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. **34:8 VA.R. 763-832 December 11, 2017,** refers to Volume 34, Issue 8, pages 763 through 832 of the *Virginia Register* issued on December 11, 2017.

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

Members of the Virginia Code Commission: **John S. Edwards,** Chair; **James A. "Jay" Leftwich; Ryan T. McDougle; Rita Davis; Leslie L. Lilley; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Christopher R. Nolen; Charles S. Sharp; Samuel T. Towell; Mark J. Vucci.**

Staff of the *Virginia Register:* **Karen Perrine,** Registrar of Regulations; **Anne Bloomsburg,** Assistant Registrar; **Alexandra Stewart-Jonte,** Regulations Analyst; **Rhonda Dyer,** Publications Assistant; **Terri Edwards,** Senior Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the Virginia Register of Regulations website (http://register.dls.virginia.gov).

October 2018 through August 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
35:4	September 26, 2018	October 15, 2018
35:5	October 10, 2018	October 29, 2018
35:6	October 24, 2018	November 12, 2018
35:7	November 7, 2018	November 26, 2018
35:8	November 19, 2018 **(Monday)**	December 10, 2018
35:9	December 5, 2018	December 24, 2018
35:10	December 14, 2018 **(Friday)**	January 7, 2019
35:11	January 2, 2019	January 21, 2019
35:12	January 16, 2019	February 4, 2019
35:13	January 30, 2019	February18, 2019
35:14	February 13, 2019	March 4, 2019
35:15	February 27, 2019	March 18, 2019
35:16	March 13, 2019	April 1, 2019
35:17	March 27, 2019	April 15, 2019
35:18	April 10, 2019	April 29, 2019
35:19	April 24, 2019	May 13, 2019
35:20	May 8, 2019	May 27, 2019
35:21	May 22, 2019	June 10, 2019
35:22	June 5, 2019	June 24, 2019
35:23	June 19, 2019	July 8, 2019
35:24	July 3, 2019	July 22, 2019
35:25	July 17, 2019	August 5, 2019
35:26	July 31, 2019	August 19, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Agency Decision

Title of Regulation: **2VAC5-490. Regulations Governing Grade "A" Milk.**

Statutory Authority: § 3.2-5206 of the Code of Virginia.

Name of Petitioner: Virginia State Dairymen's Association.

Nature of Petitioner's Request: The petitioner is requesting that the Board of Agriculture and Consumer Services amend 2VAC5-490-50 by reducing the allowed maximum somatic cell count from the current 750,000 to 500,000 somatic cells per milliliter. The petitioner also requests this section be amended to reduce the allowed maximum bacteria count from 100,000 to 50,000 bacteria per milliliter prior to commingling with any other milk.

Agency Decision: Request granted.

Statement of Reason for Decision: The Board of Agriculture and Consumer Services has voted to grant the petitioner's request for rulemaking for the following reasons: lowering the allowable somatic cell and bacteria counts in grade "A" milk will result in a safer and higher-quality product for consumers and may lead to the availability of new markets for milk and milk products produced in Virginia. Many producers are currently producing grade "A" milk that is in compliance with the proposed somatic cell and bacteria counts and would likely support the proposed regulatory amendments.

Agency Contact: Ryan Davis, Program Manager, Office of Dairy and Foods, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-8899, or email ryan.davis@vdacs.virginia.gov.

VA.R. Doc. No. R18-34; Filed August 28, 2018, 2:18 p.m.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Department of Agriculture and Consumer Services intends to consider amending **2VAC5-20, Standards for Classification of Real Estate as Devoted to Agricultural Use and to Horticultural Use under the Virginia Land Use Assessment Law**. The purpose of the proposed action is to align regulations to changes to the Code of Virginia made by Chapter 504 of the 2018 Acts of Assembly, which amended the definition of real estate devoted to agricultural use and real estate devoted to horticultural use. The proposed amendments to the regulation include standards for determining whether real estate meets the expanded definition of real estate devoted to agricultural use or real estate devoted to horticultural use. Additionally, the commissioner will consider whether to continue to include in the regulation a requirement that real estate be used for a particular purpose for a minimum length of time before qualifying as real estate devoted to agricultural or horticulture use. If this requirement will continue to be included in the regulation, the commissioner will amend the regulation to conform to Chapter 504 and (i) include the use of similar property by a lessee of the owner in calculating such time and (ii) include a shorter minimum length of time for real estate with no prior qualifying use, provided that the owner submits a written document of the owner's intent regarding use of the real estate containing elements set out in the uniform standards. The proposed regulation will also provide standards for determining whether real estate meets these requirements.

In addition, this regulation will undergo a periodic review pursuant to Executive Order 14 (2018) and a small business impact review pursuant to § 2.2-4007.1 of the Code of Virginia to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including 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.

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

Statutory Authority: § 58.1-3230 of the Code of Virginia.

Public Comment Deadline: October 17, 2018.

Agency Contact: Kevin Schmidt, Director, Office of Policy, Planning, and Research, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1346, FAX (804) 371-7679, TTY (800) 828-1120, or email kevin.schmidt@vdacs.virginia.gov.

VA.R. Doc. No. R19-5646; Filed August 27, 2018, 10:47 a.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care,** as well as other relevant regulations. The purpose of the proposed action is to comply with the 21st Century CURES Act (114 USC § 255), Item 306 YYYY of Chapter 836 of the 2017 Acts of Assembly, and Public Law 115-222 by requiring providers of personal assistance, respite, and companion services to use, effective January 1, 2020, electronic visit verification (EVV) systems. The EVV system selected by providers must comply with the federal requirements of the CURES Act and should meet best practices. The agency is considering using an open vendor model that allows managed care organizations and fee for service providers to use HIPAA compliant systems of their choice. This action will also modify regulatory service limits for personal assistance, respite, and companion services to comply with the functionality of EVV systems. Respite services rendered by Department of Behavioral Health and Developmental Services licensed providers are to be exempted from the EVV requirements by action of the General Assembly. The CURES Act mandates the use of EVV systems for home health services effective January 1, 2023.

The agency intends 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; 42 USC § 1396 et seq.

Public Comment Deadline: October 17, 2018.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

VA.R. Doc. No. R19-5467; Filed August 23, 2018, 11:40 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Common Interest Community Board intends to consider amending **18VAC48-60, Common Interest Community Board Management Information Fund Regulations**. The purpose of the proposed action is to generally review the fund regulations, which outline registration, renewal, and annual reporting requirements for associations, to ensure that the regulations complement current Virginia law and reflect up-to-date administrative procedures and policies. The goals of the planned regulatory action are to review the existing regulations and propose revisions the board determines to be necessary and appropriate. The regulations will also be reviewed to ensure they achieve their intended objectives in the most efficient, cost effective manner and are clearly written and understandable. The board may propose other changes it identifies as necessary during the regulatory review process.

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

Statutory Authority: § 54.1-2349 of the Code of Virginia.

Public Comment Deadline: October 17, 2018.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R19-5532; Filed August 22, 2018, 11:32 a.m.

BOARD OF COUNSELING

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 Counseling intends to consider amending **18VAC115-20, Regulations Governing the Practice of Professional Counseling**; **18VAC115-50, Regulations Governing the Practice of Marriage and Family Therapy**; and **18VAC115-60, Regulations Governing the Practice of Licensed Substance Abuse Treatment Practitioners**. The purpose of the proposed action is to provide a pathway for foreign-trained graduates in counseling to obtain licensure as a professional counselor, a marriage and family therapist, or a substance abuse treatment practitioner in Virginia. The board intends to adopt language similar to that adopted by the Board of Psychology, which provides that graduates of programs that are not within the United States or Canada can qualify for licensure if they can provide documentation from an acceptable credential evaluation service that allows the board to determine if the program meets the requirements set forth in the regulation.

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

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

Public Comment Deadline: October 17, 2018.

Agency Contact: Jaime Hoyle, Executive Director, Board of Counseling, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 527-4435, or email jaime.hoyle@dhp.virginia.gov.

VA.R. Doc. No. R19-5643; Filed August 23, 2018, 2:05 p.m.

TITLE 1. ADMINISTRATION

DEPARTMENT OF VETERANS SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Department of Veterans Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 25 of the Code of Virginia, which exempts the department when promulgating regulations pursuant to § 58.1-3219.11 of the Code of Virginia regarding an exemption from taxes on real property.

Title of Regulation: **1VAC80-20. Surviving Spouses of Service Members Killed in Action Real Property Tax Exemption (adding 1VAC80-20-10 through 1VAC80-20-100).**

Statutory Authority: § 58.1-3219.11 of the Code of Virginia.

Effective Date: August 29, 2018.

Agency Contact: Carrie Ann Alford, Director of Policy and Planning, Department of Veterans Services, 101 North 14th Street, 17th Floor, Richmond, VA 23219, telephone (804) 225-4716, or email carrieann.alford@dvs.virginia.gov.

Summary:

The regulation establishes the requirements of the application process and implementation of the real property tax exemption for surviving spouses of active duty service members killed in action or who died of wounds sustained in action as designated by the U.S. Department of Defense.

CHAPTER 20
SURVIVING SPOUSES OF SERVICE MEMBERS KILLED IN ACTION REAL PROPERTY TAX EXEMPTION

1VAC80-20-10. Definitions.

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

"Commissioner" means the Commissioner of the Department of Veterans Services.

"Department" means the Virginia Department of Veterans Services.

"Dwelling" means the single structure, including any permanent attachments thereto, that is the principal place of residence of the qualifying surviving spouse.

"Exemption" means the exemption from real property taxes authorized by subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and § 58.1-3219.9 of the Code of Virginia.

"Surviving spouse" means a spouse (i) of any member of the armed forces of the United States who was killed in action as determined by the U.S. Department of Defense or (ii) of any member of the armed forces of the United States who died of wounds as determined by the U.S. Department of Defense. The surviving spouse must be able to show that the surviving spouse was married to the qualifying service member at the time of the service member's death.

"Real property" means land and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land, and the dwelling occupied by the qualified surviving spouse.

1VAC80-20-20. Real property exempt from taxation.

A. The following is exempt from taxation: the dwelling that is the principal residence of a qualified surviving spouse, plus up to one acre of land, or more than one acre if a given locality has exempted such larger acreage pursuant to § 58.1-3210 of the Code of Virginia (exemption for elderly and handicapped). The exemption extends to real property improvements other than a dwelling, including the land upon which such improvements are situated, so long as the principal use of the improvement is (i) to house or cover motor vehicles or household goods and other personal effects as classified in subdivision A 14 of § 58.1-3503 of the Code of Virginia and as listed in § 58.1-3504 of the Code of Virginia and (ii) for other than a business purpose.

B. If the value of a dwelling is in excess of the average assessed value, in the locality in which it is located, as described in this subsection, then only that portion of the assessed value in excess of the average assessed value shall be subject to real property taxes, and the portion of the assessed value that is not in excess of the average assessed value shall be exempt from real property taxes.

C. Manufactured homes, as defined in § 46.2-100 of the Code of Virginia, whether or not the wheels and other equipment previously used for mobility have been removed, shall be exempt after the qualifying surviving spouse has titled the home in the Commonwealth and shown proof of ownership. Sections 58.1-3219.5 and 58.1-3219.9 of the Code

of Virginia are the only instances when manufactured homes may be classified as real property. If the surviving spouse does not own the land on which the manufactured home is located, then the land is not exempt. The spouse must meet all other provisions of § 58.1-3219.9.

1VAC80-20-30. Full exemption; joint ownership trusts.

A. For purposes of this exemption, the full exemption is authorized when real property of any surviving spouse of a member of the armed forces killed in action is held in one of the following trusts: (i) held by a surviving spouse as a tenant for life, (ii) held in a revocable inter vivos trust over which the surviving spouse holds the power of revocation, or (iii) held in an irrevocable trust under which the surviving spouse possesses a life estate or enjoys a continuing right of use or support.

B. The exemption does not apply to any other forms of trust or any interest held under a leasehold or term of years.

1VAC80-20-40. Partial exemptions.

If the qualified surviving spouse acquires the property after January 1, 2015, then the exemption shall begin on the date of acquisition, and the previous owner may be entitled to a refund for a pro rata portion of real property taxes paid pursuant to § 58.1-3360 of the Code of Virginia.

1VAC80-20-50. Surviving spouse exemption.

The surviving spouse shall qualify for the exemption, so long as:

1. The death of the qualified service member occurs in combat;

2. The surviving spouse was married to the qualified service member at the time of the qualified service member's death; and

3. The surviving spouse does not remarry.

1VAC80-20-60. Proration when not all owners qualify for the exemption.

In the event that the primary residence is jointly owned by two or more individuals, not all of whom qualify for the exemption pursuant to subsection A or B of § 58.1-3219.9 of the Code of Virginia, and no person is entitled to the exemption under this section by virtue of holding the property in any of the three ways set forth in subsection D of § 58.1-3219.9 of the Code of Virginia, then the exemption shall be prorated by multiplying the amount of the exemption or deferral by a fraction that has as a numerator the percentage of ownership interest in the dwelling held by all such joint owners who qualify for the exemption pursuant to subsections A and B of § 58.1-3219.9, and as a denominator, 100%.

1VAC80-20-70. Cooperative associations.

The exemption does not apply to property owned by a cooperative association or any other form of ownership in which the qualified surviving spouse does not actually own the real property other than the trusts detailed in 1VAC80-20-30.

1VAC80-20-80. Qualified surviving spouses residing in hospitals, nursing homes, convalescent homes, or other care facilities.

If the qualified surviving spouse is residing in a hospital, nursing home, convalescent home, or other facility for physical or mental care for an extended period of time, the exemption will continue on the property so long as such real estate is not used by or leased to others for consideration.

1VAC80-20-90. Application.

A. A surviving spouse, pursuant to § 58.1-3219.9 of the Code of Virginia, claiming the real property tax exemption shall file with the Commissioner of the Revenue, or other assessing official, in the surviving spouse's respective locality:

1. A DD-1300 death certification, issued by the U.S. Department of Defense (DOD), or its successor agency, to confirm date of death and indicating that the service member was killed in action as determined by the DOD. For purposes of this section, such determination of "killed in action" includes a determination by the DOD of "died of wounds received in action";

2. An affidavit or application on a form provided by the locality that:

a. Sets forth the name of the deceased service member and the name of the spouse;

b. Indicates whether or not the real property is jointly owned by the two spouses; and

c. Certifies that the real property is occupied as the surviving spouse's principal place of residence;

3. Proof of residence occupancy acceptable to the applicable locality, such as a valid Virginia driver's license, or other proof of residency acceptable to the locality; and

4. A certificate of marriage from the appropriate state office of records.

B. The surviving spouse shall be required to re-file the application and notify the previous jurisdiction, required by this section only if the principal place of residence changes.

C. While there is no deadline to apply for the exemption, the Commissioner of the Revenue or assessing official may only correct and refund (without interest) the past assessments of an initially qualified applicant for no more than the current, plus up to three prior tax years after January 1, 2015.

D. No county, city, or town shall be liable for any interest on any refund due to the surviving spouse for taxes paid prior to the filing of the application required by § 58.1-3219.10 of the Code of Virginia.

E. In the determination of the exemption, no locality may implement income or asset limitations or a deadline for application.

F. The limitations and parameters laid out in this policy do not prohibit the locality's ability to require an annual confirmation of continued residence from the qualifying surviving spouse.

1VAC80-20-100. Informal requests for information; formal appeals process.

