthorization contractor, formal, informal services providers and all professionals related to the individual's Medicaid services or medical care;

7. All personal care aides' records (DMAS 90). The personal care aide record shall contain:

a. The specific services delivered to the individual by the aide and his responses to this service;

b. The personal care aide's daily arrival and departure times;

c. The aide's weekly comments or observations about the individual, including observations of the individual's physical and emotional condition, daily activities, and responses to services rendered; and

d. The personal care aide's and individual's or responsible caregiver's weekly signatures, including the date, to verify that personal care services have been rendered during that week as documented in the record. An employee of the provider cannot sign for the individual unless he is a family/caregiver of the individual. This family member cannot be the same family member who is providing the service. Signatures, times and dates shall not be placed on the personal care aide record prior to the last date that the services are actually delivered; and

8. All of the individual's progress reports.

12VAC30-120-960. ~~Agency directed respite care services.~~ (Repealed.)

A. This section contains requirements governing the provision of agency directed respite care services.

B. Agency directed respite care services are comprised of hands on care of either a supportive or health related nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self administration of medications or other medical needs, monitoring health status and physical condition, and personal care services provided in a work environment. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.

C. General. Respite care may only be offered to individuals who have a primary caregiver who requires temporary relief to avoid institutionalization of the individual. Respite care services may be provided in the individual's home or place of residence, or a facility licensed as a nursing facility and enrolled in Medicaid. The authorization of respite care (agency directed and consumer directed) is limited to a total of 480 hours per year per individual effective July 1, 2011. Reimbursement shall be made on an hourly basis.

D. Special provider participation conditions. To be approved as a respite care provider with DMAS, the respite care provider shall:

1. Operate from a business office.

2. Have employees who have satisfactory work records, as evidenced by references from prior job experience, including no evidence of abuse, neglect, or exploitation of incapacitated or older adults and children. Providers are responsible for complying with § 32.1-162.9:1 of the Code of Virginia regarding criminal record checks. The criminal record check shall be available for review by DMAS staff who are authorized by the agency to review these files. DMAS will not reimburse the provider for any services provided by an employee who has committed a barrier crime.

3. Employ (or contract with) and directly supervise a registered nurse who will provide ongoing supervision of all respite care aides/LPNs.

a. The registered nurse supervisor shall be currently licensed to practice in the Commonwealth as an RN and have at least two years of related clinical nursing experience, which may include work in an acute care hospital, public health clinic, home health agency, rehabilitation hospital, nursing facility, or as an LPN.

b. Based on continuing evaluations of the aide's/LPN's performance and the individual's needs, the registered

nurse supervisor shall identify any insufficiencies in the aide's/LPN's abilities to function competently and shall provide training as indicated.

c. The registered nurse supervisor shall make an initial home assessment visit on or before the start of care for any individual admitted to respite care.

d. A registered nurse supervisor shall make supervisory visits as often as needed to ensure both quality and appropriateness of services.

(1) When respite care services are received on a routine basis, the minimum acceptable frequency of these supervisory visits shall be every 30 to 90 days dependent on the cognitive status of the individual. If an individual is also receiving personal care services, the respite care RN supervisory visit may coincide with the personal care RN supervisory visits.

(2) When respite care services are not received on a routine basis, but are episodic in nature, a registered nurse supervisor shall not be required to conduct a supervisory visit every 30 to 90 days. Instead, a registered nurse supervisor shall conduct the initial home assessment visit with the aide/LPN on or before the start of care and make a second home visit during the second respite care visit. If an individual is also receiving personal care services, the respite care RN supervisory visit may coincide with the personal care RN supervisory visit.

(3) When respite care services are routine in nature and offered in conjunction with personal care, the RN supervisory visit conducted for personal care services may serve as the registered nurse supervisory visit for respite care. However, the registered nurse supervisor shall document supervision of respite care separately from the personal care documentation. For this purpose, the same individual record can be used with a separate section for respite care documentation.

e. During visits to the individual's home, the registered nurse supervisor shall observe, evaluate, and document the adequacy and appropriateness of respite care services with regard to the individual's current functioning status and medical and social needs. The aide's/LPN's record shall be reviewed along with the individual's or family's satisfaction with the type and amount of services discussed. The registered nurse supervisor shall document in a summary note:

(1) Whether respite care services continue to be appropriate;

(2) Whether the plan of care is adequate to meet the individual's needs or if changes need to be made to the plan of care;

(3) The individual's satisfaction with the services;

(4) Any hospitalization or change in the medical condition or functioning status of the individual;

(5) Other services received by the individual and the amount of the services received; and

(6) The presence or absence of the aide/LPN in the home during the RN supervisory visit.

f. An RN supervisor shall be available to the aide/LPN for conference pertaining to individuals being served by the aide/LPN and shall be available to the aide/LPN by telephone at all times that the aide/LPN is providing services to respite care individuals.

g. If there is a delay in the registered nurse's supervisory visits because the individual is unavailable, the reason for the delay must be documented in the individual's record.

4. Employ and directly supervise aides/LPNs who provide direct care to respite care individuals. Each aide/LPN hired by the provider shall be evaluated by the provider to ensure compliance with qualifications as required by DMAS. Each aide must:

a. Be at least 18 years of age or older;

b. Be physically able to do the work;

c. Be able to read and write in English to the degree necessary to perform the tasks expected;

d. Have completed a minimum of 40 hours of DMAS-approved training consistent with DMAS standards. Prior to assigning an aide to an individual, the provider shall ensure that the aide has satisfactorily completed a training program consistent with DMAS standards; and

e. Be evaluated in his job performance by the registered nurse supervisor.

Respite care aides may not be the parents of minor children who are receiving waiver services or spouses of individuals who are receiving waiver services. Payment may not be made for services furnished by other family members living under the same roof as the individual receiving services unless there is objective written documentation as to why there are no other providers or aides available to provide the care. Family members who are approved to provide paid respite services must meet the qualifications for respite care aides.

5. Employ a licensed practical nurse (LPN) to perform skilled respite care services. Such services shall be reimbursed by DMAS under the following circumstances:

a. The individual has a need for routine skilled care that cannot be provided by unlicensed personnel. These individuals would typically require a skilled level of care if in a nursing facility (e.g., individuals on a ventilator, individuals requiring nasogastric or gastrostomy feedings, etc.);

b. No other individual in the individual's support system is willing and able to supply the skilled component of the individual's care during the caregiver's absence; and

c. The individual is unable to receive skilled nursing visits from any other source that could provide the skilled care usually given by the caregiver.

The provider must document in the individual's record the circumstances that require the provision of services by an LPN. When an LPN is required, the LPN must also provide any of the services normally provided by an aide.

E. Required documentation for individuals' records. The provider shall maintain all records of each individual receiving respite services. These records shall be separated from those of nonhome and community based care services, such as companion or home health services. These records shall be reviewed periodically by the DMAS staff who are authorized by DMAS to review these files. At a minimum these records shall contain:

1. The most recently updated Long-Term Care Uniform Assessment Instrument, the Medicaid Funded Long Term Care Service Authorization Form (DMAS 96), the Screening Team Plan of Care for Medicaid Funded Long-Term Care (DMAS 97), all respite care assessments and plans of care, all aide records (DMAS 90), all LPN skilled respite records (DMAS-90A), all Patient Information Forms (DMAS 122), and all DMAS 101A and DMAS 101B forms, as applicable;

2. The physician's order for services, obtained prior to the service begin date and updated every six months;

3. The initial assessment by a registered nurse completed prior to or on the date services are initiated;

4. Registered nurse supervisor's notes recorded and dated during significant contacts with the care aide and during supervisory visits to the individual's home;

5. All correspondence to the recipient, DMAS, and the designated preauthorization contractor;

6. Reassessments made during the provision of services;

7. Significant contacts made with family, physicians, DMAS, the designated preauthorization contractor, formal and informal services providers, and all professionals related to the individual's Medicaid services or medical care; and

8. All respite care records. The respite care record shall contain:

a. The specific services delivered to the individual by the aide or LPN and his response to this service;

b. The daily arrival and departure times of the aide or LPN for respite care services;

c. Comments or observations recorded weekly about the individual. Aide or LPN comments shall include but not be limited to observation of the individual's physical and emotional condition, daily activities, and the individual's response to services rendered;

d. The signatures of the aide or LPN, and the individual, once each week to verify that respite care services have been rendered. Signature, times, and dates shall not be placed on the aide's record prior to the last date of the week that the services are delivered. If the individual is unable to sign the aide record, it must be documented in his record how or who will sign in his place. An employee of the provider shall not sign for the individual unless he is a family member or legal guardian of the recipient; and

e. All individual progress reports.

Documentation signed by the LPN must be reviewed and signed by the supervising RN.

12VAC30-120-970. ~~Personal emergency response system (PERS).~~ (Repealed.)

A. Service description. PERS is a service that monitors individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line. PERS may also include medication monitoring devices.

B. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for digital alarm communicator system units and Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the recipient.

C. Criteria. PERS services are limited to those individuals ages 14 and older who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care (agency or consumer directed), respite (agency or consumer directed), or adult day health care. An individual may not receive PERS if he has a cognitive impairment as defined in 12VAC30-120-900.

1. PERS can be authorized when there is no one else, other than the individual, in the home who is competent and continuously available to call for help in an emergency. If the individual's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the individual is evaluated as being dependent in the categories of "Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

2. Medication monitoring units must be physician ordered. In order to receive medication monitoring services, an individual must also receive PERS services. The physician orders must be maintained in the individual's file.

D. Services units and services limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, adjustments, and monitoring of the PERS. A unit of service equals the one month rental of PERS, the price of which is set by DMAS. The one-time installation of the unit includes installation, account activation, and individual and caregiver instruction. The one time installation fee shall also include the cost of the removal of the PERS equipment.

2. PERS service must be capable of being activated by a remote wireless device and be connected to the individual's telephone line. The PERS console unit must provide hands free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

3. In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days. There must be documentation of this in the individual's record.

E. Provider requirements. In addition to meeting the general conditions and requirements for home and community based waiver participating providers as specified in 12VAC30-120-80, 12VAC30-120-160, and 12VAC30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider must be either a personal care agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer. All such providers shall have the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication monitoring unit and shall provide temporary equipment while the original equipment is being repaired;

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the telephone be off the hook or in use when the unit is activated;

7. A PERS provider must maintain a data record for each PERS individual at no additional cost to DMAS or the individual. The record must document all of the following:

a. Delivery date and installation date of the PERS;

b. Individual/caregiver signature verifying receipt of the PERS device;

c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;

d. Updated and current individual responder and contact information, as provided by the individual or the individual's caregiver; and

e. A case log documenting the individual's utilization of the system, all contacts, and all communications with the individual, caregiver, and responders;

8. The PERS provider must have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) Safety Standard Number 1635 for digital alarm communicator system units and Safety Standard Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring a manual reset by the individual;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the services, allow for ongoing evaluation and refinement of the program, and instruct the individual, caregiver, and responders in the use of the PERS services;

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and

must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the backup battery is low. The emergency response console unit must also be able to self disconnect and redial the backup monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center;

12. PERS providers must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the monitoring agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to multiple signals for help from individuals' PERS equipment. The PERS provider's equipment must include the following:

a. A primary receiver and a backup receiver, which must be independent and interchangeable;

b. A backup information retrieval system;

c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;

d. A backup power supply;

e. A separate telephone service;

f. A toll-free number to be used by the PERS equipment in order to contact the primary or backup response center; and

g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

13. The PERS provider must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

14. The PERS provider shall document and furnish within 30 days of the action taken a written report for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, the CD services facilitation provider, the transition coordinator, case manager, as appropriate to the waiver in which the individual is enrolled or, in cases where the individual only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid individuals; and

16. The PERS provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the PERS provider obtains a copy of the DMAS-122 form, the PERS provider must clearly document efforts to obtain the completed DMAS-122 form from the personal care provider, respite care provider, the CD services facilitation provider, the transition coordinator, the case manager, or the ADHC provider, as appropriate to the waiver in which the individual is enrolled.

12VAC30-120-980. ~~Consumer-directed services: personal care and respite services.~~ (Repealed.)

~~A. Service description.~~

~~1. Consumer-directed personal care services and respite care services are comprised of hands-on care of either a supportive or health-related nature and may include, but are not limited to, assistance with activities of daily living, access to the community, monitoring of self-administration of medications or other medical needs, monitoring health status and physical condition, and personal care services provided in a work environment. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. This service does not include skilled nursing services with the exception of skilled nursing tasks (e.g., catheterization) that may be delegated pursuant to 18VAC90-20-420 through 18VAC90-20-460.~~

~~2. Consumer-directed respite services are specifically designed to provide temporary, periodic, or routine relief to the unpaid primary caregiver of an individual. This service may be provided in the individual's home or other community settings.~~

~~3. DMAS shall either provide for fiscal agent services or contract for the services of a fiscal agent for consumer-directed services. The fiscal agent will be reimbursed by DMAS (if the service is contracted) to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.~~

~~4. Individuals choosing consumer-directed services must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed services. The CD services facilitator is responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the plan of care, providing training to the individual and family/caregiver on his responsibilities as an employer, and~~

providing ongoing support of the consumer-directed services. The CD services facilitator cannot be the individual, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver employing the aide.

B. Criteria.

1. In order to qualify for consumer-directed personal care services, the individual must demonstrate a need for personal care services as defined in 12VAC30-120-900.

2. Consumer-directed respite services may only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid primary caregiver for temporary relief and to help prevent the breakdown of the unpaid primary caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

3. DMAS will also pay, consistent with the approved plan of care, for personal care that the personal care aide provides to the enrolled individual to assist him at work or postsecondary school. DMAS will not duplicate services that are required as a reasonable accommodation as a part of the Americans with Disabilities Act (ADA) (42 USC §§ 12131 through 12165) or the Rehabilitation Act of 1973.

a. DMAS or the designated preauthorization contractor will review the individual's needs and the complexity of the disability, as applicable, when determining the services that will be provided to him in the workplace or postsecondary school or both.

b. DMAS will not pay for the personal care aide to assist the enrolled individual with any functions related to the individual completing his job or postsecondary school functions or for supervision time during work or school or both.

4. Individuals who are eligible for consumer-directed services must have, or have a family/caregiver who has, the capability to hire and train their own personal care aides and supervise the aide's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

5. The individual, or if the individual is unable, a family/caregiver, shall be the employer of consumer-directed services and, therefore, shall be responsible for hiring, training, supervising, and firing personal care aides. Specific employer duties include checking references of personal care aides, determining that personal care aides meet basic qualifications, and maintaining copies of timesheets to have available for review by the CD services facilitator and the fiscal agent on a consistent and timely basis. The individual or family/caregiver must have a backup plan for the provision of services in case the aide does not show up for work as expected or terminates employment without prior notice.

C. Service units and limitations.

1. The unit of services for consumer-directed respite services is one hour. Effective July 1, 2011, consumer-directed respite services are limited to a maximum of 480 hours per year. Individuals who receive consumer-directed respite services, agency-directed respite services or facility-based respite services, or both, may not receive more than 480 hours combined, regardless of service delivery method.

2. The unit of service for consumer-directed personal care services is one hour. Effective July 1, 2011, these personal care services shall be limited to 56 hours per week for 52 weeks per year. Individual exceptions may be granted based on criteria established by DMAS.

D. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based services participating providers as specified in 12VAC30-120-930, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to fully and accurately document the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess, at a minimum, an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have at least two years of satisfactory experience in a human services field working with individuals who are disabled or elderly. The CD services facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the CD services facilitator's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that may occur in individuals who are elderly or individuals with disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical care that may be required by individuals who are elderly or individuals with disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by individuals who are elderly or individuals with disabilities that reduce the need for human help and improve safety;

(4) Various long term care program requirements, including nursing facility and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care and respite services;

(5) Elderly or Disabled with Consumer Direction Waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) How to conduct assessments (including environmental, psychosocial, health, and functional factors) and their uses in services planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer directed services, including hiring, training, managing, approving time sheets, and firing an aide;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals, family/caregivers and service providers;

(2) Assessing, supporting, observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals who are elderly or individuals with disabilities; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Develop a rapport and communicate with individuals from diverse cultural backgrounds.

3. If the CD services facilitator is not a registered nurse, the CD services facilitator must inform the individual's primary health care provider that services are being provided and request consultation as needed.

4. Initiation of services and service monitoring.

a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and family/caregiver to identify the needs, assist in the development of the plan of care with the individual or family/caregiver, and provide employee management training within seven days of the initial visit. The initial comprehensive home visit is done only once per provider upon the individual's entry into CD services. If the individual changes CD services facilitator, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial visit, the CD services facilitator will continue to monitor the plan of care on an as needed basis, but in no event less frequently than quarterly for personal care. The CD services facilitator will review the utilization of consumer directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.

c. A CD services facilitator must conduct face-to-face meetings with the individual or family/caregiver at least every six months for respite services and quarterly for personal care to ensure appropriateness of any consumer-directed services received by the individual.

5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual or family/caregiver, and document the adequacy and appropriateness of consumer directed services with regard to the individual's current functioning and cognitive status and medical and social needs. The CD services facilitator's written summary of the visit must include, but is not necessarily limited to:

a. A discussion with the individual or family/caregiver concerning whether the service is adequate to meet the individual's needs;

b. Any suspected abuse, neglect, or exploitation and who it was reported to;

c. Any special tasks performed by the aide and the aide's qualifications to perform these tasks;

d. The individual's or family/caregiver's satisfaction with the service;

e. Any hospitalization or change in medical condition, functioning, or cognitive status; and

f. The presence or absence of the aide in the home during the CD services facilitator's visit.

6. The CD services facilitator must be available to the individual or family/caregiver by telephone.

7. The CD services facilitator must request a criminal record check and a sex offender record check pertaining to the aide on behalf of the individual and report findings of these records checks to the individual or the family/caregiver and the program's fiscal agent. If the individual is a minor, the aide must also be screened

through the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Registry finding must be requested by the CD services facilitator prior to beginning CD services. Aides will not be reimbursed for services provided to the individual effective on the date that the criminal record check confirms an aide has been found to have been convicted of a crime as described in § 32.1-162.9:1 of the Code of Virginia or if the aide has a confirmed record on the DSS Child Protective Services Central Registry.

8. The CD services facilitator shall review copies of timesheets during the face-to-face visits to ensure that the number of plan of care approved hours are being provided and are not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual or family/caregiver to resolve discrepancies and must notify the fiscal agent.

9. The CD services facilitator must maintain records of each individual. At a minimum these records must contain:

a. Results of the initial comprehensive home visit completed prior to or on the date services are initiated and subsequent reassessments and changes to the supporting documentation;

b. The personal care plan of care goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, and modified as appropriate. Respite plan of care goals, objectives, and activities must be reviewed by the provider annually and every six months or when 240 service hours have been used. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual;

c. CD services facilitator's dated notes documenting any contacts with the individual or family/caregiver and visits to the individual's home;

d. All correspondence to and from the individual, the designated preauthorization contractor, and DMAS;

e. Records of contacts made with the individual, family/caregiver, physicians, formal and informal service providers, and all professionals concerning the individual;

f. All training provided to the aides on behalf of the individual or family/caregiver;

g. All employee management training provided to the individual or family/caregiver, including the individual's or family/caregiver's receipt of training on their responsibility for the accuracy of the aide's timesheets;

h. All documents signed by the individual or the individual's family/caregiver that acknowledge the responsibilities as the employer; and

i. All copies of the completed Uniform Assessment Instrument (UAI), the Medicaid Funded Long-Term Care Service Authorization Form (DMAS-96), the Screening Team Plan of Care form (DMAS-97), all Consumer-Directed Personal Assistance Plans of Care forms (DMAS-97B), all Patient Information Forms (DMAS-122), the DMAS-95 Addendum, the Outline and Checklist for Consumer-Directed Recipient Comprehensive Training, and the Services Agreement Between the Consumer and the Services Facilitator.

10. For consumer-directed personal care and consumer-directed respite services, individuals or family/caregivers will hire their own personal care aides and manage and supervise their performance. The aide must meet the following requirements:

a. Be 18 years of age or older;

b. Have the required skills to perform consumer-directed services as specified in the individual's supporting documentation;

c. Be able to read and write in English to the degree necessary to perform the tasks expected;

d. Possess basic math, reading, and writing skills;

e. Possess a valid Social Security number;

f. Submit to a criminal records check and, if the individual is a minor, consent to a search of the DSS Child Protective Services Central Registry. The aide will not be compensated for services provided to the individual if either of these records checks verifies the aide has been convicted of crimes described in § 32.1-162.9:1 of the Code of Virginia or if the aide has a founded complaint confirmed by the DSS Child Protective Services Central Registry;

g. Be willing to attend training at the individual's or family/caregiver's request;

h. Understand and agree to comply with the DMAS Elderly or Disabled with Consumer Direction Waiver requirements; and

i. Receive periodic tuberculosis (TB) screening.

11. Aides may not be the parents of minor children who are receiving waiver services or the spouse of the individuals who are receiving waiver services or the family/caregivers that are directing the individual's care. Payment may not be made for services furnished by other family/caregivers living under the same roof as the individual being served unless there is objective written documentation as to why there are no other providers available to provide the care.

12. Family/caregivers who are reimbursed to provide consumer-directed services must meet the aide qualifications.

13. If the individual is consistently unable to hire and retain the employment of a personal care aide to provide consumer-directed personal care or respite services, the CD services facilitator will make arrangements to have the services transferred to an agency-directed services provider

~~of the individual's choice or to discuss with the individual or family/caregiver other service options.~~

~~14. The CD services facilitator is required to submit to DMAS biannually, for every individual, an individual progress report, the most recently updated UAI, and any monthly visit/progress reports. This information is used to assess the individual's ongoing need for Medicaid funded long-term care and appropriateness and adequacy of services rendered.~~

~~D. Individual responsibilities.~~

~~1. The individual must be authorized for consumer-directed services and successfully complete management training performed by the CD services facilitator before the individual can hire a personal care aide for Medicaid reimbursement. Individuals who are eligible for consumer-directed services must have the capability to hire and train their own personal care aides and supervise aides' performance. Individuals with cognitive impairments who are unable to manage their own care may have a family/caregiver serve as the employer on behalf of the individual.~~

~~2. Individuals will acknowledge that they will not knowingly continue to accept consumer-directed personal care services when the service is no longer appropriate or necessary for their care needs and will inform the services facilitator. If consumer-directed services continue after services have been terminated by DMAS or the designated preauthorization contractor, the individual will be held liable for employee compensation.~~

12VAC30-120-990. Quality management review; utilization review; level of care (LOC) reviews.

A. DMAS shall perform quality management reviews for the purpose of assuring high quality of service delivery consistent with the attending physicians' orders, approved POCs, [~~prior~~ service] authorized services for the waiver individuals, and DMAS compliance with CMS assurances. Providers identified as not [~~rendering reimbursed services~~ meeting the standards] consistent with such orders, POCs, and [~~prior~~ service] authorizations shall be required to submit corrective action plans (CAPs) to DMAS for approval. Once approved, such CAPs shall be implemented to resolve the cited deficiencies.

B. If [~~the~~] DMAS staff determines, during any review or at any other time, that the waiver individual no longer meets the criteria for participation in the waiver (such as functional dependencies, medical/nursing needs, risk of NF placement, or Medicaid financial eligibility), then [~~the~~] DMAS staff, as appropriate, shall deny payment for waiver services for such waiver [~~individuals~~ individual] and [~~they~~ the waiver individual] shall be discharged from the waiver.

C. Securing [~~PA~~ service authorization] shall not necessarily guarantee reimbursement pursuant to DMAS utilization review of waiver services.

D. Failure to meet documentation requirements and supervisory reviews in a timely manner may result in either a plan of corrective action or retraction of payments.

E. Once waiver enrollment occurs, Level of Care Eligibility Re-determination audits (LOCERI) shall be performed at DMAS.

1. This independent electronic calculation of eligibility determination is performed and communicated to the DMAS supervisor. Any individual whose LOCERI audit shows failure to meet eligibility criteria shall receive a second manual review and may receive a home visit by DMAS staff.

2. The agency provider and the CD services facilitator shall submit to DMAS upon request an updated [~~DMAS-99-C~~ DMAS-99 LOC] form, [information from] a current DMAS-97 A/B form, and, if applicable, the DMAS-225 form for designated waiver individuals. This information is required by DMAS to assess the waiver individual's ongoing need for Medicaid-funded long-term care and appropriateness and adequacy of services rendered.

F. DMAS or its designated agent shall periodically review and audit providers' records for these services for conformance to regulations and policies and concurrence with claims that have been submitted for payment. When a waiver individual is receiving multiple services, the records for all services shall be separated from those of non-home and community-based care services, such as companion or home health services. Failure to maintain the required documentation may result in DMAS' determination of overpayments against providers and requiring such providers to repay these overpayments pursuant to § 32.1-325.1 of the Code of Virginia.

12VAC30-120-995. Appeals.

A. Providers shall have the right to appeal actions taken by DMAS. Provider appeals shall be considered pursuant to § 32.1-325.1 of the Code of Virginia and the Virginia Administrative Process Act (§ 2.2-4000 et seq.) of the Code of Virginia and DMAS regulations at 12VAC30-10-1000 and Part [~~VII~~ XI] (12VAC30-20-500 et seq.) of 12VAC30-20.

B. Individuals shall have the right to appeal actions taken by DMAS. Individuals' appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-370. DMAS shall provide the opportunity for a fair hearing, consistent with 42 CFR Part 431, Subpart E.

C. The individual shall be advised in writing of such denial and of his right to appeal consistent with DMAS client appeals regulations 12VAC30-110-70 and 12VAC30-110-80.

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

FORMS (12VAC30-120)

Virginia Uniform Assessment Instrument (UAI) (1994)

Consent to Exchange Information, DMAS-20 (rev. 4/03)

[~~Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02)~~

Provider Aide Record (Personal/Respite Care), DMAS-90 (rev. 6/12)]

LPN Skilled Respite Record, DMAS-90A (eff. 7/05)

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03)

[~~Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00)~~

Questionnaire to Assess an Applicant's Ability to Independently Manage Consumer-Directed Services, DMAS-95 Addendum (rev. 8/05)]

~~Medicaid Funded Long Term Care Service Authorization Form, DMAS-96 (rev. 10/06).~~

~~Screening Team Plan of Care for Medicaid Funded Long Term Care, DMAS-97 (rev. 12/02).~~

~~Provider Agency Plan of Care, DMAS-97A (rev. 9/02).~~

~~Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).~~

~~Community Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).~~

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 8/12)

Individual Choice - Institutional Care or Waiver Services Form, DMAS-97 (rev. 8/12)

Agency or Consumer Direction Provider Plan of Care, DMAS-97A/B (rev. 3/10)

Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 9/09)

[~~Consumer Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).~~

~~MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).~~

~~Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer Direction Waivers, DMAS-101B (rev. 10/04).~~

Community-Based Care Level of Care Review Instrument, DMAS-99LOC (undated)

Medicaid LTC Communication Form, DMAS-225 (rev.10/11)]

Technology Assisted Waiver Provider RN Initial Home Assessment, DMAS-116 (11/10)

[~~Medicaid Long Term Care Communication Form, DMAS-225 (rev. 10/11).~~]

Technology Assisted Waiver/EPSDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94)

IFDDS Waiver Level of Care Eligibility Form (eff. 5/07)

Request for Screening for Individual and Family Developmental Disabilities Support Waiver (DD Waiver), DMAS 305 (rev. 3/09)

DD Medicaid Waiver - Level of Functioning Survey Summary Sheet, DMAS-458 (undated)

Technology Assisted Waiver Adult Aide Plan of Care, DMAS 97 T (rev. 6/08)

Technology Assisted Waiver Supervisory Monthly Summary, DMAS 103 (rev. 4/08)

Technology Assisted Waiver Adult Referral, DMAS 108 (rev. 3/10)

Technology Assisted Waiver Pediatric Referral, DMAS 109 (rev. 3/10)

VA.R. Doc. No. R10-2177; Filed December 12, 2014, 2:22 p.m.

Emergency Regulation

Title of Regulation: **12VAC30-135. Demonstration Waiver Services (adding 12VAC30-135-400, 12VAC30-135-410 through 12VAC30-135-498).**

Statutory Authority: § 32.1-325 of the Code of Virginia; § 1115 of the Social Security Act.

Effective Dates: January 1, 2015, through June 30, 2016.

Agency Contact: Victoria Simmons, Regulatory Coordinator, Department of Medical Assistance Services, Policy and Research Division, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-6043, FAX (804) 786-1680, TTY (800) 343-0634, or email victoria.simmons@dmas.virginia.gov.