A. The commissioner will provide written guidance to, and respond to requests for information from, Commissioners of the Revenue, other assessing officials, or surviving spouses, regarding the exemption, including interpretation of the provisions of subdivision (a) of Section 6-A of Article X of the Constitution of Virginia and the implementing statutes. Such requests may be by phone or in writing. Request for an appeal must be in writing.

B. The commissioner does not have the authority to answer questions regarding the assessed value of any property. Such questions should be answered solely by the surviving spouse's respective Commissioner of Revenue or other assessing official.

C. A surviving spouse desiring to appeal a denial of an application for exemption by a Commissioner of the Revenue or other assessing official shall send a written request for appeal and the document from the surviving spouse's respective Commissioner of Revenue or other assessing official denying the surviving spouse's application:

1. Via email to john.newby@dvs.virginia.gov; carrieann.alford@dvs.virginia.gov with a subject line that states ATTN: Tax Exemption – APPEAL; or

2. Via U.S. mail or delivery to Commissioner, Virginia Department of Veterans Services, ATTN: Tax Exemption – APPEAL, 101 North 14th Street, 17th Floor, Richmond, VA 23219.

D. The commissioner may conduct hearings telephonically, by video conferencing means, or if the commissioner determines it necessary, in person at the department's headquarters in Richmond. The appeal shall be limited to issues involving the tax exemption eligibility criteria. The commissioner is not authorized to hear or decide appeals regarding a dispute over a property's assessed value.

E. In advance of any hearing, both the surviving spouse and the Commissioner of the Revenue, or other assessing official, shall be provided (i) reasonable notice of the time, date, and location of the hearing; (ii) the right to appear in person or by counsel, or other qualified representative, before the agency or its subordinates for the presentation of factual data, argument, or proof in connection with any case; and (iii) notice of all facts or information in the possession of the Department of Veterans Services that could be relied upon in making a decision.

F. The commissioner shall render a decision within 90 days from the date of the hearing or from a later date agreed to by the surviving spouse and the commissioner. If the commissioner does not render a decision within 90 days, the surviving spouse may provide written notice to the commissioner that a decision is due. If no decision is made within 30 days from the commissioner's receipt of the notice, the decision shall be deemed to be in favor of the surviving spouse.

G. The final decision by the commissioner shall be mailed to all named parties.

H. A decision of the commissioner may be appealed by either party to the circuit court in the locality in which the surviving spouse resides.

I. The burden shall be upon the party complaining of the commissioner's decision to designate and demonstrate an error of law subject to review by the circuit court. Such issues of law include (i) accordance with constitutional right, power, privilege, or immunity; (ii) compliance with statutory authority, jurisdiction limitations, or right as provided in the basic laws as to subject matter and the factual showing respecting entitlement in connection with case decisions; (iii) observance of required procedure where any failure therein is not mere harmless error; and (iv) the substantiality of the evidentiary support for findings of fact. Any necessary facts in controversy shall be determined by the court upon the basis of the agency file, minutes, and records of its proceedings, augmented, if need be, by the agency pursuant to order of the court or supplemented by any allowable and necessary proofs adduced in court, except that the function of the court shall be to determine only whether the result reached by the agency could reasonably be said, on all such proofs, to be within the scope of the legal authority of the agency. The court shall take due account of the presumption of official regularity, the experience and specialized competence of the agency, and the purposes of the basic law under which the agency has acted.

VA.R. Doc. No. R19-5238; Filed August 23, 2018, 12:09 p.m.

TITLE 2. AGRICULTURE

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulations have been filed by the Department of Agriculture and Consumer Services. 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 to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Titles of Regulations: **2VAC5-111. Public and Private Animal Shelters.**

2VAC5-150. Rules and Regulations Governing the Transportation of Companion Animals.

Contact Information: Dr. Kathryn MacDonald, Program Manager, Office of Animal Care and Emergency Response, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-2483, or email kathryn.macdonald@vdacs.virginia.gov.

FORMS (2VAC5-111)

~~Animal Shelter Inspection Form, VDACS AC-10 (rev. 8/2017)~~

Animal Shelter Inspection Form, VDACS AC-10 (rev. 7/2018)

FORMS (2VAC5-150)

~~Animal Shelter Inspection Form, VDACS AC-10 (rev. 8/2017)~~

Animal Shelter Inspection Form, VDACS AC-10 (rev. 7/2018)

VA.R. Doc. No. R19-5650; Filed August 28, 2018, 12:30 p.m.

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TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Fast-Track Regulation

Title of Regulation: **3VAC5-10. Procedural Rules for the Conduct of Hearings before the Board and its Hearing Officers (amending 3VAC5-10-150).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 17, 2018.

Effective Date: November 1, 2018.

Agency Contact: LaTonya D. Hucks, Legal Liaison, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.virginia.gov.

Basis: Section 4.1-101 of the Code of Virginia establishes the Virginia Alcoholic Beverage Control Authority and the Board of Directors of the Virginia Alcoholic Beverage Control Authority.

Section 4.1-103 of the Code of Virginia enumerates the powers of the board, which include the authority to adopt regulations and to do all acts necessary or advisable to carry out the purposes of Title 4.1 of the Code of Virginia. Subdivision 7 of § 4.1-103 states the board may delegate or assign any duty or task to be performed by the authority to any officer or employee of the authority. Subdivision 24 of § 4.1-103 permits the board to promulgate regulations in accordance with the Administrative Process Act and § 4.1-111 of the Code of Virginia.

Section 4.1-111 of the Code of Virginia provides the board with the authority to adopt reasonable regulations that it deems reasonable to carry out the provisions of Title 4.1 and to amend or repeal such regulations.

Purpose: The purpose of this regulatory action is to accommodate the new part-time board. As the Department of Alcoholic Beverage Control transitions into an authority, it was necessary to make amendments to the regulations dealing with procedural rules so as to make the process more efficient and to not overburden the new part-time board. Approvals that were once subject to board approval have been delegated to the chief hearing officer. This action does not significantly impact public health or safety; however, there is an argument to be made that the general public welfare is benefited because the new process is more efficient because the responsibility is delegated to the chief hearing officer instead of relying on the new part-time board and it also presents licensees with a process for resolving uncontested matters that is not overwhelming or intimidating.

Rationale for Using Fast-Track Rulemaking Process: The amendments are expected to be noncontroversial because they are in the licensee's favor and simplify the consent settlement process.

Substance: Approvals once subject to board approval have been delegated to the chief hearing officer thereby accommodating the new part-time board while not hampering the process for licensees.

Issues: The primary advantage of the regulatory action to the public and the agency is that it will make the process for consent settlements more efficient because it allows the board to delegate the responsibility of approving consent settlements instead of having to wait for board approval, which could delay the process as the board will meet much less frequently under the authority. There are no disadvantages to the public, the agency, or the Commonwealth. Pertinent matters to the regulated community, government officials, and the public are that consent settlements will not always have oversight from the board; however, they will be delegated to chief hearing officer, who may have more intimate knowledge of the case and the significance of the settlement terms.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (Board) proposes to permit a designee, typically the chief hearing officer, to extend offers of consent settlement without direct approval from the Board. In addition, the Board proposes to extend the time in which the licensee may return the properly executed consent settlement with payment.

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

Estimated Economic Impact. The current regulation states that "Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee." As noted, Board approval is currently required for consent settlements. Such approval was feasible under the administration of a full-time Board; however, as the Department of Alcoholic Beverage Control (ABC) transitions into an Authority, the Board will operate on a part-time basis. Maintaining the requirement of Board approval for all consent settlements would become burdensome and unrealistic for a part-time Board, and would significantly impair the consent settlement process.

Consequently, the Board proposes to amend the regulation so that a designee of the Board, typically the chief hearing officer, can extend an offer of consent settlement without direct approval from the Board. This would be beneficial in that it prevents the delay of mutually agreed upon settlements from taking place.

The current regulation states that the licensee shall return the properly executed consent order along with the payment in full of any monetary penalty within 15 calendar days from the date of mailing by the board. The Board proposes to allow licensees up to 21 days, rather than 15, to return the executed consent order with payment. Since this is acceptable to the Board and gives affected individuals more time to decide and gather funds, it should produce a net benefit.

Businesses and Entities Affected. All 13,000 plus licensees could potentially be subject to disciplinary proceedings, and thus could be affected by the proposed amendments.[1] ABC issues: licenses for manufacturers, wholesalers and shippers of alcoholic beverages; retail licenses for the sale of alcohol at restaurants, hotels, convenience stores, grocery stores, etc.; and banquet licenses to allow persons or groups to host events such as wedding receptions, tastings or fundraisers, where alcohol is served in an unlicensed location or club premise.[2]

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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[1]Data source: Department of Alcoholic Beverage Control

[2]See https://www.abc.virginia.gov/licenses/get-a-license

Agency's Response to Economic Impact Analysis: The Virginia Alcoholic Beverage Control Authority concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments (i) permit the chief hearing officer to extend offers of consent settlement without direct approval from the board, (ii) extend the time in which the licensee may return the properly executed consent settlement with payment, and (iii) remove the requirement that the board review or approve acceptance of consent settlement agreement.

3VAC5-10-150. Consent settlement.

A. Generally. ~~Disciplinary cases may be resolved by consent settlement if the nature of the proceeding and public interest permit. In appropriate cases, the chief hearing officer will extend an offer of consent settlement, conditioned upon approval by the board, to the licensee.~~ The board, or its designee, may offer to resolve disciplinary cases when the nature of the proceeding and public interest permit. In appropriate cases, the board or its designee will extend an offer for a consent settlement to the licensee.

B. Who may accept. The licensee or his attorney may accept an offer of consent settlement. If the licensee is a corporation, only an attorney or an officer, director or majority stockholder of the corporation may accept an offer of consent settlement. ~~Settlement shall be conditioned upon approval by the board.~~

C. How to accept. The licensee shall return the properly executed consent order along with the payment in full of any monetary penalty ~~within 15~~ no later than 21 calendar days from the date of mailing by the board. Failure to respond within the time period will result in a withdrawal of the offer by the agency and a formal hearing will be held on the date specified in the notice of hearing.

D. Effect of acceptance. ~~Upon approval by the board, acceptance~~ Acceptance of the consent settlement offer shall constitute an admission of the alleged violation of the A.B.C. laws or regulations~~,~~ and will result in a waiver of the right to a formal hearing and the right to appeal or otherwise contest the charges. The offer of consent settlement is not negotiable; however, the licensee is not precluded from submitting an offer in compromise under 3VAC5-10-160.

E. ~~Approval by the board. The board shall review all proposed settlements. Only after approval by the board shall a settlement be deemed final. The~~ Board review. Prior to extending an offer of consent settlement to the licensee, the board or its designee may reject any proposed settlement which is contrary to law or policy or which, in its sole discretion, is not appropriate.

F. Record. Unaccepted offers of consent settlement will become a part of the record only after completion of the hearing process.

VA.R. Doc. No. R19-5362; Filed August 15, 2018, 3:02 p.m.

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TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-50).**

Statutory Authority: §§ 29.1-103 and 29.1-501 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.

Summary:

The amendment updates the "List of Native and Naturalized Fauna of Virginia" offered by the department to the 2018 version.

4VAC15-20-50. Definitions; "wild animal," "native animal," "naturalized animal," "nonnative (exotic) animal," and "domestic animal."

A. In accordance with § 29.1-100 of the Code of Virginia, the following terms shall have the meanings ascribed to them by this section when used in regulations of the board:

"Native animal" means those species and subspecies of animals naturally occurring in Virginia, as included in the department's ~~2014~~ 2018 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Naturalized animal" means those species and subspecies of animals not originally native to Virginia that have established wild, self-sustaining populations, as included in the department's ~~2014~~ 2018 "List of Native and Naturalized Fauna of Virginia," with copies available in the Richmond and regional offices of the department.

"Nonnative (exotic) animal" means those species and subspecies of animals not naturally occurring in Virginia, excluding domestic and naturalized species.

The following animals are defined as domestic animals:

Domestic dog (Canis familiaris), including wolf hybrids.

Domestic cat (Felis catus), including hybrids with wild felines.

Domestic horse (Equus caballus), including hybrids with Equus asinus.

Domestic ass, burro, and donkey (Equus asinus).

Domestic cattle (Bos taurus and Bos indicus).

Domestic sheep (Ovis aries) including hybrids with wild sheep.

Domestic goat (Capra hircus).

Domestic swine (Sus scrofa), including pot-bellied pig and excluding any swine that are wild or for which no claim of ownership can be made.

Llama (Lama glama).

Alpaca (Lama pacos).

Camels (Camelus bactrianus and Camelus dromedarius).

Domesticated races of hamsters (Mesocricetus spp.).

Domesticated races of mink (Mustela vison) where adults are heavier than 1.15 kilograms or their coat color can be distinguished from wild mink.

Domesticated races of guinea pigs (Cavia porcellus).

Domesticated races of gerbils (Meriones unguiculatus).

Domesticated races of chinchillas (Chinchilla laniger).

Domesticated races of rats (Rattus norvegicus and Rattus rattus).

Domesticated races of mice (Mus musculus).

Domesticated breeds of European rabbit (Oryctolagus cuniculus) recognized by the American Rabbit Breeders Association, Inc. and any lineage resulting from crossbreeding recognized breeds. A list of recognized rabbit breeds is available on the department's website.

Domesticated races of chickens (Gallus).

Domesticated races of turkeys (Meleagris gallopavo).

Domesticated races of ducks and geese distinguishable morphologically from wild birds.

Feral pigeons (Columba domestica and Columba livia) and domesticated races of pigeons.

Domesticated races of guinea fowl (Numida meleagris).

Domesticated races of peafowl (Pavo cristatus).

"Wild animal" means any member of the animal kingdom, except domestic animals, including without limitation any native, naturalized, or nonnative (exotic) mammal, fish, bird, amphibian, reptile, mollusk, crustacean, arthropod or other invertebrate, and includes any hybrid of them, except as otherwise specified in regulations of the board, or part, product, egg, or offspring of them, or the dead body or parts of them.

B. Exception for red foxes and European rabbits. Domesticated red foxes (Vulpes vulpes) having coat colors distinguishable from wild red foxes and wild European rabbits possessed in captivity on July 1, 2017, may be maintained in captivity until the animal dies, but the animal may not be bred or sold without a permit from the department. Persons possessing domesticated red foxes or European rabbits without a permit from the department must declare such possession in writing to the department by January 1, 2018. This written declaration must include the number of individual animals in possession and date acquired, sex, estimated age, coloration, and a photograph of each fox or European rabbit. This written declaration shall (i) serve as a permit for possession only, (ii) is not transferable, and (iii) must be renewed every five years.

DOCUMENTS INCORPORATED BY REFERENCE (4VAC15-20)

~~List of Native and Naturalized Fauna of Virginia, March 2012, Virginia Department of Game and Inland Fisheries~~

List of Native and Naturalized Fauna of Virginia, 2018, Virginia Department of Game and Inland Fisheries

Federal Endangered and Threatened Animal Species as of August 4, 2016

VA.R. Doc. No. R18-5495; Filed August 27, 2018, 10:03 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-20. Definitions and Miscellaneous: In General (amending 4VAC15-20-190).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments (i) add waters with the special trout fishing provisions described in 4VAC14-330-160 to the category "designated stocked trout waters" so that a trout license is required to fish in such waters and (ii) correct cross references for fee fishing waters and urban fishing waters.

4VAC15-20-190. Definitions; "designated stocked trout waters."

When used in regulations of the board, "designated stocked trout waters" will include those waters that are stocked with harvestable-sized trout and are listed by the director in the annual Trout Stocking Plan. These waters will only be considered designated stocked trout waters from October 1 through June 15, both dates inclusive, except for fee fishing waters covered by ~~4VAC15-320-10 et seq.~~ 4VAC15-320-120, waters covered by 4VAC15-330-160, and urban fishing waters covered by ~~4VAC15-330-20 et seq~~ 4VAC15-330-200. Designated stocked trout waters are either posted by the department with appropriate "stocked trout waters" signs or are posted as fee fishing areas under ~~4VAC15-320-10 et seq.~~ 4VAC15-320-120 or waters under 4VAC15-330-160.

VA.R. Doc. No. R18-5496; Filed August 27, 2018, 10:15 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-25).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments (i) remove the size limit on spotted and largemouth bass and increase the size limit for smallmouth bass for Claytor Lake; (ii) impose a 20-inch minimum size limit for smallmouth bass and a one fish per day creel limit for trophy smallmouth bass in the Levisa Fork River in Buchanan County; (iii) change the minimum length limit from October 1 to May 31 for striped bass for Buggs Island (Kerr) Reservoir, Staunton River to Leesville Dam, and Dan River to Union Street Dam to 20 inches; (iv) for September 16 through June 30, set the minimum size limit at 20 inches and the creel limit as two fish per day and for July 1 through September 15 remove the size limit and set the creel limit to four fish per day for striped bass for Claytor Lake and its tributaries; (v) set a 14-inch minimum length limit and a 10 fish per day creel limit for white bass for Buggs Island (Kerr) Reservoir, Staunton River to Leesville Dam, and Dan River to Union Street Dam; (vi) establish a nine-inch minimum length limit for crappie for Buggs Island (Kerr), Briery Creek, and Sandy River Reservoirs; (vii) revise the current creel limit for rock bass to be 25 per day in aggregate with Roanoke bass, revise the current creel limit for Roanoke bass to be 25 per day in aggregate with rock bass, and add the Blackwater River in Franklin County, Falling River, and Smith River to the rivers and tributaries where the daily limit is five rock bass and Roanoke bass in aggregate and the minimum length limit is eight inches; (viii) limit blue catfish greater than 32 inches harvested from Lake Gaston to one per day; and (ix) modify American shad creel and length limits to adhere to The Atlantic State Marine Fisheries Commission Interstate Fishery Management Plan for American Shad, which prohibits harvest of American shad in states where there is currently no sustainable management plan implemented.

4VAC15-320-25. Creel and length limits.

The creel limits (including live possession) and the length limits for the various species of fish shall be as follows, unless otherwise excepted by posted rules at department-owned or department-controlled waters (see 4VAC15-320-100 D).

Type of fish	Subtype or location	Creel and length limits	Geographic exceptions	Creel or length limits for exceptions
largemouth bass, smallmouth bass, spotted bass		5 per day in the aggregate (combined)~~;~~ No statewide length limits	**Lakes**	
			Briery Creek Lake	No bass 16 to 24 inches~~;~~; only 1 per day longer than 24 inches
			Buggs Island (Kerr)	Only 2 of 5 bass less than 14 inches
			Claytor Lake	No smallmouth bass less than ~~12~~ 14 inches; 15 spotted bass per day
			Flannagan Reservoir	No bass less than 12 inches
			Lake Gaston	Only 2 of 5 bass less than 14 inches
			Leesville Reservoir	Only 2 of 5 bass less than 14 inches
			Lake Moomaw	No bass less than 12 inches
			Philpott Reservoir	No bass less than 12 inches
			Quantico Marine Base waters	No bass 12 to 15 inches
			Smith ~~Mt.~~ Mountain Lake and its tributaries below Niagara Dam	Only 2 of 5 bass less than 14 inches
			Rivers	
			Clinch River – within the boundaries of Scott, Wise, Russell, or Tazewell ~~counties~~ Counties	No bass less than 20 inches~~;~~; only 1 bass per day longer than 20 inches
			Levisa Fork River – within the boundaries Buchanan County	No bass less than 20 inches; only 1 bass per day longer than 20 inches

			Dan River and tributaries downstream from the Union Street Dam, Danville	Only 2 of 5 bass less than 14 inches
			James River – Confluence of the Jackson and Cowpasture rivers (Botetourt County) downstream to the 14th Street Bridge in Richmond	No bass 14 to 22 inches~~,~~; only 1 per day longer than 22 inches
			New River – Fields Dam (Grayson County) downstream to the VA - WV state line and its tributaries Little River downstream from Little River Dam in Montgomery County, Big Walker Creek from the Norfolk Southern Railroad Bridge downstream to the New River, and Wolf Creek from the Narrows ~~dam~~ Dam downstream to the New River in Giles County (This does not include Claytor Lake, which is delineated as: The upper end of the island at Allisonia downstream to the dam)	No bass 14 to 22 inches~~,~~; only 1 per day longer than 22 inches

			North Fork Holston River - Rt. 91 bridge upstream of Saltville, VA downstream to the VA - TN state line	No bass less than 20 inches~~,~~; only 1 per day longer than 20 inches
			North Fork Shenandoah River – Rt. 42 bridge, Rockingham [~~Co.~~ County] downstream to the confluence with S. Fork Shenandoah at Front Royal	No bass 11 to 14 inches
			Potomac River - Virginia tidal tributaries above Rt. 301 bridge	No bass less than 15 inches from March 1 through June 15
			Roanoke (Staunton) River - and its tributaries below Difficult Creek, Charlotte ~~Co.~~ County	Only 2 of 5 bass less than 14 inches
			Shenandoah River –	
			Confluence of South Fork and North Fork [~~rivers~~ Rivers], Front Royal, downstream, to the Warren Dam, near Front Royal	No bass 11 to 14 inches
			Base of Warren Dam, near Front Royal downstream to Rt. 17/50 bridge	No bass 14 to 20 inches~~,~~; only 1 per day longer than 20 inches

			Rt. 17/50 bridge downstream to VA - WV state line	No bass 11 to 14 inches
			South Fork Shenandoah River -	
			Confluence of North and South rivers, below Port Republic, downstream to Shenandoah Dam, near Town of Shenandoah	No bass 11 to 14 inches
			Base of Shenandoah Dam, near Town of Shenandoah, downstream to Luray Dam, near Luray	No bass 14 to 20 inches~~,~~; only 1 per day longer than 20 inches
			Base of Luray Dam, near Luray, downstream to the confluence with North Fork of Shenandoah, Front Royal	No bass 11 to 14 inches
			Staunton River -	
			Leesville Dam (Campbell County) downstream to the mouth of Difficult Creek, Charlotte County	No smallmouth bass less than 20 inches~~,~~; only 1 per day longer than 20 inches

striped bass	landlocked striped bass and landlocked striped bass ~~x~~ - white bass hybrids	4 per day in the aggregate~~;~~ No fish less than 20 inches	Buggs Island (Kerr) ~~reservoir~~ Reservoir, including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	October 1 - May 31: 2 per day in the aggregate; ~~No~~ no striped bass or hybrid striped bass less than ~~24~~ 20 inches [~~;~~] June 1 - September 30: 4 per day in the aggregate; ~~No~~ no length limit
			Claytor Lake and its tributaries	September 16 – June 30: 2 per day in the aggregate; no striped bass or hybrid bass less than 20 inches July 1 – September 15: 4 per day in the aggregate; no length limit
			Smith Mountain Lake and its tributaries, including the Roanoke River upstream to Niagara Dam	2 per day in the aggregate~~;~~ November 1 - May 31: No striped bass 30 to 40 inches~~;~~ June 1 - October 31: No length limit
			Lake Gaston	4 per day in the aggregate October 1 - May 31: No striped bass or hybrid striped bass less than 20 inches June 1 - September 30: No length limit
	anadromous (coastal) striped bass above the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be set by the Virginia Marine Resources Commission for recreational fishing in tidal waters		

	anadromous (coastal) in the Meherrin, Nottoway, Blackwater (Chowan Drainage), North Landing and Northwest Rivers and their tributaries plus Back Bay	2 per day~~;~~ No striped bass less than 18 inches		
white bass		5 per day~~;~~ No statewide length limits	Buggs Island (Kerr) Reservoir, including the Staunton River to Leesville Dam and the Dan River to Union Street Dam (Danville)	10 per day; no white bass less than 14 inches
walleye		5 per day in the aggregate~~;~~ No walleye or saugeye less than 18 inches	New River upstream of Buck Dam in Carroll County	No walleye less than 20 inches
			Claytor Lake and the New River upstream of Claytor Lake Dam to Buck Dam in Carroll County	February 1 - May 31: 2 walleye per day; no walleye 19 to 28 inches~~;~~ June 1 - January 31: 5 walleye per day; no walleye less than 20 inches
sauger		2 per day~~;~~ No statewide length limits		
yellow perch		No statewide daily limit~~;~~ No statewide length limits	Lake Moomaw	10 per day
chain pickerel		5 per day~~;~~ No statewide length limits	Gaston and Buggs Island (Kerr) ~~reservoirs~~ Reservoirs	No daily limit
northern pike		2 per day~~;~~ No pike less than 20 inches		

muskellunge		2 per day~~;~~ No muskellunge less than 30 inches	New River - Fields Dam (Grayson County) downstream to Claytor Dam, including Claytor Lake	1 per day; ~~No~~ no muskellunge less than 42 inches
			New River - Claytor Dam downstream to the VA - WV state line	1 per day June 1 - last day of February: No muskellunge 40 to 48 inches~~;~~ March 1 - May 31: No muskellunge less than 48 inches
bluegill (bream) and other sunfish excluding crappie, rock bass (redeye) and Roanoke bass		50 per day in the aggregate~~;~~ No statewide length limits	Gaston and Buggs Island (Kerr) ~~reservoirs~~ Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
crappie (black or white)		25 per day in the aggregate~~;~~ No statewide length limits	Lake Gaston ~~and Buggs Island (Kerr) reservoirs~~ and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County	No daily limit
			Buggs Island (Kerr) Reservoir	No crappie less than 9 inches

			Briery Creek and Sandy River Reservoirs	No crappie less than 9 inches
			Flannagan and South Holston ~~reservoirs~~ Reservoirs	No crappie less than 10 inches
rock bass (redeye)		25 per day; in the aggregate with Roanoke bass No statewide length limits	Gaston and Buggs Island (Kerr) ~~reservoirs~~ Reservoirs and that portion of the New River from the VA - NC state line downstream to the confluence of the New and Little Rivers in Grayson County~~.~~	No daily limit
			Nottoway ~~and,~~ Meherrin ~~rivers,~~ Blackwater (Franklin County), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with Roanoke bass; ~~No~~ no rock bass less than 8 inches
Roanoke bass		~~No statewide daily limit~~; 25 per day in the aggregate with rock bass No statewide length limits	Nottoway ~~and,~~ Meherrin ~~rivers,~~ Blackwater (Franklin County), Falling, and Smith Rivers and their tributaries	5 per day in the aggregate with rock bass; ~~No~~ no Roanoke bass less than 8 inches
trout	See 4VAC15-330. Fish: Trout Fishing.			
catfish	channel, white, and flathead catfish	20 per day; No length limits	All rivers below the fall line	No daily limit
	blue catfish	20 per day; No statewide length limits	Lake Gaston	No daily limit, except only 1 blue catfish per day longer than 32 inches

			Kerr Reservoir	20 per day, except only 1 blue catfish per day longer than 32 inches
			James River and its tributaries below the fall line and York River and its tributaries (including the Pamunkey River and Mattaponi River) below the fall line	No daily limit, except only 1 blue catfish per day longer than 32 inches
			All rivers below the fall line other than the James River and its tributaries and the York River and its tributaries	No daily limit
	yellow, brown, and black bullheads	No daily limit; No length limits		
~~American shad and~~ hickory shad	~~Virginia waters of Lake Gaston and Buggs Island (Kerr) Reservoir and tributaries to include the Dan and Staunton rivers~~	~~No possession (catch and release only)~~		
	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission ~~for these species~~ in tidal rivers		

	Meherrin River below Emporia Dam Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest ~~rivers~~ Rivers, and their tributaries plus Back Bay	10 per day ~~in the aggregate~~ No length limits		
American shad		No possession		
anadromous (coastal) alewife and blueback herring	Above and below the fall line in all coastal rivers of the Chesapeake Bay	Creel and length limits shall be the same as those set by the Virginia Marine Resources Commission for these species in tidal rivers		
	Meherrin River, Nottoway River, Blackwater River (Chowan Drainage), North Landing and Northwest ~~rivers~~ Rivers, and their tributaries plus Back Bay	No possession		
red drum	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	1 per day~~;~~ No drum less than 18 inches or greater than 27 inches		

spotted sea trout (speckled trout)	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	4 per day~~;~~ No sea trout less than 14 inches		
grey trout (weakfish)	Back Bay and tributaries including Lake Tecumseh and North Landing River and its tributaries	1 per day~~;~~ No grey trout less than 12 inches		
southern flounder	Back Bay and tributaries including Lake Tecumseh and the North Landing River and its tributaries	6 per day~~;~~ No flounder less than 15 inches		
northern snakehead		Anglers may possess snakeheads taken from Virginia waters if they immediately kill the fish and notify the headquarters or a regional office of the department; notification may be made by telephoning (804) 367-2925 No statewide daily limit No statewide length limits		
longnose gar		5 per day~~;~~ No statewide length limits		
bowfin		5 per day~~;~~ No statewide length limits		
American eel		25 per day~~;~~ No eel less than 9 inches	Back Bay and North Landing River	No possession limit for those individuals possessing a permit obtained under 4VAC15-340-80
other native or naturalized nongame fish	See 4VAC15-360-10. Fish: Aquatic Invertebrates, Amphibians, Reptiles, and Nongame Fish. Taking aquatic invertebrates, amphibians, reptiles, and nongame fish for private use.			
endangered or threatened fish	See 4VAC15-20-130. Definitions and Miscellaneous: In General. Endangered and threatened species; adoption of federal list; additional species enumerated.			

nonnative (exotic) fish	See 4VAC15-30-40. Definitions and Miscellaneous: Importation, Possession, Sale, Etc., of Animals. Importation requirements, possession and sale of nonnative (exotic) animals.	

VA.R. Doc. No. R18-5497; Filed August 27, 2018, 10:23 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (amending 4VAC15-320-50).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments prohibit the use of any species of fish as bait in Virginia's candy darter streams of the New River drainage, including Big Stony Creek in Giles County, Dismal Creek in Bland and Giles Counties, Laurel Creek in Bland County, and Cripple Creek in Smyth and Wythe Counties, to prevent the introduction of nonnative fish species in those streams.

4VAC15-320-50. Fish used as bait prohibited in certain waters.

It shall be unlawful to use any species of fish as bait in the waters and tributaries of Lick Creek in Smyth and Bland counties, Bear Creek in Smyth County, ~~and~~ Laurel Creek in Tazewell and Bland counties, Big Stony Creek in Giles County, Dismal Creek in Bland and Giles Counties, Laurel Creek in Bland County, and Cripple Creek in Smyth and Wythe Counties.

VA.R. Doc. No. R18-5500; Filed August 27, 2018, 10:26 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-320. Fish: Fishing Generally (repealing 4VAC15-320-140).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments repeal the requirement for a permit to conduct a striped bass tournament.

4VAC15-320-140. ~~Permits required for striped bass fishing rodeos; etc.~~ (Repealed.)