Preamble:

Section 2.2-4011 A of the Code of Virginia states that agencies may adopt regulations in emergency situations after the agency submits a written request stating the nature of the emergency and the Governor approves the emergency action. The Department of Medical Assistance Services (DMAS) submitted a request to the Governor stating in writing the nature of this emergency, and on December 10, 2014, the Governor specifically authorized the Governor's Access Plan (GAP) Demonstration Waiver for Individuals with Serious Mental Illness to be promulgated as an emergency action.

Absent an expansion of the Medicaid program to uninsured Virginians, this program proposes to provide individuals who have diagnoses of serious mental illness

access to some basic medical and behavioral health services. At the present time, there is no program that provides these benefits to this defined population of the Commonwealth's uninsured citizens.

The three main goals of this initiative are:

1. Improve access to health care for a segment of the uninsured population in Virginia that has significant behavioral and medical needs;

2. Improve health and behavioral health outcomes of demonstration participants; and

3. Serve as a bridge to closing the insurance coverage gap for uninsured Virginians.

A significant portion of the citizens across the Commonwealth who are uninsured not only lack basic health care, but also suffer from conditions that lead to complex behavioral health needs. A targeted benefit package of services is needed that builds on a successful model of using existing partnerships to provide and integrate basic medical and behavioral health care services.

DMAS recommends a demonstration waiver under the authority of § 1115 of the Social Security Act to allow DMAS to develop (i) a targeted population of citizens to be served; (ii) targeted, limited benefit package; (iii) targeted, limited provider population for peer supports and GAP case management services; and (iv) a care management system that improves health outcomes and reduces costs to the overall health system.

This demonstration will target participants who meet eligibility parameters, as set out in the regulations, resulting from a diagnosis of serious mental illness (SMI). DMAS has worked with stakeholders and behavioral health experts to determine the eligibility criteria to assist in this waiver's design.

The ultimate goal of this demonstration is to enable program eligible individuals who have diagnoses of SMI to gain access to a limited array of behavioral and primary health services. To implement this program quickly, DMAS proposes to utilize existing partnerships and provider networks. Virginians who meet the program eligibility criteria will receive a coordinated, limited benefit package that includes both medical and behavioral health services.

Referrals for this program will arise from a variety of sources, including, but not limited to: (i) self-referral; (ii) community mental health providers; (iii) health care providers; (iv) community organizations; (v) law enforcement; (vi) jail/prisons (upon discharge); and (vii) hospitals. Once determined eligible, individuals will be enrolled into the program. Participants will receive benefits defined for the program and will do so through existing provider networks that will be paid the existing rates and using the same service authorization processes currently in use for the Medicaid and FAMIS programs.

DMAS anticipates that the benefits that are included in the program, which are currently covered by the Behavioral Health Services Administrator (BHSA) agreement, will continue to be provided through the BHSA. A DMAS eligibility contractor will implement the eligibility rules; the benefits and terms of payment will be specified in a contract document that will be executed with existing partners.

Through this program, Virginia will seek to demonstrate that integrating care coordination and a limited benefit of primary care, specialty care, pharmacy, and behavioral health care for this uninsured population will result in better health and sustained living for these individuals. It is anticipated that such individuals will also have fewer improper emergency department (ED) visits, less inpatient hospital utilization, and decreased negative interaction with the criminal justice system thereby reducing other often-uncompensated health care costs. It is anticipated that the use of program benefits will support a reduction of other high cost services (such as emergency room visits).

The benefit package for this demonstration will be limited in scope while still providing access to the most critical services for the SMI population. Specific benefits in the benefit package include, generally: (i) basic medical coverage (such as outpatient physician services, physician specialists, diagnostic procedures, laboratory procedures, and pharmacy services); (ii) care coordination (such as, crisis line and peer support); and (iii) community behavioral health services (such as, crisis intervention and stabilization, psychosocial rehabilitation assessments and services, and substance abuse treatments). SMI diagnostic screenings will also be covered.

The demonstration program will not pay for any services beyond the limited benefit package such as (i) inpatient and outpatient hospital visits; (ii) emergency department visits; (iii) home health services; (iv) durable medical equipment (other than diabetes care products that are covered); (v) nursing home and long-term care services; (vi) routine dental services; (vii) nonemergency transportation; or (viii) routine optometry services. Demonstration program enrolled individuals who require these services will need to access other payment sources or secure charity care.

This program also does not include any cost-sharing (such as co-payments, co-insurance or deductibles) requirements for the participating individuals.

Part III

Governor's Access Plan Demonstration Waiver for Individuals with Serious Mental Illness

12VAC30-135-400. Establishment of program.

A. The Commonwealth through the Department of Medical Assistance Services (DMAS), the single state Medicaid agency, establishes a § 1115 demonstration waiver, the Virginia Governor's Access Plan (GAP) for the Seriously

Mentally Ill (SMI). With federal approval, Virginia will offer a limited yet targeted benefit package of services that builds on a successful model of using existing partnerships to provide and integrate basic medical and behavioral health care services for individuals who have a serious mental illness (SMI) and have incomes less than 100% of the federal poverty limit (below 95% with a 5.0% income disregard to equal 100% of the FPL).

B. Enabling persons with SMI to access both behavioral health and primary health services will enhance the treatment they can receive, allow their care to be coordinated among providers, and potentially significantly decrease the severity of their condition. The three goals of this program are:

1. Improve access to health care for a segment of the uninsured population in Virginia that has significant behavioral and medical needs;

2. Improve health and behavioral health outcomes of demonstration participants; and

3. Serve as a bridge to closing the coverage gap for uninsured Virginians.

12VAC30-135-410. Definitions.

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

"Action" means an action by Cover Virginia or the service authorization contractor that constitutes a termination or denial of eligibility or services or limited authorization of a service authorization request including (i) type or level of service; (ii) reduction, suspension, or termination of a previously authorized service; (iii) failure to act on a service request; (iv) denial in whole or in part of coverage for a service; or (v) failure by Cover Virginia or the service authorization contractor to render a decision within the required timeframes.

"Agency" means either Cover Virginia or the service authorization contractor.

"Alternative home care" means mental health services more intensive than outpatient services provided either in the individual's home or the individual is temporarily (less than two weeks) placed in a therapeutic living setting that provides intensive mental health services such as residential crisis stabilization.

"Appellant" means an applicant for or recipient of GAP benefits who seeks to challenge an action regarding eligibility, services, and coverage determinations.

"Behavioral health" means mental health and substance use disorder services.

"BHSA" means the behavioral health services administrator entity that manages or directs a behavioral health benefits program under contract with DMAS.

"Care coordination" means the collaboration and sharing of information among health care providers who are involved with an individual's health care to (i) improve the health and wellness of individuals with complex and special care needs and (ii) integrate services around the needs of such individuals at the local level by working collaboratively with all partners, including the individual, his family, and providers.

"CAT" means computer aided tomography.

"Certified prescreener" means an employee of the local community services board/behavioral health authority or its designee who is skilled in the assessment and treatment of mental illness and who has completed a certification program approved by DBHDS.

"Client appeal" means an individual's request for review of an eligibility, coverage, or payment determination. An appeal is an individual's challenge to the actions regarding benefits, services, and reimbursement provided by the department, its service authorization contractor, or Cover Virginia.

"Cover Virginia" or "Cover VA" means a department contractor that receives applications for the GAP Demonstration Waiver for Individuals with SMI, determines eligibility, and handles individuals' appeal of actions that have denied, reduced, or terminated covered benefits.

"CSB" means the local community services board or behavioral health authority agency, which is the entry point for citizens into behavioral health and substance abuse treatment services as established in Chapter 5 (§ 37.2-500 et seq.) and Chapter 6 (§ 37.2-600 et seq.) of Title 37.2 of the Code of Virginia.

"DBHDS" means the Department of Behavioral Health and Developmental Services consistent with Chapter 3 (§ 37.2-300 et seq.) of Title 37.2 of the Code of Virginia.

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

"Direct services" means the provision of direct behavioral health and medical treatment, counseling, or other supportive services not included in the definition of care management services.

"Division" means the Appeals Division at DMAS.

"DSM-5" means the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, copyright 2013, American Psychiatric Association.

"Duration of illness" means the individual (i) is expected to require this program's services for an extended period of time; (ii) has undergone more than once in his lifetime psychiatric treatment more intensive than outpatient care such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization; (iii) has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted his normal living situation.

"Eight dimensions of wellness" means the same as found on the website for the Substance Abuse and Mental Health Services Administration at http://www.promoteacceptance.samhsa.gov/10by10/dimensions.aspx.

"Expedited appeal" means the process by which the department must respond to an individual's appeal of an adverse action regarding services if an eligibility or denial of care decision may jeopardize the individual's life; health; or ability to attain, maintain, or regain maximum function.

"Final decision" means a written determination pertaining to client appeals by a department hearing officer that is binding on the department, unless modified during or after the judicial process, and that may be appealed to the local circuit court.

"FPL" means the federal poverty level.

"FQHC" means a federally qualified health center.

"GAP" means Governor's Access Plan.

"GAP case management" means services to assist individuals in solving problems, if any, in accessing needed medical, behavioral health, social, educational, vocational, and other supports essential to meeting basic needs, including (i) assessment and planning services, including developing an individual service plan (does not include performing medical and psychiatric assessment but does include referral for such assessment); (ii) linking the individual to services and supports specified in the individual service plan; (iii) assisting the individual for the purpose of locating, developing, or obtaining needed services and resources; (iv) coordinating services and service planning with other agencies and providers involved with the individual; (v) enhancing community integration by contacting other entities to arrange community access and involvement, including opportunities to learn community living skills, and use vocational, civic, and recreational services; (vi) making collateral contacts with the individuals' significant others to promote implementation of the service plan and community adjustment; (vii) follow-up and monitoring to assess ongoing progress and to ensure services are delivered; and (viii) education and counseling that guides the client and develops a supportive relationship that promotes the service plan.

"GAP screening entity" means the entity that conducts the SMI screening for the GAP SMI program; shall be a CSB or participating FQHC or an inpatient psychiatric hospital or general hospital with an inpatient psychiatric unit and shall be conducted by a qualified provider for the purpose of determining eligibility for participation in the GAP SMI program.

"Good cause" means to provide sufficient cause or reason for failing to file a timely appeal or for missing a scheduled appeal hearing. The existence of good cause shall be determined by the department.

"Grievance" means an expression of dissatisfaction about any matter other than an action. A grievance shall be filed and resolved at Cover Virginia or the service authorization contractor. Possible subjects for grievances include, but shall not be limited to, the quality of care or services provided, aspects of interpersonal relationships such as rudeness of a provider or employee, or failure to respect the enrollee's rights.

"Hearing" means an informal evidentiary proceeding conducted by a department hearing officer during which an individual has the opportunity to present his concerns with or objections to the action taken by Cover Virginia or the service authorization contractor.

"Hearing officer" means an impartial decision maker who conducts evidentiary hearings on behalf of the department.

"Individual" means the client, enrollee, or recipient of services described in this section.

"Individual service plan" or "ISP" means a comprehensive and regularly updated treatment plan specific to the individual's unique treatment needs as identified in the clinical assessment.

"Intensive outpatient services" means services for individuals who have substance use disorders that are provided in a nonresidential clinical setting scheduled a maximum of 19 hours of services per week. Intensive outpatient services are targeted to individuals who require more intensive services than outpatient counseling services. Intensive outpatient services are provided in a concentrated manner and generally involve multiple outpatient visits per week over a period of time for individuals requiring stabilization. Intensive outpatient services include monitoring and multiple group therapy sessions during the week and individual and family therapy focused on the Medicaid-eligible individual. The maximum annual limit is 600 hours.

"Licensed mental health professional" or "LMHP" means a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed substance abuse treatment practitioner, licensed marriage and family therapist, or certified psychiatric clinical nurse specialist.

"LMHP-resident" or "LMHP-R" means the same as "resident" as defined in (i) 18VAC115-20-10 for licensed professional counselors; (ii) 18VAC115-50-10 for licensed marriage and family therapists; or (iii) 18VAC115-60-10 for licensed substance abuse treatment practitioners. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

"LMHP-resident in psychology" or "LMHP-RP" means the same as an individual in a residency program as defined in 18VAC125-20-10 for clinical psychologists. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a "resident" until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident in Psychology" after their signatures to indicate such status.

"LMHP-supervisee in social work" or "LMHP-S" means the same as "supervisee" as defined in 18VAC140-20-10 for licensed clinical social workers. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a "supervisee" until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

"MRI" means magnetic resonance imaging.

"Peer support services" or "peer support" means supportive services provided by adults who self-disclose as living with or having lived with a behavioral health condition and includes (i) planning for engaging in natural community support resources as part of the recovery process, (ii) helping to initiate rapport with therapists, and (iii) increasing teaching and modeling of positive communication skills with individuals to help them self-advocate for individualized services to promote successful community integration strategies.

"Progress notes" means individual-specific documentation that contains the unique differences particular to the individual's circumstances, treatment, and progress that is also signed and contemporaneously dated by the provider's professional staff who have prepared the notes.

"PSN" means a peer support navigator who has self-declared that he is living with or has lived with a behavioral health condition. PSNs assist individuals to successfully remain in or transition back into their communities from inpatient hospital stays, help them avoid future inpatient stays, and increase community tenure by providing an array of linkages to peer run services, natural supports, and other recovery oriented resources.

"Psychoeducational activities and services" means systematic interventions based on supportive and cognitive behavior therapy that emphasizes individuals' and families' needs and focuses on increasing individuals' and families' knowledge about mental disorders, adjusting to mental illness, communicating and facilitating problem solving and increasing coping skills.

"Qualified mental health professional-adult" or "QMHP-A" means the same as defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as defined in 12VAC35-105-20.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as defined in 12VAC35-105-20.

"Qualified substance abuse professional" or "QSAP" means the same as defined in 12VAC35-105-20.

"Register" or "registration" means notifying DMAS or its contractor that an individual will be receiving services that do not require service authorization.

"Remand" means the return of a case by the hearing officer to Cover Virginia or the service authorization contractor for further review, evaluation, and action.

"Representative" means an attorney or other individual who has been authorized to represent an applicant or enrollee pursuant to this part.

"Reverse" means to overturn the action of Cover Virginia or the service authorization contractor and direct that eligibility or requested services be fully approved for the amount, duration, and scope of requested services.

"Serious mental illness" or "SMI" means, for the purpose of this part, a diagnosis of (i) schizophrenia spectrum disorders and other psychotic disorders but not substance/medication induced psychotic disorder; (ii) major depressive disorder; (iii) bipolar and related disorders but not cyclothymic disorder; (iv) post-traumatic stress disorder; (v) other disorders including obsessive-compulsive disorder, agoraphobia, anorexia nervosa, or bulimia nervosa.

"Service authorization" means the process to approve specific services for an enrolled GAP individual prior to service delivery and reimbursement in order to validate that the service requested is medically necessary and meets the DMAS and the DMAS contractor criteria for reimbursement.

"Service-specific provider intake" means the face-to-face interaction in which the provider obtains information from the individual and his parent or other family member or members, as appropriate, about mental health status. It includes documented history of the severity, intensity, and duration of mental health care problems and issues and shall contain all of the following elements: (i) the presenting issue or reason for referral; (ii) mental health history and hospitalizations; (iii) previous interventions by providers and the timeframes and response to treatment; (iv) medical profile; (v) developmental history including history of abuse, if appropriate; (vi) educational/vocational status; (vii) current living situation and family history and relationships; (viii) legal status; (ix) drug and alcohol profile; (x) resources and strengths; (xi) mental status exam and profile; (xii) diagnosis; (xiii) professional summary and clinical formulation; (xiv)

recommended care and treatment goals; and (xv) the dated signature of the LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

"State fair hearing" means the DMAS evidentiary hearing process as administered by the division.

"State Plan" or "the Plan" means the document required by § 1902(a) of the Act.

"Sustain" means to uphold the action of Cover Virginia or the service authorization contractor.

"Title XIX of the Social Security Act" or "the Act" means the United States Code beginning at 42 USC § 1396.

"Virtual engagement" means telephonic communications between a peer specialist and GAP enrolled individual to discuss and promote engagement with resources that may be available to the individual to promote his recovery.

"Warm line" means a peer-support telephone line that provides peer support for adult individuals who are living with or have lived with behavioral health conditions. The peers shall have specific training to provide telephonic support, and such systems may operate regionally or statewide and beyond traditional business hours.

"Withdrawal" means a written request from the applicant or enrollee or his representative for the department to terminate the appeal process without a final decision on the merits.

12VAC30-135-420. Administration; authority; waived provisions.

A. DMAS shall cover a targeted set of services as set forth in 12VAC30-135-450 for currently uninsured individuals who have diagnoses of serious mental illnesses with incomes below 100% of the federal poverty line (FPL) (below 95% of the FPL plus a 5.0% household income disregard).

B. Consistent with § 1115 of the Social Security Act (42 USC § 1315), the department covers certain limited services specified in 12VAC30-135-450 for certain targeted individuals specified in 12VAC30-135-430.

C. The Secretary of the U.S. Department of Health and Human Resources has waived compliance for the department with the following for the purpose of this demonstration waiver program:

1. Consistent with § 1902(a)(10)(B) of the Act, the amount, duration, and scope of services covered in the State Plan for Medical Assistance shall be waived. The department shall cover a specified set of benefits for the individuals who are determined to be eligible for this program.

2. Consistent with § 1902(a)(23)(A) of the Act, the participating individuals' freedom of choice of providers of services shall be waived for peer supports and GAP case management.

3. Consistent with § 1902(a)(23) of the Act, the services shall be provided by a different delivery system than otherwise used for full State Plan services for peer supports and GAP case management.

4. Consistent with § 1902(a)(4) of the Act, insofar as it incorporates 42 CFR 431.53 permitting the Commonwealth to waive providing nonemergency transportation to and from participating providers for eligible, participating individuals.

5. Consistent with § 1902(a)(35) of the Act, permitting the Commonwealth to waiver offering eligible, participating individuals retroactive eligibility for this demonstration program.

D. This demonstration program shall operate statewide.

E. This demonstration program shall operate for at least two years beginning January 2015 through January 2017 or until the Commonwealth implements an alternative plan to provide health care coverage to all individuals having incomes up to 100% of the FPL.

F. This demonstration program shall not affect or modify, or both, components of the Commonwealth's existing medical assistance or children's health insurance programs.

12VAC30-135-430. Individual eligibility; limitations; referrals; eligibility determination process.

A. The GAP eligibility determination process shall have two parts: (i) a determination of whether or not the individual meets the GAP SMI criteria and (ii) a determination of whether or not the individual meets the GAP financial and nonfinancial eligibility criteria.

1. A person may apply through Cover Virginia for GAP by phone or through a provider-assisted web portal.

2. If an individual is found not to meet GAP eligibility rules, either the GAP financial/nonfinancial criteria or the GAP SMI criteria, then the individual shall be sent an adverse determination letter with appeal rights. Such individuals shall be assessed and referred for eligibility through Medicaid, FAMIS MOMS, and the federal marketplace for private health insurance.

B. Individuals shall have a screening conducted by a DMAS-approved GAP screening entity for the determination of eligibility for GAP SMI services.

C. In order to be eligible for this program, individuals shall be assessed to determine whether their diagnosed condition is a serious mental illness. The serious mental illness shall be diagnosed according to criteria defined in the DSM-5. LMHPs, including LMHP-supervisees, LMHP-residents, and LMHP-residents in psychology, shall conduct the clinical screening required to determine the individual's diagnosis if one has not already been made. At least one of the following diagnoses shall be documented for the individual to be approved for GAP SMI services:

1. Schizophrenia spectrum disorders and other psychotic disorders with the exception of substance/medication induced psychotic disorders;

2. Major depressive disorder;

3. Bipolar and related disorders with the exception of cyclothymic disorder;

4. Post-traumatic stress disorder; or

5. Obsessive compulsive disorder, panic disorder, agoraphobia, anorexia nervosa, or bulimia nervosa.

D. In order to be eligible for this program, individuals shall meet at least one of the following criteria to reflect the duration of illness:

1. The individual is expected to require treatment and supportive services for the next 12 months;

2. The individual has undergone psychiatric treatment more intensive than outpatient care, such as crisis response services, alternative home care, partial hospitalization, or inpatient hospitalization for a psychiatric condition, more than once in his lifetime; or

3. The individual has experienced an episode of continuous, supportive residential care, other than hospitalization, for a period long enough to have significantly disrupted the normal living situation. A significant disruption of a normal living situation means the individual has been unable to maintain his housing or had difficulty maintaining his housing due to being in a supportive residential facility or program that was not a hospital. This includes group home placement as an adolescent and assisted living facilities but does not include living situations through the Department of Social Services.

E. In order to be eligible for this program, individuals shall demonstrate a significant level of impairment on a continuing or intermittent basis. There shall be evidence of severe and recurrent impairment resulting from mental illness. The impairment shall result in functional limitation in major life activities. Due to the mental illness, the person shall meet at least two of the following:

1. The person is either unemployed or employed in a sheltered setting or a supportive work situation, has markedly limited or reduced employment skills, or has a poor employment history;

2. The person requires public and family financial assistance to remain in his community;

3. The person has difficulty establishing or maintaining a personal social support system;

4. The person requires assistance in basic living skills such as personal hygiene, food preparation, or money management; or

5. The person exhibits inappropriate behavior that often results in intervention by the mental health or judicial system.

F. The individual shall require assistance to consistently access and to utilize needed medical or behavioral, or both, health services and supports due to the mental illness.

G. In addition, the individuals shall:

1. Be adults ages 21 through 64 years of age;

2. Be United States citizens or lawfully residing immigrants;

3. Be residents of the Commonwealth;

4. Be uninsured;

5. Be ineligible for any state or federal full benefits health insurance program including, but not necessarily limited to Medicaid, Children's Health Insurance Program (CHIP/FAMIS), Medicare, or TriCare Federal Military benefits;

6. Have household incomes below 95% of the federal poverty level (FPL) plus a 5.0% household income disregard, which shall be verified via pay stubs or other readily available and reliable electronic sources. Pursuant to DMAS federal authority under the § 1115 waiver, should expenditures for the GAP demonstration waiver compromise the program's budget neutrality, DMAS may amend the waiver to maintain budget neutrality by reducing income eligibility levels to below 95% of the FPL; and

7. Not be current residents of a long-term care facility, mental health facility, or penal institution.

H. Individuals who are enrolled in this GAP demonstration waiver program who require hospitalization shall not be disenrolled from the GAP demonstration waiver program during their hospitalization.

I. If a GAP-eligible individual secures Medicare or Medicaid/FAMIS MOMS coverage, his GAP program eligibility shall be terminated consistent with the effective date of the Medicare or Medicaid coverage. Individuals who gain other sources of health insurance shall not be disenrolled from the GAP demonstration waiver program during their 12 months of eligibility; however, in such instances, the GAP program shall be the payer of last resort.

J. DMAS or its contractor shall verify income data via existing electronic data sources, such as Virginia Employment Commission and TALX. Citizenship and identity shall be verified through the monthly file exchange between DMAS and the Social Security Administration. The individual's age, residency, and insurance status shall be verified through self-attestation. Applicants shall be permitted 90 days to resolve any citizenship discrepancies resulting from Social Security Administration matching process, in any of the information provided, and in the DMAS or the contractor verification process findings.

12VAC30-135-440. Individual screening requirements; enrollment process.

A. All individuals who apply for GAP shall be screened by a GAP screening entity using the screening tool (DMAS P-603) and shall meet the requirements of the screening tool. Screenings shall be provided to persons without regard to whether or not they have serious mental illness. Screenings

may be either limited or a full screening depending on the individual's prior history of serious mental illness.

B. Two types of screenings shall be conducted:

1. Limited screenings shall be conducted for those individuals who have had a diagnostic evaluation within the past 12 months and this evaluation is available to the screener. These limited screenings may be conducted by either an LMHP or a QMHP.

2. Full screenings shall be conducted for those individuals who have not had a diagnostic evaluation within the past 12 months or for whom the evaluation is not available to the screener. These full screenings shall be conducted by an LMHP.

C. All SMI screenings shall be submitted to the BHSA. The diagnostic evaluation shall be signed and contemporaneously dated by the LMHP who completed it.

D. Once an individual's eligibility has been determined consistent with all of the requirements set out in 12VAC30-135-430, his coverage shall become effective on the first day of the same month in which he applied and his signed application has been received. No retroactive eligibility shall be permitted in the GAP SMI demonstration waiver program. No service coverage shall begin prior to the first day of the month that the individual's signed and dated application for the GAP SMI demonstration waiver program is received.

E. Once an individual is determined to be eligible for this GAP demonstration waiver program, his eligibility shall remain effective for 12 continuous months except if the individual becomes 65 years of age, becomes eligible for Medicare or Medicaid, moves out of the Commonwealth, dies, or is unable to be located.

F. The renewal of an individual's eligibility for this GAP demonstration SMI program shall be redetermined prior to the end of the 12-month coverage period. No additional determination of serious mental illness shall be required to complete a renewal for program eligibility.

G. GAP SMI demonstration program individuals shall not be required to report changes in their financial circumstances during their 12-month coverage period but only at the time of their renewal application.

H. Completion of the application determination process shall require no more than 45 days except in cases of unusual circumstances as described below:

1. Unusual circumstances include administrative or other emergency beyond the agency's control. In such case, DMAS or its designee shall document, in the applicant's record, the reasons for delay. DMAS or its designee shall not use the time standards as a waiting period before determining eligibility or as a reason for denying eligibility because it has not determined eligibility within the time standards.

2. Incomplete applications shall be held open for a period of 45 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Any applicant who fails to provide, within 45 calendar days of the receipt of the initial application, information or verifications necessary to determine eligibility shall have his application for GAP SMI eligibility denied.

I. Cover Virginia shall mail approval notices to applicants, including the applicant's identification number, his enrollment period, and a member handbook.

J. The BHSA shall mail out the individual's identification cards to the address provided on the individual's application.

12VAC30-135-450. Covered services; limitations; restrictions.

A. GAP coverage shall be limited to outpatient medical, behavioral health, pharmacy, GAP case management, and care coordination services for individuals determined to meet the GAP SMI eligibility criteria. This program intends that such services will significantly decrease the severity of individuals' serious mental illnesses so that they can recover, work, parent, learn, and participate more fully in their communities.

B. These services are intended to be delivered in a person-centered manner. The individuals who are receiving these services shall be included in all service planning activities.

C. Medical services including outpatient physician and clinic services, specialists, diagnostic procedures, laboratory procedures, and pharmacy services shall be covered as follows:

1. Outpatient physician services and medical office visits includes evaluation and management, diagnostic and treatment procedures performed in the physician's office, and therapeutic or diagnostic injections. The requirements of 12VAC30-50-140 D 2, 3, and 4 shall be met in order for these services to be reimbursed by DMAS.

2. Outpatient clinic services include evaluation and management, treatment, and procedures performed in the clinic's office, and medically necessary therapeutic and diagnostic injections. The requirements of 12VAC30-50-180 B, C, and D shall be met in order for this service to be reimbursed by DMAS as it pertains to GAP covered services.

3. Outpatient specialty care, consultation, management, and treatment includes evaluation and treatment, and procedures performed in the physician's office, and medically necessary therapeutic or diagnostic injections consistent with 12VAC30-50-140 D 2, 3, and 4 as it pertains to GAP covered services.

4. Outpatient diagnostic services includes ultrasounds, electrocardiogram, service-authorized CAT and MRI scans, and diagnostic services that can be performed in a physician's office with the exception of colonoscopy procedures and other services listed as noncovered in 12VAC30-135-469. The requirements of 12VAC30-50-

140 O shall be met as it pertains to GAP SMI services in order for these services to be reimbursed by DMAS. CAT and MRI scans shall be covered if the service is authorized by either DMAS or the service authorization contractor.

5. Outpatient laboratory consistent with 12VAC30-50-120 as it pertains to GAP SMI covered services.

6. Outpatient pharmacy services consistent with 12VAC30-50-210 as it pertains to GAP SMI covered services.

7. Outpatient family planning consistent with 12VAC30-50-130 D as it pertains to GAP SMI covered services; sterilization procedures and abortions shall not be covered.

8. Outpatient telemedicine, which is covered the same as Medicaid for services that are not otherwise excluded from GAP coverage.

9. Outpatient durable medical equipment and supplies coverage shall be limited to diabetic equipment and supplies consistent with 12VAC30-50-165 as it pertains to GAP SMI covered services.

10. Outpatient hospital procedures shall be limited to (i) diagnostic ultrasound procedures; (ii) EKG/ECG including stress tests; and (iii) radiology procedures except for PET scans, colonoscopy, and radiation treatment procedures.

11. GAP case management services pursuant to 12VAC30-50-420 as it pertains to seriously mentally ill adults.

a. Reimbursement shall be provided only for active case management individuals. An active individual for GAP case management purposes means an individual for whom there is a current ISP, as defined in 12VAC30-50-226, that requires regular direct or client-related contacts or activity or communication with the individuals or families, significant others, service providers, or others. Billing can be submitted only for months in which direct or individual-related contacts, activity, or communications occur. Regular case management is reimbursed for months in which the minimum requirements are met for case management. High intensity case management is reimbursed for months in which a face-to-face contact with the individual takes place in a community setting outside of the case management office.

b. The case management entity shall collaborate with the BHSA monthly with care coordination efforts.

c. Case management shall not be billed for persons while they are in institutions for mental disease.

d. The provider of case management services shall be licensed by DBHDS as a provider of case management services.

D. Care coordination, crisis phone line, and peer supports shall be covered through the BHSA as follows:

1. Care coordination shall be provided as defined in 12VAC30-135-410. BHSA LMHP care managers shall work closely with behavioral health providers including local CSB staff to provide information to the individual in accessing covered benefits, provider selection, and how to access all services including behavioral health.

2. The BHSA shall provide crisis phone lines 24 hours per day and seven days per week including access to a licensed care manager during a crisis.

3. The BHSA or its designee shall provide peer support services seven days per week. A telephonic support shall be covered staffed by PSNs who have been trained specifically in line telephonic support operations and resources. The telephonic support associated with the PSN GAP program shall offer extended hours, toll-free access, and dedicated data collection capabilities. The BHSA shall provide trained peer navigators as members of its care coordination team or may contract with other entities to do so. The BHSA shall employ community-based peer navigators to work in provider settings, community settings, and peer-run organizations. The scope of peer support services shall include, but not be limited to:

a. Visiting members in inpatient settings to develop the peer relationship.

b. Describing and developing a plan for engaging in peer and natural community support resources as part of the recovery process.

c. Initiating rapport, teaching, and modeling positive communication skills with members to help them self-advocate for an individualized services plan and assisting the individual with the coordination of services to promote successful community integration strategies.

d. Assisting in developing strategies to decrease or avoid the need for future hospitalizations by offering social and emotional support and an array of individualized services.

e. Providing social, emotional, and other supports framed around the eight dimensions of wellness as defined in 12VAC30-135-410.

E. Community mental health (behavioral health) services shall be covered as follows:

1. All community mental/behavioral health services shall be subject to service authorization or registration as specified.

2. GAP case management as defined in 12VAC30-135-410 shall be provided by CSB case managers with consultation and support from BHSA care managers. This service shall be targeted to individuals who are expected to benefit from assistance with medication management and appropriate use of community resources. The CSB GAP case managers shall have the same knowledge, skills, and abilities as set out in 12VAC30-50-420 E 2 e and the case management entity shall maintain all licenses required by DBHDS in 12VAC35-105. GAP case management shall not include the provision of direct treatment services and shall have

two levels of service intensity: regular and high intensity, and shall be focused on assisting individuals to access needed medical, behavioral health (psychiatric and substance abuse treatment), social, education, vocational, and other support services.

3. Crisis intervention shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B 5 and 12VAC30-60-143. This service shall only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, or a certified prescreener. Crisis intervention services shall be indicated following a marked reduction in the individual's psychiatric, adaptive, or behavioral functioning or an extreme increase in personal distress.

a. The crisis intervention services provider shall be licensed as a provider of emergency services by DBHDS pursuant to 12VAC35-105-30.

b. An individual service plan shall not be required for individuals newly enrolled in GAP services to receive this service. Inclusion of crisis intervention as a service on the ISP shall not be required for the service to be provided on an emergency basis.

c. For individuals receiving scheduled, short-term counseling as part of the crisis intervention service, an ISP shall be developed or revised by the fourth face-to-face contact to document the short-term counseling goals.

d. Telephonic supports and collateral contacts related to needs are identified during face-to-face contact.

e. Reimbursement shall be provided for short-term crisis counseling contacts occurring within a 30-day period from the time of the first face-to-face crisis contact. Other than the annual service limits, there are no restrictions (regarding number of contacts or a given time period to be covered) for reimbursement for unscheduled crisis contacts.

f. Crisis intervention services provided to eligible individuals outside of the clinic may be reimbursable, provided the provision of out-of-clinic services is clinically/programmatically appropriate. Travel-related costs (gas and mileage, travel time) by staff to provide out-of-clinic services shall not be reimbursable. Crisis intervention may involve contacts with the family or significant others. If other clinic services are billed at the same time as crisis intervention, documentation must clearly support the separation of the services with distinct treatment goals.

g. An LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, or a certified prescreener shall conduct a face-to-face service-specific provider intake.

h. Crisis intervention shall be provided by either an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, or a certified prescreener.

i. Services shall be documented through daily notes and a daily log of time spent in the delivery of services.

4. Crisis stabilization shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B and 12VAC30-60-143 except that service authorization shall be required in place of registration. This service shall only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-A, QMHP-E, or a certified prescreener.

a. In order to qualify for crisis stabilization services, individuals shall demonstrate a clinical necessity for the service arising from a condition due to an acute crisis of a psychiatric nature, which puts the individual at risk of psychiatric hospitalization.

b. This service shall be authorized following a face-to-face service-specific provider intake by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, or a certified prescreener.

c. The service-specific provider intake must document the need for crisis stabilization services.

d. Room and board, custodial care, and general supervision are not components of this service and shall not be reimbursed.

e. Clinic option services are not billable at the same time crisis stabilization services are provided with the exception of clinic visits for medication management. Medication management visits may be billed at the same time that crisis stabilization services are provided but documentation must clearly support the separation of the services with distinct treatment goals.

f. Providers of residential crisis stabilization shall be licensed by DBHDS as providers of mental health residential crisis stabilization. Providers of community-based crisis stabilization shall be licensed by DBHDS as providers of mental health nonresidential crisis stabilization.

5. Psychosocial rehabilitation service-specific provider intake and services shall be covered consistent with the limits and requirements set out in 12VAC30-50-226 B 4. This service shall only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-A, QMHP-E, or a QPPMH. Psychosocial rehabilitation services shall be provided to individuals who have experienced long-term or repeated psychiatric hospitalization, who experience difficulty in activities of daily living and interpersonal skills, whose support system is limited or nonexistent, or who are unable to function in the community without intensive intervention or when long-term services are needed to maintain the individual in the community.

a. Psychosocial rehabilitation services shall be provided following a service-specific provider intake that clearly documents the need for services. This intake shall be completed by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP. An ISP shall be completed by the LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP,

QMHP-A, or QMHP-E and be reviewed/approved by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP within 30 calendar days of service initiation. At least every three months, the LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-A, or QMHP-E shall review, modify as appropriate, and update the ISP.

b. The continued need for psychosocial rehabilitation services that continue more than six months shall be reviewed by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP who shall document the continued need for the service.

c. The enrolled provider of psychosocial rehabilitation services shall be licensed by DBHDS as a provider of psychosocial rehabilitation.

d. Psychosocial rehabilitation services may be provided by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, QMHP-A, QMHP-E, or a qualified paraprofessional under the supervision of a QMHP-A, QMHP-E, LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

e. The psychosocial rehabilitation program shall operate a minimum of two continuous hours in a 24-hour period.

f. Time allocated for field trips may be used to calculate time and units when the goal of the field trip is to provide training in an integrated setting and to increase the individual's understanding or ability to access community resources.

F. Outpatient psychotherapy services shall be covered, consistent with 12VAC30-50-140 D 2 through D 5, as follows:

1. Psychiatric evaluation and outpatient individual, family, and group therapies (mental health and substance abuse treatment) shall be covered.

2. The first 26 visits shall be covered without prior authorization, and additional visits beyond the first 26 shall be covered if they have been prior authorized when medically necessity is demonstrated.

3. Reimbursement shall be provided, consistent with 12VAC30-80-30 A 3, in a tiered manner.

G. Community substance abuse treatment services shall be covered as follows:

1. Services shall include intensive outpatient services and opioid treatment services. These services shall be rendered to individuals consistent with the criteria for these two services specified in 12VAC30-50-228 A 2.

a. Intensive outpatient services for individuals shall be provided in a nonresidential setting and may be scheduled multiple times per week, with a maximum of 19 hours of service per week. This service should be provided to individuals who do not require the intensive level of care of inpatient or residential services, but require more intensive services than outpatient services. Intensive outpatient services shall be provided in a concentrated manner and generally involve multiple outpatient visits per week over a period of time for individuals requiring stabilization. These services include monitoring, multiple group therapy sessions during the week, and individual and family therapy focused on the enrolled individual. The maximum annual limit is 600 hours. Intensive outpatient services shall not be provided concurrently with day treatment services or opioid treatment services. Even though day treatment services are not covered in the GAP demonstration SMI program, intensive outpatient services shall not be provided concurrently with it.

b. Pursuant to 12VAC30-50-140 (with the exception of § 6403 of the Omnibus Budget Reconciliation Act of 1989, which is excluded), methadone/opioid treatment means an intervention strategy that combines psychological and psychoeducational services with the administering or dispensing of opioid agonist treatment medication. An individual specific, physician-ordered dose of medication is administered or dispensed either for detoxification or maintenance treatment. Methadone/opioid treatment shall be provided in daily sessions with a maximum of 600 hours per year. Intensive outpatient services shall not be provided concurrently with methadone/opioid treatment. Methadone/opioid treatment service covers psychological and psychoeducational services. Medication costs for methadone/opioid agonists shall be billed separately from psychological and psychoeducational services.

c. Staff qualifications for intensive outpatient and opioid treatment services shall be as follows:

(1) The minimum qualification for providing individual and group counseling, family therapy, and occupational and recreational therapy shall be a QSAP.

(2) A QSAP or a paraprofessional under the supervision of a QSAP may provide education about the effects of alcohol and other drugs on the physical, emotional, and social functioning of the individual; information about relapse prevention; and information about occupational and recreational activities. A QSAP shall be on site when a paraprofessional is providing services.

(3) Paraprofessionals shall participate in supervision as described in 12VAC30-50-228 A 2 d.

2. Evaluations required. Prior to initiation of intensive outpatient or opioid treatment services, an evaluation shall be conducted consistent with 12VAC30-50-228 B by at least a QSAP. The minimum intake will consist of a structured objective assessment of the impact of substance use or dependence on the individual's functioning in the following areas: legal system involvement; employment or school performance, or both; and medical, family-social, and psychiatric issues. A psychological and psychiatric

examination shall be included as part of this evaluation, if indicated by history or structured assessment.

12VAC30-135-469. Noncovered medical and behavioral health services.

A. Noncovered medical services shall include:

1. Inpatient hospital treatment including psychiatric facilities and psychiatric facility partial hospitalization;

2. Emergency room treatment;

3. Ambulatory surgical centers;

4. Military treatment facilities;

5. Outpatient hospital procedures other than diagnostic procedures;

6. PET scans;

7. Home health;

8. Skilled and intermediate nursing facilities;

9. Long-term care including home and community-based care waiver services, custodial care facilities, and intermediate care facilities for individuals with intellectual disabilities;

10. Residential substance abuse treatment facilities;

11. Psychiatric residential treatment centers;

12. Comprehensive inpatient/outpatient rehabilitation facilities;

13. End-stage renal disease treatment facilities;

14. Hospice;

15. Ambulance (including land, air, and water);

16. Early and periodic screening diagnosis and treatment (EPSDT) services;

17. Dental services;

18. Nonemergency transportation;

19. Physical therapy (PT), occupational therapy (OT), and speech therapies (when billed separately);

20. OB/maternity care including birthing centers (gynecology services are covered);

21. Routine eye exams;

22. Abortions, sterilization (vasectomy or tubal ligation);

23. Chemotherapy, radiation therapy;

24. Colonoscopy;

25. Dialysis;

26. Durable medical equipment (DME) and supply items (other than those required to treat diabetes); orthotics; prosthetics; home IV therapy; nutritional supplements;

27. Cosmetic procedures;

28. Eyeglasses, contact lenses, hearing aids;

29. Private duty nursing;

30. Assisted living;

31. Other unspecified facilities;

32. Services specifically excluded under Virginia Medicaid;

33. Services not deemed medically necessary;

34. Services that are considered experimental or investigational;

35. Services from non-Medicaid-enrolled providers; and

36. Any medical services not otherwise defined as covered.

B. Noncovered traditional behavioral health services shall include:

1. Inpatient hospital or partial hospital services, hospital observation services, emergency room services;

2. Electroconvulsive therapy and related services (e.g., anesthesia and hospital charges);

3. Residential treatment services;

4. Psychological and neuropsychological testing;

5. Smoking and tobacco cessation and counseling;

6. Transportation;

7. Services specifically excluded under Virginia Medicaid;

8. Services not deemed medically necessary;

9. Services that are considered experimental or investigational;

10. Services from non-Medicaid-enrolled providers; and

11. Any behavioral health or substance abuse treatment services not otherwise defined as covered.

C. Noncovered nontraditional behavioral health services shall include:

1. Substance abuse case management, substance abuse day treatment for pregnant women, substance abuse residential treatment for pregnant women, substance abuse day treatment, and substance abuse crisis intervention;

2. Day treatment partial hospitalization, mental health skill building services, and intensive community treatment;

3. Treatment foster care case management;

4. VICAP assessments;

5. Transportation;

6. Services specifically excluded under Virginia Medicaid;

7. Services not deemed medically necessary;

8. Services that are considered experimental or investigational;

9. Services from non-Medicaid-enrolled providers; and

10. Any behavioral health or substance abuse treatment services not otherwise defined as covered.

12VAC30-135-470. Provider qualifications; requirements.

A. Some GAP covered services require an approved service authorization prior to service delivery in order for reimbursement to occur. Those services are specified in 12VAC30-135-450.

1. To obtain service authorization, all providers' information about these individuals that is supplied to the DMAS service authorization contractor or the behavioral health service authorization contractor shall be fully substantiated throughout individuals' medical records.

2. Providers shall be required to maintain documentation detailing all relevant information about the GAP-enrolled individuals who are in providers' care. Such documentation shall fully disclose the extent of services provided in order to support providers' claims for reimbursement for services rendered. This documentation shall be written, signed, and dated at the time the services are rendered unless specified otherwise.

B. Providers who are determined not to be in compliance with DMAS requirements shall be subject to 12VAC30-80-130 for the repayment of overpayments to DMAS.

C. An LMHP-resident shall be in continuous compliance with the regulatory requirements of the applicable counseling profession for supervised practice and shall not perform the functions of the LMHP-R or be considered a resident until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Counseling. For purposes of Medicaid reimbursement to their supervisors for services provided by such residents, they shall use the title "Resident" in connection with the applicable profession after their signatures to indicate such status.

D. An LMHP-resident in psychology shall be in continuous compliance with the regulatory requirements for supervised experience as found in 18VAC125-20-65 and shall not perform the functions of the LMHP-RP or be considered a resident until the supervision for specific clinical duties at a specific site has been preapproved in writing by the Virginia Board of Psychology. For purposes of Medicaid reimbursement by supervisors for services provided by such residents, they shall use the title "Resident-in-Psychology" after their signatures to indicate such status.

E. An LMHP-supervisee in social work shall be in continuous compliance with the regulatory requirements for supervised practice as found in 18VAC140-20-50 and shall not perform the functions of the LMHP-S or be considered a supervisee until the supervision for specific clinical duties at a specific site is preapproved in writing by the Virginia Board of Social Work. For purposes of Medicaid reimbursement to their supervisors for services provided by supervisees, these persons shall use the title "Supervisee in Social Work" after their signatures to indicate such status.

F. Individualized and member-specific progress notes shall be part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, progress or lack of progress toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the contemporaneous-with-the-service signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units/hours required to deliver the service. The content of each progress note shall corroborate the time/units billed. Progress notes shall be documented for each service that is billed.

12VAC30-135-475. Individual service plan (ISP) requirements.

A. Individual service plans shall contain all of the elements as set out in 12VAC30-135-410. ISPs that do not contain the specified elements shall be considered by DMAS to be incomplete and not adequate to support service reimbursement.

B. Prior to the development of an ISP:

1. A service-specific provider intake shall be completed for the following services: (i) psychosocial rehabilitation, (ii) crisis intervention, and (iii) crisis stabilization.

2. An evaluation consistent with 12VAC30-50-228 B shall be completed for substance abuse intensive outpatient and opioid treatment services.

3. DBHDS licensure requirements for assessment and planning as defined in 12VAC35-105-650 shall be completed for GAP case management.

C. The ISP shall contain the individual's treatment or training needs, his goals and measurable objectives to meet the individual's identified needs, services to be provided with the recommended frequency to accomplish the measurable goals and objectives, the estimated timetable for achieving the goals and objectives, and an individualized discharge plan that describes transition to other appropriate services. The individual shall be included in the development of the ISP, and the ISP shall be signed by the individual. Documentation shall be provided if the individual is an adult lacking legal capacity or is unable or unwilling to sign the ISP.

D. The ISP shall be updated at a minimum of annually or as the needs and progress of the individual changes. An ISP shall be considered outdated if it is not updated either annually or as the treatment interventions based on the needs and progress of the individual changes. An ISP that does not include all required elements specified in 12VAC30-50-226 shall be considered incomplete. All ISPs shall be completed, signed, and contemporaneously dated by the LMHP or QMHP who completed the ISP. The preparation of the ISP shall occur within a maximum of 30 days of the date of the completed service-specific provider intake unless otherwise specified. The individual shall sign his own ISP. If the individual is unwilling or unable to sign the ISP, then the service provider shall document the clinical or other reasons why the individual was not able or willing to sign the ISP.

E. Service-specific ISP updating requirements.

1. For individuals receiving psychosocial rehabilitation services, the ISP shall be updated at least every three months by the LMHP, LMHP-supervisee, LMHP-

resident, LMHP-RP, QMHP-A, or QMHP-E who shall review the ISP and modify it as appropriate.

2. Evaluations shall be required prior to initiation of intensive outpatient or opioid treatment services consistent with 12VAC30-50-228 B by at least a QSAP. The minimum intake will consist of a structured objective assessment of the impact of substance use or dependence on the individual's functioning in the following areas: legal system involvement, employment or school performance, or both, and medical, family-social, and psychiatric issues. A psychological and psychiatric examination shall be included as part of this evaluation, if indicated by history or structured assessment. The assessment shall result in a written report as specified at 12VAC30-50-228 B and shall document the medical necessity for either the intensive outpatient service or methadone/opioid treatment, or both.

3. The ISP shall document the need for GAP case management and be fully completed within 30 calendar days of initiation of the service. The case manager shall review the ISP at least monthly. The review shall be due by the last day of the month following the month in which the last review was completed.

4. The ISP shall be updated at least annually.

5. For crisis stabilization services, the ISP shall be developed or revised within three calendar days of admission to this service. The LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, certified prescreener, QMHP-A, or QMHP-E shall develop the ISP.

12VAC30-135-480. Utilization review.

A. These utilization requirements shall apply to all GAP covered services unless otherwise specified.

B. DMAS, or its designee, shall perform reviews of the utilization of all GAP-covered services pursuant to 42 CFR 440.260 and 42 CFR Part 456.

C. DMAS shall recover expenditures made for covered services when providers' documentation does not comport with standards specified in state and federal Medicaid requirements.

D. Utilization reviews shall include determinations that providers meet the following requirements:

1. The provider shall meet the federal and state requirements for administrative and financial management capacity. The provider shall obtain a current provider enrollment agreement that covers each GAP service that the provider offers prior to the delivery of services and shall maintain and update the agreement periodically as DMAS or its contractor requires. DMAS shall not reimburse providers who do not enter into a provider enrollment agreement for a service prior to offering that service.

2. The provider shall document and maintain individual case records in accordance with state and federal Medicaid requirements.

3. The provider shall ensure eligible individuals have free choice of providers of behavioral health services and other medical care.

4. If an individual receiving community mental health rehabilitative services or substance abuse treatment services is also receiving case management services pursuant to 12VAC30-50-420, the provider shall collaborate with the case manager by notifying the case manager of the provision of community mental health rehabilitative services and sending monthly updates on the individual's treatment status. A discharge summary shall be sent to the case manager within 30 calendar days of the discontinuation of services. Service providers and case managers who are using the same electronic health record for the individual shall meet requirements for delivery of the notification, monthly updates, and discharge summary upon entry of this documentation into the electronic health record.

5. The provider shall determine who the primary care provider is and inform him of the individual's receipt of GAP community mental health rehabilitative services. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

6. The provider shall include the individual and the family or caregiver, as may be appropriate, in the development of the ISP. To the extent that the individual's condition requires assistance for participation in treatment, assistance shall be provided.

E. Utilization review requirements specific to community mental health services, as set out in 12VAC30-50-226, 12VAC30-60-140, and 12VAC30-60-143, shall be as follows:

1. To be reimbursed for GAP behavioral health services, the required DBHDS license shall be either a full, annual, triennial, or conditional license. Providers shall be enrolled with the BHSA to be reimbursed. Once enrolled, a provider shall maintain, and update periodically as the BHSA requires, a current provider enrollment agreement for each GAP service that the provider offers.

2. Health care entities with provisional licenses shall not be reimbursed as GAP providers of community mental health services.

3. Payments shall not be permitted to health care entities who fail to enter into a provider enrollment agreement for a service prior to rendering that service.

4. The behavioral health service authorization contractor shall apply the appropriate medical necessity criteria for community mental health services covered by GAP as defined in 12VAC30-50-226. Services that fail to meet

medical necessity criteria shall be denied service authorization.

F. Individualized and individual-specific progress notes shall be part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, progress or lack of progress toward goals and objectives in the ISP. The progress notes shall also include, at a minimum, the name of the service rendered, the date of the service rendered, the contemporaneous-with-the-service signature and credentials of the person who rendered the service, the setting in which the service was rendered, and the amount of time or units/hours required to deliver the service. The content of each unique progress note shall corroborate the time/units billed. Progress notes shall be documented for each service that is billed.

12VAC30-135-485. Reimbursement.

A. All services covered in the GAP program shall be billed and reimbursed through the existing Medicaid/CHIP fee-for-service methodology and claims process.

B. Specific covered services shall require service authorization via the department's and BHSA requirements.

C. Reimbursement for substance abuse services shall be consistent with subdivisions 1 through 6 of 12VAC30-80-32.

D. Service authorization shall not guarantee payment for the service.

12VAC30-135-487. Client appeals.

A. Notwithstanding the provisions of 12VAC30-110-10 through 12VAC30-110-370, the regulations for client appeals described in this section through 12VAC30-135-495 govern state fair hearings for GAP program applicants and enrolled individuals. Appeal procedures for GAP providers are set out in 12VAC30-135-496.

B. GAP program applicants and enrollees (also referred to as appellants) shall have the right to a hearing pursuant to 42 CFR 431.220.

C. Applicants and enrollees shall be notified in writing of the appeals process at the time of the request for eligibility and upon receipt of a notice of action from Cover Virginia, BHSA, or the service authorization contractor.

D. An appellant shall have the right to representation by an attorney or other individual of his choice at all stages of an appeal.

1. For those appellants who wish to have a representative, a representative shall be designated in a written statement that is signed by the appellant whose Medicaid benefits were adversely affected. If the appellant is physically unable to sign a written statement, the division shall allow a family member or other person acting on the appellant's behalf to be the representative. If the appellant is mentally unable to sign a written statement, the division shall require written documentation that a family member or other person has been appointed or designated as his legal representative.

2. If the representative is an attorney or a paralegal working under the supervision of an attorney, a signed statement by such attorney or paralegal that he is authorized to represent the appellant, prepared on the attorney's letterhead, shall be accepted as a designation of representation.

3. A member of the same law firm as a designated representative shall have the same rights as the designated representative.

4. An appellant may revoke representation by another person at any time. The revocation is effective when the department receives written notice from the appellant.

E. Any written communication from an applicant or enrollee or his representative that clearly expresses that he wants to present his case to a reviewing authority shall constitute an appeal request.

1. This communication should explain the basis for the appeal of Cover Virginia or the service authorization contractor's action.

2. The applicant or enrollee or his representative may examine witnesses or documents, or both, provide testimony, submit evidence, and advance arguments during the hearing.

F. Appeals to the state fair hearing process shall be made to the DMAS Appeals Division in writing, with the exception of expedited appeals, and may be made via U.S. Mail, fax transmission, hand-delivery, or electronic transmission.

G. The agency of record, Cover Virginia, BHSA, or the service authorization contractor shall attend and defend its decisions at all appeal hearings or conferences, whether in person or by telephone, as deemed necessary by the DMAS Appeals Division. Travel and telephone expenses in relation to appeal activities shall be borne by the agency of record, Cover Virginia, or the service authorization contractor, as appropriate.

H. Expedited appeals referenced in subsection K of this section may be filed by telephone or by any of the methods set forth in subsection F in this section.

I. The BHSA or the service authorization contractor shall continue benefits while the appeal is pending when all of the following criteria are met:

1. The applicant or enrollee or his representative files the appeal within 10 calendar days (plus five mail days) of the date the notice of action was sent by Cover Virginia, BHSA, or the service authorization contractor;

2. The appeal involves the termination, suspension, or reduction of eligibility benefits or a previously authorized course of treatment;

3. In the case of services, the services were ordered by an authorized provider, and the original period covered by the initial authorization has not expired; and

4. The applicant or enrollee or his representative requests continuation of benefits.

J. After the final resolution and if the final resolution of the appeal is adverse to the enrollee (e.g., Cover Virginia, BHSA, or the service authorization contractor's action is upheld), the agency may recover the costs of services furnished to the applicant or enrollee while the appeal was pending to the extent they were furnished solely because of the pending appeal.

K. The department shall maintain an expedited process for appeals when an appellant's or enrollee's treating provider certifies that taking the time for a standard resolution could seriously jeopardize the appellant's or enrollee's life or health or ability to attain, maintain, or regain maximum function. Expedited appeal decisions shall be issued as expeditiously as the appellant's or enrollee's health condition requires.

1. For eligibility matters, the Commonwealth shall render appeal decisions within a reasonable amount of time. In setting timeframes, the Commonwealth shall consider the need for expedited appeals when there is an immediate need for health services.

2. For health services matters, the Commonwealth shall ensure that appeals that meet the criteria for expedited resolution are completed no later than 72 hours after the agency receives a fair hearing request.

12VAC30-135-489. Appeal timeframes.

A. Appeals to the Medicaid state fair hearing process shall be filed with the DMAS Appeals Division within 30 days of the date the notice of action was sent by Cover Virginia, BHSA, or the service authorization contractor, unless the time period is extended by DMAS upon a finding of good cause in accordance with 12VAC30-135-487 through 12VAC30-135-495.

B. It is presumed that appellants or enrollees will receive the notice of action five days after Cover Virginia, BHSA, or the service authorization contractor mails it, unless the appellant shows that he did not receive the notice within the five-day period. For purposes of calculating the five-day period, it is presumed that the notice was mailed by Cover Virginia, BHSA, or the service authorization contractor on the date that is indicated on the notice.

C. A request for appeal on the grounds that Cover Virginia, BHSA, or the service authorization contractor has not acted with reasonable promptness in response to an eligibility or service request may be filed at any time until Cover Virginia or the service authorization contractor has acted.

D. The date of filing shall be the date the request is postmarked, if by U.S. mail, or the date the request is received by the department, if delivered other than by U.S. mail.

E. Documents postmarked on or before a time limit's expiration shall be accepted as timely.

F. In computing any time period under 12VAC30-135-487 through 12VAC30-135-495, the day of the act or event from which the designated period of time begins to run shall be excluded and the last day included. If a time limit would expire on a Saturday, Sunday, or state or federal holiday, it shall be extended until the next regular business day.

G. An extension of the 30-day period for filing a request for appeal may be granted for good cause shown. Examples of good cause include, but are not limited to, the following situations:

1. The appellant or enrollee was seriously ill and was prevented by illness from contacting the department;

2. The notice of action completed by Cover Virginia, BHSA, or the service authorization contractor was not sent to the appellant. Cover Virginia or the service authorization contractor may rebut this claim by evidence that the decision was mailed to the appellant's or enrollee's last known address or that the notice was received by the appellant;

3. The appellant or enrollee sent the request for appeal to another government agency in good faith within the time limit; or

4. Unusual or unavoidable circumstances prevented a timely filing of the appeal request.

H. Appeals shall be heard and decisions issued within 90 days of the postmark date (if delivered by U.S. mail) or receipt date (if delivered by any method other than U.S. mail).