~~No person shall organize, conduct, supervise, or solicit entries for striped bass fishing tournaments, rodeos, or other striped bass fishing events on the inland waters of this Commonwealth, for which prizes are offered, awarded, or accepted, either in money or other valuable considerations, without having applied for and obtained a permit from the department to do so. Exercising a due regard for the distribution, local abundance, economic value, breeding habits, and natural growth potential of striped bass in the affected public water, the director is authorized on behalf of the board to issue or deny permits pursuant to this section, and to establish such special rules for each tournament as may be deemed necessary, after consulting with the state fish biologist and with the approval of the board's fish committee as designated from time to time by the chairman. Failure to comply with all special rules and other provisions of any permit issued pursuant to this section may be deemed grounds for denying the permittee a permit for a similar event to be held within three years from the date of such failure of compliance.~~

VA.R. Doc. No. R18-5501; Filed August 27, 2018, 10:33 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-330. Fish: Trout Fishing (amending 4VAC15-330-10).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments provide for closures to designated stocked trout waters to adult anglers for youth trout fishing events sponsored by the department, including (i) how a closure shall be posted, (ii) when a closure will begin the day preceding an event, and (iii) that a closure will last until the conclusion of an event.

4VAC15-330-10. Season; general open season.

Except as otherwise specifically provided in the sections appearing in this chapter, there shall be a year-round season for taking trout. However, angling in designated stocked trout waters shall only be permitted from 5 a.m. until one hour after sunset, except for waters designated by the director as Trout Heritage Waters and listed in the annual trout stocking plan (as referenced in 4VAC15-20-190). Trout Heritage Waters will be closed to fishing on the Friday prior to the first Saturday in April and will reopen to fishing at 9 a.m. on the first Saturday in April. Youth fishing events that are sponsored by the department and held on designated stocked trout waters shall be posted on site with a closure to adults (anglers older than 15 years of age) from noon the day before the event until the conclusion of the youth event. Any person older than 15 years of age and accompanying a youth who is incapable of hooking and landing a fish unassisted shall be properly licensed to fish in designated stocked trout waters.

VA.R. Doc. No. R18-5502; Filed August 27, 2018, 10:35 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-330. Fish: Trout Fishing (amending 4VAC15-330-150).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments require that trout fishing in Wolf Creek, within the Abingdon Muster Grounds in the Town of Abingdon from Colonial Road downstream to Stone Mill Road, and Beaver Creek, within the boundaries of Sugar Hollow Park in the City of Bristol, be catch and release using single hook artificial lures only. Since the proposed action, a correction identifying the Wayne Avenue Bridge on the South River in the City of Waynesboro, instead of the Arch Avenue Bridge, has been added.

4VAC15-330-150. Special provision applicable to ~~Stewarts Creek Trout Management Area; certain portions of the Dan, Rapidan, South Fork Holston and Staunton rivers, the Brumley Creek, East Fork of Chestnut Creek, Little Stony Creek, Little Tumbling Creek, Big Tumbling Creek, North Creek, Roaring Fork, Spring Run, Stony Creek, Venrick Run, South River, and their tributaries~~ trout fishing using artificial lures with single hook.

It shall be lawful year around to fish for trout using only artificial lures with single hooks within:

1. The Stewarts Creek Trout Management Area in Carroll County.

2. The Rapidan and Staunton [~~rivers~~ Rivers] and their tributaries upstream from a sign at the Lower Shenandoah National Park boundary in Madison County.

3. The Dan River and its tributaries between the Townes Dam and the Pinnacles Hydroelectric Project powerhouse in Patrick County.

4. The East Fork of Chestnut Creek (Farmers Creek) and its tributaries upstream from the Blue Ridge Parkway in Grayson and Carroll Counties.

5. Roaring Fork and its tributaries upstream from the southwest boundary of Beartown Wilderness Area in Tazewell County.

6. That section of the South Fork Holston River and its tributaries from the concrete dam at Buller Fish Culture Station downstream to the lower boundary of the Buller Fish Culture Station in Smyth County.

7. North Creek and its tributaries upstream from a sign at the George Washington National Forest North Creek Campground in Botetourt County.

8. Spring Run from it confluence with Cowpasture River upstream to a posted sign at the discharge for Coursey Springs Hatchery in Bath County.

9. Venrick Run and its tributaries within the Big Survey Wildlife Management Area and Town of Wytheville property in Wythe County.

10. Brumley Creek and its tributaries from the Hidden Valley Wildlife Management Area boundary upstream to the Hidden Valley Lake Dam in Washington County.

11. Stony Creek (Mountain Fork) and its tributaries within the Jefferson National Forest in Wise and Scott Counties from the outlet of High Knob Lake downstream to the confluence of Chimney Rock Fork and Stony Creek.

12. Little Stony Creek and its tributaries within the Jefferson National Forest in Scott County from the Falls of Little Stony Creek downstream to a posted sign at the Hanging Rock Recreation Area.

13. Little Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth and Tazewell Counties downstream to the concrete bridge.

14. ~~Effective January 1, 2018,~~ Big Tumbling Creek and its tributaries within the Clinch Mountain Wildlife Management Area in Smyth County from a sign starting at the foot of the mountain and extending upstream seasonally from October 1 until five days prior to the first Saturday in April.

15. South River in the City of Waynesboro from the [~~Arch~~ Wayne] Avenue Bridge downstream 2.2 miles to the Second Street Bridge.

16. Wolf Creek and its tributaries within the Abingdon Muster Grounds in the Town of Abingdon from Colonial Road downstream to Stone Mill Road.

17. Beaver Creek and its tributaries within the boundaries of Sugar Hollow Park in the City of Bristol.

All trout caught in these waters must be immediately returned to the water. No trout or bait may be in possession at any time in these areas.

VA.R. Doc. No. R18-5503; Filed August 27, 2018, 10:49 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-340. Fish: Seines and Nets (amending 4VAC15-340-60).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments clarify that the use of cast nets for taking bait fish in the Roanoke and Dan Rivers in Campbell, Charlotte, Halifax, and Pittsylvania Counties and in the City of Danville is not prohibited.

4VAC15-340-60. Seines, traps, and nets prohibited in certain areas.

A. It shall be unlawful to use seines and nets of any kind for the taking of fish from the public waters of the Roanoke (Staunton) and Dan Rivers in Campbell, Charlotte, Halifax, and Pittsylvania Counties~~,~~ and in the City of Danville; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked or the taking of fish from these waters pursuant to the provisions of 4VAC15-360. In addition, this section shall not be construed to prohibit the use of cast nets, also known as throw nets, for the taking of bait fish.

B. In Lick Creek and tributaries in Smyth and Bland Counties, in Bear Creek and Hungry Mother Creek above Hungry Mother Lake in Smyth County, ~~and~~ in Laurel Creek and tributaries upstream of Highway 16 bridge in Tazewell and Bland Counties, in Susong Branch and Mumpower Creek in Washington County and the City of Bristol, and in Timbertree Branch in Scott County, it shall be unlawful to use seines, nets, or traps; provided, however, this section shall not be construed to prohibit the use of hand-landing nets for the landing of fish legally hooked.

VA.R. Doc. No. R18-5504; Filed August 27, 2018, 10:51 a.m.

Final Regulation

REGISTRAR'S NOTICE: The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 A 3 of the Code of Virginia when promulgating regulations regarding the management of wildlife.

Title of Regulation: **4VAC15-350. Fish: Gigs, Grab Hooks, Trotlines, Snares, etc. (amending 4VAC15-350-70).**

Statutory Authority: §§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Aaron Proctor, Regulations Coordinator, Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, VA 23228, telephone (804) 367-8341, or email aaron.proctor@dgif.virginia.gov.

Summary:

The amendments add goldfish to the list of fish that can be taken using bow and arrow or crossbow.

4VAC15-350-70. Taking ~~common carp, grass carp, northern snakehead, bowfin, catfish, and gar~~ of fish with bow and arrow or crossbow.

A. Season. Except as otherwise provided by local legislation or as posted, it shall be lawful to take common carp, northern snakehead, goldfish, and gar from the public inland waters of the Commonwealth, grass carp from public inland waters of the Commonwealth except department-owned or department-controlled lakes, and bowfin and catfish from below the fall line in tidal rivers of the Chesapeake Bay, except waters stocked with trout, by means of bow and arrow or crossbow.

B. Poison arrows or explosive-head arrows prohibited. It shall be unlawful to use poison arrows or arrows with explosive heads at any time for the purpose of taking common carp, grass carp, northern snakehead, bowfin, catfish, goldfish, or gar in the public inland waters of the Commonwealth.

C. Fishing license required. All persons taking fish in the manner ~~mentioned~~ described in this section shall be required to have a regular fishing license.

D. Creel limits. ~~Common~~ The creel limits for common carp, grass carp, northern snakehead, goldfish, and catfish – shall be unlimited, provided that any angler taking northern snakehead immediately kill such fish and notify the department, as soon as practicable, of such actions and provided that any angler taking grass carp ensure that harvested fish are dead. The creel limit for bowfin and longnose gar shall be five fish per day.

VA.R. Doc. No. R18-5505; Filed August 27, 2018, 10:55 a.m.

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.

Titles of Regulations: **4VAC20-252. Pertaining to the Taking of Striped Bass (amending 4VAC20-252-20, 4VAC20-252-30, 4VAC20-252-80, 4VAC20-252-160).**

4VAC20-280. Pertaining to Speckled Trout and Red Drum (amending 4VAC20-280-20, 4VAC20-280-30).

4VAC20-320. Pertaining to the Taking of Black Drum (amending 4VAC20-320-20, 4VAC20-320-60).

4VAC20-380. Pertaining to Grey Trout (Weakfish) (amending 4VAC20-380-20, 4VAC20-380-30, 4VAC20-380-60).

4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20).

4VAC20-500. Pertaining to the Catching of Eels (amending 4VAC20-500-20, 4VAC20-500-35).

4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-12, 4VAC20-510-30).

4VAC20-540. Pertaining to Spanish and King Mackerel (amending 4VAC20-540-20, 4VAC20-540-40).

4VAC20-620. Pertaining to Summer Flounder (amending 4VAC20-620-20, 4VAC20-620-50).

4VAC20-910. Pertaining to Scup (Porgy) (amending 4VAC20-910-20, 4VAC20-910-30).

4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-20, 4VAC20-950-30).

4VAC20-960. Pertaining to Tautog (amending 4VAC20-960-20, 4VAC20-960-30).

4VAC20-1120. Pertaining to Tilefish and Grouper.

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

Effective Date: September 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments create conformity in total length measurements and descriptions in all regulations and establish a uniform definition and process for measuring finfish.

4VAC20-252-20. Definitions.

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

"Chesapeake area" means the area that includes the Chesapeake Bay and its tributaries and the Potomac River tributaries.

"Chesapeake Bay and its tributaries" means all tidal waters of the Chesapeake Bay and its tributaries within Virginia, westward of the shoreward boundary of the Territorial Sea, excluding the coastal area and the Potomac River tributaries as defined by this section.

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

"Commercial fishing" or "fishing commercially" or "commercial fishery" means fishing by any person where the catch is for sale, barter, trade, or any commercial purpose, or is intended for sale, barter, trade, or any commercial purpose.

"Commission" means the Marine Resources Commission.

"Great Wicomico-Tangier Striped Bass Management Area" means the area that includes the Great Wicomico River and those Virginia waters bounded by a line beginning at Dameron Marsh at NAD 83 North Latitude 37-46.9535, West Longitude 76-17.1294; thence extending to the southernmost point of Tangier Island, and thence north to a point on the Virginia-Maryland state boundary at NAD 83 North Latitude 37-57.0407, West Longitude 75-58.5043, thence westerly along the Virginia-Maryland state boundary to Smith Point.

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

"Recreational fishing" or "fishing recreationally" or "recreational fishery" means fishing by any person, whether licensed or exempted from licensing, where the catch is not for sale, barter, trade, or any commercial purpose, or is not intended for sale, barter, trade, or any commercial purpose.

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat participating in the recreational striped bass fishery.

"Share" means a percentage of the striped bass commercial harvest quota.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Spawning reaches" means sections within the spawning rivers as follows:

1. James River from a line connecting Dancing Point and New Sunken Meadow Creek upstream to a line connecting City Point and Packs Point.

2. Pamunkey River from the Route 33 Bridge at West Point upstream to a line connecting Liberty Hall and the opposite shore.

3. Mattaponi River from the Route 33 Bridge at West Point upstream to the Route 360 bridge at Aylett.

4. Rappahannock River from the Route 360 Bridge at Tappahannock upstream to the Route 1 Falmouth Bridge.

"Spear" or "spearing" means to fish while the person is fully submerged under the water's surface with a mechanically aided device designed to accelerate a barbed spear.

"Striped bass" means any fish of the species Morone saxatilis, including any hybrid of the species Morone saxatilis.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

"Trophy-size striped bass" means any striped bass that is 36 inches or greater in total length.

4VAC20-252-30. General prohibitions and requirements.

A. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, except in accord with the provisions of Title 28.2 of the Code of Virginia and in accord with the provisions of this chapter.

B. It shall be unlawful for any person to possess any striped bass taken from the tidal waters of Virginia, including Virginia's portion of the Territorial Sea, during a time, from an area, and with a gear type when there is no open season set forth in this chapter for such time, area, and gear type.

C. Except for those persons permitted in accordance with 4VAC20-252-170, it shall be unlawful for any person to possess any striped bass less than 18 inches total length at any time.

D. It shall be unlawful for any person to possess any striped bass that measures less than the minimum size or more than the maximum size applicable to the open season when fishing occurs, except as described in 4VAC20-252-115.

~~E. Total length measurement of striped bass shall be in a straight line from tip of nose to tip of tail.~~

~~F.~~ E. It shall be unlawful for any person while aboard any boat or vessel or while fishing from shore or pier to alter any striped bass or to possess any altered striped bass such that its total length cannot be determined.

~~G.~~ F. It shall be unlawful for any person to gaff or attempt to gaff any striped bass at any time.

~~H.~~ G. It shall be unlawful for any person to use a commercial hook and line within 300 feet of any bridge, bridge-tunnel, jetty, or pier during Thanksgiving Day and the following day or during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through 6 a.m. Friday.

~~I.~~ H. Unless specified differently in other regulations, it shall be unlawful to place, set, or fish any gill net within 300 feet of any bridge, bridge-tunnel, jetty, or pier during any open recreational striped bass season in the Chesapeake Bay and its tributaries, except during the period midnight Sunday through midnight Wednesday.

~~J.~~ I. During the period April 1 through May 31, inclusive, it shall be unlawful for any person to set or fish any anchored gill net or staked gill net, for any purpose, within the

spawning reaches of the James, Pamunkey, Mattaponi, and Rappahannock Rivers. Drift or float gill nets may be set and fished within the spawning reaches of these rivers during this period, provided that the person setting and fishing the net remains with the net during the time it is fishing and all striped bass that are caught shall be returned to the water immediately.

~~K.~~ J. Holding any permit issued by the commission to fish for striped bass, recreationally or commercially, shall authorize any commission personnel or their designees to inspect, measure, weigh, or take biological samples from any striped bass in possession of the permit holder.