I. Exceptions to standard appeal resolution timeframes. Decisions may be issued beyond the standard timeframe when the appellant, enrollee, representative requests or causes a delay. Decisions may also be issued beyond the standard appeal resolution timeframe when any of the following circumstances exist:

1. The appellant, enrollee, or representative requests to reschedule or continue the hearing;

2. The appellant, enrollee, or representative provides good cause for failing to keep a scheduled hearing appointment and the appeals division reschedules the hearing;

3. Inclement weather, unanticipated system outage, or the department's closure that prevents the hearing officer's ability to work;

4. Following a hearing, the hearing officer orders an independent medical assessment as described in 12VAC30-110-200;

5. The hearing officer leaves the hearing record open after the hearing in order to receive additional evidence or argument from the appellant, enrollee, or representative;

6. The hearing officer receives additional evidence from a person other than the appellant, enrollee, or his representative, and the appellant, enrollee, or

representative requests to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence; or

7. The division determines that there is a need for additional information and documents how the delay is in the appellant's interest.

J. For delays requested or caused by an appellant, enrollee, or his representative, the delay date for the decision will be calculated as follows:

1. If an appellant, enrollee, or representative requests or causes a delay within 30 days of the request for a hearing, the 90-day time limit will be extended by the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

2. If an appellant, enrollee, or representative requests or causes a delay within 31 to 60 days of the request for a hearing, the 90-day time limit will be extended by 1.5 times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

3. If an appellant, enrollee, or representative requests or causes a delay within 61 to 90 days of the request for a hearing, the 90-day time limit will be extended by two times the number of days from the date when the first hearing was scheduled until the date to which the hearing is rescheduled.

K. Post hearing delays requested or caused by an appellant, enrollee, or representative (e.g., requests for the record to be left open) will result in a day-to-day delay for the decision date. The department shall provide the appellant, enrollee, and representative with written notice of the reason for the decision delay and the delayed decision date, if applicable.

12VAC30-135-491. Prehearing decisions.

A. If the division determines that any of the conditions exist as described in this subsection, a hearing shall not be held and the appeal process shall be terminated.

1. The appeal request was not filed within the time limit imposed by 12VAC30-110-160 or extended pursuant to 12VAC30-110-170. The appellant, enrollee, or representative did not reply to the hearing officer's request for an explanation that met good cause criteria.

2. The individual who filed the appeal is not the appellant and has not submitted authorization to represent the appellant under the provisions of 12VAC30-110-60.

3. Subsequent to the appeal request, the appellant's or enrollee's eligibility or request for services was approved for the full amount, duration, and scope of the services requested.

4. The appellant, enrollee, or representative failed to appear at the scheduled hearing and the appellant, enrollee, or representative did not reply to the hearing officer's request for an explanation that met good cause criteria.

5. A written notice of the telephonic hearing has been agreed to by the appellant and sent to the appellant, but the appellant or his representative has failed to respond to the hearing officer's request for a telephone number at which he could be reached for the telephonic hearing.

6. The appellant, enrollee, or representative withdrew the appeal request.

7. The sole issue is a federal or state law requiring an automatic change adversely affecting some or all appellants or enrollees.

8. The hearing officer determined from the record, without conducting a hearing, that Cover VA or the service authorization contractor's action was clearly in error and that the case should be resolved in the appellant's or enrollee's favor. The hearing officer may issue a decision pursuant to 12VAC30-110-210 C.

B. A letter shall be sent to the appellant, enrollee, or representative that explains the determination made on his appeal.

C. If the hearing officer determines from the record that the actions of Cover VA, the BHSA, or the service authorization contractor were clearly in error and that the case should be resolved fully in the appellant's favor, then the hearing officer may issue a decision pursuant to 12VAC30-110-210 C without conducting a hearing.

D. If the hearing officer determines from the record (without conducting a hearing) that the case might be resolved in the appellant's favor if Cover VA, the BHSA, or the service authorization contractor obtains or develops additional information, documentation, or verification, then the hearing officer may remand the case to Cover VA, the BHSA, or the service authorization contractor for action consistent with the hearing officer's written instructions pursuant to 12VAC30-110-210 D.

12VAC30-135-494. Evidentiary hearings and final decisions.

A. All hearings shall be scheduled at a reasonable time, date, and place, and the appellant and his representative shall be notified in writing at least 15 days before the hearing.

1. The hearing location shall be determined by the division.

2. A hearing shall be rescheduled at the appellant's request no more than twice unless compelling reasons exist.

3. Rescheduling the hearing at the appellant's, enrollee's, or representative's request will result in automatic waiver of the 90-day deadline for resolution of the appeal. The delay date for the decision will be calculated as set forth in 12VAC30-135-489 J.

B. The hearing shall be conducted by one or more hearing officers or other impartial individuals who were not directly involved in the initial determination of the action in question. The hearing officer or officers shall review the complete record for all Cover Virginia, BHSA, or service authorization

contractor actions that are properly appealed; conduct informal, fact-gathering hearings; evaluate evidence presented; research the issues; and render a written final decision.

C. Subject to the requirements of all applicable federal and state laws regarding privacy, confidentiality, disclosure, and personally identifiable information, the appeal record shall be made accessible to the appellant and representative at a convenient place and time before the date of the hearing, as well as during the hearing. The appellant or enrollee and his representative may examine the content of the appellant's or enrollee's case file and all documents and records the department will rely on at the hearing except those records excluded by law.

D. Appellants, enrollees, or representatives who require the attendance of witnesses or the production of records, memoranda, papers, and other documents at the hearing may request in writing the issuance of a subpoena. The request must be received by the department at least 10 working days before the scheduled hearing. Such request shall (i) include the witness' or respondent's name, home and work addresses, and county or city of work and residence and (ii) identify the sheriff's office that will serve the subpoena.

E. The hearing officer shall conduct the hearing; decide on questions of evidence, procedure, and law; question witnesses; and assure that the hearing remains relevant to the issue or issues being appealed. The hearing officer shall control the conduct of the hearing and decide who may participate in or observe the hearing.

F. Hearings shall be conducted in an informal, nonadversarial manner. The appellant, enrollee, or his representative shall have the right to bring witnesses, establish all pertinent facts and circumstances, present an argument without undue interference, and question or refute the testimony or evidence, including the opportunity to confront and cross-examine agency representatives.

G. The rules of evidence shall not strictly apply. All relevant, nonrepetitive evidence may be admitted, but the probative weight of the evidence will be evaluated by the hearing officer.

H. The hearing officer may leave the hearing record opened for a specified period of time after the hearing in order to receive additional evidence or argument from the appellant or his representative.

1. The hearing officer may order an independent medical assessment when the appeal involves medical issues such as a diagnosis, an examining physician's report, or a medical review team's decision, and the hearing officer determines that it is necessary to have an assessment by someone other than the person or team who made the original decision (e.g., to obtain more detailed medical findings about the impairments, to obtain technical or specialized medical information, or to resolve conflicts or differences in medical findings or assessments in the existing evidence). A medical assessment ordered pursuant to this part shall be at the department's expense and shall become part of the record.

2. The hearing officer may receive evidence that was not presented by either party if the record indicates that such evidence exists, and the appellant or his representative requests to submit it or requests that the hearing officer secure it.

3. If the hearing officer receives additional evidence from an entity other than the appellant, enrollee, or his representative, the hearing officer shall send a copy of such evidence to the appellant, enrollee, and his representative and give the appellant, enrollee, or his representative the opportunity to comment on such evidence in writing or to have the hearing reconvened to respond to such evidence.

4. Any additional evidence received will become a part of the hearing record, but the hearing officer must determine whether or not it will be used in making the decision.

I. After conducting the hearing, reviewing the record, and deciding questions of law, the hearing officer shall issue a written final decision that either sustains or reverses the action of Cover Virginia or the service authorization contractor or remands the case for further evaluation consistent with the hearing officer's written instructions. Some decisions may be a combination of these dispositions. The hearing officer's final decision shall be considered as the department's final administrative action pursuant to 42 CFR 431.244(f). The final decision shall include:

1. Identification of the issue or issues;

2. Relevant facts, to include a description of the procedural development of the case;

3. Conclusions of law, regulations, and policy that relate to the issue or issues;

4. Discussions, analysis of the accuracy of the agency's decision, conclusions, and hearing officer's decision;

5. Further action, if any, to be taken by the agency to implement the decision;

6. The deadline date by which further action must be taken; and

7. A cover letter informing the appellant and representative of the hearing officer's decision. The letter must indicate that the hearing officer's decision is final and that the final decision may be appealed directly to circuit court.

J. A copy of the hearing record shall be forwarded to the appellant, enrollee, and his representative with the final decision.

K. An appellant or enrollee who disagrees with the hearing officer's final decision as defined in this section may seek judicial review pursuant to the Administrative Process Act (§ 2.2-4026 of the Code of Virginia) and Rules of the Supreme Court of Virginia, Part Two A. Written instructions for requesting judicial review must be provided to the

appellant, enrollee, or representative with the hearing officer's decision, and upon request by the appellant, enrollee, or representative.

12VAC30-135-495. Division appeal records.

A. No person shall take from the division's custody any original record, paper, document, or exhibit that has been certified to the division except as the Appeals Division Director or his designee authorizes, or as may be necessary to furnish or transmit copies for other official purposes.

B. Information in the appellant's or enrollee's record can be released only to the appellant, the enrollee, or the appellant's or enrollee's authorized representative; the agency; other entities for official purposes; and other persons named in a release of information authorization signed by an appellant or his representative.

C. The fees to be charged and collected for any copies of division records will be in accordance with Virginia's Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia) or other controlling law.

D. When copies are requested from records in the division's custody, the required fee shall be waived if the copies are requested in connection with an enrollee's own appeal.

12VAC30-135-496. Provider appeals.

A. The division maintains an appeal process for enrolled GAP providers of GAP services who have rendered services and are requesting to challenge an adverse decision. The appeal process is available to (i) enrolled GAP service providers that have rendered services and have received a denial in whole or part for GAP covered services and (ii) enrolled GAP service providers who have received a notice of program reimbursement or overpayment demand from the department or its contractors.

B. Unless otherwise specified above, department provider appeals shall be conducted in accordance with the department's provider appeal regulations in Part XII (12VAC30-20-500 et seq.) of 12VAC30-20, § 32.1-325 et seq. of the Code of Virginia, and the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. The department's appeal decision shall be binding on Cover VA, the BHSA, and the service authorization contractor and shall not be subject to further appeal.

12VAC30-135-498. Individual rights.

A. Individuals who have been found eligible for this GAP program shall have the right to be treated with respect and dignity by health care providers' staff and their personal health information kept in confidence per the Health Insurance Portability and Accountability Act.

B. No premiums, copayments, coinsurance or deductibles shall be charged to individuals who have been found to be eligible for the GAP program.

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

FORMS (12VAC30-135)

Governor's Access Plan (GAP Serious Mental Illness (SMI) Screening Tool, DMAS P-603 (eff. 11/2014)

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-135)

Child Adolescent Functional Assessment Scale (Uniform Assessment Instrument), Functional Assessment Systems, 2000.

Diagnostic and Statistical Manual of Mental Disorders (DSM-5®), Fifth Edition, copyright 2013, American Psychiatric Association, 1000 Wilson Boulevard, Suite 1825, Arlington, Virginia 22209, http://www.psychiatry.org/dsm5.

VA.R. Doc. No. R15-4171; Filed December 10, 2014, 3:08 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board is also claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3 of the Code of Virginia, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.67, 16VAC25-90-1910.266).**

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

Effective Date: February 15, 2015.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219,

telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety & Health Administration (OSHA) has corrected nonsubstantive typographical errors in its standards for Vehicle-mounted elevating and rotating work platforms, 29 CFR 1910.67, and Logging operations, 29 CFR 1910.266. The first typographical error corrected was in the title of a national consensus standards organization referenced in 29 CFR 1910.67(c)(5) by replacing "Automotive" with "American". The second typographical error was in a reference in the Logging operations standard to another federal OSHA standard. Specifically, in 29 CFR 1910.266(d)(1)(iv), which was adopted by the Safety and Health Codes Board on December 19, 1994, federal OSHA, in this final rule, inserted "1910.67" and removed "1910.68". In this regulatory action, the board is adopting these corrections.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational Safety and Health Standards) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On December 11, 2014, the Safety and Health Codes Board adopted federal OSHA's final rule for Corrections to the Standards for Vehicle-Mounted Elevating and Rotating Work Platforms, § 1910.67, and Logging Operations, §1910.266, as published in 79 FR 37189-37190 on July 1, 2014, with an effective date of February 15, 2015.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
July 1, 2014	February 15, 2015

VA.R. Doc. No. R15-4256; Filed December 17, 2014, 10:00 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **16VAC25-90. Federal Identical General Industry Standards (amending 16VAC25-90-1910.269, Appendices A-2, B, C, D, and E to 16VAC25-90-1910.269).**

16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.960, 16VAC25-175-968, Appendix B to Subpart V of Part 126).

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

Effective Date: February 15, 2015.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety and Health Administration corrected numerous errors in its Final Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment.

Changes to § 1910.269 of Subpart R include (i) revising paragraph (h)(2)(i) to include the strength requirement for portable ladders; (ii) in Table R-3, AC Live-Line Work Minimum Approach Distance, revising the equation under the entry "For phase-to-phase system voltages of more than 72.5 kV, nominal" and changing "Table 6 through Table 13" to read "Table 14 through Table 21" in footnote 2; (iii) in Tables R-6 and R-7, removing the bracketed expression "[In meters or feet and inches]"; (iv) revising Appendix A-2, Application of § 1910.269 and Subpart S of this Part to Electrical Safety-Related Work Practices, to correct the first question in the flow chart so that it refers to the definition of "qualified" in § 1910.399; (v) In Appendix B, Working on Exposed Energized Parts, § IV.D, changing "Table 7 through Table 14" wherever it appears to "Table 14 through Table 21" and the title "Table 6-Minimum Approach Distances until March 31, 2015" to "Table 6-Minimum Approach Distances until December 31, 2014"; (vi) in Appendix C, Protection From Hazardous Differences in Electric Potential, redesignating footnotes 14, 15, 16, 17, and 18 as footnotes 1, 2, 3, 4, and 5, respectively; (vii) in Appendix D, Methods of Inspecting and Testing Wood Poles, redesignating footnotes 19 and

20 as footnotes 1 and 2, respectively; and (viii) in Appendix E, Protection From Flames and Electric Arcs, redesignating footnotes 21, 22, 23, 24, 25, 26, 27, 28, and 29 as footnotes 1, 2, 3, 4, 5, 6, 7, 8, and 9, respectively.

Changes to Subpart V of Part 1926, Electric Power Transmission and Distribution include (i) in Tables V-5 and V-6 of §1926.960 of Subpart V, removing the parenthetical expression "(In Meters or Feet and Inches)" in the table headings; (ii) in § 1926.968, changing "§ 1926.1200" to "§ 1926.59" in the note to the definition of "Hazardous atmosphere" (5) and changing "section" to "subpart" in paragraph 2 of the definition of "Lines" and (iii) in Table 2 of Appendix B to Subpart V of Part 1926, changing "2. Multiply by √3" to "2. Multiply by √2."

This regulatory action adopts the corrections in OSHA's final rule to Subpart R (Special Industries) of 29 CFR Part 1910 and Subpart V (Electric Power Transmission and Distribution) of 29 CFR Part 1926.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1910 (Occupational and Safety Health Standards) and 29 CFR Part 1926 (Safety and Health Regulations for Construction) are declared documents generally available to the public and appropriate for incorporation by reference. For this reason, these documents will not be printed in the Virginia Register of Regulations. A copy of these documents are available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On December 11, 2014, the Safety and Health Codes Board adopted federal OSHA's final rule for Corrections to the Final Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment, as published in 79 FR 56955-56962 on September 24, 2014, with an effective date of February 15, 2015.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Occupational Safety and Health Standards and Safety and Health Regulations for Construction is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
September 24, 2014	February 15, 2015

VA.R. Doc. No. R15-4249; Filed December 17, 2014, 9:58 a.m.

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **16VAC25-175. Federal Identical Construction Industry Standards (amending 16VAC25-175-1926.1427).**

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

Effective Date: February 15, 2015.

Agency Contact: John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, or email crisanti.john@dol.gov.

Summary:

In a final rule, federal Occupational Safety & Health Administration (OSHA) extended for an additional three years (i) the enforcement date for crane operator certification and (ii) the employer's duty to ensure crane operators are competent to operate a crane safely. In this regulatory action, the board is adopting the new federal deadline of November 10, 2017.

Note on Incorporation by Reference: Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR Part 1926 (Safety and Health Regulations for Construction) is declared a document generally available to the public and appropriate for incorporation by reference. For this reason, this document will not be printed in the Virginia Register of Regulations. A copy of this document is available for inspection at the Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 201 North 9th Street, Richmond, Virginia 23219.

Statement of Final Agency Action: On December 11, 2014, the Safety and Health Codes Board adopted federal OSHA's final rule for Cranes and Derricks in Construction: Operator Certification, § 1926.1427(k), as published in 79 FR 57785-57798 on September 26, 2014, with an effective date of February 15, 2015.

Federal Terms and State Equivalents: When the regulations as set forth in the revised final rule for Safety and Health Regulations for Construction is applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

Federal Terms	VOSH Equivalent
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department
November 10, 2014	February 15, 2015

VA.R. Doc. No. R15-4250; Filed December 17, 2014, 10:02 a.m.

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TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

REGISTRAR'S NOTICE: The Common Interest Community Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 6 of the Code of Virginia, which excludes regulations of the regulatory boards served by the Department of Professional and Occupational Regulation pursuant to Title 54.1 of the Code of Virginia that are limited to reducing fees charged to regulants and applicants. The Common Interest Community Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC48-60. Common Interest Community Board Management Information Fund Regulations (amending 18VAC48-60-60).**

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Effective Date: March 1, 2015.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

Summary:

The amendments reduce renewal fees for residential common interest community association registrations renewing on or before June 30, 2016, in order to reduce an accumulated surplus in the board's budget and to be in compliance with § 54.1-113 of the Code of Virginia.

18VAC48-60-60. Registration fee.

The following fee schedule is based upon the size of each residential common interest community. The application fee is different than the annual renewal fee. All fees are nonrefundable.

Number of Lots/Units	Application Fee	Renewal Fee
1-50	$45	$30
51-100	$65	$50
101-200	$100	$80
201-500	$135	$115
501-1000	$145	$130
1001-5000	$165	$150
5001+	$180	$170

For annual renewal of a residential common interest community registration received on or before June 30, 2016, the fee shall be $10 regardless of size.

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

FORMS (18VAC48-60)

Community Association Registration Application, ASSOCANRPT (eff. 9/08)

~~CIC Annual Renewal Report, CICANRENRPT (eff. 09/04/08)~~

Declarant Annual Report for Condominium, condo annual report (eff. 9/08)

Community Association Annual Report, A492-0550ANRPT-v2int (eff. 3/15)

Governing Board Change Form, BODCHG (eff. 11/08)

VA.R. Doc. No. R15-4222; Filed December 19, 2014, 11:46 a.m.

BOARD FOR CONTRACTORS

Proposed Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-100, 18VAC50-22-130, 18VAC50-22-140, 18VAC50-22-160, 18VAC50-22-170, 18VAC50-22-180, 18VAC50-22-260; adding 18VAC50-22-62).**

Statutory Authority: §§ 54.1-201, 54.1-1102, and 54.1-1146 of the Code of Virginia.

Public Hearing Information:

February 10, 2015 - 10:15 a.m. - Commonwealth of Virginia Conference Center Perimeter Center, Training Room 2, 9960 Mayland Drive, Richmond, VA 23233

Public Comment Deadline: March 13, 2015.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1146 of the Code of Virginia authorizes the Board for Contractors to issue residential building energy analyst licenses and residential building energy analyst firm licenses to applicants that meet specified criteria. Section 54.1-201 A 5 of the Code of Virginia states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The proposed amendments address residential building energy analyst licensure for firms as required by Chapter 865 of the Acts of the 2011 General Assembly. The number of consumers who are interested in having their homes become more energy efficient has continued to increase as people become more conscious of their impact on the environment. The General Assembly has determined that this program is necessary to ensure that the public be protected against incompetent, unqualified, unscrupulous, or unfit persons engaging in residential building energy analyst activities.

Substance: The board seeks to amend its regulations to include a definition and fee for residential building energy analyst firms and to bring residential building energy analyst firm license holders under the board's jurisdiction and disciplinary authority. The proposed amendments (i) add residential building energy analyst firm to the definitions and list of licenses issued by the Board for Contractors; (ii) establish entry requirements for residential building energy analyst firm license applicants; (iii) establish a residential building energy analyst firm license fee of $210 and specify that a residential building energy analyst firm is not subject to paying the $25 recovery fund assessment; (iv) establish renewal and reinstatement requirements and fees for residential building energy analyst firms; (v) provide that a residential building energy analyst firm shall be continuously licensed if they meet the requirements of reinstatement; and (vi) update the filing of charges and prohibited acts section to include residential building energy analyst firms as well as contractors, including the addition of two prohibited acts specifically for residential building energy analyst firms.

Issues: The housing industry is taking great strides in constructing homes that are energy efficient. The building codes for residential construction will also reflect some of these newer construction techniques. Part of the industry changes are to ensure that new homes are constructed in accordance with the standards set forth by the Building Performance Institute and the Residential Energy Services Network and that work done retroactively to existing structures meets similar industry standards. It is imperative that individuals who are responsible for the inspection of a residential property to evaluate or measure the energy consumption and efficiency of that property are adequately trained and licensed. Additionally, financial criteria set forth in these proposed regulations, including the requirement that a licensee be properly insured, helps protect the public from damages that could occur during the testing process. The protection and assurance of properly trained individuals and firms is the primary advantage of these regulations. Since the decision to have an energy analysis done on one's home is voluntary, there is no disadvantage to the public.

Virginia was the first state to require the licensure of residential building energy analyst firms and, by doing so, can be viewed as being very proactive within the residential energy industry and consumer protection arenas by ensuring that energy analyses are done by properly trained individuals working for financially protected companies.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 865 of the 2011 Acts of the Assembly, the Board for Contractors (Board) proposes to promulgate regulations to newly license residential building energy analyst (RBEA) firms. These proposed regulations will replace emergency regulations that became effective July 1, 2013.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact. Chapter 865 of the 2011 Acts of Assembly created a new licensing requirement for RBEAs and firms under newly created sections of the Virginia Code: 54.1-1144, 54.1-1145, and 54.1-1146. In addition, Chapter 865 mandated that the board adopt regulations to approve accredited RBEA training programs, the licensing requirements for this profession, and the establishment of performance standards for this work that are consistent with the United States Environmental Protection Agency (EPA). This proposed regulatory package would address the licensing of RBEA firms by:

1) Adding a definition of residential building analyst firm,

2) Requiring firms to have at least one qualified individual who is over the age of 18, is licensed as an RBEA analyst and is a full time employee of the firm,

3) Requiring firms to get and maintain $500,000 in general liability insurance,

4) Establishing an RBEA firm initial license fee of $210, a biennial renewal fee of $195, and a reinstatement fee of $405 (for firms that fail to renew within 30 days of their renewal date),

5) Stating that applicants for renewal or reinstatement must meet all licensure requirements and are required to submit proof of insurance,

6) Clarifying that RBEA firms who apply for reinstatement are regarded as having been continuously licensed without interruption and may be held accountable for their activities during the entire time period,

7) Adding RBEA firms to the relevant sections of the disciplinary provisions of the regulatory text that pertain to prohibited acts and

8) Adding two grounds for discipline that are specific to RBEA firms: firms that endorse residential building energy analyses inconsistent with Board, EPA, or Energy Star Program requirements or fail to maintain the required general liability insurance will be subject to Board discipline.

Firms that are licensed through these regulations will incur explicit costs for required fees and for maintain required insurance; Board staff reports that insurance premiums will vary pretty widely but estimates that the annual cost of a $500,000 general liability insurance policy for firms should be between $600 and $1,500. Firms may also incur implicit and explicit costs for training and testing employees so that they can be licensed as RBEA analysts. For firms these costs would include the value of the time (Board staff approximates 40 hours) that an already licensed firm employee who has been certified as an RBEA trainer must spend training unlicensed employees as well as the $950 fee for taking a certification exam through one of the two certification programs approved by the Board (the Residential Energy Services Network or the Building Professional Institute). Firms may choose to pay for such training because the cost of outside training for employees, approximately $2,995, might be prohibitive for many individuals. Firms will likely also incur non-fee costs for compiling and maintaining necessary documents to prove licensure eligibility and for submitting these documents to the Board. These costs must be weighed against any benefit that might accrue to the public if licensure curbs or eliminates shoddy or unethical residential building energy analyses. As these benefits are currently unknown, there is insufficient information to ascertain whether benefits will outweigh costs for this licensure program.

Businesses and Entities Affected. Board staff reports that, as of November 30, 2013, the Board has licensed 28 RBEA firms. All of these firms, as well as any other entities that might want to engage in residential building energy analysis, will be affected by these proposed regulations.

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

Projected Impact on Employment. This proposed regulatory action is likely to reduce the number firms that perform or facilitate residential building energy analysis because having to get and maintain licensure will likely raise costs for such firms.

Effects on the Use and Value of Private Property. To the extent that the right to engage in the business of one's choice unencumbered can be viewed as a private property right, the value of affected firms' private property may be reduced by these proposed regulations. Any reduction in value may be offset partially or completely because licensure programs serve as a barrier to entry that may limit competition and increase market share, and therefore revenues, for surviving firms. Some firms may actually enjoy increased profits if increased revenues outstrip additional costs incurred on account of required licensure.

Small Businesses: Costs and Other Effects. Most if not all RBEA firms qualify as small businesses. These firms will incur implicit and explicit costs for getting and maintaining licensure.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternatives to these regulations that would both fulfill the legislative requirements in Chapter 865 and be less costly for small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The board concurs with the analysis.

Summary:

The proposed amendments create the residential building energy analyst firm license to comport with Chapter 865 of the 2011 Acts of Assembly. The proposed amendments add a definition of residential building energy analyst firm, establish licensure eligibility criteria, list the fees associated with the license, add prohibited acts for such a

license, and identify other administrative requirements. The proposed regulations are intended to replace emergency regulations that have been in effect since July 1, 2013.

Part I
Definitions

18VAC50-22-10. General definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Change order" means any modification to the original contract including, but not limited to, the time to complete the work, change in materials, change in cost, and change in the scope of work.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Prime contractor" means a licensed contractor that performs, supervises, or manages the construction, removal, repair, or improvement of real property pursuant to the terms of a primary contract with the property owner/lessee. The prime contractor may use its own employees to perform the work or use the services of other properly licensed contractors.

"Principal place of business" means the location where the licensee principally conducts business with the public.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Residential building energy analyst firm" means any business entity wherein a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, is offered or practiced.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Temporary license" means a license issued by the board pursuant to § 54.1-201.1 of the Code of Virginia that authorizes a person to engage in the practice of contracting until such time as the license is issued or 45 days from the date of issuance of the temporary license, whichever occurs first.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon

death of either, the other takes whole to exclusion of the deceased's remaining heirs.

"Virginia Uniform Statewide Building Code" or "USBC" means building regulations comprised of those promulgated by the Virginia Board of Housing and Community Development in accordance with § 36-98 of the Code of Virginia, including any model codes and standards that are incorporated by reference and that regulate construction, reconstruction, alteration, conversion, repair, maintenance or use of structures, and building and installation of equipment therein.

18VAC50-22-62. Requirements for residential building energy analyst firm.

A. An applicant for a residential building energy analyst firm license must meet the requirements of this section.

B. The firm shall name a qualified individual who meets all of the following requirements:

1. Is at least 18 years old;

2. Holds a current individual residential building energy analyst license issued by the board; and

3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm.

C. The applicant shall provide documentation, acceptable to the board, that the firm currently carries a minimum of $500,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose at the time of application (i) any current or previous energy analyst or home inspection licenses held in Virginia or in other jurisdictions and (ii) any disciplinary actions taken on these licenses. This includes, but is not limited to, any monetary penalties, fines, suspensions, revocations, surrender of a license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. The firm shall provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies. The firm, its qualified individual, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of residential building energy analysis as defined in § 54.1-1144 of the Code of Virginia.

F. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual for the firm:

1. All misdemeanor convictions within three years of the date of application; and

2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

18VAC50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	$210
Class B Initial License	with license application	$345
Class A Initial License	with license application	$360
Temporary License	with license application and applicable initial license fee	$50
Residential Building Energy Analyst Firm License	with license application	$210
Qualified Individual Exam Fee	with exam application	$20
Class B Exam Fee	with exam application ($20 per section)	$40
Class A Exam Fee	with exam application ($20 per section)	$60

Note: A $25 Recovery Fund assessment is also required with each initial license application, except for the residential building energy analyst firm license. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental

agency or organization shall be determined by that agency or organization.

18VAC50-22-130. Qualifications for renewal.

A. The license holder's completed renewal form and appropriate fees must be received within 30 days of the license expiration date in order to renew the license. Applications and fees received after the 30-day period will be processed in accordance with Part IV (18VAC50-22-160 et seq.) of this chapter.

B. Applicants for renewal of a Class C license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-40. Applicants for renewal of a Class B license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-50. Applicants for renewal of a Class A license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-60.

C. Applicants for renewal of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-62 and shall submit proof of insurance as required in 18VAC50-22-62 C.

18VAC50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Renewal	with renewal application	$195
Class B Renewal	with renewal application	$225
Class A Renewal	with renewal application	$240
Residential Building Energy Analyst Firm Renewal	with renewal application	$195

The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

Part IV
Reinstatement

18VAC50-22-160. Reinstatement required.

Should the Department of Professional and Occupational Regulation fail to receive a license holder's renewal form and appropriate fees within 30 days of the license expiration date, the licensee shall be required to reinstate the license. Applicants for reinstatement of a Class C license shall meet the requirements of 18VAC50-22-130. Applicants for reinstatement of a Class B license shall continue to meet the qualifications for licensure set forth in 18VAC50-22-50. Applicants for reinstatement of a Class A license shall continue to meet all the qualifications for licensure set forth in 18VAC50-22-60. Applicants for reinstatement of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-62 and shall submit proof of insurance as required in 18VAC50-22-62 C.

18VAC50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Reinstatement	with reinstatement application	$405*
Class B Reinstatement	with reinstatement application	$460*
Class A Reinstatement	with reinstatement application	$490*
Residential Building Energy Analyst Firm Reinstatement	with reinstatement application	$405*

*Includes renewal fee listed in 18VAC50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once one year from the expiration date of the license has passed.

18VAC50-22-180. Status of licensee during the period prior to reinstatement.

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

B. A contractor who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore:

1. The contractor shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.

2. A consumer who contracts with a contractor during the period between the expiration of the license and the reinstatement of the license shall not be prohibited from making a claim on the Virginia Contractor Transaction Recovery Fund.

A contractor who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward.

Nothing in this chapter shall divest the board of its authority to discipline a contractor for a violation of the law or regulations during the period of time for which the contractor was licensed.

C. A residential building energy analyst firm that reinstates its license shall be regarded as having been continuously licensed without interruption and shall remain under the disciplinary authority of the board during this entire period and may be held accountable for its activities during this period.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.

3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor license by another state or conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence and/or incompetence in the practice of contracting or residential building energy analyses.

6. Misconduct in the practice of contracting or residential building energy analyses.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

a. When work is to begin and the estimated completion date;

b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;

c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;

d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;

e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;

f. Disclosure of the cancellation rights of the parties;

g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of protection available to him through the Board for Contractors;

h. Contractor's name, address, license number, class of license, and classifications or specialty services;

i. A statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties; and

j. Effective with all new contracts entered into after July 1, 2015, a statement notifying consumers of the existence of the Virginia Contractor Transaction Recovery Fund that includes information on how to contact the board for claim information.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure to obtain a building permit or applicable inspection, where required.

34. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth

by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the "Energy Star" Program.

35. Failure of a residential building energy analyst firm to maintain the general liability insurance required in 18VAC50-22-62 C at any time while licensed by the board.

VA.R. Doc. No. R13-2849; Filed December 18, 2014, 2:24 p.m.

Proposed Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-40, 18VAC50-30-90, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-185, 18VAC50-30-190, 18VAC50-30-200).**

Statutory Authority: §§ 54.1-201, 54.1-1102, and 54.1-1146 of the Code of Virginia.

Public Hearing Information:

February 10, 2015 - 10 a.m. - Commonwealth of Virginia Conference Center Perimeter Center - Training Room 2, 9960 Mayland Drive, Richmond, Virginia 23233

Public Comment Deadline: March 13, 2015.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (866) 430-1033, or email contractors@dpor.virginia.gov.

Basis: Section 54.1-1146 of the Code of Virginia authorizes the Board for Contractors to issue residential building energy analyst licenses and residential building energy analyst firm licenses to applicants that meet specified criteria. Section 54.1-201 A 5 of the Code of Virginia states in part that regulatory boards shall promulgate regulations in accordance with the Administrative Process Act necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the regulatory board.

Purpose: The proposed amendment addresses residential building energy analysts (individuals) as required by Chapter 865 of the Acts of the 2011 General Assembly. The number of consumers that are interested in having their homes become more energy efficient has continued to increase as people become more conscious of their impact on the environment. The General Assembly has determined that this program is necessary to ensure that the public be protected against incompetent, unqualified, unscrupulous, or unfit persons engaging in activities residential building energy analyses.

Substance: The board seeks to amend its regulations to include a definition and fee for residential building energy analysts and to bring residential building energy analyst license holders under the board's jurisdiction and disciplinary authority. The proposed amendments (i) establish entry requirements for residential building energy analyst license applicants; (ii) establish a residential building energy analyst license fee of $130; (iii) establish renewal and reinstatement requirements and fees for residential building energy analysts; (iv) provide that residential building energy analysts are subject to disciplinary action from the board if found in violation of the statutes or regulations; (v) update the filing of charges and prohibited acts section to include residential building energy analysts, including the addition of two prohibited acts specifically for residential building energy analysts; and (vi) establish vocational training requirements for residential building energy analysts.

Issues: The housing industry is taking great strides in constructing homes that are energy efficient. The building codes for residential construction will also reflect some of these newer construction techniques. Part of the industry changes are to ensure that new homes are constructed in accordance with the standards set forth by the Building Performance Institute and the Residential Energy Services Network and that work done retroactively to existing structures meets similar industry standards. It is imperative that individuals who are responsible for the inspection of a residential property to evaluate or measure the energy consumption and efficiency of that property are adequately trained and licensed. Additionally, financial criteria set forth in these proposed regulations, including the requirement that a licensee be properly insured, helps protect the public from damages that could occur during the testing process. The protection and assurance of properly trained individuals and firms is the primary advantage of these regulations. Since the decision to have an energy analysis done on one's home is voluntary, there is no disadvantage to the public.

Virginia was the first state to require the licensure of residential building energy analyst firms and, by doing so, can be viewed as being very proactive within the residential energy industry and consumer protection arenas by ensuring that energy analyses are done by properly trained individuals working for financially protected companies.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 865 of the 2011 Acts of the Assembly, the Board for Contractors (Board) proposes to promulgate regulations to newly license residential building energy analysts. These proposed regulations will replace emergency regulations that became effective July 1, 2013.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact. Chapter 865 of the 2011 Acts of Assembly created a new licensing requirement for residential building energy analysts (RBEAs) under newly created sections of the Virginia Code: 54.1-1144, 54.1-1145, and 54.1-1146. In addition, Chapter 865 mandates that the board adopt regulations to approve accredited RBEA training programs, the licensing requirements for this profession, and

the establishment of performance standards for this work that are consistent with the United States Environmental Protection Agency (EPA). This proposed regulatory package would address the licensing of RBEAs by requiring applicants for licensure to:

1) Complete a Board approved training program (currently the Board has approved of certification programs by the Residential Energy Services Network [RESNET] and the Building Professional Institute[BPI]),

2) Complete a minimum of five residential building analyses under the supervision of a licensed RBEA,

3) Have a membership, in good standing, with a certifying organization approved by the Board (RESNET or BPI),

4) Disclose adverse financial information (on past due debts, judgments, tax obligations, defaults or bankruptcies) for the five years immediately prior to application for licensure,

5) Get and maintain $100,000 in general liability insurance if they are sole proprietors and are not employees of a licensed firm and

6) Pay an initial license fee of $130, a biennial renewal fee of $90, and a reinstatement fee of $140 (for individuals that fail to renew within 30 days of their renewal date).

Additionally, licensees will have to provide proof of continuing membership, in good standing, in a certifying organization approved by the Board when renewing or reinstating a license. The Board also proposes to add RBEAs to the relevant sections of the disciplinary provisions of the regulatory text that pertain to prohibited acts and to add two grounds for discipline that are specific to RBEAs and RBEA firms: RBEAs whose residential building energy analyses are inconsistent with Board, EPA, or Energy Star Program requirements and RBEAs who fail to maintain the required general liability insurance (when relevant) will be subject to Board discipline.

Individuals who are licensed through these regulations will incur explicit costs for required fees and for maintaining required insurance (in instances when such insurance is required); Board staff reports that insurance premiums will vary pretty widely especially for individuals since rates take into account such things as past claims and creditworthiness. Board staff estimates that the annual cost of a $500,000 general liability insurance policy required of firms should be between $600 and $1,500 but also reports that the required $100,000 of individual insurance may carry premiums that range both higher and lower than that estimate, depending on the circumstances of the individuals being insured. Individuals may also incur implicit and explicit costs for training and testing for certification but also may have those costs paid by their employer. Individuals who bear the costs for their own training will have to pay approximately $2,995 for 40 hours of education as well as the $950 fee for taking a certification exam through RESNET or BPI. Firms may choose to pay for training employees because training costs may be prohibitively high for many individuals and so paying for training may help firms attract workers. Individuals will likely also incur non-fee costs for compiling and maintaining necessary documents to prove licensure eligibility and for submitting these documents to the Board. These costs must be weighed against any benefit that might accrue to the public if licensure curbs or eliminates shoddy or unethical residential building energy analyses. As these benefits are currently unknown, there is insufficient information to ascertain whether benefits will outweigh costs for this licensure program.

Businesses and Entities Affected. Board staff reports that, as of November 30, 2013, the Board has licensed 52 RBEAs. All of these licensees, as well as any other entities that might want to engage in residential building energy analysis, will be affected by these proposed regulations.

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

Projected Impact on Employment. This proposed regulatory action is likely to reduce the number individuals who perform or facilitate residential building energy analysis because having to get and maintain licensure will likely raise costs for such individuals.

Effects on the Use and Value of Private Property. To the extent that the right to engage in the business of one's choice unencumbered can be viewed as a private property right, the value of affected individual's private property may be reduced by these proposed regulations. Any reduction in value may be offset partially or completely because licensure programs serve as a barrier to entry that may limit competition and increase market share, and therefore revenues, for individuals who choose to become licensed. Some individuals may actually enjoy increased profits if increased revenues outstrip additional costs incurred on account of required licensure.

Small Businesses: Costs and Other Effects. All sole proprietor RBEAs will qualify as small businesses. These individuals will incur implicit and explicit costs for getting and maintaining licensure.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are likely no alternatives to these regulations that would both fulfill the legislative requirements in Chapter 865 and be less costly for affected small businesses.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or

other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The board concurs with the analysis.

Summary:

The proposed amendments create the residential building energy analyst license to comport with Chapter 865 of the 2011 Acts of Assembly. The proposed amendments add a definition of residential building energy analyst, establish licensure eligibility criteria, list the fees associated with the license, add prohibited acts for such a license, and identify other administrative requirements. The proposed regulations are intended to replace emergency regulations that have been in effect since July 1, 2013.

18VAC50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;

2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;

3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;

4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or

2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or

2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in

excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129.1 A of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

G. An applicant for certification as an accessibility mechanic shall:

1. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances; 80 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 20 hours of formal training, but not to exceed 60 hours;

2. Have three years of practical experience in the construction, installation, maintenance, service, repair, and testing of wheelchair lifts, incline chairlifts, dumbwaiters, residential elevators, or related conveyances and a certificate of completion of an accessibility mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an accessibility mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

H. An applicant for a limited use/limited application (LULA) endorsement shall:

1. Hold a current certification as an accessibility mechanic issued by the board.

2. Have one year of practical experience in the construction, installation, maintenance, service, repair, and testing of limited use/limited application elevators and complete a vocational education program approved by the board; and satisfactorily complete a written examination administered by the board; or complete a limited use/limited application elevator training program determined to be equivalent to the requirements established by the board.

I. Pursuant to § 54.1-1145 B of the Code of Virginia, an applicant for licensure as a residential building energy analyst shall provide satisfactory proof to the board of:

1. The completion of a residential building energy analyst training program approved by the board;

2. The completion of a minimum of five residential building energy analyses under the supervision of a licensed residential building energy analyst;

3. Current membership in good standing with a certifying organization approved by the board; and

4. Maintaining a minimum of $100,000 of general liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia unless the individual is employed by a company that holds a valid residential building energy analyst firm license issued by the board.

The applicant shall provide information for the past five years prior to application on any outstanding past-due debts, outstanding judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies.

J. Individuals applying for initial licensure as residential building energy analysts who meet the criteria of § 54.1-1145 C of the Code of Virginia are not required to meet the eligibility standards for licensure found in subsection I of this section.

18VAC50-30-90. Fees for licensure and certification.

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

Original tradesman license by examination	$130
Original tradesman license without examination	$130
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	$95
Liquefied petroleum gas fitter	$130
Natural gas fitter provider	$130
Backflow prevention device worker certification	$130
Elevator mechanic certification	$130
Certified accessibility mechanic	$130
Water well systems provider certification	$130
Residential building energy analyst license	$130
Limited use/limited application endorsement	$65

18VAC50-30-120. Renewal.

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics and certified accessibility mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Uniform Statewide Building Code pertaining to elevators, escalators, and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129.1 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	$90
Liquefied petroleum gas fitter license	$90
Natural gas fitter provider license	$90
Backflow prevention device worker certification	$90
Elevator mechanic certification	$90
Certified accessibility mechanic	$90
Water well systems provider certification	$90
Residential building energy analyst license	$90

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

J. Residential building energy analysts, as a condition of renewal or reinstatement, shall provide documentation of

continued membership, in good standing, of a certifying organization approved by the board and proof of insurance as required in 18VAC50-30-40 I 4.

18VAC50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	$140*
Liquefied petroleum gas fitter license	$140*
Natural gas fitter provider license	$140*
Backflow prevention device worker certification	$140*
Elevator mechanic certification	$140*
Certified accessibility mechanic	$140*
Water well systems provider certification	$140*
Residential building energy analyst license	$140*

*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, or water well systems providers, or residential building energy analysts, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic or certified accessibility mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Any individual who completes a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, subsequent to the expiration of a residential building energy analyst license may have engaged in illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part V
Standards of Conduct

18VAC50-30-185. Revocation of licensure or certification.

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to fine, suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, ~~or~~ accessibility mechanics, or residential building energy analysts in the Commonwealth of Virginia.

18VAC50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;

2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;

3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider

license, certificate or card, or backflow prevention device worker, water well systems provider, elevator mechanic, or accessibility mechanic certification card, by another state or a conviction in a court of competent jurisdiction of a building code violation;

4. Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider;

5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider;

6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, accessibility mechanic, or water well systems provider by a court of competent jurisdiction;

7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under $1,000, or backflow prevention device workers, elevator mechanics, accessibility mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, elevator or accessibility work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Uniform Statewide Building Code;

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified;

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment; ~~and~~

17. Failure to obtain a building permit or applicable inspection where required;

18. Failure to perform a residential building energy analysis consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the "Energy Star" Program; and

19. Failure of a residential building energy analyst to maintain the general liability insurance required in 18VAC50-30-40 I 4.

Part VI

Vocational Training and Continuing Education Providers

18VAC50-30-200. Vocational training.

A. Vocational training courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board review.

D. Water well systems provider courses must be completed through schools or programs approved by the board.

E. Certified accessibility courses must be completed through education providers approved by the board.

F. Residential building energy analyst courses must be completed through programs that meet or exceed the standards set forth by the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Home Performance with Energy Star Program. Other programs could be approved after board review.

VA.R. Doc. No. R13-2739; Filed December 18, 2014, 2:25 p.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to § 54.1-3443 D of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (adding 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: February 11, 2015.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4416, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Summary:

The Board of Pharmacy is amending its regulations to place three compounds into Schedule I. The added compounds will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to § 54.1-3443 D of the Code of Virginia, the Board of Pharmacy places the following substances in Schedule I of the Drug Control Act:

1. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)indazole-3-carboxamide (other name: AB-CHMINACA);

2. N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluoropentyl)indazole-3-carboxamide (other name: 5-fluoro-AMB); and

3. 3,4-methylenedioxy-N,N-dimethylcathinone (other names: Dimethylone, bk-MDDMA).

B. The placement shall remain in effect until July 28, 2016, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R15-4220; Filed December 18, 2014, 1:41 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Final Regulation

Title of Regulation: **18VAC145-20. Professional Soil Scientists Regulations (amending 18VAC145-20-10, 18VAC145-20-60, 18VAC145-20-90, 18VAC145-20-91, 18VAC145-20-100, 18VAC145-20-120 through 18VAC145-20-170; adding 18VAC145-20-145; repealing 18VAC145-20-70, 18VAC145-20-111).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Effective Date: March 1, 2015.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Summary:

The amendments facilitate the requirements of Chapters 777 and 859 of the 2011 Acts of Assembly that the soil scientist regulation program transition from certification to licensure and also include the following changes: (i) the board's adoption of the Council of Soil Science Examiners prepared exam, (ii) addition of continuing education requirements for the renewal and maintenance of licensure, and (ii) technical changes to eliminate language in the regulation that duplicates existing language in corresponding statutes and to clarify and improve the readability of the regulations.

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

Part I
General

18VAC145-20-10. Definitions.

Section 54.1-2200 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Board

Soil

Soil evaluation

Soil science

Soil scientist

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

"Application" means a completed application with the appropriate fee and any other required documentation, including but not limited to references, employment verification, degree verification, and verification of examination and licensure.

~~"Board" means the Board for Professional Soil Scientists as established by Chapter 22 (§ 54.1 2200 et seq.) of Title 54.1 of the Code of Virginia.~~

"CSSE" means the Council of Soil Science Examiners.

~~"Department" means the Department of Professional and Occupational Regulation.~~

"Field study" means the investigation of a site to secure soils information by means of landscape analysis and soil borings, excavations or test pits which are plotted on a base map or other documents (e.g., aerial photographs, topographic maps, scaled site plans, subdivision plans, or narrative description of the location).

~~"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.~~

~~"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.~~

~~"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.~~

"Soil map" means a map showing distribution of soil types or other soil mapping units in relation to the prominent landforms and cultural features of the ~~earth~~ earth's surface.

~~"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.~~

~~"Soil scientist" means a person having special knowledge of soil science and the methods and principals of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.~~

"Soil survey" means a systematic field investigation of the survey area that provides a soil evaluation and a system of uniform definitions of soil characteristics for all the different kinds of soil found within the study area, all of which are incorporated into a soil report which includes a soil map.

Part II
Entry

18VAC145-20-60. ~~Qualifications for certification~~ General application requirements.

A. Applicants for ~~certification~~ licensure shall meet the ~~education, eligibility, experience and examination~~ requirements ~~specified~~ established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

B. All applications and accompanying materials become the property of the board upon receipt by the board.

C. The board may make further inquiries and investigations with respect to applicants' qualifications and documentation to confirm or amplify information supplied.

D. Applicants who do not meet the requirements of this chapter may be approved following consideration by the board in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC145-20-70. ~~Qualifications for examination.~~ (Repealed.)

~~An applicant shall satisfy one of the following criteria in order to qualify for the examination:~~

~~1. Hold a bachelor's degree from an accredited institution of higher education in a soil science curriculum (see 18VAC145-20-91) which has been approved by the board and have at least four years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or~~

~~2. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or~~

~~3. Have a record of at least eight years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or~~

~~4. Have at least four years of experience in soil science research or as a teacher of soil science curriculum in an accredited institution of higher education which offers an approved four-year program in soils and at least two years of soil evaluation experience, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist.~~

18VAC145-20-90. Qualifying experience in soil evaluation.

~~An applicant~~ Minimum experience requirements are established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia. Applicants shall satisfy the length of experience established relative to their education. Applicants

shall demonstrate experience in two or more of the following areas:

1. Soil mapping. ~~Compiling of~~ Compiled soil maps representing at least 5,000 acres as ~~a~~ part of a soil survey or surveys with a formal mapping legend under the direct guidance of an experienced technical supervisor. ~~Acceptable maps shall be~~ Only maps in a published report, a report scheduled to be published, or a report of a publishable quality shall be deemed as acceptable for this type of experience;

2. Soil evaluation. ~~Conducting~~ Conducted at least 20 soil evaluations for specific land uses under the direct guidance of an experienced technical supervisor. Examples of such uses include, but are not limited to, ~~on-site~~ onsite wastewater disposal, residential and commercial development, sanitary landfill sites, forestry or agriculture production, soil erosion and sediment control, shrink-swell, or hydric soils. The finished product ~~shall~~ must have been submitted to a client or government agency (e.g., Health Department, Environmental Protection Agency, Department of Environmental Quality, Department of Conservation and Recreation, or local planning commission);

3. Field/Laboratory studies. ~~Conducting~~ Conducted at least 10 detailed field or laboratory studies under the direct guidance of an experienced technical supervisor. The field or laboratory study ~~shall~~ must have resulted in a soil evaluation report that was accepted by the client or government agency;

4. Research/Teaching. ~~Conducting~~ Conducted at least one research project as part of a thesis or publication or ~~teaching~~ taught at least one ~~full-time~~ full-time course in a soil science curriculum at an accredited institution of higher education, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist;

5. Consulting (public/private). ~~Assembling or compiling~~ Assembled or compiled soil information ~~either~~ with existing data or field studies~~,~~ and ~~evaluating~~ evaluated data for a specific land use. The work may ~~be either~~ have been done independently or under supervision. At least three written reports ~~shall~~ must have been submitted to the client or government agency; or

6. Education. Each year of full-time undergraduate study in a soils curriculum or related natural science may count as one-half year of experience up to a maximum of two years. Each year of full-time graduate study in a soils curriculum may count as one year of experience up to a maximum of two years. ~~With a passing grade, 30 semester credit hours or 45 quarter credit hours is considered to be one year~~ One year equals 30 semester credit hours earned or 45 quarter credit hours earned. ~~Credits~~ Any credits used to meet the education requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia may not be used to meet experience requirements.

18VAC145-20-91. Core course requirements.

A. At least 15 semester hours selected from the identified courses ~~below~~ in this subsection or the equivalent are required for course work or a degree core to be considered a degree in a soil science ~~degree~~ curriculum or a ~~soil science~~ related natural science degree.

Intro to Crop and Soil Environmental Sciences	Soil - Plant - Animal Interrelationships in Grasslands
Soil Evaluation	Aluminum Chemistry in the Soil System
Soils	Soil Physics or Physical Properties
Soils Lab	Soil Genesis/Classification
Man and Environment	Soil Fertility/Management
Soil Survey/Taxonomy	Soil Fertility/Management Lab
Soil Microbiology	Soil/Groundwater Pollution
Soil Resource Management	Soils for Waste Disposal
Soil Chemistry	Soil Microbiology Lab
Topics in Soil Genesis	Forest Soils/Hydrology
Soil Seminar	Clay Mineralogy
Special Studies (Soils Based)	Soil Interpretations
Field Studies (Soils Based)	Advanced Concepts in Soil Genesis
Soils and Land Use	Independent Studies (Soil Based)
Soil Physical and Colloidal Chemistry	Soil Biochemistry
~~Chemistry~~	Soil Geomorphology
Soil - Plant Relations	Soil Conservation

B. ~~An applicant~~ Applicants may petition the board ~~in writing~~ to review the syllabus and other supporting documents of a course not listed in subsection A of this section for academic credit. The course ~~shall~~ must contain content ~~to enhance the~~ that enhances applicants' knowledge ~~of the applicant~~ in the study of soils. ~~The applicant~~ Applicants must demonstrate course equivalency in order to receive academic credit. Petitions to the board for such review must be made in writing.

18VAC145-20-100. Examination.

~~A. A board-approved examination shall be administered at least twice a year, at a time designated by the department.~~

~~B. An applicant must meet all eligibility requirements as of the date the application is filed with the department.~~

~~C. A candidate who is unable to take the examination at the time scheduled must notify the department in writing prior to the date of the examination; such a candidate will be rescheduled for the next examination without additional fee. Failure to so notify the department will result in forfeiture of the examination or reexamination fee.~~

~~D. A candidate approved to take an examination shall do so within one year of the date of approval or submit a new application and fee in accordance with these regulations.~~

~~E. Candidates will be notified of passing or failing the examination.~~

~~F. Upon payment of the reexamination fee, a candidate who fails the examination or any part thereof shall be allowed to retake the failed examination or any part thereof within one year of the date of initial failure notification. After the one-year period has elapsed, an applicant shall be required to submit a new application and fee in accordance with this chapter in order to take the examination.~~

A. Applicants shall be required to pass all parts of the CSSE-prepared exam.

B. Applicants shall meet all other requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia in order to be granted board approval to sit for the exam.

C. Completed applications must be received by the board no less than 60 days prior to the exam date or applicants may be deferred to the next exam administration.

D. Applicants approved by the board shall be exam-eligible for a period of three years from the date of their initial board approval. Applicants who do not pass the exam at the end of the three-year period are no longer exam-eligible.

E. To become exam-eligible again, applicants shall reapply to the board and meet all entry requirements current at the time of their reapplication. Upon approval by the board, applicants shall become exam-eligible for another period of three years.

F. Board-approved applicants eligible for admission to both parts of the exam must first pass the Fundamentals in Soil Science exam before being admitted to the Professional Practices in Soil Science exam.

G. Applicants will be notified by the board of whether they passed or failed the exam. The exam may not be reviewed by applicants. Exam scores are final and not subject to change.

18VAC145-20-111. ~~Waiver from examination through reciprocity.~~ (Repealed.)

~~An applicant qualified to take the examination may be granted a Virginia certificate without written examination, provided that the applicant holds an unexpired professional soil scientist certificate or equivalent issued on the basis of equivalent requirements for certification in Virginia, by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body that could result in the suspension or revocation of his certificate, and such other regulatory body recognizes the certificates issued by this board.~~

Part III
Renewal/Reinstatement and Fees

18VAC145-20-120. Expiration.

~~Certificates~~ Licenses issued under this chapter shall expire two years from the last day of the month in which they were issued, as indicated on the ~~certificate~~ license.

18VAC145-20-130. Procedures for renewal.

A. The ~~department shall mail~~ board sends a renewal notice to the ~~certificate~~ license holder at the last known address of record at least 30 days prior to expiration of the license. Failure to receive this notice does not relieve the ~~certificate~~ license holder from the requirement to renew the ~~certificate~~ license. ~~If the certificate holder fails to receive the renewal notice, a copy of the certificate shall be submitted with the required fee in lieu of the renewal notice. A certificate holder~~ License holders shall keep the ~~department~~ board informed of ~~his~~ their current mailing address. ~~Change~~ Changes of address shall be reported to the ~~department~~ board in writing within 30 calendar days of the change.

B. In addition to the established fee, proof of satisfactory completion of continuing education (CE) shall be required to renew a license. Documentation submitted as proof of completion of CE must demonstrate that the CE meets the requirements established in 18VAC145-20-145.

C. If the renewal fee ~~is~~ and proof of completion of CE are not received by the ~~department~~ board within 30 ~~calendar~~ days following the license expiration date ~~noted on the certificate~~, a late renewal fee of $25 shall be required in addition to the regular renewal fee. ~~If the certificate is renewed after 30 days from the expiration date and prior to 180 days of the expiration date, the effective date of the renewal shall be the original renewal date~~ Upon receipt of the requisite fee and proof of completion of CE, the license shall be renewed for an additional two years. ~~No certificate may be renewed more than 180 days following the date of expiration noted on the certificate~~ A license that is not renewed within six months after its expiration is no longer eligible for renewal. The license may be reinstated pursuant to the requirements of 18VAC145-20-140.

~~C.~~ D. The date ~~a~~ the fee ~~is~~ and documented proof of completion of CE are received by the ~~department~~ board or its agent shall determine whether a late renewal fee ~~or,~~ the ~~requirement for~~ reinstatement fee, or reapplication is ~~applicable~~ required.

~~D.~~ E. A ~~certificate~~ license suspended by board order ~~shall~~ may not be renewed until the period of suspension has ended and all terms and conditions of the board's order have been met. Individuals renewing ~~certificates~~ licenses within 30 days after the suspension is lifted will not be required to pay a late fee.

~~E.~~ F. A revoked ~~certificate cannot~~ license may not be renewed. An individual whose ~~certificate~~ license has been revoked ~~must~~ shall file a new application and obtain ~~approval of the board~~ board approval to recover ~~certification~~ licensure. Examination ~~shall~~ may not be waived.