~~L.~~ K. Nothing in this chapter shall preclude any person, who is legally eligible to fish, from possessing any striped bass tagged with a Virginia Institute of Marine Science (VIMS) fluorescent green tag. Possession of these VIMS-tagged striped bass shall not count towards the personal recreational possession limit, and permitted commercial striped bass individual transferable quota (ITQ) holders shall not be required to apply a tamper evident, numbered tag provided by the commission, in order to possess any striped bass tagged with a VIMS-inscribed green fluorescent tag. It shall be unlawful for any person to retain any of these VIMS-tagged striped bass for a period of time that is longer than necessary to provide the VIMS-tagged striped bass to a VIMS representative. Under no circumstance shall any VIMS-tagged striped bass be stored for future use or sale or delivered to any person who is not a VIMS representative.

4VAC20-252-80. Bay Spring/Summer Striped Bass Recreational Fishery.

A. The open season for the Bay Spring/Summer Striped Bass Recreational Fishery shall be May 16 through June 15 inclusive.

B. The area open for this fishery shall be the Chesapeake Bay and its tributaries.

C. The minimum size limit for this fishery shall be 20 inches total length, and the maximum size limit for this fishery shall be 28 inches total length, except as provided in subsection E of this section.

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

E. The possession limit described in subsection D of this section may consist of one trophy-size striped bass 36 inches or greater in total length, which is subject to the provisions of subsections A, B, E, F, G, H, I, and J of 4VAC20-252-60.

4VAC20-252-160. Individual transferable shares; tagging.

A. For each person permitted under the provisions of 4VAC20-252-130 to harvest striped bass commercially, a weight quota shall be issued to permitted fishermen in amounts equal to the percentage share of the Chesapeake area and coastal area striped bass harvest quota they hold. Tags issued for Chesapeake area harvest quota shall only be used for striped bass harvests in the Chesapeake area, and tags issued for the coastal area harvest quota shall only be used for striped bass harvests in the coastal area.

B. It shall be unlawful for any person onboard any vessel to possess any striped bass tags in Virginia waters, according to the following provisions:

1. It shall be unlawful for any person onboard any vessel to set, place, or fish any gear that can harvest striped bass in the Chesapeake area when in possession of coastal area striped bass tags issued by the Virginia Marine Resources Commission or striped bass tagged with coastal area tags.

2. It shall be unlawful for any person to possess Virginia coastal area striped bass tags in the Chesapeake area or striped bass tagged with coastal area tags except when transiting the Chesapeake area.

3. It shall be unlawful for any person to possess striped bass tags issued for previous years for the Chesapeake area, coastal area, or any other jurisdiction.

4. It shall be unlawful for any person to possess Potomac River Fisheries Commission striped bass tags in Virginia waters, except when transiting the Virginia tributaries of the Potomac River to land in Virginia and as provided by subsection C of this section.

5. It shall be unlawful for any person to possess any non-Virginia jurisdictional striped bass tags in Virginia waters or striped bass tagged with any non-Virginia jurisdictional striped bass tags, except as provided by subdivision 4 of this subsection and subsection C of this section.

6. Any violation of this subsection shall result in the confiscation and impoundment of all striped bass tags or striped bass on the vessel.

C. It shall be unlawful for any person onboard any vessel to possess any striped bass tags in the Great Wicomico-Tangier Striped Bass Management Area except current year striped bass tags issued by the jurisdictions of the Virginia Marine Resources Commission, State of Maryland, or Potomac River Fisheries Commission and according to the following provisions:

1. It shall be unlawful for any person onboard any vessel to possess more than one jurisdiction's tags or more than one jurisdiction's tagged striped bass in the Great Wicomico-Tangier Striped Bass Management Area.

2. It shall be unlawful for any person onboard any vessel to place, set, or fish any gear that can harvest striped bass in the Great Wicomico-Tangier Striped Bass Management Area when in possession of any striped bass tags not issued by the Virginia Marine Resources Commission.

3. Any violation of this subsection shall result in the confiscation and impoundment of all striped bass tags or striped bass on the vessel.

D. Shares of the commercial striped bass quota held by any permitted fisherman may be transferred to any other person who is a licensed registered commercial fisherman; such transfer shall allow the transferee to harvest striped bass in a quantity equal to the share transferred. Any transfer of striped bass commercial shares shall be limited by the following conditions:

1. Shares of commercial striped bass quota shall not be permanently transferred in any quantity less than 500 pounds, or 100% of unused permanent shares, in any year from February 1 through October 31. Permanent transfers of shares of commercial striped bass quota shall be prohibited from November 1 through January 31.

2. Shares of commercial striped bass quota shall not be temporarily transferred in any quantity less than 500 pounds from February 1 through October 31 or less than 200 pounds from November 1 through December 15. Temporary transfers of shares of commercial striped bass quota shall be prohibited from December 16 through January 31.

3. No licensed registered commercial fisherman shall hold more than 2.0% of the total annual Chesapeake area commercial striped bass harvest quota or more than 11% of the total annual coastal area commercial striped bass harvest quota.

4. No transfer of striped bass commercial harvest quota shall be authorized by the commission unless transferor and transferee provide up-to-date records of all commercial landings of striped bass and striped bass tag use to the commission prior to such transfer.

5. No transfer of striped bass commercial harvest quota shall be authorized unless such transfer is documented on a form provided by the Virginia Marine Resources Commission, notarized by a lawful Notary Public, and approved by the commissioner.

E. Transfers of Chesapeake area or coastal area striped bass commercial quota from one person to another may be permanent or temporary. Transferred quota from the Chesapeake area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the Chesapeake area, and transferred quota from the coastal area striped bass commercial quota shall only be used by the transferee for striped bass harvested from the coastal area. Permanent transfers of commercial quota shall grant to the transferee that transferred percentage of the quota for future years, and the transferor loses that same transferred percentage of the quota in future years. Temporary transfers of individual striped bass commercial harvest quota shall allow the transferee to harvest only that transferred percentage of the quota during the year in which the transfer is approved. Transferors are solely responsible for any overage of the transferred percentage of the quota by the transferee. Thereafter, any percentage of the transferred striped bass commercial quota, less any overage incurred by the transferee, reverts back to the transferor.

F. The commission will issue striped bass tags to permitted striped bass commercial fishermen as follows: those fishermen permitted only for Chesapeake area or coastal area harvests of striped bass will receive their allotment of tags prior to the start of the fishing season. Any permitted fisherman, eligible for both Chesapeake area and coastal area tags, shall receive only one type of area-specific tag allotment, of his choosing, prior to the start of the fishing season, and his other type of area-specific tags will be distributed when it has been determined from the commission's mandatory harvest reporting program that the fisherman has used all of his first allotment of tags and has not exceeded his individual harvest quota. The commissioner may authorize the distribution of the second allotment of area-specific tags to a fisherman eligible for both Chesapeake area and Coastal area tags prior to that fisherman's complete use of his first allotment of tags, provided that fisherman surrenders any remaining tags of his first allotment of tags.

G. Striped bass tags are valid only for use by the permittee to whom the tags were allotted. The permittee shall be on board the boat or vessel when striped bass are harvested and tags are applied. Nothing in this subsection shall prevent a permitted commercial hook-and-line fisherman from using three crew members who are not registered commercial fishermen to assist in the harvest of his allotment of striped bass.

H. At the place of capture, and before leaving that place of capture, tags shall be passed through the mouth of the fish and one gill opening, and interlocking ends of the tag shall then be connected such that the tag may only be removed by breaking. Failure to comply with these provisions shall be a violation of this chapter.

I. It shall be unlawful to bring to shore any commercially caught striped bass that has not been tagged at the place of capture by the fisherman with a tamper evident, numbered tag provided by the commission. It shall be unlawful to possess striped bass in a quantity greater than the number of tags in possession. If a permittee violates this section, the entire amount of untagged striped bass, as well as the number of tags equal to the amount of striped bass in his possession, shall be confiscated. Any confiscated striped bass shall be considered as a removal from that permittee's harvest quota. Any confiscated striped bass tags shall be impounded by the commission. Upon confiscation, the marine police officer shall inventory the confiscated striped bass and may redistribute the catch by one or a combination of the following methods:

1. The marine police officer shall secure a minimum of two bids for purchase of the confiscated striped bass from approved and licensed seafood buyers. The confiscated fish will be sold to the highest bidder, and all funds derived from such sale shall be deposited to the Commonwealth pending court resolution of the charge of violating the possession limits established in this chapter. All of the collected funds and confiscated tags will be returned to the accused upon a finding of innocence or forfeited to the Commonwealth upon a finding of guilt.

2. The marine police officer shall provide the confiscated striped bass to commission staff for biological sampling of the catch. Upon receipt of confiscated striped bass, commission staff will secure a minimum of two estimates of value per pound for striped bass from approved and licensed seafood buyers. The confiscated tags and the estimated value of confiscated striped bass provided for biological sampling will be reimbursed to the accused upon a finding of innocence or retained by the commission upon a finding of guilt.

J. Altering or attempting to alter any tag for the purpose of reuse shall constitute a violation of this chapter.

K. Prior to receiving any commercial season's allotment of striped bass tags, a permitted commercial harvester shall be required to have returned all unused tags from the previous commercial season to the commission within 30 days of harvesting their individual harvest quota, or by the second Thursday in January, whichever comes first. Any unused tags that cannot be turned in to the commission shall be accounted for by the harvester submitting an affidavit to the commission that explains the disposition of the unused tags that are not able to be turned into the commission. Each individual shall be required to pay a processing fee of $25, plus $0.13 per tag, for any unused tags that are not turned in to the commission.

L. Any individual with remaining unused striped bass commercial quota in the current year requesting additional commercial season striped bass tags shall provide up-to-date records of landings and account for all previously issued tags prior to receiving an additional allotment of tags. The harvester shall submit an affidavit to the commission that explains the disposition of the tags that are not accounted for and shall be required to pay a processing fee of $25, plus $0.13 per tag, for such tags to the commission.

M. For the commercial fishing season, one type of tag shall be distributed to Chesapeake area permittees and one type of tag shall be distributed to coastal area permittees. For the Chesapeake area, the tag shall only be used on striped bass 18 inches or greater in total length. For the coastal area, the tag shall only be used on striped bass 28 inches or greater in total length. The possession of any improperly tagged striped bass by any permitted striped bass fisherman shall be a violation of this chapter.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-252)

~~2017 Recreational/Charter Reporting Form (rev. 4/2017)~~

2018 Recreational/Charter Reporting Form (rev. 8/2018)

4VAC20-280-20. Definitions.

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

"Red drum" means red drum or channel bass and is any fish of the species Sciaenops ocellatus.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Speckled trout" means speckled trout or spotted seatrout and is any fish of the species Cynoscion nebulosus.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-280-30. Size limits.

A. It shall be unlawful for any person to take, catch, or possess any speckled trout less than 14 inches in total length, provided however the catch of speckled trout by pound net or haul seine may consist of up to 5.0%, by weight, of speckled trout less than 14 inches in total length.

B. It shall be unlawful for any person fishing commercially with commercial hook and line gear, or fishing recreationally with any gear type to possess more than one speckled trout 24 inches or greater in any one day from January 1 through December 31, except as described in 4VAC20-280-40 B.

C. It shall be unlawful for any person fishing recreationally with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 26 inches in total length.

D. It shall be unlawful for any person fishing commercially with any gear type to take, catch, or possess any red drum less than 18 inches in total length or greater than 25 inches in total length.

~~E. Length is measured in a straight line from tip of nose to tip of tail.~~

4VAC20-320-20. Definitions.

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

"Black Drum" means any fish of the species Pogonias cromis.

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

"Commercial Harvest" means any black drum taken from the tidal waters of Virginia by any harvesting method, including hook-and-line, and sold.

"Floating gill net" means any gill net that is suspended from the water surface and extends to a depth no more than midway between the water surface and bottom.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-320-60. Minimum size limit.

~~A.~~ It shall be unlawful for any person to take, catch, or possess any black drum less than 16 inches in total length.

~~B. Total length shall be measured in a straight line from the tip of the nose to the tip of the tail.~~

4VAC20-380-20. Definitions.

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

"Fishing season" means the time period of April 1 through March 31.

"Grey trout" means any fish of the species Cynoscion regalis.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-380-30. Commercial minimum size limits.

A. For any person fishing with pound net or haul seine, there shall be no minimum size limit on grey trout.

B. It shall be unlawful for any person fishing with gill nets to possess any grey trout less than 12 inches in total length.

C. It shall be unlawful for any trawl boat to land any grey trout in Virginia that are less than 12 inches in total length, except that up to 100 grey trout less than 12 inches in total length may be landed by trawl but shall not be sold.

D. It shall be unlawful for any person fishing with commercial hook and line to possess any grey trout less than 12 inches in total length.

E. It shall be unlawful for any person using any gear type not specified in subsection A, B, C, or D of this section to possess any grey trout less than nine inches in total length.

F. During a closed season it shall be unlawful for any person using any gear type which is regulated by a closed season to possess any grey trout less than 12 inches in total length.

~~G. Length is measured in a straight line from the tip of the nose to the tip of the tail.~~

4VAC20-380-60. Recreational fishing seasons, minimum size limits, and possession limits.

A. It shall be unlawful for any person fishing with hook and line, rod and reel or hand line to possess more than one grey trout and the minimum size limit shall be 12 inches in total length.

B. 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 one. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any grey trout taken after the possession limit has been reached shall be returned to the water immediately.

4VAC20-490-20. Definitions.

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

"Agent" means any person who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

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

"COLREGS Line" means the COLREGS Demarcation Line, as defined in the Code of Federal Regulations (33 CFR 80.510 Chesapeake Bay Entrance, VA).

"Commercial shark fisherman" means any commercial fisherman permitted to land or possess sharks (excluding

spiny dogfish) that has landed and sold one pound of shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

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

Blacktip, Carcharhinus limbatus

Bull, Carcharhinus leucas

Lemon, Negaprion brevirostris

Nurse, Ginglymostoma cirratum

Silky, Carcharhinus falciformis

Spinner, Carcharhinus brevipinna

Tiger, Galeocerdo cuvier

"Commercially permitted hammerhead shark" means any of the following species:

Great hammerhead, Sphyrna mokarran

Scalloped hammerhead, Sphyrna lewini

Smooth hammerhead, Sphyrna zygaena

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

Atlantic sharpnose, Rhizoprionodon terraenovae

Bonnethead, Sphyrna tiburo

Finetooth, Carcharhinus isodon

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

Blue, Prionace glauca

Oceanic whitetip, Carcharhinus longimanus

Porbeagle, Lamna nasus

Shortfin mako, Isurus oxyrinchus

Thresher, Alopias vulpinus

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

Atlantic angel, Squatina dumeril

Basking, Cetorhinus maximus

Bigeye sand tiger, Odontaspis noronhai

Bigeye sixgill, Hexanchus nakamurai

Bigeye thresher, Alopias superciliosus

Bignose, Carcharhinus altimus

Blacknose, Carcharhinus acronotus

Caribbean reef, Carcharhinus perezii

Caribbean sharpnose, Rhizoprionodon porosus

Dusky, Carcharhinus obscurus

Galapagos, Carcharhinus galapagensis

Longfin mako, Isurus paucus

Narrowtooth, Carcharhinus brachyurus

Night, Carcharhinus signatus

Sand tiger, Carcharias taurus

Sevengill, Heptranchias perlo

Sixgill, Hexanchus griseus

Smalltail, Carcharhinus porosus

Whale, Rhincodon typus

White, Carcharodon carcharias

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

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

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

"Fork length" means the ~~straight line measurement of a fish from the tip of the snout~~ length of a fish measured from the most forward projection of the snout, with the mouth closed, to the fork of the tail ~~The measurement is not made along the curve of the body~~ along the midline, using a straight-line measure, not measured over the curve of the body.