18VAC145-20-140. Reinstatement.

A. If the renewal fee ~~and,~~ late renewal fee, and documented proof of completion of CE are not received by the ~~department~~ board within ~~180 days~~ six months following the license expiration date ~~noted on the certificate~~, the ~~certificate~~ license holder shall ~~no longer be considered a certificate holder and will~~ be required to ~~apply for certificate~~ pay the fee for reinstatement. ~~The applicant shall meet the current eligibility standards for certification as a professional soil scientist. The applicant may apply by examination or by reciprocity. The board may require reexamination.~~ The fee for reinstatement shall include the regular renewal fee plus the reinstatement fee.

B. If the reinstatement fee ~~is~~ and documented proof of completion of CE are not received by the ~~department~~ board within ~~360 days~~ one year following the license expiration date ~~noted on the certificate, the applicant~~, the individual shall no longer be considered a license holder. To become licensed again, the individual shall apply as a new applicant and meet all current education, experience, and examination requirements as ~~may be required by the board~~ established in this chapter.

18VAC145-20-145. Continuing education requirements.

A. Licensees shall complete eight contact hours of continuing education (CE) per year for renewal or reinstatement. CE shall be completed pursuant to the provisions of this section.

B. CE must be completed during the time prior to the renewal or reinstatement of a license and shall be valid for that renewal or reinstatement only.

C. CE activities completed by licensees may be accepted by the board provided the activity:

1. Consists of content and subject matter directly related to the practice of soil science;

2. Has a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the practice of soil science and may be in areas related to business practices, including project management, risk management, and ethics, that have demonstrated relevance to the practice of soil science as defined in § 54.1-2200 of the Code of Virginia;

3. Is taught by instructors who are competent in the subject matter, either by education or experience, for those activities involving an interaction with an instructor;

4. Contains an assessment by the sponsor at the conclusion of the activity that verifies that the licensee has successfully achieved the purpose and objective for any self-directed activity; and

5. Results in documentation that verifies the licensee's successful completion of the activity.

D. Computation of credit.

1. Fifty contact minutes shall equal one hour of CE. For activities that consist of segments that are less than 50 minutes, those segments shall be totaled for computation of CE for that activity.

2. The number of hours required to successfully complete any CE activity must have been predetermined by the sponsor. A licensee shall not claim more credit for any CE activity than was predetermined by the sponsor at the time the activity was completed.

3. A licensee may not receive credit for any CE activity that was not completed in its entirety. No credit shall be given for partial completion of a CE activity.

4. A licensee applying for renewal or reinstatement shall not receive credit for completing a CE activity with the same content more than once during the time period prior to the renewal or reinstatement.

18VAC145-20-151. Fees.

The fees for ~~certification~~ licensure are listed below. Checks or money orders shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee~~,~~ plus an additional processing charge as authorized by § 2.2-614.1 C of the Code of Virginia.

Fee Type	When ~~due~~ Due	Amount ~~due~~ Due
New application	With application	$90
~~Examination fee~~	~~Upon approval for exam~~	~~$150~~
~~Reexamination fee~~	~~Upon request to be rescheduled for exam~~	~~$75 for each part~~
Renewal fee	~~With renewal card~~ Prior to license expiration	$70
Late renewal fee	~~30 days after date of expiration~~ More than 30 days after license expiration	$25

Reinstatement fee	~~180 days after date of expiration~~ More than six months after license expiration	$90

Part IV
Standards of Practice and Conduct

18VAC145-20-160. Professional conduct.

A ~~certified~~ licensed professional soil scientist:

1. Shall not submit any false statements, make any misrepresentations, or fail to disclose any facts requested concerning any application for ~~certification or recertification.~~ initial licensure, renewal, or reinstatement;

2. Shall not engage in any fraud, deceit, or misrepresentation in advertising, in soliciting, or in providing professional services~~.~~;

3. Shall not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, maps, or other documents not prepared or reviewed and approved by ~~the certificate holder.~~ him;

4. Shall not knowingly represent a client or employer on a project on which ~~the certificate holder~~ he represents or has represented another client or employer without making full disclosure thereof~~.~~;

5. Shall express a professional opinion only when it is founded on adequate knowledge of established facts at issue and based on a background of technical competence in the subject matter~~.~~;

6. Shall not knowingly misrepresent factual information in expressing a professional opinion~~.~~;

7. Shall immediately notify the client or employer and the appropriate regulatory agency if ~~the certificate holder's~~ his professional judgment is overruled and not adhered to when advising appropriate parties of any circumstances of a substantial threat to the public health, safety, or welfare~~.~~; and

8. Shall exercise reasonable care when rendering professional services and shall apply the technical knowledge, skill, and terminology ordinarily applied by practicing soil scientists.

18VAC145-20-170. ~~Grounds for suspensions, revocation, denial of application, renewal or other disciplinary action~~ Sanctions and powers of the board.

A. The board has the power to ~~fine any certificate holder or to revoke or suspend any certificate~~ sanction any license holder at any time after a hearing conducted pursuant to the Administrative Process Act~~,~~ (§ 2.2-4000 et seq. of the Code of Virginia~~, when the person is found to have:~~). Sanctions may include but are not limited to the issuance of fines, the suspension of a license, the revocation of a license, or the levying of an additional requirement for remedial education. Sanctions may be levied against any regulant who has been determined by the board to have:

1. Committed fraud or deceit in obtaining or attempting to obtain ~~certification.~~ initial licensure, renewal, or reinstatement;

2. Performed any act in the practice of his profession likely to deceive, defraud, or harm the public~~.~~;

3. Committed any act of gross negligence, incompetence, or misconduct in the practice of soil science~~.~~;

4. Been convicted of a felony under the terms specified in § 54.1-204 of the Code of Virginia~~.~~; or

~~The board may suspend or revoke a certificate or may fine a certificate holder when the certificate holder has been found to have violated or cooperated with others in violating any provisions of Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board.~~

5. Violated or cooperated with others having violated any provisions of Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board.

B. The board may~~, in its discretion,~~ refuse to grant, renew, or reinstate ~~a certificate~~ the license of any person for any of the reasons specified in subsection A of this section~~,~~ or in circumstances where an individual fails to comply with the requirements of Chapter 22 (§ 54.1-2200 et seq.) of the Code of Virginia and this chapter.

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

[FORMS (18VAC145-20)

~~Professional Soil Scientist Certification Application (with instructions), 3401CERT (rev. 9/10).~~

~~Professional Soil Scientist Experience Log, 3401EXP (rev. 9/10).~~

Professional Soil Scientist License Application (with instructions), A439-3401LIC-v2 (rev. 8/14)

Professional Soil Scientist Experience Log, A439-3401EXP-v1 (rev. 9/13)

Virginia Certified Professional Soil Scientist Application for Licensure, A439-3401GLIC-v2 (eff. 4/14)]

VA.R. Doc. No. R12-2917; Filed December 17, 2014, 4:29 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC145-30. Regulations Governing Certified Professional Wetland Delineators (amending 18VAC145-30-40).**

Statutory Authority: § 54.1-201 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 11, 2015.

Effective Date: March 1, 2015.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (804) 527-4294, or email soilscientist@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia authorizes the board to promulgate regulations necessary to assure continued competency and to effectively administer the regulatory system administered by the board. Section 54.1-2206.2 of the Code of Virginia addresses the requirements for professional wetland delineator certification and was amended per Chapter 546 of the 2013 Acts of Assembly.

Purpose: This action removes the requirement that experience be gained under a certified professional wetland delineator and conforms the regulation to state law. Because only 110 certified professional wetland delineators in the Commonwealth could act as supervisors, the amendment removes a burden to certification. This action also removes the waiver of the requirement for a reference from a certified professional wetland delineator as the waiver expired on July 13, 2010. This action should not affect the public health, safety, or welfare.

Rationale for Using Fast-Track Process: The board does not expect this action to be controversial as it removes a requirement for certification that was a burden to certification because only 110 certified professional wetland delineators are in the Commonwealth, and it removes an obsolete provision.

Substance: Removing the requirement that experience be gained under a certified professional wetland delineator makes it easier for applicants to meet the four-year experience requirement.

Issues: There are no disadvantages to private citizens, businesses, or the Commonwealth. There is an advantage to those seeking certification as a professional wetland delineator because it will ease the burden of gaining experience under one of the 110 certified professional wetland delineators in the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 546 of the 2013 Acts of the Assembly, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists (Board) proposes to amend its regulation governing the certification of wetland delineators so that individuals who are applying to take the certification examination will not have had to gain required experience under the supervision of a certified professional wetland delineator.

Result of Analysis. Benefits likely exceed costs for all proposed regulatory changes.

Estimated Economic Impact. Currently both the Code of Virginia and regulation require that individuals who wish to be certified professional wetland delineators pass a certification exam and either:

1) Hold a bachelors degree in certain specified fields, complete a course in state and federal wetland delineation methods and have at least four years of experience in wetland delineation under the supervision of an already certified professional wetland delineator,

2) Have a record of at least six years of experience in wetland delineation under the supervision of an already certified professional wetland delineator, or

3) Have a record of at least four years of experience in wetland science research or as a teacher of a wetlands curriculum at a college level.

In 2013, the General Assembly passed legislation that eliminated supervision requirements for the experience that must be shown in order to qualify for certification as a professional wetland delineator. Board staff reports that the General Assembly took this action because there are too few certified wetland delineators in the Commonwealth to provide enough supervisory capacity for a robust regulatory program. The Board now proposes to amend these regulations so that they comport with Chapter 546.

Individuals who wish to work as wetland delineators will benefit from this change as they will be able to count experience toward certification requirements that they would not have been able to before the law change. This may allow them to become certified more quickly and less expensively. The public will also benefit from this change as lengthy apprenticeship requirements in an environment where there are so few certified individuals likely helps create an artificial scarcity in wetland services which would tend to drive up prices for such services. Eliminating the supervision requirement will mitigate but not eliminate this artificial scarcity and may lead to lower costs for these services. Some currently certified wetland delineators will likely experience decreased profits because the state will no longer be imposing a requirement that likely allows them to hire individuals who aspire to certification at lower wages than they otherwise would have to pay. The benefits for individuals seeking certification as well as for the public, however, likely outweigh these costs.

Businesses and Entities Affected. The Department of Professional and Occupational Regulation (DPOR) reports that, currently, fewer than six individuals per year apply for certification as wetland delineators; DPOR further reports that there are currently 110 certified professional wetland delineators practicing in the Commonwealth.

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

Projected Impact on Employment. This proposed regulatory change, and the Code of Virginia change that drives it, will

likely increase the supply of individuals who work as certified professional wetland delineators in the Commonwealth. If this increase in supply drives down the average cost of obtaining the services of certified wetland delineators, the quantity demanded for these services may increase.

Effects on the Use and Value of Private Property. This proposed regulatory change, and the Code of Virginia change that drives it, will likely increase the supply of individuals who work as certified professional wetland delineators in the Commonwealth. If this increase in supply drives down the average cost of obtaining the services of certified wetland delineators, the cost of developing private property that includes wetlands will likely decrease and the value of that property will likely increase.

Small Businesses: Costs and Other Effects. No small business in the Commonwealth is likely to incur costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business in the Commonwealth is likely to incur costs on account of this regulatory action.

Real Estate Development Costs. This proposed regulatory change, and the Code of Virginia change that drives it, will likely increase the supply of individuals who work as certified professional wetland delineators in the Commonwealth. If this increase in supply drives down the average cost of obtaining the services of certified wetland delineators, the cost of developing property that included wetlands will likely decrease.

Legal Mandate.

General: The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to:

- the projected number of businesses or other entities to whom the proposed regulation would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulation will have an adverse effect on small businesses, 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules (JCAR) is notified at the time the proposed regulation is submitted to the Virginia Register of Regulations for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis.

Summary:

The amendments delete (i) the requirement that experience be gained under a certified professional wetland delineator prior to certification pursuant to Chapter 546 of the 2013 Acts of Assembly and (ii) the obsolete waiver of the requirement for a reference from a certified professional wetland delineator.

18VAC145-30-40. Qualification for examination.

A. In order to qualify for the examination, an applicant shall provide three written references that comply with subsection B of this section and satisfy one of the following criteria:

1. Hold a bachelor's degree from an accredited institution of higher education in a wetland science, biology, biological engineering, civil and environmental engineering, ecology, soil science, geology, hydrology or any similar biological, physical, natural science or environmental engineering curriculum that has been approved by the board; have successfully completed a course of instruction in state and federal wetland delineation methods that has been approved by the board; and have at least four years of experience in wetland delineation, which meets the requirements of subdivision 1 or 2 of 18VAC145-30-50, ~~under the supervision of a certified professional wetland delineator,~~ the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator;

2. Have a record of at least six years of experience in wetland delineation, which meets the requirements of subdivision 1 or 2 of 18VAC145-30-50, ~~under the supervision of a certified professional wetland delineator,~~ the quality of which demonstrates to the board that the

applicant is competent to practice as a certified professional wetland delineator; or

3. Have a record of at least four years of experience in wetland science research or as a teacher of wetlands curriculum in an accredited institution of higher education, which meets the requirements of subdivision 3 of 18VAC145-30-50, and the quality of which demonstrates to the board that the applicant is competent to practice as a certified professional wetland delineator.

B. Every applicant shall provide three written references, on a form provided by the board, from wetland professionals with at least one from a certified professional wetland delineator. Individuals who provide references shall not be related to the applicant and shall have known the applicant for at least one year. Individuals who provide references may not also verify experience, including research or teaching experience.

~~C. Notwithstanding the requirements of subsections A and B of this section, the requirement for a reference from and supervision by a certified professional wetland delineator shall be waived provided a complete application is received by the board on or before July 13, 2010.~~

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

FORMS (18VAC145-30)

~~Professional Wetland Delineator Certification Application, 3402CERT (rev. 9/10).~~

~~Professional Wetland Delineator Experience Log, 3402EXP (rev. 9/10).~~

~~Professional Wetland Delineator Reference Form, 3402REF (rev. 9/10).~~

Professional Wetland Delineator Certification Application, A439-3402CERT-v1 (rev. 9/13)

Professional Wetland Delineator Experience Log, A439-3402EXP-v2 (rev. 3/15)

Professional Wetland Delineator Reference Form, A439-3402REF-v1 (rev. 9/13)

VA.R. Doc. No. R15-3963; Filed December 17, 2014, 4:26 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

Final Regulation

REGISTRAR'S NOTICE: The Department of State Police is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors and requires each agency to review all references to sections of the Code of Virginia within its regulations each time a new supplement or replacement volume to the Code of Virginia is published to ensure the accuracy of each section or section subdivision identification listed. 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: **19VAC30-190. Regulations Relating to the Issuance of Nonresident Concealed Handgun Carry Permits (amending 19VAC30-190-50; repealing 19VAC30-190-10).**

Statutory Authority: § 18.2-308.06 of the Code of Virginia.

Effective Date: February 13, 2015.

Agency Contact: Lt. 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.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

The amendments reflect changes in applicable statutory cross references impacted by the recodification of the concealed carry laws and remove the outdated purpose statement.

19VAC30-190-10. ~~Purpose.~~ (Repealed.)

~~The 2004 Virginia General Assembly amended § 18.2 308 of the Code of Virginia to authorize nonresidents of Virginia to apply for a concealed handgun permit. Nonresidents of the Commonwealth 21 years of age or older may apply in writing to the Virginia State Police for a five-year permit to carry a concealed handgun. These regulations set forth the procedure for the application for and renewal of nonresident concealed handgun carry permits.~~

19VAC30-190-50. Proof of competence with a handgun.

The applicant shall demonstrate competence with a handgun by including in his application package a photocopy of a certificate of completion of any such course or class as set forth in § ~~18.2 308 P 1~~ 18.2-308.06 B of the Code of Virginia, an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or

class attesting to the completion of the course or class by the applicant; or a copy of any document that shows completion of the course or class or evidences participation in firearms competition shall satisfy the requirement for demonstration of competence with a handgun.

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

FORMS (19VAC30-190)

~~Application for Concealed Handgun Permit, SP-248 , eff. 7/06.~~

~~Nonresident Concealed Handgun Permit, Application Check List, rev. 9/07~~

Application for Concealed Handgun Permit, SP-248 (rev. 7/13)

Nonresident Concealed Handgun Permit, Application Check List (undated)

VA.R. Doc. No. R15-4226; Filed December 12, 2014, 11:51 a.m.

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TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: **22VAC40-470. Exemptions Applicable to Public Assistance Programs (amending 22VAC40-470-10).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: February 11, 2015.

Effective Date: February 26, 2015.

Agency Contact: Angela Beachy, Benefit Programs Assistant Director, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7365, FAX (804) 726-7357, or email angela.beachy@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia provides blanket authority to the State Board of Social Services to adopt regulations that may be necessary or desirable to carry out Title 63.2 of the Code of Virginia.

Purpose: The provisions of federal law do not apply to the Auxiliary Grant (AG) Program. While the AG Program is included in the definition of public assistance programs in § 63.2-100 of the Code of Virginia, it is a state and locally funded program and, as such, the federal law to exempt payments made to victims of Nazi persecution do not cover the program. This action will ensure that eligibility rules for auxiliary grants are aligned with other federal means-tested public assistance programs administered by the Virginia Department of Social Services and ensure that such payments continue to be disregarded in the determination of AG eligibility. There is no adverse impact on the health, safety, or welfare of Virginia's citizens.

Rationale for Using Fast-Track Process: The AG Program currently disregards Nazi persecution payments as income or resources. Current eligibility practices will not be affected; therefore, controversy is not anticipated.

Substance: The substantive change is to replace the current exemption of Nazi persecution payments in all public assistance programs and limit the exemption to AG. The other public assistance programs defined in § 63.2-100 of the Code of Virginia are federal means-tested programs covered by the federal statute, with the exception of the General Relief Program, which only covers unattached children who would not qualify for such payments.

Issues: There are no known advantages or disadvantages to the Commonwealth or the public, as these eligibility criteria are already incorporated into AG guidance.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Social Services (Board) proposes to amend its regulation that governs eligibility exemptions for public assistance programs. Specifically, the Board proposes to amend language so that only the solely state funded assistance program is named in this regulation and to change a Code of Virginia (COV) reference.

Result of Analysis. Benefits likely outweigh costs for these proposed regulatory changes.

Estimated Economic Impact. Currently, this regulation reads, "The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for all public assistance programs as defined in § 63.2-100 of the Code of Virginia." Since all public assistance programs that are covered by this regulation, except for the Auxiliary Grants Program, are funded, in full or in part, by the federal government, an exemption for Holocaust survivor restitution payments is already required for them. The Board now proposes to amend regulatory language so that only the state funded Auxiliary Grant Program is mentioned. The Board also proposes to update a COV citation so that it points to state rules for the Auxiliary Grant Program. No entity is likely to incur costs on account of these changes. Affected entities may benefit from changes to this regulation that increase clarity.

Businesses and Entities Affected. These proposed regulatory changes will affect all Holocaust survivors who started receiving restitution payments from foreign governments after August 1, 1994 and who may be eligible for means-tested public assistance.

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

Projected Impact on Employment. This regulatory action is unlikely to affect employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small businesses will be affected by this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small businesses will be affected by this regulatory action.

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

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

The action amends the regulatory language so that only the auxiliary grant program funded solely by the Commonwealth is named in the regulation and to correct a citation to the Code of Virginia.

22VAC40-470-10. Foreign government restitution payments to Holocaust survivors.

The value of foreign government restitution payments made to Holocaust survivors on or after August 1, 1994, shall be disregarded in the determination of eligibility or amount of assistance for ~~all public assistance programs~~ the Auxiliary Grants Program as defined in § ~~63.2-100~~ 51.5-160 of the Code of Virginia.

VA.R. Doc. No. R15-3622; Filed December 11, 2014, 10:39 a.m.

Final Regulation

Title of Regulation: **22VAC40-880. Child Support Enforcement Program (amending 22VAC40-880-10, 22VAC40-880-20, 22VAC40-880-90, 22VAC40-880-100, 22VAC40-880-190, 22VAC40-880-240, 22VAC40-880-250, 22VAC40-880-290, 22VAC40-880-320, 22VAC40-880-350, 22VAC40-880-380, 22VAC40-880-390, 22VAC40-880-405, 22VAC40-880-410, 22VAC40-880-430, 22VAC40-880-440, 22VAC40-880-480, 22VAC40-880-560; repealing 22VAC40-880-30 through 22VAC40-880-80, 22VAC40-880-110 through 22VAC40-880-180, 22VAC40-880-200, 22VAC40-880-210, 22VAC40-880-220, 22VAC40-880-230, 22VAC40-880-260, 22VAC40-880-270, 22VAC40-880-280, 22VAC40-880-300, 22VAC40-880-310, 22VAC40-880-330, 22VAC40-880-340, 22VAC40-880-360, 22VAC40-880-370, 22VAC40-880-385, 22VAC40-880-420, 22VAC40-880-450, 22VAC40-880-460, 22VAC40-880-470, 22VAC40-880-490 through 22VAC40-880-550, 22VAC40-880-570 through 22VAC40-880-720).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 651 et seq.

Effective Date: February 12, 2014.

Agency Contact: Alice Burlinson, Senior Assistant Attorney General, Department of Social Services, 4504 Starkey Road, Suite 103, Roanoke, VA 24018, telephone (540) 776-2779, FAX (540) 776-2797, or email alice.burlinson@dss.virginia.gov.

Summary:

The amendments (i) update terminology, (ii) allow appeal of a social services hearing officer's decision on passport denial to the circuit court, (iii) remove specific language that currently governs case prioritization and replace it with a general notice that the department has the authority to prioritize cases based on available information, (iv) update language to reflect statutory changes, and (v) repeal numerous sections that are duplicative of state and federal law and federal regulations.

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

~~Part I~~
~~Definitions~~

22VAC40-880-10. Definitions.

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

~~"Absent parent" means a responsible person as defined in § 63.1-250 of the Code of Virginia who is required under law to support a dependent child or the dependent child and the child's caretaker.~~

~~"Administrative" means noncourt ordered, legally enforceable actions the department may take to establish, modify, collect, distribute or enforce a child support obligation.~~

~~"AFDC" means Aid to Families with Dependent Children which is established under Title IV-A of the Social Security Act. This is a category of financial assistance paid on behalf of children who are deprived of one or both of their parents by reason of death, disability, or continued absence (including desertion) from the home. See also "TANF."~~

~~"AFDC/FC" means Aid to Families with Dependent Children or Foster Care which is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for AFDC and who are in the custody of local social services agencies.~~

"Appeal" means a request for a review of an administrative action taken by the division, or an action taken to contest a court order.

"Applicant" or "applicant/recipient" means a party who applies for and receives services from the division.

"Application" means a written document requesting child support enforcement services which the department provides to the individual or agency applying for services and which is signed by the applicant.

~~"Arrears" or "arrearage"~~ "Arrearage" means unpaid child or medical support payments, interest, and other costs for past periods owed by a parent to the state or obligee. This may include unpaid spousal support when child support is also being enforced.

~~"Assignment" means any assignment of rights to child, spousal, or medical support or any assignment of rights to medical support and to payments for medical care from any third party.~~

"Bad check" means a check not honored by the bank on which it is drawn.

"Case summary" means a written statement outlining the actions taken by the department on a case that has been appealed.

"Child support guideline" means a ~~federal requirement for the establishment and adjustment/modification of financial child support and is comprised of §§ 20-108.1 and~~ method for calculating a child support obligation as set out in § 20-108.2 of the Code of Virginia.

~~"Custodial parent" or "obligee" means (i) the natural or adoptive parent with whom the child resides, (ii) a stepparent or other person who has physical custody of the child and with whom the child resides, or (iii) a social service agency which has legal custody of a child in foster care.~~

~~"Debt" means the total unpaid support obligation established by court order, administrative order, or payment of public assistance that is owed by an obligor to either the custodial parent/obligee, to the Commonwealth, or to the obligor's dependents.~~

"Delinquency" means an unpaid child or medical support obligation. The obligation may include spousal support when child support is also being enforced.

"Department" means the Virginia Department of Social Services.

"District office" means a local office of the Division of Child Support Enforcement responsible for the operation of the ~~Child Support Enforcement Program~~ child support enforcement program.

"Division" means the Division of Child Support Enforcement of the Virginia Department of Social Services, also known as a IV-D agency.

"Enforcement" means ensuring the payment of child support through the use of administrative or judicial means [~~as described in § 63.2-1904 of the Code of Virginia~~].

~~"Erroneous payment" means a payment sent to the custodial parent/obligee for which no funds were received by the department to be paid to that applicant/recipient.~~

"Federal foster care" means foster care that is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for TANF and who are in the custody of local social service agencies.

"Financial statement" means the provision of financial information from the natural or adoptive parents.

~~"Foreclosure" means a judicial procedure to enforce debts involving forced judicial sale of the real property of a debtor.~~

~~"Genetic testing" means scientifically reliable genetic tests, including blood tests, as described in §§ 20-49.1, 20-49.3, 20-49.4, 20-49.8, and 63.1-250.1:2 of the Code of Virginia.~~

"Good cause" means, as it pertains to TANF [~~and~~] ~~AFDC/FC~~ [~~federal foster care~~] applicants and recipients, an agency determination that the individual ~~does not have~~ is not required to cooperate with ~~Division of Child Support Enforcement~~ the division in its efforts to collect child support.

~~"Health insurance coverage" means any plan providing hospital, medical, or surgical care coverage for dependent~~

~~children provided such coverage is available and can be obtained by a parent at a reasonable cost.~~

"[~~Hearings~~ Hearing] officer" means ~~a disinterested person designated by the department to hold appeal hearings and render appeal decisions on administrative actions~~ an impartial person charged by the Commissioner of [the Department of] Social Services to hear appeals and decide if an agency followed its policy and procedures.

~~"Interest" means charges accrued on past due child support at the prevailing judgment rate.~~

"IV-D agency" means a governmental entity administering the child support [enforcement] program [~~enforcement~~] under Title IV-D of the Social Security Act. In Virginia the IV-D agency is the Division of Child Support Enforcement.

~~"Judicial" means an action initiated through a court.~~

~~"Local social service agency" means one of Virginia's locally administered social service or welfare departments which operate the TANF and AFDC/FC programs and other programs offered by the department.~~

~~"Location"~~ "Locate services" means obtaining information which is sufficient and necessary to take action on a child support case including information concerning (i) the physical whereabouts of the obligor or the obligor's employer, or (ii) other sources of income or assets, as appropriate. Certain individuals and entities such as courts and other state child support enforcement agencies can receive locate-only services from the department.

~~"Location only services" means that certain entities such as courts and other state child support enforcement agencies can receive only locate services from the department.~~

~~"Medicaid only"~~ "Medicaid-only" means a category of public assistance whereby a family receives Medicaid but is not eligible for or receiving ~~AFDC~~ TANF.

"Medical support services" means the establishment of a medical support order and the enforcement of health insurance coverage or, if court ordered, medical expenses.

~~"Mistake of fact" means an error in the identity of the obligor or in the amount of support owed.~~

~~"Noncustodial parent" means a responsible person, as defined in § 63.1-250 of the Code of Virginia, who is obligated under Virginia law for support of a dependent child or child's caretaker.~~

"Obligation" means the amount and frequency of payments which the obligor is legally bound to pay as set out in a court or administrative support order.

~~"Obligee" means an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.~~

~~"Obligor" means an individual, or the estate of a decedent, who owes or is alleged to owe a duty of support, is alleged but has not been adjudicated to be a parent of a child, or is liable under a court order.~~

"Occupational license" means any license, certificate, registration, or other authorization to engage in a business, trade, profession, or occupation issued by the Commonwealth pursuant to Title 22.1, 38.2, 46.2, or 54.1 of the Code of Virginia or any other provision of law.

"Parent" means any natural or adoptive parent; the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; a local board that has legal custody of a child in foster care; or a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"Past due support" means support payments determined under a court or administrative order which have not been paid.

"Pendency of an appeal" means the period of time after an administrative appeal has been made and before the final disposition by an administrative hearing officer, or between the time a party files an appeal with the court ~~hears a case~~ and the court renders a [~~final~~] decision.

~~"Public assistance" means payments for TANF, or AFDC/FC, or Medicaid.~~

"Putative father" means ~~an alleged father;~~ a person ~~named as~~ alleged to be the father of a child ~~born out of wedlock but~~ whose paternity has not been established.

~~"Reasonable cost" means, as it pertains to health insurance coverage, available through employers, unions, or other groups without regard to service delivery mechanism.~~

"Recipient" means a person ~~who~~ or agency that has applied for or ~~is in receipt of~~ receives public assistance or child support enforcement services.

"Recreational license" means any license, certificate, or registration used for the purpose of participation in games, sports, or hobbies, or for amusement or relaxation.

"Service" or "service of process" means the delivery to or leaving of a child support document, in a manner prescribed by state statute, giving the party reasonable notice of the action being taken.

~~"Subpoena" means a document commanding a person to appear at a time and place to give testimony upon a certain matter.~~

~~"Subpoena duces tecum" means a document compelling production of specific materials relevant to facts in a pending judicial proceeding.~~

"Summons" means a document notifying ~~an absent or custodial~~ a parent or other person that he or she must appear at a time and place named in the document to provide information needed to pursue child support actions.

~~"Supplemental Security Income" means a program administered by the federal government which guarantees a~~

~~minimum income to persons who meet the requirement of aged, blind, or disabled.~~

~~"Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.~~

~~"TANF" means Temporary Assistance for Needy Families, formerly known as AFDC.~~

~~Part II~~

~~General Information~~

~~Article 1~~

~~Services~~

22VAC40-880-20. Services provided.

A. Child support enforcement services shall be provided ~~as a group to AFDC, AFDC/FC, and non-AFDC clients~~ to all TANF and non-TANF customers. ~~Courts and other state IV-D agencies may apply for location only services. Medicaid only~~ Medicaid-only [~~clients~~ customers] shall be provided services to establish or enforce ~~medical support and may, at their request, receive full services~~ health care orders [at their request].

~~B. Child support enforcement services shall include the following services which may involve administrative or court action:~~

~~1. Location of absent parents, their employers, or their sources of income;~~

~~2. Establishment of paternity;~~

~~3. Establishment or modification of child support obligations, including the responsibility to provide health insurance coverage;~~

~~4. Enforcement of child support and medical support obligations, both administratively and judicially determined; and~~

~~5. Collection and disbursement of child support payments, regardless of whether the obligation is legally established.~~

B. The department shall provide locate services (i) whenever the location of parents or their sources of income or assets is needed in order to establish parentage, establish a child support order, or enforce a child support obligation and (ii) when there is sufficient identifying information available to the department to access locate sources.

22VAC40-880-30. ~~Eligibility for services.~~ (Repealed.)

~~A. Individuals who apply for TANF, AFDC/FC, or Medicaid-only assistance are automatically eligible for child support services.~~

~~1. TANF and AFDC/FC applicants and recipients must subrogate all rights to support to IV-D, which includes all child support services as a condition of eligibility for public assistance unless a determination of good cause has been made for the IV-D agency not to pursue child support services.~~

~~2. Medicaid applicants/recipients must accept medical support and paternity establishment services as a condition of eligibility for Medicaid unless the local social services agency determines that good cause exists for not accepting these services.~~

~~3. The department shall close a child support case in which the local social service agency has determined that good cause exists for not cooperating with the department in its pursuit of child support.~~

~~4. The department shall continue to provide child support services to an individual whose TANF, AFDC/FC, or Medicaid case closes.~~

~~a. The department shall provide these services without requiring a formal application.~~

~~b. The department shall continue to provide these services until the applicant/recipient states in writing that the services are no longer wanted. This request will result in closure of the child support case unless this action is contrary to state or federal law, or outstanding arrears are owed to the Commonwealth for TANF previously paid.~~

~~B. An individual who is not receiving TANF, AFDC/FC, or Medicaid assistance must make an application for child support services as a condition of eligibility for those services with the exception that an application is not required for cases transferred from the courts to the department on or after October 1, 1985. For such cases the payee shall be deemed as having executed an authorization to seek or enforce a support obligation with the department unless the payee specifically indicates that the department's services are not desired.~~

~~1. The child for whom child support is being requested must have an order in place for his support, or be under 18 years of age.~~

~~2. If the child for whom support is being sought is under 18 years of age, the applicant must be the parent or physical guardian of the child.~~

~~C. Individuals residing outside of Virginia shall be eligible for child support services:~~

~~1. Upon a request for services from the IV-D agency in the state in which they reside; or~~

~~2. Upon receipt of an application from nonresident individuals and accompanying documentation.~~

~~D. Locate-only services.~~

~~1. Custodial parents may apply for locate-only services.~~

~~2. Noncustodial parents may apply for locate-only services for custody and visitation purposes only.~~

3. Courts and other state IV-D agencies are eligible for child support enforcement services or for location only services.

Article 2
Department as Payee

22VAC40-880-40. Assignment of rights. (Repealed.)

A. Assignment of child support rights to the Commonwealth is automatic by operation of law with receipt of AFDC and AFDC/FC assistance and continues after the public assistance case closes unless the client requests in writing that the services be terminated.

B. Assignment of medical support rights to the Commonwealth is automatic by operation of law with receipt of Medicaid only assistance and continues after the public assistance case closes unless the client requests in writing that the service be terminated.

22VAC40-880-50. Authorization to seek or enforce a child support obligation. (Repealed.)

Persons receiving child support services shall give the department written authorization to seek or enforce support on behalf of the child or spouse and child.

22VAC40-880-60. Special conditions regarding receipt of TANF or AFDC/FC. (Repealed.)

Pursuant to § 63.1-251 of the Code of Virginia, receipt of TANF or AFDC/FC assistance creates a debt to the Commonwealth.

Article 3
Application

22VAC40-880-70. Application fees. (Repealed.)

The application fee for child support services is $1.00 for nonpublic assistance clients. The department shall pay this fee on behalf of such applicants for child support enforcement services.

22VAC40-880-80. Application process. (Repealed.)

A. The department shall make applications accessible to the public and shall include with each application information describing child support enforcement services and the applicant's rights and responsibilities.

1. The department shall provide an application on the day an individual requests the application when the request is made in person.

2. The department shall send applications within five working days of the date a written or telephone request for an application is received.

B. The department shall provide TANF, AFDC/FC, and Medicaid recipients with the above information, and the rights and responsibilities of applicants, within five working days of receiving the referral from a local social service agency.

C. The department shall, within two calendar days of the date of application from a nonpublic assistance recipient or from the date a referral of a public assistance recipient is received, establish a case record, and within 20 calendar days, obtain the information needed to locate the noncustodial parent, initiate verification of information, if appropriate, and gather all relevant facts and documents.

Article 4
Case Assessment and Prioritization

22VAC40-880-90. Case assessment.

The After establishing a case record, the department shall (i) assess the case information to determine if sufficient information to establish or enforce a child support obligation is available and verified and, (ii) attempt to obtain additional case information if the information is not sufficient and, (iii) gather all relevant documents, and (iv) verify case information which is not verified.

22VAC40-880-100. Case prioritization.

A. The department shall give priority to cases which contain any of the following on the absent parent or putative father:

1. Verified, current, residential address; or

2. Current employer; or

3. Last known residential address or last known employer if the information is less than three years old; or

4. Social security number and date of birth.

B. The department shall give low priority but shall review periodically cases in which:

1. There is not adequate identifying or other information to meet requirements for submittal for location, or

2. The absent parent receives supplemental security income or public assistance.

The department shall have the authority to prioritize cases based on available information.

Article 5
Service of Process

22VAC40-880-110. Service of process. (Repealed.)

Service is necessary when child support obligations are established either administratively or through court action and, in some instances, when actions to enforce the obligation are taken. The department shall use diligent efforts to serve process as allowed by law.

Article 6
Administrative Summons

22VAC40-880-120. Administrative summons. (Repealed.)

The department may summons obligees, obligors, and parents to appear in the division's office to provide essential information necessary for the collection of child support.

The department may request the Department of Motor Vehicles to suspend or refuse to renew the driver's license of a party who fails to comply with a subpoena, summons, warrant, or writ of capias relating to paternity or child support proceedings pursuant to § 46.2-320 of the Code of Virginia.

Article 7
Program Costs

22VAC40-880-130. Costs associated with the provision of child support services. (Repealed.)

A. The department may not require custodial parents to pay the costs associated with the provision of child support services unless contesting genetic test results.

B. The department shall assess and recover fees from the parties according to the rules set out in Part XII (22VAC40-880-680 et seq.) of this chapter.

Part III
Location

22VAC40-880-140. Location services. (Repealed.)

The department shall provide location services (i) whenever the location of absent parents or their employers is needed in order to establish or enforce a child support obligation and (ii) when there is sufficient identifying information available to the department to access location sources.

22VAC40-880-150. Location sources. (Repealed.)

Whenever location services are provided, the department shall access all necessary locate sources. Locate sources include but are not limited to:

1. Local public and private sources;

2. State Parent Locator Services;

3. Electronic Parent Locator Network;

4. Central Interstate Registry;

5. Federal Parent Locator Service; and

6. Parents, friends, and other personal sources.

22VAC40-880-160. Location time requirements. (Repealed.)

A. The department shall access all appropriate location sources within 75 calendar days of receipt of the application for child support services or the referral of a public assistance recipient if the department determines that such services are needed and quarterly thereafter if the location attempts are unsuccessful.

B. The department shall review at least quarterly those cases in which previous attempts to locate absent parents or sources of income or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location.

C. The department shall provide location services immediately if new information is received which may aid in location.

D. The department shall utilize the Federal Parent Locator Service at least annually when other location attempts have failed with the exception of cases referred through the central registry.

E. When another state requests location services from the department, the department shall follow the time requirements described in 45 CFR § 303.7.

Part IV
Establishing Child Support Obligations

Article 1
Paternity Establishment

22VAC40-880-170. Establishing paternity. (Repealed.)

In order for the department to establish a child support obligation and to enforce and collect child support payments from a putative father, the father must be determined to be legally responsible for the support of the child. In situations in which a putative father has not been legally determined to be the father of the child, paternity must be established before a child support obligation can be administratively ordered or court ordered. The department pursues paternity establishment in accordance with §§ 20-49.1 through 20-49.9 and 63.1-250.1:2 of the Code of Virginia.

1. The department shall obtain a sworn statement for each child from the mother acknowledging the paternity of the child or children for whom child support is sought.

2. Based on this sworn statement, the department shall attempt to locate the putative father, if necessary, according to the locate time requirements described in Part III (22VAC40-880-140 et seq.) of this chapter.

3. Once the putative father is located, the department shall contact him to determine if he is willing to sign a sworn statement voluntarily acknowledging paternity or to voluntarily submit to genetic testing to determine paternity.

a. The department shall advise the putative father verbally and in writing of his rights and responsibilities regarding child support prior to obtaining a sworn statement of paternity.

b. A putative father who signs a sworn statement of paternity along with an acknowledgement from the mother or who, through genetic testing, is affirmed by at least a 98% probability to be the father of the child is responsible for the financial support of the child or children.

4. When the putative father does not sign a sworn statement of paternity or does not voluntarily submit to genetic testing, the department shall order the putative father to submit to genetic testing. If the putative father refuses to comply with the genetic testing order, the department shall petition the court for a paternity determination when there is sufficient evidence to do so.

5. Within 90 calendar days of locating the putative father, the department shall:

a. Obtain a sworn acknowledgement of paternity or arrange for voluntary or mandatory genetic testing or the purpose of establishing paternity, or

b. File a petition with the court for paternity establishment.

6. In any case where more than one putative father has been identified, the department shall pursue paternity for all putative fathers.

22VAC40-880-180. Establishing paternity in interstate cases. (Repealed.)

The department shall establish, if possible, the paternity of children who do not reside in Virginia when the putative father resides in Virginia and a request for such services is received from another state IV-D agency.

Article 2

Administrative Support Orders

22VAC40-880-190. Administrative establishment of a child support obligation.

A. The department has statutory authority to establish child support obligations through noncourt ordered, legally enforceable child support orders. These administrative orders have the same force and effect as a support order established by the court. These administrative orders shall contain the information listed in § 63.1-252.1 of the Code of Virginia.

B. The amount of child support that is owed and the frequency with which it is paid must be established before the payment of child support can be enforced.

C. The administrative order shall be called the administrative support order.

D. A. The department shall use the administrative support order to establish a temporary child support obligation when judicial determinations of support are pending due to custody and visitation issues.

E. B. Within 90 calendar days of locating the putative father or noncustodial parent, and except as shown in subsection H D of this section, the department shall either establish an administrative child support order or petition the court to serve and complete service of process on the putative father or noncustodial parent to establish a child support obligation, or shall diligently attempt to complete the service of process necessary for an obligation to be ordered.

F. C. When a court dismisses a petition for a support order without prejudice or an administrative [hearings hearing] officer overrules an administrative support action, the department shall examine the reasons for the dismissal or overruling to determine when or if further action is appropriate.

G. The child support obligation is established when an administrative support order has been served and the 10-day appeal period for the administrative order has elapsed.

H. A child support obligation shall not be established when the obligor is receiving Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or General Relief (GR) benefits.

22VAC40-880-200. Determining the amount of the child support obligation. (Repealed.)

A. The administrative child support order shall include information and provisions as set forth in § 63.2-1916 of the Code of Virginia.

B. Verification of financial information and use of financial statements.

1. The department shall use financial statements obtained from the legally responsible parents to determine the amount of the child support obligation and shall verify financial information used to determine child support obligations.

2. The legally responsible parents shall complete financial statements upon demand by the department. Such responsible parties shall certify under penalty of perjury the correctness of the statement.

3. If the custodial parent is a recipient of public assistance, the department shall use the information obtained through the TANF or AFDC/FC eligibility process to meet the financial statement and financial information verification requirements.

4. The department shall define the type of financial information which shall be required based on § 63.2-1919 of the Code of Virginia which is incorporated by reference. The department has the authority to request verification of financial information for the purpose of establishing or modifying a child support obligation. The department will not provide credit for self-employment tax paid if the most recent federal tax return and the Schedule H attachment are not provided by the party upon request.

5. When both parents are noncustodial, each parent must provide financial information. In this situation, the person with whom the child resides shall not be required to complete a financial statement.

C. The department shall determine the amount to be paid monthly toward past due support when the obligation is administratively ordered and when a court ordered obligation for support does not specify the amount to be paid toward the past due support. The monthly payment for past due support will be $65 or 25% of the current obligation, whichever is greater, and shall not exceed the amount allowed under the federal Consumer Credit Protection Act.

22VAC40-880-210. Service of the administrative support order. (Repealed.)

The department must legally serve the administrative support order on the obligor in order to have an established obligation. The department shall also provide a copy of this document to the obligee in no less than 14 days from date of service on the obligor.

22VAC40-880-220. Medical support. (Repealed.)

A. The department shall have the authority to issue orders containing provisions for medical support services for the

~~dependent children of obligors if the coverage is available at reasonable cost as defined in § 63.1-250.1 of the Code of Virginia.~~

~~B. The obligor shall provide information regarding the availability of or changes in health insurance coverage for his or her dependent children.~~

~~C.~~ The obligor shall provide health insurance coverage for the child or children if health insurance is available through his or her employment. The department may enter an administrative order or seek a judicial order requiring the obligor's employer to enroll the dependent children in a group health insurance plan or other similar plan providing health insurance coverage offered by the employer as provided in § 20-79.3 of the Code of Virginia.

22VAC40-880-230. ~~Child support guideline.~~ (Repealed.)

~~A. The department shall use the child support guideline, which includes the Schedule of Monthly Basic Child Support Obligations (§ 20-108.2 B of the Code of Virginia) and procedures in §§ 20-108.1 and 20-108.2 of the Code of Virginia in calculating obligation amounts except for obligations determined as set forth in 22VAC40-880-240 for which the presumptive amount will only be used as the initial support calculation.~~

~~B. The department may not include benefits from public assistance programs as defined in § 63.1-87 of the Code of Virginia, Supplemental Security Income, or child support received in calculating the combined gross income.~~

22VAC40-880-240. Administrative deviation from the child support guideline.

There shall be a rebuttable presumption that the amount of child support that results from the application of the guidelines is the correct amount of child support pursuant to §§ 20-108.1, 20-108.2, and ~~63.1-264.2~~ 63.2-1918 of the Code of Virginia. Deviations from the guideline shall be allowed as follows:

~~1. A deviation from the gross income of either parent shall be allowed when a parent has other dependent children residing with him or has child support orders for other dependent children for which either parent is legally and financially responsible and who are not included in a child support order.~~

~~a. If there is an order in place for such child, the actual amount of the order is allowed.~~

~~b. If there is no order in place (i.e., the child lives in the home of either parent), a deviation is allowed equal to the amount of support found in the Schedule of Basic Monthly Child Support Obligations (§ 20-108.2 B of the Code of Virginia) for the income of the parent receiving the deviation and the number of children for whom a deviation is allowable as described above.~~

~~2.~~ 1. When either natural or adoptive parent is found to be voluntarily unemployed or fails to provide financial information upon request, income shall be imputed except as indicated below. A natural or adoptive parent is determined to be voluntarily unemployed when he quits a job without good cause or is fired for cause.

a. The current or last available monthly income shall be used to determine the obligation if that income is representative of what the natural or adoptive parent could earn or otherwise receive.

b. If actual income is not available, use the federal minimum wage multiplied by 40 hours per week and converted to a monthly amount by multiplying the result by 4.333.

[~~c. Where parents have never been employed, income shall not be imputed.~~]

~~3.~~ 2. No other deviations from the child support guidelines may be made in establishing or adjusting administrative support orders or reviewing court orders. Should potential deviation factors exist, as stated in § 20-108.1 of the Code of Virginia, refer the case to court for additional action.

22VAC40-880-250. Periodic reviews of the child support obligation.

A. Either parent may request a review of the child support obligation once every three years. Additional requests may be made earlier by providing documentation ~~of a special circumstance~~ that a material change of circumstance has occurred that potentially affects the child support obligation. Such changes shall be limited to the following:

1. An additional child needs to be ~~covered by~~ added to the order;

2. A child ~~needs to be removed when another child remains covered by the order;~~ is no longer eligible to receive current support due to a change of custody or emancipation and needs to be removed from an existing order that includes other children;

3. A provision for health care coverage needs to be added;

4. A provision ordering the natural or adoptive parents to share the costs of all unreimbursed medical/dental expenses exceeding $250 per child per year covered by the order needs to be added; or

5. A change of at least 25% can be documented by the requesting ~~party~~ parent in the following circumstances:

a. Income of either ~~party~~ natural or adoptive parent;

b. Amount of medical insurance; or

c. Cost of ~~dependent care.~~ employment-related child-care costs.

B. The department shall adjust an administrative obligation when the results of the review indicate a change of at least 10% in the monthly obligation but not less than $25.

~~Part V~~
~~Enforcing Child Support Obligations~~

~~Article 1~~
~~General~~

22VAC40-880-260. ~~Enforcement.~~ (Repealed.)

~~A. The department shall, whenever possible, administratively enforce compliance with established child support orders including both administrative and court orders.~~

~~B. The department shall enforce child support obligations at the time the administrative support order is initially entered through the use of an income withholding order.~~

~~C. The department shall enforce child support obligations when the obligation becomes delinquent through the use of one or more of the following administrative enforcement remedies:~~

~~1. Income withholding order;~~

~~2. Liens;~~

~~3. Orders to withhold and deliver;~~

~~4. Foreclosure;~~

~~5. Distraint, seizure, and sale;~~

~~6. Unemployment compensation benefits intercept;~~

~~7. Bonds, securities, and guarantees;~~

~~8. Tax intercept;~~

~~9. Internal Revenue Service full collection service;~~

~~10. Credit bureau reporting;~~

~~11. Enforcement remedies for federal employees;~~

~~12. Occupational and professional license suspensions;~~

~~13. Driver's license suspension;~~

~~14. Recreational or sporting license suspensions; or~~

~~15. Financial Institution Data Match.~~

~~D. The department shall attempt to enforce current and delinquent child support payments through administrative means before petitioning the court for enforcement action unless it determines that court action is more appropriate.~~

~~E. The department shall take appropriate enforcement action, unless service of process is necessary, within 30 calendar days of identifying a delinquency or of locating a noncustodial parent, whichever occurs later.~~

~~F. The department shall take appropriate enforcement action if service of process is necessary within 60 calendar days of identifying a delinquency or of locating a noncustodial parent, whichever occurs later.~~

~~G. The department shall take appropriate enforcement action within the above timeframes to enforce health insurance coverage.~~

~~H. When an enforcement action is unsuccessful, the department shall examine the reason or reasons and determine when it would be appropriate to take an enforcement action in the future. The department shall take further enforcement action at a time and in a manner determined appropriate by department staff.~~

~~I. The department shall use high volume administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedures to the requesting state, pursuant to 42 USC § 666(a)(14).~~

22VAC40-880-270. ~~Withholding of income.~~ (Repealed.)

~~A. The department shall issue an income withholding order against all income except income exempted under federal and state law.~~

~~B. The department shall serve the income withholding order on the employer.~~

~~C. The department shall release the income withholding order only if one of the following occurs:~~

~~1. The current support order terminates, and any past due support is paid in full;~~

~~2. Only past due support is owed and it is paid in full;~~

~~3. The whereabouts of the child or child and custodial parent become unknown;~~

~~4. Bankruptcy laws require release; or~~

~~5. A nonpublic assistance custodial parent or former public assistance custodial parent no longer wants the services of the department and no debt is owed to the Commonwealth.~~

~~Article 2~~
~~Income Withholding Enforcement Remedies~~

22VAC40-880-280. ~~Withholding of income; administrative support orders.~~ (Repealed.)

~~The administrative support order shall include a requirement for immediate withholding of the child support obligation from the noncustodial parent's income unless the parties agree in writing to an alternate payment arrangement, or good cause is determined by the department for not implementing an immediate withholding, pursuant to 42 USC § 666(a)(8)(B)(i) and § 63.1-258.1 of the Code of Virginia.~~

22VAC40-880-290. Determining the amount to be applied toward past due support.

The department shall collect any ~~court ordered~~ court-ordered amount to be paid toward past due support. If the order does not specify an amount to be paid toward past due support, the department shall determine the amount to be paid monthly toward past due support. The monthly payment for past due support will be ~~$65 or~~ 25% of the current or former obligation or $65, whichever is greater. For disposable earnings, the total amount withheld shall not exceed the amount allowed under ~~the federal Consumer Credit Protection Act. (See~~ § 34-29 of the Code of Virginia.~~)~~

22VAC40-880-300. ~~Alternative payment arrangement.~~ (Repealed.)

~~The custodial parent and noncustodial parent may mutually choose an alternative payment arrangement at the time the obligation is established as an alternate to immediate withholding of income for payment of child support.~~

~~Article 3~~

~~Other Enforcement Remedies~~

22VAC40-880-310. ~~Enforcement remedies.~~ (Repealed.)

~~The department shall have the authority to administratively collect delinquent child support payments from absent parents. These are called enforcement remedies.~~

22VAC40-880-320. Initiated withholding of income.

In all initial and modified administrative support orders, the department shall initiate an income withholding order unless the parties agree to [~~an~~ a written] alternative payment arrangement. The department shall ~~send~~ initiate an income withholding order to ~~an~~ the noncustodial parent's employer requiring the ~~deduction~~ withholding of the child support obligation from the noncustodial parent's income under the following circumstances:

1. When a payment is delinquent in an amount equal to or exceeding one month's child support obligation, or

2. When either parent requests that withholding begin regardless of whether past due support is owed ~~or support payments are in arrears~~.

22VAC40-880-330. ~~Liens.~~ (Repealed.)

~~A. A lien arises by operation of law for overdue support pursuant to 42 USC § 666(a)(4)(A) and the department may file a lien on the real or personal property of the noncustodial parent when the division has:~~

~~1. Issued an administrative support order;~~

~~2. Received a Virginia court order; or~~

~~3. Received a support order from a jurisdiction outside of Virginia.~~

~~B. Any lien of the department shall have the priority of a secured creditor.~~

~~C. Any lien of the department shall be subordinate to the lien of any prior mortgagee.~~

~~D. Any lien shall be released when the past due support has been paid in full.~~

22VAC40-880-340. ~~Orders to withhold and deliver.~~ (Repealed.)

~~A. The department may use orders to withhold and deliver to collect assets such as bank accounts, trust funds, stocks, bonds, and other types of financial holdings when past due support is owed.~~

~~B. The department may use high volume administrative enforcement (AEI) in response to a request made by another state to enforce support orders by using orders to withhold and deliver to collect assets such as bank accounts, trust funds, stocks, bonds, and other types of financial holdings when past due support is owed. The department shall promptly report the results of such enforcement procedure to the requesting state.~~

~~C. The department shall release the order to withhold when the order cannot be served on the noncustodial parent.~~

~~D. The department shall release the order to deliver when:~~

~~1. The past due support is paid, or~~

~~2. The noncustodial parent makes satisfactory alternate arrangements for paying the full amount of the past due support.~~

22VAC40-880-350. Distraint, seizure, and sale.

A. The department may use distraint, including booting of vehicle, seizure and sale against the real or personal property of a noncustodial parent when:

1. There ~~are arrears~~ is an arrearage of at least $1,000 for a case with a current support obligation and at least $500 for an [~~arrears only~~ arrearage-only] case;

2. Conventional enforcement remedies have failed or are not appropriate; and

3. A lien has been filed pursuant to § 63.2-1927 of the Code of Virginia.

B. Assets targeted for distraint, including booting of vehicle, seizure and sale are:

1. Solely owned by the noncustodial parent.

2. Co-owned by the noncustodial parent and current spouse.

3. Owned by a business in which the noncustodial parent is the sole proprietor. Assets owned by business partnerships or corporations which are co-owned with someone other than a noncustodial parent's current spouse do not qualify for booting of vehicle, or seizure and sale.

C. The ~~Director~~ director of the ~~Division of Child Support Enforcement~~ division or his designee shall give final approval for the use of distraint, seizure and sale. This includes immobilizing a vehicle using vehicle boots.

D. When initiating booting, or seizure and sale of vehicle, the department shall check with the Department of Motor Vehicles for vehicles registered in the noncustodial parent's name, the address on the vehicle registration, and the name of any lien holder on the vehicle.

E. Once a lien has been filed pursuant to § 63.2-1927 of the Code of Virginia, the department shall send a notice of intent to the noncustodial parent before initiating distraint, including booting of vehicle, seizure and sale action. ~~If there is reason to believe that the noncustodial parent will leave town or hide the asset, the asset can be seized without sending the notice and with proper documentation.~~

F. If the noncustodial parent contacts the department in response to the intent notice, the department shall request payment of ~~arrears~~ the arrearage in full. The department shall

negotiate a settlement if the noncustodial parent cannot pay the [~~arrears~~ arrearage] in full. The least acceptable settlement is 5.0% of the arrearage owed or $500, whichever is greater, with additional monthly payments towards the ~~arrears~~ arrearage that will satisfy the arrearage within 10 years. The department may initiate distraint, including booting of vehicle, seizure and sale, without further notice to the noncustodial parent if the noncustodial parent defaults on the payments as agreed.

G. The department shall send a fieri facias request to each county or city where a lien is filed and a levy is being executed if the noncustodial parent does not contact the department in response to the intent notice.

H. The department shall set a target date for seizure or booting and have the sheriff levy the property or boot the vehicle.

I. Once property has been seized or booted by the sheriff, the department must (i) reach a payment agreement with the noncustodial parent of 5.0% of the arrearage owed or $500, whichever is greater, with additional monthly payments towards the ~~arrears~~ arrearage that will satisfy the arrearage within 10 years and release the vehicle to the owner; (ii) proceed with the sale of the vehicle pursuant to § 63.2-1933 of the Code of Virginia; or (iii) at the end of 90 days from the issuance of the writ of fieri facias, release the vehicle to the owner.

J. The department shall send a cancellation notice to the sheriff if a decision is made to terminate the seizure action before the asset is actually seized.

K. If the department sells an asset and it is a motor vehicle, the department shall notify the Department of Motor Vehicles to issue clear title to the new owner of the vehicle.

22VAC40-880-360. ~~Unemployment compensation benefits intercept.~~ (Repealed.)

~~The department may intercept unemployment compensation benefits for support within the limits set by the federal Consumer Credit Protection Act pursuant to 15 USC § 1673(b) and § 34-29 of the Code of Virginia.~~

22VAC40-880-370. ~~Bonds, securities, and guarantees.~~ (Repealed.)

~~The department shall use administrative bonds, securities, and guarantees as an enforcement action only if the amount of the delinquency exceeds $1,000 and:~~

~~1. After all other enforcement actions fail; or~~

~~2. When no other enforcement actions are feasible.~~

22VAC40-880-380. Tax intercept.

A. The department shall intercept state and federal income tax refunds due to obligors that owe support arrearages.

B. The Virginia Department of Taxation prescribes rules for interception of state tax refunds and notification to the person whose state tax refund is being intercepted.