"Large mesh gill net" means any gill net with a stretched mesh of greater than five inches.

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

"Movable gill net" means any gill net other than a staked gill net.

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

"Recreational shore angler" means a person neither fishing from a vessel nor transported to or from a fishing location by a vessel.

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

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

Atlantic sharpnose, Rhizoprionodon terraenovae

Blacknose, Carcharhinus acronotus

Blacktip, Carcharhinus limbatus

Blue, Prionace glauca

Bonnethead, Sphyrna tiburo

Bull, Carcharhinus leucas

Finetooth, Carcharhinus isodon

Great hammerhead, Sphyrna mokarran

Lemon, Negaprion brevirostris

Nurse, Ginglymostoma cirratum

Oceanic whitetip, Carcharhinus longimanus

Porbeagle, Lamna nasus

Scalloped hammerhead, Sphyrna lewini

Shortfin mako, Isurus oxyrinchus

Smooth dogfish, Mustelus canis

Smooth hammerhead, Sphyrna zygaena

Spinner, Carcharhinus brevipinna

Thresher, Alopias vulpinus

Tiger, Galeocerdo cuvier

"Recreationally prohibited shark" means any of the following species:

Atlantic angel, Squatina dumeril

Basking, Cetorhinus maximus

Bigeye sand tiger, Odontaspis noronhai

Bigeye sixgill, Hexanchus nakamurai

Bigeye thresher, Alopias superciliosus

Bignose, Carcharhinus altimus

Caribbean reef, Carcharhinus perezii

Caribbean sharpnose, Rhizoprionodon porosus

Dusky, Carcharhinus obscurus

Galapagos, Carcharhinus galapagensis

Longfin mako, Isurus paucus

Narrowtooth, Carcharhinus brachyurus

Night, Carcharhinus signatus

Sand tiger, Carcharias taurus

Sandbar, Carcharhinus plumbeus

Sevengill, Heptranchias perlo

Silky, Carcharhinus falciformis

Sixgill, Hexanchus griseus

Smalltail, Carcharhinus porosus

Whale, Rhincodon typus

White, Carcharodon carcharias

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

Sandbar, Carcharhinus plumbeus

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

"Small mesh gill net" means any gill net with a stretched mesh of equal to or less than five inches.

"Smooth dogfish" means any shark of the species Mustelus canis. Smooth dogfish are also known as "smoothhound shark."

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

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

4VAC20-500-20. Definition.

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

"Eel" or "eels," as described in this chapter, means the eel species Anguilla rostrata.

"Elver" means any eel of less than six inches in total length.

"Land" or "landing" means to enter port with eels on board any boat or vessel, to begin offloading eels, or to offload eels.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-500-35. Minimum size limit.

It shall be unlawful for any individual to take, catch, possess, or land any eels less than nine inches in total length.

4VAC20-510-12. Definitions.

The following ~~term~~ terms when used in this chapter shall have the following ~~meaning~~ meanings unless the context clearly indicates otherwise:

"Recreational vessel" means any vessel, kayak, charter vessel, or headboat vessel participating in the recreational cobia fishery.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-510-30. Minimum size limits.

A. It shall be unlawful for any person to take, catch, or have in possession any amberjack less than 32 inches in total length.

B. It shall be unlawful for any person fishing commercially to take, harvest, or possess any cobia less than 37 inches in total length.

C. It shall be unlawful for any person to take, catch, or have in possession any recreationally harvested cobia less than 40 inches in total length.

~~D. Total length is measured in a straight line from tip of nose to tip of tail.~~

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FORMS (4VAC20-510)

~~2017 Recreational/Charter Reporting Form (rev. 4/2017)~~

2018 Recreational/Charter Reporting Form (rev. 8/2018)

4VAC20-540-20. Definition.

The following ~~word~~ words and ~~term~~ terms, when used in the chapter, shall have the following meaning unless the context clearly indicates otherwise.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

"Trip" means that period during which the vessel shall have left a dockside landing place, relocated to waters where fishing for Spanish mackerel by the vessel is legally permitted, and returned to a dockside landing place.

4VAC20-540-40. Minimum size limits established.

A. Minimum size limit for Spanish mackerel is established at 14 inches in total length.

B. Minimum size limit for king mackerel is established at 27 inches in total length.

C. It shall be unlawful for any person to take, catch or possess any Spanish mackerel less than 14 inches in total length.

D. Except as provided in subsection ~~F~~ E of this section it shall be unlawful for any person to take, catch or possess any king mackerel less than 27 inches in total length.

~~E. Total length shall be measured in a straight line from the tip of the nose to the tip of the tail for the purposes of this chapter.~~

~~F.~~ E. Nothing in this section shall prohibit the taking, catching, or possession of any king mackerel, less than 27 inches in total length, by a licensed pound net.

4VAC20-620-20. Definitions.

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

"Chesapeake Bay and its tributaries" means all tidal waters of Virginia, excluding the Potomac River tributaries and the coastal area as defined in this section.

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

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

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

"Safe harbor" means that a vessel has been authorized by the commissioner to enter Virginia waters from federal waters solely to either dock temporarily at a Virginia seafood buyer's place of business or traverse the Intracoastal Waterway from Virginia to North Carolina.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-620-50. Minimum size limits.

A. The minimum size for summer flounder harvested by commercial fishing gear shall be 14 inches in total length.

B. The minimum size of summer flounder harvested by recreational fishing gear, including hook and line, rod and reel, spear and gig, shall be 16.5 inches in total length, except that the minimum size of summer flounder harvested in the Potomac River tributaries shall be the same as established by the Potomac River Fisheries Commission for the mainstem Potomac River.

~~C. Length shall be measured in a straight line from tip of nose to tip of tail.~~

~~D.~~ C. It shall be unlawful for any person to possess any summer flounder smaller than the designated minimum size limit.

~~E.~~ D. Nothing in this chapter shall prohibit the landing of summer flounder in Virginia that were legally harvested in the Potomac River.

4VAC20-910-20. Definitions.

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

"Scup" means any fish of the species Stenotomus chrysops, commonly referred to as porgy.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-910-30. Minimum size limits.

A. The minimum size of scup harvested by commercial fishing gear shall be nine inches in total length.

B. The minimum size of scup harvested by recreational fishing gear including hook and line, rod and reel, spear, and gig shall be eight inches in total length.

~~C. Length shall be measured in a straight line from tip of nose to tip of tail.~~

~~D.~~ C. It shall be unlawful for any person to catch and retain possession of any scup of a total length less than the designated minimum sizes in subsections A and B of this section.

~~E.~~ D. It shall be unlawful for any person to sell, trade, barter, or offer to sell, trade, or barter any scup less than nine inches in total length.

4VAC20-950-20. Definitions.

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

"Black sea bass" means any fish of the species Centropristis striata.

"Land" or "landing" means to (i) enter port with finfish, shellfish, crustaceans, or other marine seafood on board any boat or vessel; (ii) begin offloading finfish, shellfish, crustaceans, or other marine seafood; or (iii) offload finfish, shellfish, crustaceans, or other marine seafood.

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, excluding the caudal fin filament, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-950-30. Minimum size limit.

A. The minimum size for black sea bass harvested by commercial fishing gear shall be 11 inches in total length. It shall be unlawful for any person to sell, trade, or barter, or offer to sell, trade, or barter any black sea bass less than 11 inches in total length, except as described in 4VAC20-950-70.

B. The minimum size of black sea bass harvested by recreational gear, including hook and line, rod and reel, spear and gig, shall be 12-1/2 inches in total length.

C. It shall be unlawful for any person to possess any black sea bass smaller than the minimum size limit, as designated respectively, in subsections A and B of this section, except as described in 4VAC20-950-70.

~~D. Total length shall be measured along the lateral midline from tip of nose to tip of tail excluding the caudal fin filament.~~

4VAC20-960-20. Definitions.

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

"Snout" means the most forward projection from a fish's head that includes the upper and lower jaw.

"Tautog" means any fish of the species Tautoga onitis.

"Total length" means the length of a fish measured from the most forward projection of the snout, with the mouth closed, to the tip of the longer lobe of the tail (caudal) fin, measured with the tail compressed along the midline, using a straight-line measure, not measured over the curve of the body.

4VAC20-960-30. Minimum size limits.

A. The minimum size limit of tautog harvested for commercial purposes shall be 15 inches in total length.

B. The minimum size of tautog harvested for recreational purposes shall be 16 inches in total length.

C. It shall be unlawful for any person to possess any tautog of a total length less than the designated minimum size limit.

~~D. Total length shall be measured in a straight line from tip of nose to tip of tail.~~

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (4VAC20-1120)

~~2017 Recreational/Charter Reporting Form (rev. 4/2017)~~

2018 Recreational/Charter Reporting Form (rev. 8/2018)

VA.R. Doc. No. R19-5652; Filed August 31, 2018, 8:52 a.m.

Emergency Regulation

Title of Regulation: **4VAC20-510. Pertaining to Amberjack and Cobia (amending 4VAC20-510-25).**

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

Effective Dates: September 1, 2018, through September 30, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Preamble:

The amendment closes the commercial cobia season on October 1, 2018, to mirror the federal waters closure.

4VAC20-510-25. Commercial fishery possession limits and season.

A. It shall be unlawful for any person fishing commercially to possess more than two amberjack or more than two cobia at any time, except as described in 4VAC20-510-33. Any amberjack or cobia caught after the possession limit has been reached shall be returned to the water immediately. When fishing from any 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 valid commercial fisherman registration licensees on board multiplied by two, except there is a maximum vessel limit of six cobia per vessel per day. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit.

B. In 2018 it shall be unlawful for any person, fishing commercially, to harvest or possess any cobia after October 1.

VA.R. Doc. No. R19-5651; Filed August 31, 2018, 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: **4VAC20-720. Pertaining to Restrictions on Oyster Harvest (amending 4VAC20-720-20, 4VAC20-720-40, 4VAC20-720-60, 4VAC20-720-70, 4VAC20-720-75, 4VAC20-720-80, 4VAC20-720-91).**

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

Effective Date: October 1, 2018.

Agency Contact: Jennifer Farmer, Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, or email jennifer.farmer@mrc.virginia.gov.

Summary:

The amendments establish the 2018-2019 areas of public harvest, public oyster harvest seasons, and management measures, including (i) adjusting the start and duration of the harvest season on an area basis; (ii) changing vessel and individual harvest bushel limits; (iii) implementing less efficient gear types, such as patent and hand tongs in certain harvest areas; (iv) subdividing the current harvest areas into additional rotation areas; and (v) in the James River Seed Area, changing seed quota amounts, seed transport permits, and areas open to seed harvest.

4VAC20-720-20. Definitions.

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

"Aid to navigation" means any public or private day beacon, lighted channel marker, channel buoy, lighted channel buoy, or lighthouse that may be at, or adjacent to, any latitude and longitude used in area descriptions.

"Clean culled oyster" means any oyster taken from natural public beds, rocks, or shoals that is three inches or greater in shell length.

"Coan River Area" means ~~that area of~~ the Public Grounds within the Coan River ~~inside of~~ excluding Public Grounds 77 and 78 of Northumberland County.

Public Ground 77 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 2,300 feet northeast of Honest Point and 1,300 feet southwest of Travis Point, said point being Corner 1, located at Latitude 37° 59.5257207' N., Longitude 76° 27.8810639' W.; thence southwesterly to Corner 2, Latitude 37° 59.3710259' N., Longitude 76° 27.9962148' W.; thence southwesterly to Corner 3, Latitude 37° 59.2953830' N., Longitude 76° 28.0468953' W.; thence northwesterly to Corner 4, Latitude 37° 59.3350863' N., Longitude 76° 28.0968837' W.; thence northeasterly to Corner 5, Latitude 37° 59.3965161' N., Longitude 76° 28.0287342' W.; thence northwesterly to Corner 6, Latitude 37° 59.4758507' N., Longitude 76° 28.1112280' W.; thence north-northwesterly to Corner 7, Latitude 37° 59.5079401' N., Longitude 76° 28.1230058' W.; thence northeasterly to Corner 8, Latitude 37° 59.5579153' N., Longitude 76° 27.9889429' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

Public Ground 78 of Northumberland County is located near the mouth of the Coan River, beginning at a point approximately 3,420 feet southeast of Travis Point and 3,260 feet northwest of Great Point, said point being Corner 1, located at Latitude 37° 59.4822275' N., Longitude 76° 27.1878637' W.; thence southeasterly to Corner 2, Latitude 37° 59.3824046' N., Longitude 76° 27.1088650' W.; thence southwesterly to Corner 3, Latitude 37° 59.2283287' N., Longitude 76° 27.8632901' W.; thence northeasterly to Corner 4, Latitude 37° 59.4368502' N., Longitude 76° 27.6868001' W.; thence continuing northeasterly to Corner 5, Latitude 37° 59.5949216' N., Longitude 76° 27.5399436' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Deep Rock Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay near Gwynn Island, beginning at Cherry Point at the western-most point of the eastern headland of Kibble Pond located at Latitude 37° 30.9802148' N., Longitude 76° 17.6764393' W.; thence northeasterly to the Piankatank River, Flashing Green Channel Light "3", Latitude 37° 32.3671325' N., Longitude 76° 16.7038334' W.; thence east-southeasterly to the Rappahannock River Entrance Lighted Buoy G"1R", Latitude 37° 32.2712833' N., Longitude 76° 11.4813666' W.; thence southwesterly to the southern-most point of Sandy Point, the northern headland of "The Hole in the Wall", Latitude 37° 28.1475258' N., Longitude 76° 15.8185670' W.; thence northwesterly along the Chesapeake Bay mean low water line of the barrier islands of Milford Haven, connecting headland to headland at their eastern-most points, and of Gwynn Island to the western-most point of the eastern headland of Kibble Pond on Cherry Point, said point being the point of beginning.

"Deep Water Shoal State Replenishment Seed Area" or "DWS" means that area in the James River near Mulberry Island, beginning at a point approximately 530 feet west of Deep Water Shoal Light, said point being Corner 1, located at Latitude 37° 08.9433287' N., Longitude 76° 38.3213007' W.; thence southeasterly to Corner 2, Latitude 37° 09.5734380' N., Longitude 76° 37.8300582' W.; thence southwesterly to Corner 3, Latitude 37° 08.9265524' N., Longitude 76° 37.0574269' W.; thence westerly to Corner 4, Latitude 37° 08.4466039 N., Longitude 76° 37.4523346' W.; thence northwesterly to Corner 5, Latitude 37° 08.4491489' N., Longitude 76° 38.0215553' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Great Wicomico River Rotation Area 1" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Sandy Point, Latitude 37° 49.3269652' N., Longitude 76° 18.3821766' W.; thence easterly to the southern-most point of Cockrell Point, Latitude 37° 49.2664838' N., Longitude 76° 17.3454434' W.; thence easterly following the mean low water line of Cockrell Point to a point on the boundary of Public Ground 115 at Cash Point, Latitude 37° 49.2695619' N., Longitude 76° 17.2804046' W.; thence southeasterly to the gazebo on the pier head at Fleeton Point, Latitude 37° 48.7855824' N., Longitude 76° 16.9609311' W.; thence southeasterly to the Great Wicomico River Light; Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence westerly to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320 W.; thence northerly crossing the entrance to Towles Creek at the offshore ends of the jetties and continuing along the mean low water line to Bussel Point, Latitude 37° 48.6879208' N., Longitude 76° 18.4670860' W.; thence northwesterly to the northern headland of Cranes Creek, Latitude 37° 48.8329168' N., Longitude 76° 18.7308073' W.; thence following the mean low water line northerly to a point on Sandy Point, Latitude 37° 49.3269652'

N., Longitude 76° 18.3821766' W., said point being the point of beginning.