1. The department may retain moneys up to the amount owed on the due date of the finalization notice from the department to the Virginia Department of Taxation.

2. The department may intercept state tax refunds when the ~~delinquent amount~~ arrearage equals at least $25.

3. State tax refund intercepts shall be disbursed in the same manner as support payments. Federal tax intercepts shall be disbursed as required pursuant to 42 USC § 664.

4. The department may not disburse the intercepted state taxes if the noncustodial parent has appealed the intercept action and the appeal is pending.

5. The department shall issue a refund to the noncustodial parent when one of the following occurs:

a. The intercept was made in error;

b. The noncustodial parent pays the ~~delinquent amount~~ arrearage in full after the Department of Taxation has been notified of the ~~delinquency~~ arrearage and before the tax refund is intercepted; or

c. The total amount intercepted is more than the amount of the ~~delinquency~~ arrearage owed at the time that notification of the tax intercept is received from the Department of Taxation, and the noncustodial parent does not agree to allow the department to apply the excess funds to any ~~delinquency~~ arrearage that accrued after certification for tax intercept.

~~C. The Internal Revenue Service has prescribed rules regarding the interception of federal tax refunds. 45 CFR 302.60 and 303.72 are incorporated by reference in this chapter.~~

22VAC40-880-385. ~~License suspension.~~ (Repealed.)

~~A. The department may petition the court to suspend any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation pursuant to 42 USC § 666(a)(16) and § 63.1-263.1 of the Code of Virginia.~~

~~B. The department may request the Department of Motor Vehicles to suspend or refuse to renew the driver's license of an obligor pursuant to 42 USC § 666(a)(16) and § 46.2-320 of the Code of Virginia.~~

~~C. The department may petition the court to suspend any recreation or sporting activity license issued to an obligor pursuant to 42 USC § 666(a)(16) and § 63.1-263.1 of the Code of Virginia.~~

~~Article 4~~
~~Federal Enforcement Remedies~~

22VAC40-880-390. Additional remedies.

In addition to state administrative enforcement remedies, the department shall ~~use~~ utilize available federal enforcement remedies to enforce child support obligations and collect accumulated support arrearages.

22VAC40-880-405. Passport denial program.

A. The department shall participate in the Passport Denial Program for the denial, revocation, or limitation of noncustodial parents' passports where child support arrearages exceed the federally mandated threshold.

B. The department shall certify the arrearages to the federal Office of Child Support Enforcement, which will then (i) send notice of the certification on behalf of the department to the individual and (ii) certify the arrearage to the Department of State pursuant to the Passport Denial Program.

C. An individual has the right to appeal per the notice to a Department of Social Services' hearing officer. The only issues reviewable on appeal are (i) whether the arrears met the threshold at the time of certification, or (ii) mistaken identity. ~~The decision of the hearing officer is final with no further appeal.~~ An appeal from the hearing officer shall be to circuit court pursuant to the procedures under the Setoff Debt Collection Act (§ 58.1-520 et seq. of the Code of Virginia). The issues in subsections D and E are not reviewable by the hearing officer.

D. An individual's child support arrearages shall be paid in full before the department notifies the federal Office of Child Support Enforcement that the individual is eligible to receive a passport.

E. Exceptions to paying all arrearages prior to release of a passport may be granted by the IV-D agency director upon written request documenting compelling evidence of a life-or-death situation of an immediate family member. Such decision whether to grant an exception shall be in the sole discretion of the IV-D agency director.

22VAC40-880-410. Enforcement remedies to be used against federal employees.

~~A.~~ The department may apply its enforcement remedies against ~~United States military and civilian active and retired personnel~~ current and retired employees of the United States.

~~B. When enforcement under Virginia law is unsuccessful, the department may use involuntary allotments to enforce support obligations of certain federal employees, including active military personnel and public health services employees.~~

~~1. For the purposes of these enforcement actions, delinquency shall be defined as failure of the noncustodial parent to make support payments equal to the amount due for two months.~~

~~2. The amount of money withheld from these wages shall be up to the amount allowed under the federal Consumer Credit Protection Act pursuant to 15 USC § 1673(b) and § 34-29 of the Code of Virginia.~~

~~Part VI~~
~~Administrative Appeals~~

22VAC40-880-420. ~~Appeal rules.~~ (Repealed.)

~~Actions to establish and enforce child support obligations administratively may be appealed according to the following rules.~~

22VAC40-880-430. Validity of the appeal.

A. The department shall determine the validity of an administrative appeal.

1. The appeal must be in writing.

2. If the appeal is personally delivered, the appeal must be received within 10 [~~working~~ business] days of service of the notice of the proposed action on the appellant.

3. If mailed, the postmark must be within 10 business days from the date of service of the notice of the proposed action on the appellant.

B. ~~The only exception to this shall be~~ For appeals of federal and state tax intercepts~~. The~~, the appellant shall have 30 days to note an appeal ~~a tax intercept notice~~ to the department.

22VAC40-880-440. General rules for appeals.

A. The appeal shall be heard by a hearing officer.

1. The hearing officer may hold the hearing by telephone or in the district office where the custodial parent or his or her case resides unless another location is requested by the appellant.

2. The ~~parties~~ parents may be represented at the hearing by legal counsel.

3. The appellant may withdraw the appeal at any time. The department may withdraw its actions at any time~~, such as when a case review reveals new information or that prior action taken was incorrect~~.

4. The hearing officer shall accept a request for a continuance from the noncustodial parent or the custodial parent if:

a. The request is made in writing at least five business days prior to the hearing, and

b. The request is for not more than a 10-day continuance, except when the facts presented justify an exception.

B. The hearing officer shall notify the ~~parties~~ parents of the date and time of the hearing in accordance with § ~~63.1-267.1~~ 63.2-1942 of the Code of Virginia.

C. Prior to the hearing, the hearing officer shall send the ~~parties~~ parents a copy of the case summary prepared by the district office.

~~D. The hearing officer shall serve the appellant and mail the other party a copy of the hearing officer's decision either at the time of the hearing or no later than 45 days from the date the appeal request was first received by the department.~~

E. The hearing officer shall notify the parties in writing by certified mail if the appeal is determined to be abandoned because the appellant did not appear at the hearing.

F. Either party may appeal the hearing officer's decision as follows:

1. For cases under the Setoff Debt Collection Act (§ 58.1-520 et seq. of the Code of Virginia), to the circuit court on the record within 30 days of the date of the decision.

2. For all other cases, to the juvenile and domestic relations district court de novo within 10 calendar days of receipt of the decision.

22VAC40-880-450. Appeal of enforcement actions. (Repealed.)

A. The absent parent may appeal the actions of the department to enforce a support obligation only under the following conditions:

1. For withholding of earnings; liens; distraint, seizure, and sale; and unemployment compensation benefits intercept the appeal shall be based only on a mistake of fact;

2. For orders to withhold and deliver the appeal shall be based only on (i) a mistake of fact or (ii) whether the funds to be withheld are exempt by law from garnishment; and

3. Federal and state tax intercepts may be appealed based only on (i) a mistake of fact or (ii) the validity of the claim.

B. A mistake of fact is based on:

1. An error in the identity of the absent parent, or

2. An error in the amount of current support or past due support.

22VAC40-880-460. Appeal of federal enforcement remedies. (Repealed.)

Actions to enforce child support payments through federal enforcement remedies may not be appealed through the Department of Social Services. Absent parents shall appeal these actions to the federal agency which took the action.

Part VII
Interstate Responsibilities

22VAC40-880-470. Long-arm authority. (Repealed.)

The department shall extend its authority whenever possible to establish and enforce child support obligations on out-of-state absent parents as provided in § 63.1-250.1 of the Code of Virginia.

22VAC40-880-480. Cooperation with other state IV-D agencies.

A. When the noncustodial parent and the custodial parent parents reside in different states, cooperation between these state agencies may be necessary.

B. The department shall provide the same services to other state IV-D cases that it provides to its own cases with the following conditions:

1. The request for services must be in writing; and

2. The request for services must list the specific services needed.

C. The department shall request in writing the services of other state IV-D agencies when one parent resides in Virginia, but the other parent resides in another state.

D. Other department responsibilities in providing services to other state IV-D cases and obtaining services from other state IV-D agencies are defined in 45 CFR 303.7 and §§ 63.1-274.6 63.2-1902 and 20-88.32 through 20-88.82 of the Code of Virginia.

22VAC40-880-490. Central registry. (Repealed.)

A. The department shall manage the flow of interstate correspondence through a Central Registry located in the division's central office. Correspondence will be handled according to the rules established by the state and federal regulations cited by reference above.

B. The Central Registry shall act as the Uniform Interstate Family Support Act State Information Agent required by §§ 63.1-274.6 and 20-88.32 through 20-88.82 of the Code of Virginia.

Part VIII
Confidentiality and Exchange of Information

Article 1
Information Collected by the Department

22VAC40-880-500. Information collected from state, county, and city offices. (Repealed.)

A. The department may request and shall receive from state, county, city, and local agencies within and without the Commonwealth information about noncustodial parents.

B. The department shall use this information to locate and collect child support payments from noncustodial parents.

22VAC40-880-510. Subpoena of financial information. (Repealed.)

The department may subpoena financial records or other information relating to the obligor and obligee from a person, firm, corporation, association, political subdivision, or state agency to establish or enforce the collection of child support. A civil penalty not to exceed $1,000 may be assessed for failure to respond to a subpoena, pursuant to 42 USC § 666 (c)(1)(B) and § 63.1-250.1 of the Code of Virginia.

Article 2
Information Released by the Department

22VAC40-880-520. Agencies to whom the department releases information. (Repealed.)

A. The department may release information on the parents as set forth in 45 CFR 303.21 to courts and other state child support agencies for the purpose of establishing or enforcing a child support order.

B. The department may release information directly bearing on the identity and whereabouts of a noncustodial parent or putative father to public officials and agencies seeking to

~~locate obligors for the purpose of enforcing child support obligations including but not limited to the Attorney General, law enforcement agencies, prosecuting attorneys, courts of competent jurisdiction and agencies in other states engaged in the enforcement of support of children and their caretakers.~~

~~C. The department shall provide information on the noncustodial or custodial parent to an entity other than the ones listed above with the written permission of that parent. However, the department may not release information regarding the noncustodial parent's debt to private collection agencies, if it deems such disclosure inappropriate.~~

~~D. The department shall release information concerning parents' medical support payments and medical support orders to the Department of Medical Assistance Services.~~

22VAC40-880-530. ~~Release of information to and from the Internal Revenue Service.~~ (Repealed.)

~~A. The department may not release information provided by the Internal Revenue Service to anyone outside of the department with the following exceptions:~~

~~1. The department may release the information to local social service agencies and the courts, but the source of the information may not be released.~~

~~2. The department may release information provided by the Internal Revenue Service if that information is verified by a source independent of the IRS.~~

~~B. The division director, or a designee, may release information on absent parents to the Internal Revenue Service.~~

22VAC40-880-540. ~~Request for information from the general public.~~ (Repealed.)

~~The department shall answer requests for information from the general public within five working days of receipt of the request or less as federal and state law may require.~~

22VAC40-880-550. ~~Requests for information from parents.~~ (Repealed.)

~~A. The department shall release, upon request from either parent, copies of court orders, administrative orders, enforcement actions, fiscal records, and financial information used to calculate the obligation. However, when a protective order has been issued or there is a risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be released.~~

~~B. The department shall release to either parent personal information contained in the case record which pertains to the individual requesting the information with one exception. The department may not release medical or psychological information for which the physician providing the information has stated the individual should not have access.~~

~~C. Either parent may correct, challenge, or explain the personal information which pertains to that individual and may challenge the financial information of the other parent.~~

~~D. The department shall charge a fee for copying case record information. The department shall base the fee on the cost of copying the material.~~

22VAC40-880-560. Release of health insurance information.

The department shall provide specific third party liability information to the Department of Medical Assistance Services in order for that agency to pursue the noncustodial parent's health insurance provider for any Medicaid funds expended for his or her dependents who are receiving TANF or ~~AFDC/FC~~ federal foster care or who are Medicaid-only [~~clients~~ customers].

A. The department shall release health insurance coverage information on TANF, ~~AFDC/FC~~ federal foster care, and ~~Medicaid only~~ Medicaid-only cases to the Department of Medical Assistance Services as prescribed in the cooperative agreement between the department and that agency.

B. The department shall release health insurance coverage information on TANF, ~~AFDC/FC~~ federal foster care, and ~~Medicaid only~~ Medicaid-only cases to other state child support agencies upon their request.

~~Part IX~~

~~Rights and Responsibilities of the Custodial Parent and of the Department~~

~~Article 1~~

~~Custodial Parent's Rights and Responsibilities~~

22VAC40-880-570. ~~Custodial parents.~~ (Repealed.)

~~Throughout this chapter rights and responsibilities of the custodial parents are mentioned in general terms. This section of the chapter does not abridge those rights and responsibilities; it adds to them.~~

22VAC40-880-580. ~~Custodial parent's rights.~~ (Repealed.)

~~A. The department shall give the custodial parent prior notice of major decisions about the child support case.~~

~~B. The department shall periodically inform the custodial parent of the progress of the case.~~

~~C. The department shall provide the custodial parent with copies of appropriate notices as identified in this chapter.~~

~~D. The department shall advise custodial parents who receive AFDC of the following rights:~~

~~1. The $50 disregard payments, and~~

~~2. Eligibility for continued Medicaid coverage when AFDC is no longer received.~~

~~E. The department shall advise parents who receive AFDC, AFDC/FC, and Medicaid only of their eligibility for continued child support services when public assistance is no longer received.~~

~~F. The department shall inform all non AFDC or AFDC/FC clients at the time of application for services of the effect of past receipt of AFDC or AFDC/FC on the collection of child support payments.~~

22VAC40-880-590. ~~Custodial parent's responsibilities.~~ (Repealed.)

~~A. Custodial parents must give full and complete information, if known, regarding the absent parent's name, address, social security number, current employment, and employment history and provide new information when learned.~~

~~B. Custodial parents must inform the department of any public assistance which was received in the past on behalf of the parent and children.~~

~~C. Custodial parents must promptly (i) inform the department of any divorce actions or court actions to establish a child support order, (ii) send to the department copies of any legal documents pertaining to divorce, support, or custody, and (iii) inform the department of any changes in custody or plans for reconciliation with the absent parent.~~

~~D. Custodial parents must notify the department if an attorney is hired to handle a child support matter.~~

~~E. Custodial parents must notify the department immediately of any change in their financial circumstances.~~

~~F. Custodial parents must notify the department in writing regarding any change of their address or name. When possible, the custodial parent shall give this notification 30 days in advance.~~

~~Article 2~~
~~Department's Rights and Responsibilities~~

22VAC40-880-600. ~~Department's rights.~~ (Repealed.)

~~A. The department shall decide, in a manner consistent with state and federal requirements, the best way to handle a child support case.~~

~~B. The department shall decide when to close a case based on federal requirements and the criteria in Part XI (22VAC40-880-670 et seq.).~~

22VAC40-880-610. ~~Department's responsibilities.~~ (Repealed.)

~~A. The department shall act in a manner consistent with the best interests of the child.~~

~~B. The department shall establish a priority system for providing services which will ensure that services are provided in a timely manner.~~

~~C. The department shall keep custodial parents advised about the progress of the child support cases and shall include custodial parents in major decisions made about the handling of the child support case.~~

~~Part X~~
~~Processing Support Payments~~

~~Article 1~~
~~Child Support and Medical Support Payments~~

22VAC40-880-620. ~~Disbursement of payments.~~ (Repealed.)

~~A. A noncustodial parent may have multiple child support obligations.~~

~~1. Each case shall receive full payment of the current obligation when possible.~~

~~2. If the noncustodial parent's disposable earnings do not cover the full payment for each current support order, the department shall prorate the amount withheld among all orders.~~

~~B. Current support obligations shall be satisfied before satisfying past due support.~~

~~C. The method by which child support and medical support payments are disbursed is governed by 45 CFR 302.51 and 302.52 which are incorporated by reference.~~

~~D. No refund shall be made of any overpayment of support under $1 except upon written request by the payor.~~

~~Article 2~~
~~Payment Recovery~~

22VAC40-880-630. ~~Bad checks.~~ (Repealed.)

~~A. When a payment made by an employer or absent parent is not honored upon presentation to the bank on which it was drawn, the department shall first demand payment from the employer or absent parent.~~

~~B. If the employer or absent parent does not comply with the demand and the custodial parent is not an AFDC or AFDC/FC recipient, the department shall recover the payment from the custodial parent according to the methods described in 22VAC40-880-650.~~

~~C. The department shall concurrently take enforcement action against the absent parent or legal action against the employer.~~

~~D. If a check received from a custodial parent is not honored upon presentation to the bank upon which it was drawn, the department shall demand payment from the custodial parent.~~

22VAC40-880-640. ~~Erroneous or duplicate disbursements.~~ (Repealed.)

~~A. When the department sends the custodial parent a payment in error or a duplicate payment, the department shall first demand payment from the custodial parent.~~

~~B. If the custodial parent is not an AFDC or AFDC/FC recipient and does not comply with the demand, the department shall recover the amount of the payment according to the methods described in 22VAC40-880-650.~~

22VAC40-880-650. ~~Methods of payment recovery from the custodial parent.~~ (Repealed.)

~~A. If the custodial parent is not a TANF or AFDC/FC recipient, the department shall:~~

~~1. Intercept and retain payments for past due support (arrears) by retaining the lesser of the balance due or 100% of any intercepted funds and any amounts seized from bank accounts; and~~

~~2. Retain 10% of the current support payment.~~

~~B. If the custodial parent is a TANF or AFDC/FC recipient and retains an erroneous payment, the division shall notify the Division of Temporary Assistance Program.~~

~~Article 3~~
~~Uncollectible Debts~~

22VAC40-880-660. ~~Debt discharge.~~ (Repealed.)

~~The department may identify uncollectible support debts and discharge them from its record.~~

~~Part XI~~
~~Case Closure~~

22VAC40-880-670. ~~General rules.~~ (Repealed.)

~~A. The department shall terminate child support enforcement services when one of the criteria defined in the 45 CFR 303.11 is met.~~

~~B. The department shall continue to provide collection and disbursement services until alternate arrangement for these services has been made.~~

~~Part XII~~
~~Cost Recovery~~

~~Article 1~~
~~General~~

22VAC40-880-680. ~~Recovery of fees.~~ (Repealed.)

~~A. The department shall assess and recover from the noncustodial parent:~~

~~1. Attorney's fees;~~

~~2. Genetic testing fees for paternity establishment; and~~

~~3. Intercept programs' costs.~~

~~B. The department shall use any mechanism provided in Title 63.1 of the Code of Virginia to enforce these fees and costs.~~

22VAC40-880-690. ~~Attorney's fees for enforcement.~~ (Repealed.)

~~A. Attorney fees shall not exceed the amount allowed court-appointed counsel in the district courts pursuant to subdivision 1 of § 19.2-163 of the Code of Virginia.~~

~~B. The department shall not recover attorneys' fees or costs in any case in which the absent parent prevails.~~

22VAC40-880-700. ~~Genetic testing.~~ (Repealed.)

~~A. The department shall set the costs of the genetic testing for paternity establishment at the rate charged the department by the provider of genetic testing services.~~

~~B. Where an original genetic test for paternity establishment is contested and either party requests additional testing, the department may require advance payment by the contestant.~~

22VAC40-880-710. ~~Intercept programs.~~ (Repealed.)

~~The department shall charge the absent parent the rate actually charged the department.~~

22VAC40-880-720. ~~Service of process, seizure and sale.~~ (Repealed.)

~~The department shall have the authority to charge the noncustodial parent the actual costs for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions, per § 63.1-274.10 of the Code of Virginia.~~

VA.R. Doc. No. R11-2892; Filed December 11, 2014, 12:50 p.m.

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Notice of Periodic and Small Business Impact Review

Pursuant to Executive Order 17 (2014) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Agriculture and Consumer Services is currently reviewing each of the regulations listed below to determine whether it should be repealed, amended, or retained in its current form. The review of each regulation will be guided by the principles in Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia. Each regulation will be reviewed to determine whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

2VAC5-170, Rules and Regulations for the Registration of Poultry Dealers

2VAC5-180, Rules and Regulations Governing Pseudorabies in Virginia

2VAC5-200, Rules and Regulations Pertaining to the Disposal of Entire Flocks of Dead Poultry

2VAC5-206, Regulation for Scrapie Eradication

Agency Contact: Dr. Charles Broaddus, Program Manager, Veterinary Services; P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-4560, FAX (804) 371-2380, or email charles.broaddus@vdacs.virginia.gov.

2VAC5-315, Virginia Imported Fire Ant Quarantine for Enforcement of the Virginia Pest Law

Agency Contact: Andres Alvarez, Director, Division of Consumer Protection; P.O. Box 1163, Richmond, VA 23218, telephone (804) 225-3821, FAX (804) 371-7479, or email andres.alvarez@vdacs.virginia.gov.

2VAC5-620, Rules and Regulations Pertaining to the Establishment of the Dangerous Dog Registry

Agency Contact: Dr. Carolynn Bissett, Acting Program Manager, Office of Animal Care and Emergency Response, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, FAX (804) 371-2380, or email carolynn.bissett@vdacs.virginia.gov.

The comment period begins January 12, 2015, and ends February 2, 2015.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to the agency contacts listed above.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice of Public Meetings for the Development of a TMDL Implementation Plan for Upper Rapidan River Watersheds: Rippin Run, Blue Run, Marsh Run, Beautiful Run, Poplar Run, Unnamed Tributaries to the Rapidan River, and the Rapidan River; Madison, Green, Orange, Albemarle Counties, VA

The Virginia Department of Environmental Quality (DEQ) will host public meetings on a water quality improvement process for Rippin Run, Blue Run, Marsh Run, Beautiful Run, Poplar Run, unnamed tributaries to the Rapidan River, and the Rapidan River on January 28, 2015, and January 29, 2015.

The meetings will start at 6 p.m. The meeting on January 28, 2015, will be held at the Town of Orange Public Works Department located at 235 Warren Street, Orange, VA 22960. In case of inclement weather, the meeting will be moved to February 11, 2015, at the same location. The meeting on January 29, 2015, will be held at the Piedmont Virginia Community College, Eugene Giuseppe Center (Greene County Library Building, 2nd floor) located at 222 South Main Street, Stanardsville, VA 22973. In case of inclement weather, the meeting will be moved to February 12, 2015, at the same location.

The waters listed above were identified in Virginia's water quality assessment integrated reports as impaired for not supporting the bacteria criteria for recreational uses. The impairments are based on water quality monitoring data indicating exceedances of the bacteria standard.

At this meeting, TMDL findings and the development of the implementation plan will be discussed and citizens will learn how they can be part of the public participation process. DEQ seeks information and involvement of local citizens in developing this plan. After a one-hour public meeting, stakeholders will break into working group sessions to discuss and provide input for the implementation plan.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop total maximum daily loads for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent water quality assessment reports. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to

the TMDL amount. The TMDL report for the Rapidan River, which was approved by EPA on December 5, 2007, and by the State Water Control Board on July 31, 2008, can be found at:

http://www.deq.virginia.gov/portals/0/DEQ/Water/TMDL/apptmdls/rapprvr/rapidanec.pdf.

The public comment period on materials presented at this meeting will extend from January 29, 2015, to February 27, 2015. For additional information or to submit comments, contact May Sligh, Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, by telephone (804) 450-3802, or email may.sligh@deq.virginia.gov.

*Additional information is also available on the DEQ website at www.deq.virginia.gov/tmdl.

Citizen Nomination of State Surface Waters for Inclusion in Annual Water Quality Monitoring Plan

Purpose: This document provides detailed guidance on implementation of § 62.1-44.19:5 F of the Code of Virginia, the section of the Water Quality Monitoring, Information and Restoration Act that provides for requests from the public regarding specific segments that should be included in the Virginia Department of Environmental Quality's (DEQ) annual Water Quality Monitoring Plan.

Background: During the 1997 legislative session, the General Assembly enacted the Water Quality Monitoring, Information and Restoration Act (the Act). The Act directs DEQ to provide a procedure for citizens of the Commonwealth to nominate portions of lakes, streams, and rivers of Virginia for water quality monitoring by DEQ. Citizens can send their nominations to DEQ via the procedures described below. Nominations received by April 30, 2015, will be considered for inclusion in DEQ's annual monitoring plan for the 2016 calendar year. The monitoring plan will be finalized after considering the citizen's nominations for inclusion. DEQ will respond to each request in writing, stating the reasons for accepting or denying each nomination. DEQ's response is due by August 31 for nominations received between January 1, 2015, and April 30, 2015.

Process to Request Additional Monitoring: Any person may request that a specific body of water be included in DEQ's annual water quality monitoring plan. Each request received between January 1, 2015, and April 30, 2015, shall be reviewed when DEQ develops or updates the annual water quality monitoring plan. Such requests shall include, at a minimum (i) a geographical description of the water body recommended for monitoring, (ii) the reason the monitoring is requested, and (iii) any water quality data that the petitioner may have collected or compiled.

Note that the monitoring program covered by this process is directed at the surface waters of the state. Private ponds, privately owned lakes, and any other body of water not deemed to be "State Waters" are ineligible.

Nominations can be submitted by mail, fax, email, or hand delivered to the contact person listed below.

Timeline: Nominations received between **January 1, 2015, and April 30, 2015,** will be considered for inclusion in DEQ's water quality monitoring plan for the following calendar year (2016). DEQ will respond in writing on its approval or denial of each nomination by August 31, 2015. The DEQ 2015 monitoring plan will be made available for public inspection. A notice of availability of the annual monitoring plan will be placed in the Virginia Register and on DEQ's website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/WaterQualityMonitoring/CitizenMonitoring/FollowupMonitoring.aspx.

Contact Information: Stuart Torbeck, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4461, FAX (804) 698-4032, or email charles.torbeck@deq.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on December 22, 2014. The orders may be viewed at the Virginia Lottery, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 201 North 9th Street, 2nd Floor, Richmond, Virginia.

Director's Order Number One Hundred Sixty-Nine (14)

Certain Virginia Fastplay Game; End of Game - Virginia Lottery's Fastplay Bow Wow Bucks (152 14) (This Director's Order is effective nunc pro tunc to December 8, 2014, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Seventy (14)

Certain Virginia Fastplay Game; End of Game - Virginia Lottery's FastPlay Smokin' Hot Crossword (79 14) (This Director's Order is effective nunc pro tunc to December 8, 2014, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Seventy-One (14)

Certain Virginia Fastplay Game; End of Game - Virginia Lottery's FastPlay Fast 50's Slots of Fun (80 14) (This Director's Order is effective nunc pro tunc to December 8, 2014, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Seventy-Three (14)

Virginia Lottery's "Premium Registration Coupon" Final Rules for Operation (This Director's Order becomes effective on Thursday, December 18, 2014, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number One Hundred Seventy-Four (14)

Virginia Lottery's "Collegiate VIP Seat Upgrade Promotion" Final Rules for Operation (This Director's Order becomes effective nunc pro tunc to Sunday, December 14, 2014, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

STATE WATER CONTROL BOARD

Proposed Enforcement Action: Del Monte Fresh Production, Inc.

An enforcement action has been proposed for Del Monte Fresh Production, Inc., for alleged violations of the Virginia Ground Water Management Act of 1992 at the Ames Farm, Duer Home Farm, and Dennis Road MLC water systems located in Accomack County. Corrective action is pending and the consent order requires payment of a civil charge. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov/Programs/Enforcement/PublicNotices.aspx. Previn Smith will accept comments by email at previn.smith@deq.virginia.gov, or postal mail at Department of Environmental Quality, Central Office, 629 East Main Street, Richmond, VA 23219, from January 13, 2015, to February 12, 2015.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

Meeting Notices: Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/connect/commonwealth-calendar.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed: A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/documents/cumultab.pdf.

Filing Material for Publication in the *Virginia Register of Regulations*: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works 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.

ERRATA

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Title of Regulation: **12VAC35-225. Requirements for Virginia Early Intervention System.**

Publication: 31:9 VA.R. 666-692 December 29, 2014.

Corrections to Emergency Regulation:

Page 691, column 1, 12VAC35-225-490 C 2 a: Replace "12VAC35-225-450 B 2" with "12VAC35-225-460 C 2"

Page 692, column 2, after 12VAC35-225-540 B insert:

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

FORMS (12VAC35-225)

Infant & Toddler Connection of Virginia Eligibility Determination Form (eff. 6/12)

Early Intervention Certification Application (undated)

VA.R. Doc. No. R15-3889; Filed December 22, 2014, 9:32 a.m.