"Great Wicomico River Rotation Area 2" means all public grounds and unassigned grounds, in that area of the Great Wicomico River, Ingram Bay, and the Chesapeake Bay, beginning at a point on Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W.; thence due south to a point due east of the southern-most point of Dameron Marsh, Latitude 37° 46.6610003' N., Longitude 76° 16.0570007' W.; thence due west to the southern-most point of Dameron Marsh, Latitude 37° 46.6609070' N., Longitude 76° 17.2670707' W.; thence along the mean low water line of Dameron Marsh, north and west to Garden Point, Latitude 37° 47.2519872' N., Longitude 76° 18.4028142' W.; thence northwesterly to Windmill Point, Latitude 37° 47.5194547' N., Longitude 76° 18.7132194' W.; thence northerly along the mean low water line to the western headland of Harveys Creek, Latitude 37° 47.7923573' N., Longitude 76° 18.6881450' W.; thence east-southeasterly to the eastern headland of Harveys Creek, Latitude 37° 47.7826936' N., Longitude 76° 18.5469879' W.; thence northerly along the mean low water line to a point on the offshore end of the southern jetty at the entrance to Towles Creek, Latitude 37° 48.3743771' N., Longitude 76° 17.9600320' W.; thence easterly to Great Wicomico River Light, Latitude 37° 48.2078167' N., Longitude 76° 15.9799333' W., said point being the point of beginning.

"Hand scrape" means any device or instrument with a catching bar having an inside measurement of no more than 22 inches, which is used or usable for the purpose of extracting or removing shellfish from a water bottom or the bed of a body of water.

"Hand tong" or "ordinary tong" means any pincers, nippers, tongs, or similar device used in catching oysters, which consist of two shafts or handles attached to opposable and complementary pincers, baskets, or containers operated entirely by hand, from the surface of the water and has no external or internal power source.

"James River Hand Scrape Area 1" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence southeasterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence southeasterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence southeasterly to the northeast corner of the western draw span pier of the James River Bridge (U.S. Route 17), Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence southwesterly along the upstream side of the James River Bridge to the mean low water line; thence northwesterly along the mean low water line, crossing Kings Creek at the headlands and continuing along the mean low water line to a point on the shore at Rainbow Farm Point in line with VMRC Markers "STH" and "SMT," located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328 N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Hand Scrape Area 2" means all public grounds and unassigned grounds, in that area of the James River, beginning at the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76° 32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, said point being in line with VMRC Markers "NMT" and "NTH" and located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; thence southeasterly along the mean low water line to the upstream side of the James River Bridge (U.S. Route 17); thence westerly along the James River Bridge to the northeast corner of the western draw span pier, Latitude 37° 00.1524824' N., Longitude 76° 28.1581984' W.; thence northwesterly to the Flashing Green Channel Light #1, located at Latitude 37° 00.7666667' N., Longitude 76° 29.9083333' W.; thence northwesterly to the Flashing Green Channel Light #3, located at Latitude 37° 01.7124500' N., Longitude 76° 31.8210667' W.; thence northwesterly to the Flashing Green Channel Light #5, located at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W., said point being the point of beginning.

"James River Hand Scrape Area 3" means those public grounds of Isle of Wight County and Nansemond County (City of Suffolk) located in the James River and Nansemond River west of the Monitor Merrimac Memorial Bridge Tunnel (Route I-664), northeast of the Mills E. Godwin, Jr. Bridge (U.S. Route 17) on the Nansemond River, and south of the James River Bridge (U.S. Route 17).

"James River Seed Area" means all public grounds and unassigned grounds in that area of the James River and its tributaries with a southeastern boundary beginning at a point on the shore on the south side of the river at Rainbow Farm Point in Isle of Wight County located at Latitude 37° 00.1965862' N., Longitude 76° 34.0712010' W.; thence north-northeasterly to a VMRC Marker "STH," Latitude 37° 00.9815328 N., Longitude 76° 33.5955842' W.; thence to a VMRC Marker "SMT," at Latitude 37° 01.3228160' N., Longitude 76° 33.3887351' W.; thence to the Flashing Green Channel Light #5, at Latitude 37° 02.3528833' N., Longitude 76° 32.7785333' W.; thence northeasterly to a VMRC Marker "NMT," Latitude 37° 02.7740540' N., Longitude 76°

32.0960864' W.; thence to a VMRC Marker "NTH" located at Latitude 37° 03.2030055' N., Longitude 76° 31.4231211' W.; thence to a point on the north shore of the river at Blunt (Blount) Point, in the City of Newport News, located at Latitude 37° 03.3805862' N., Longitude 76° 31.1444562' W.; the northern boundary, being a straight line, beginning at a point on the shore on the east side of the river in the City of Newport News, at Latitude 37° 08.4458787' N., Longitude 76° 37.2855533' W.; thence westerly to the southeast corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4466039' N., Longitude 76° 37.4523346' W.; thence westerly to the southwest corner of the Deep Water Shoal State Replenishment Seed Area, Latitude 37° 08.4490472' N., Longitude 76° 38.0215554' W.; thence westerly to a point on the shore on the west side of the river at the mouth of Lawnes Creek in Isle of Wight County, Latitude 37° 08.4582990' N., Longitude 76° 40.2816023' W.

"Latitude and longitude" means values that are based upon a geodetic reference system of the North American Datum of 1983 (NAD83). When latitude and longitude are used in any area description, in conjunction with any physical landmark, to include aids to navigation, the latitude and longitude value is the legal point defining the boundary.

"Little Wicomico River" means that area of the Little Wicomico River inside of Public Ground 43 of Northumberland County, located in the Little Wicomico River near Bridge Creek, beginning at a point approximately 150 feet north of Peachtree Point, said point being Corner 1, located at Latitude 37° 53.2910650' N., Longitude 76° 16.7312926' W.; thence southwesterly to Corner 2, Latitude 37° 53.2601877' N., Longitude 76° 16.8662408' W.; thence northwesterly to Corner 3, Latitude 37° 53.2678470' N., Longitude 76° 16.8902408' W.; thence northeasterly to Corner 4, Latitude 37° 53.3113148' N., Longitude 76° 16.8211543' W.; thence southeasterly to Corner 1, said corner being the point of beginning.

"Milford Haven" means that area of Milford Haven inside of Public Ground 7 of Mathews County, beginning at a point approximately 1,380 feet east of Point Breeze, said point being Corner 1, located at Latitude 37° 28.3500000' N., Longitude 76° 16.5000000' W.; thence northeasterly to Corner 2, Latitude 37° 28.3700000' N., Longitude 76° 16.4700000' W.; thence southeasterly to Corner 3, Latitude 37° 28.3500000' N., Longitude 76° 16.4200000' W.; thence southwesterly to Corner 4, Latitude 37° 28.3200000' N., Longitude 76° 16.4500000' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

"Mobjack Bay Area" means that area of Mobjack Bay consisting of Public Ground 2 of Mathews County (Pultz Bar) and Public Ground 25 of Gloucester County (Tow Stake) described as:

Public Ground 2 of Mathews County, known as Pultz Bar, is located in Mobjack Bay, beginning at a point approximately 5,420 feet south of Minter Point, said point being Corner 1, located at Latitude 37° 21.2500000' N., Longitude 76° 21.3700000' W.; thence easterly to Corner 2, Latitude 37° 21.2700000' N., Longitude 76° 20.9600000' W.; thence southerly to Corner 3, Latitude 37° 21.0200000' N., Longitude 76° 20.9400000' W.; thence westerly to Corner 4, Latitude 37° 21.0500000' N., Longitude 76° 21.3300000' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 25 of Gloucester County, known as Tow Stake, is located in Mobjack Bay, near the mouth of the Severn River, beginning at a point approximately 2,880 feet east-northeast of Tow Stake Point, said point being Corner 1, located at Latitude 37° 20.3883888' N., Longitude 76° 23.5883836' W.; thence northeasterly to Corner 2, Latitude 37° 30.5910482' N., Longitude 76° 23.2372184' W.; thence southeasterly to Corner 3, Latitude 37° 20.3786971' N., Longitude 76° 22.7241180' W.; thence southwesterly to Corner 4, Latitude 37° 19.8616759' N., Longitude 76° 23.5914937' W.; thence northwesterly to Corner 5, Latitude 37° 20.0284019' N., Longitude 76° 23.7717423' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Nomini Creek Area" means that area of Nomini Creek inside of Public Grounds 26 and 28 of Westmoreland County.

Public Ground 26 of Westmoreland County is located in Nomini Creek, north of Beales Wharf and east of Barnes Point, beginning at a point approximately 1,400 feet north of Barnes Point, said point being Corner 1, located at Latitude 38° 07.2690219' N., Longitude 76° 42.6784210' W.; thence southeasterly to Corner 2, Latitude 38° 07.0924060' N., Longitude 76° 42.4745767' W.; thence southwesterly to Corner 3, Latitude 38° 06.8394053' N., Longitude 76° 42.6704025,' W.; thence northwesterly to Corner 4, Latitude 38° 06.8743004' N., Longitude 76° 42.7552151' W.; thence northeasterly to Corner 5, Latitude 38° 07.0569717' N., Longitude 76° 42.5603535' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 28 of Westmoreland County is located at the mouth of Nomini Creek, beginning at a point approximately 50 feet west of White Oak Point, said point being Corner 1, located at Latitude 38° 07.6429987' N., Longitude 76° 43.0337082' W.; thence south-southeasterly to Corner 2, Latitude 38° 07.2987193' N., Longitude 76° 43.1101420' W.; thence northwesterly to Corner 3, Latitude 38° 07.7029267' N., Longitude 76° 43.3337762' W.; thence west to the mean low water line, Latitude 38° 07.7031535' N., Longitude 76° 43.3378345' W.; thence northerly and westerly along the mean low water line of Nomini Creek to a point southwest of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence northeasterly to a point on the mean low water

line at the southern-most point of Cedar Island, Latitude 38° 07.8986449' N., Longitude 76° 43.6329097' W.; thence following the mean low water line of the southern and eastern sides of Cedar Island to a point, Latitude 38° 08.0164430' N., Longitude 76° 43.4773169' W.; thence northeasterly to Corner 4, Latitude 38° 08.0712849' N., Longitude 76° 43.4416606' W.; thence northeasterly to a point on the northern headland of Nomini Creek at the mean low water line, said point being Corner 5, Latitude 38° 08.2729626' N., Longitude 76° 43.3105315' W.; thence following the mean low water line of White Point to a point northwest of Snake Island, Corner 6, Latitude 38° 08.4066960' N., Longitude 76° 42.9105565' W.; thence southeast, crossing the mouth of Buckner Creek, to a point on the mean low water line of Snake Island, Corner 7, Latitude 38° 08.3698254' N., Longitude 76° 42.8939656' W.; thence southeasterly following the mean low water line of Snake Island to Corner 8, Latitude 38° 08.2333798' N., Longitude 76° 42.7778877' W.; thence south-southwesterly, crossing the mouth of Buckner Creek, to Corner 9, Latitude 38° 08.2134371' N., Longitude 76° 42.7886409' W.; thence southeasterly to a point on the mean low water line of the southern headland of Buckner Creek, Corner 10, Latitude 38° 08.1956281' N., Longitude 76° 42.7679625' W.; thence southwesterly following the mean low water line of Nomini Creek, crossing the mouth of an un-named cove at the narrowest point between the headlands and continuing to follow the mean low water line to a point on White Oak Point, Latitude 38° 07.6428228' N., Longitude 76° 43.0233530' W.; thence west to Corner 1, said point being the point of beginning.

"Oyster" means any shellfish of the species Crassostrea virginica.

"Oyster dredge" means any device having a maximum weight of 150 pounds with attachments, maximum width of 50 inches, and maximum tooth length of four inches.

"Oyster patent tong" means any patent tong not exceeding 100 pounds in gross weight, including any attachment other than rope and with the teeth not to exceed four inches in length.

"Oyster resource user fee" means a fee that must be paid each calendar year by anyone who grows, harvests, shucks, packs, or ships oysters for commercial purposes.

"Pocomoke Sound Area" means that area of Pocomoke Sound inside of Public ~~Grounds~~ Ground 9 ~~and 10~~ of Accomack County.

Public Ground 9 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 1.06 nautical miles north-northeast of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 57.2711566' N., Longitude 75° 42.2870790' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 57.2896577' N., Longitude 75° 41.9790727' W.; thence southerly to Corner 3, Latitude 37° 57.2574850' N., Longitude 75° 41.9790730' W.; thence southwesterly to Corner 4, Latitude 37° 57.2288700' N., Longitude 75° 42.0077287' W.; thence west-southwesterly to Corner 5, Latitude 37° 57.2034533' N., Longitude 75° 42.1511250' W.; thence south-southwesterly to Corner 6, Latitude 37° 57.0940590' N., Longitude 75° 42.1935214' W.; thence south-southeasterly to Corner 7, Latitude 37° 57.0551726' N., Longitude 75° 42.1814457' W.; thence southwesterly to Corner 8, Latitude 37° 56.9408327' N., Longitude 75° 42.2957912' W.; thence south-southwesterly to Corner 9, Latitude 37° 56.6574947' N., Longitude 75° 42.3790819' W.; thence southwesterly to Corner 10, Latitude 37° 56.5790952' N., Longitude 75° 42.5228752' W.; thence west-southwesterly to Corner 11, Latitude 37° 56.5712564' N., Longitude 75° 42.5915437' W.; thence south-southeasterly to Corner 12, Latitude 37° 56.5441067' N., Longitude 75° 42.5869894' W.; thence southwesterly to Corner 13, Latitude 37° 56.4575045' N., Longitude 75° 42.7458050' W.; thence west-southwesterly to Corner 14, Latitude 37° 56.2575123' N., Longitude 75° 43.3791097' W.; thence southwesterly to Corner 15, Latitude 37° 55.7408688' N., Longitude 75° 43.7957804' W.; thence westerly to Corner 16, Latitude 37° 55.7575327' N., Longitude 75° 43.9458298' W.; thence northwesterly to Corner 17, Latitude 37° 55.8908661' N., Longitude 75° 44.1291309' W.; thence north-northeasterly to Corner 18, Latitude 37° 55.9908639' N., Longitude 75° 44.0791266' W.; thence northeasterly to Corner 19, Latitude 37° 56.1241858' N., Longitude 75° 43.8791328' W.; thence north-northeasterly to Corner 20, Latitude 37° 56.4075136' N., Longitude 75° 43.7291361' W.; thence northeasterly to Corner 21, Latitude 37° 56.8241664' N., Longitude 75° 43.2624601' W.; thence north-northeasterly to Corner 22, Latitude 37° 57.0706006' N., Longitude 75° 43.1480402' W.; thence east-northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

Public Ground 10 of Accomack County is located in the Pocomoke Sound, beginning at a corner on the Maryland-Virginia state line, located in the Pocomoke Sound approximately 2.3 nautical miles westerly of the northern-most point of North End Point, said point being Corner 1, located at Latitude 37° 56.4741881' N., Longitude 75° 45.7051676' W. (NAD83); thence east-northeasterly along the Maryland-Virginia state line to Corner 2, Latitude 37° 56.9261140' N., Longitude 75° 43.7679786' W.; thence south-southwesterly to Corner 3, Latitude 37° 56.1241948' N., Longitude 75° 44.3624962' W.; thence west-southwesterly to Corner 4, Latitude 37° 56.0820561' N., Longitude 75° 44.5826292' W.; thence northerly to Corner 5, Latitude 37° 56.1377309' N., Longitude 75° 44.5817745'

W.; thence west-southwesterly to Corner 6, Latitude 37° 56.1259751' N., Longitude 75° 44.6226859' W.; thence southwesterly to Corner 7, Latitude 37° 56.1039335' N., Longitude 75° 44.6692334' W.; thence southerly to Corner 8, Latitude 37° 56.0643616' N., Longitude 75° 44.6750106' W.; thence west-southwesterly to Corner 9, Latitude 37° 55.9742005' N., Longitude 75° 45.1458109' W.; thence west-northwesterly to Corner 10, Latitude 37° 56.0741973' N., Longitude 75° 45.8958329' W.; thence north-northwesterly to Corner 11, Latitude 37° 56.2565760' N., Longitude 75° 46.0000557' W.; thence northeasterly along the Maryland-Virginia state line to Corner 1, said corner being the point of beginning.

"Pocomoke and Tangier Sounds Management Area" or "PTSMA" means the area as defined in § 28.2-524 of the Code of Virginia.

"Pocomoke and Tangier Sounds Rotation Area 1" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at a point on the Maryland-Virginia state line, located at Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence south to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence westerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence south to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence easterly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence northerly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southeasterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence southeasterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence southeast to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence southerly to a point on a line from Guilford Flats Junction Light to the northern-most point of Russell Island, where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence clockwise following the PTSMA boundary to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Pocomoke and Tangier Sounds Rotation Area 2" means all public grounds and unassigned grounds, within an area of the PTSMA, in Pocomoke and Tangier Sounds, bounded by a line beginning at the house on Great Fox Island, located at Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence southerly to the north end of Watts Island, Latitude 37° 48.7757800' N., Longitude 75° 53.5994100' W.; thence westerly to a point, Latitude 37° 48.4429100' N., Longitude 75° 56.4883600' W.; thence northerly to a point, Latitude 37° 53.3633500' N., Longitude 75° 56.5589600' W.; thence easterly to the house on Great Fox Island, said house being the point of beginning. Also, Pocomoke and Tangier Sounds Rotation Area 2 shall include all public grounds and unassigned grounds in the PTSMA in Pocomoke Sound bounded by a line beginning at a point on the Maryland-Virginia state line, Latitude 37° 54.6136000' N., Longitude 75° 53.9739600' W.; thence following the PTSMA boundary clockwise to a point on the line from the northern-most point of Russell Island to Guilford Flats Junction Light Flashing 2+1 Red "GF", where said line intersects the PTSMA boundary, Latitude 37° 48.4715943' N., Longitude 75° 46.9955932' W.; thence northerly to Guilford Flats Junction Light Flashing 2+1 Red "GF", Latitude 37° 50.9533300' N., Longitude 75° 46.6416700' W.; thence northwesterly to Messongo Creek Entrance Buoy Green Can "1", Latitude 37° 52.1000000' N., Longitude 75° 47.8083300' W.; thence northwesterly to Pocomoke Sound Shoal Flashing Light Red "8", Latitude 37° 52.4583300' N., Longitude 75° 49.4000000' W.; thence northwesterly to the house on Great Fox Island, Latitude 37° 53.6946500' N., Longitude 75° 53.8898800' W.; thence northerly to a point on the Maryland-Virginia state line, said point being the point of beginning.

"Public oyster ground" means all those grounds defined in § 28.2-551 of the Code of Virginia or by any other acts of the General Assembly pertaining to those grounds, all those grounds set aside by court order, and all those grounds set aside by order of the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Rappahannock River Area 7" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Rogue Point, located at Latitude 37° 40.0400000' N., Longitude 76° 32.2530000' W.; thence west-northwesterly to Flashing Red Buoy "8", Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.; and bounded upstream by a line from Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; thence southeasterly to Monaskon Point, Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.

"Rappahannock River Area 8" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Monaskon Point, located at Latitude 37° 44.0630000' N., Longitude 76° 34.1080000' W.; thence northwesterly to Punchbowl Point, Latitude 37° 44.6750000' N., Longitude 76° 37.3250000' W.; and bounded upstream by a line from Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; thence north-northwesterly to Sharps Point, Latitude 37° 49.3640000' N., Longitude 76° 42.0870000' W.

"Rappahannock River Area 9" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from Sharps Point, located at Latitude 37°

49.3640000' N., Longitude 76° 42.0870000' W.; thence south-southeasterly to Jones Point, Latitude 37° 46.7860000' N., Longitude 76° 40.8350000' W.; and bounded upstream by the Thomas J. Downing Bridge (U.S. Route 360).

"Rappahannock River Rotation Area 1" means all public grounds, in that area of the Rappahannock River and Chesapeake Bay, bounded by a line offshore and across the mouth of the Rappahannock River from a point on the mean low water line of Windmill Point, located at Latitude 37° 36.8200000' N., Longitude 76° 16.9460000' W.; thence southeast to Windmill Point Light, Latitude 37° 35.7930000' N., Longitude 76° 14.1800000' W.; thence southwesterly to Stingray Point Light, Latitude 37° 33.6730000' N., Longitude 76° 16.3620000' W.; thence westerly to a point on the mean low water line of Stingray Point, Latitude 37° 33.6920000' N., Longitude 76° 17.9860000' W.; and bounded upstream by a line from the mean low water line west of Broad Creek, Latitude 37° 33.9520000' N., Longitude 76° 19.3090000' W.; thence northeasterly to a VMRC Buoy on the Baylor line, Latitude 37° 34.5310000' N., Longitude 76° 19.1430000' W.; thence northeasterly to a VMRC Buoy, Latitude 37° 34.6830000' N., Longitude 76° 19.1000000' W.; thence northwesterly to a VMRC Buoy, Latitude 37° 35.0170000' N., Longitude 76° 19.4500000' W.; thence northwesterly to Sturgeon Bar Light "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence continuing northwesterly to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence northwesterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.

"Rappahannock River Rotation Area 2" means all public grounds, in that area of the Rappahannock River, bounded downstream by a line from the southern-most corner of the house on Mosquito Point, located at Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southeast to Mosquito Point Light "8R", Latitude 37° 36.1000000' N., Longitude 76° 21.3000000' W.; thence continuing southeasterly to Sturgeon Bar Beacon "7R", Latitude 37° 35.1500000' N., Longitude 76° 19.7330000' W.; thence west-southwesterly to a VMRC Buoy, Latitude 37° 34.9330000' N., Longitude 76° 21.0500000' W.; thence southwesterly to a VMRC Buoy, Latitude 37° 34.8830000' N., Longitude 76° 21.1000000' W.; thence southwesterly to a pier west of Hunting Creek at Grinels, Latitude 37° 34.4360000' N., Longitude 76° 26.2880000' W.; and bounded on the upstream by a line from Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 26.9500000' W.; thence northeasterly to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence northeasterly to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000'0 W.

"Rappahannock River Rotation Area 3" means all public grounds, in that area of the Rappahannock River, beginning from the north channel fender at the Robert O. Norris, Jr. Bridge, located at Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence southeast to the southern-most corner of the house on Mosquito Point, Latitude 37° 36.5230000' N., Longitude 76° 21.5950000' W.; thence southwest to Mill Creek Channel Marker "2", Latitude 37° 35.4830000' N., Longitude 76° 24.5670000' W.; thence southwesterly to Mill Creek Channel Marker "4", Latitude 37° 35.0830000' N., Longitude 76° 24.9500000' W.; thence northeasterly to Parrotts Creek Channel Marker "1", Latitude 37° 36.0330000' N., Longitude 76° 25.4170000' W.; thence northerly to VMRC Buoy, Latitude 37° 36.3330000' N., Longitude 76° 25.2000000' W.; thence northerly to the north channel fender of the Robert O. Norris, Jr. Bridge, said point being the point of beginning.

"Rappahannock River Rotation Area 4" means all public grounds, in that area of the Rappahannock River, Corrotoman River and Carter Creek, beginning at the White Stone end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 38.1290000' N., Longitude 76° 24.7220000' W.; thence along said bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence westerly to the VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence northerly to Old House Point, Latitude 37° 39.1390000' N., Longitude 76° 29.6850000' W.; thence northeasterly to Ball Point, Latitude 37° 41.6600000' N., Longitude 76° 28.6320000' W.; thence southeasterly to VMRC reef marker "Ferry Bar – North", Latitude 37° 40.3000000' N., Longitude 76° 28.5000000' W.; thence southwesterly to VMRC reef marker "Ferry Bar – South", Latitude 37° 40.1670000' N., Longitude 76° 28.5830000' W.; thence southeasterly to a duck blind west of Corrotoman Point, Latitude 37° 39.8760000' N., Longitude 76° 28.4200000' W.; thence southerly to VMRC Buoy "543", Latitude 37° 39.2670000' N., Longitude 76° 27.8500000' W.; thence southerly to VMRC Buoy "Drumming-West", Latitude 37° 38.8830000' N., Longitude 76° 27.6830000' W.; thence southerly to VMRC Buoy "Drumming-East", Latitude 37° 38.8330000' N., Longitude 76° 27.5670000' W.; thence northeasterly to Orchard Point, Latitude 37° 38.9240000' N., Longitude 76° 27.1260000' W.

"Rappahannock River Rotation Area 5" means all public grounds, in that area of the Rappahannock River, beginning at the Greys Point end of the Robert O. Norris, Jr. Bridge (State Route 3), located at Latitude 37° 36.8330000' N., Longitude 76° 25.9990000' W.; thence northeasterly along the bridge to the north channel fender, Latitude 37° 37.4830000' N., Longitude 76° 25.3450000' W.; thence west-northwesterly to VMRC Buoy "5-4", Latitude 37° 38.0050000' N., Longitude 76° 30.0280000' W.; thence westerly to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence

south to the eastern headland of Whiting Creek, Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.

"Rappahannock River Rotation Area 6" means all public grounds, in that area of the Rappahannock River, beginning on the eastern headland of Whiting Creek, located at Latitude 37° 36.6580000' N., Longitude 76° 30.3120000' W.; thence north to Buoy "R6", Latitude 37° 38.0330000' N., Longitude 76° 30.2830000' W.; thence northwesterly to VMRC White House Sanctuary Buoy, Latitude 37° 38.1500000' N., Longitude 76° 30.5330000' W.; thence northwesterly to VMRC Towles Point Area Buoy, Latitude 37° 38.8330000' N., Longitude 76° 31.5360000' W.; thence northwesterly to Flashing Red Buoy "8" off Rogue Point, Latitude 37° 40.1580000' N., Longitude 76° 32.9390000' W.; thence southwesterly to Balls Point, Latitude 37° 39.3550000' N., Longitude 76° 34.4440000' W.

"Seed oyster" means any oyster taken by any person from natural beds, rocks, or shoals that is more than 30 days from harvest for human consumption.

"Unassigned ground" means all grounds not assigned pursuant to §§ 28.2-600 through 28.2-633 of the Code of Virginia, established pursuant to § 28.2-551 of the Code of Virginia, or set aside by court order, or those grounds set aside by declarations or regulation by the Marine Resources Commission, and may be redefined by any of these legal authorities.

"Upper Chesapeake Bay - Blackberry Hangs Area" means all public grounds and unassigned grounds, in that area of the Chesapeake Bay, bounded by a line, beginning at a point approximately 300 feet east of the mean low water line of the Chesapeake Bay and approximately 1,230 feet southwest of the end of the southern-most stone jetty at the mouth of the Little Wicomico River, said point being Corner 1, Latitude 37° 53.1811193' N., Longitude 76° 14.1740146' W.; thence east-southeasterly to Corner 2, Latitude 37° 52.9050025' N., Longitude 76° 11.9357257' W.; thence easterly to Corner 3, Latitude 37° 52.9076552' N., Longitude 76° 11.6098145' W.; thence southwesterly to Corner 4, Latitude 37° 52.8684955' N., Longitude 76° 11.6402444' W.; thence east-southeasterly to Corner 5, Latitude 37° 52.7924853' N., Longitude 76° 11.0253352' W.; thence southwesterly to Corner 6, Latitude 37° 49.4327736' N., Longitude 76° 13.2409959' W.; thence northwesterly to Corner 7, Latitude 37° 50.0560555' N., Longitude 76° 15.0023234' W.; thence north-northeasterly to Corner 8, Latitude 37° 50.5581183' N., Longitude 76° 14.8772805' W.; thence north-northeasterly to Corner 9, Latitude 37° 52.0260950' N., Longitude 76° 14.5768550' W.; thence northeasterly to Corner 1, said corner being the point of beginning.

"Yeocomico River Area" means that area of the North West Yeocomico River, inside Public Ground 8 of Westmoreland County and those areas of the South Yeocomico River inside Public Grounds 100, 102, 104, ~~106, and~~ 107, and 112 of Northumberland County~~.~~ described as:

Public Ground 8 of Westmoreland County is located in the North West Yeocomico River, beginning at a point approximately 1,455 feet northeast of Crow Bar and 1,850 feet northwest of White Point, said point being Corner 1, located at Latitude 38° 02.7468214' N., Longitude 76° 33.0775726' W.; thence southeasterly to Corner 2, Latitude 38° 02.7397202' N., Longitude 76° 33.0186286' W.; thence southerly to Corner 3, Latitude 38° 02.6021644' N., Longitude 76° 33.0234175' W.; thence westerly to Corner 4, Latitude 38° 02.6006669' N., Longitude 76° 33.0824799' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 100 of Northumberland County is located in the South Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 00.2292779' N., Longitude 76° 32.2244222' W.; thence southwesterly to Corner 2, Latitude 38° 00.2183904' N., Longitude 76° 32.2488009' W.; thence westerly to Corner 3, Latitude 38° 00.2156893' N., Longitude 76° 32.3156220' W.; thence northwesterly to Corner 4, Latitude 38° 00.4024997' N., Longitude 76° 32.3338888' W.; thence continuing northeasterly to Corner 5, Latitude 38° 00.5806170' N., Longitude 76° 32.1957546' W.; thence continuing easterly to Corner 6, Latitude 38° 00.5798424' N., Longitude 76° 31.9506788' W., thence continuing southeasterly to Corner 7, Latitude 38° 00.5076459' N., Longitude 76° 31.9387425' W.; thence heading along the mean low water southwesterly to Corner 1, said corner being the point of beginning.

Public Ground 102 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 630 feet south of Mundy Point and 1,745 feet southwest of Tom Jones Point, said point being Corner 1, located at Latitude 38° 01.2138059' N., Longitude 76° 32.5577201' W.; thence east-northeasterly to Corner 2, Latitude 38° 01.2268644' N., Longitude 76° 32.4497849' W.; thence southwesterly to Corner 3, Latitude 38° 01.1091209' N., Longitude 76° 32.5591101' W.; thence northerly to Corner 1, said corner being the point of beginning.

Public Ground 104 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 670 feet north of Walker Point and 1,900 feet northwest of Palmer Point, said point being Corner 1, located at Latitude 38° 00.8841841' N., Longitude 76° 32.6106215' W.; thence southeasterly to Corner 2, Latitude 38° 00.8609163' N., Longitude 76° 32.5296302' W.; thence southeasterly to Corner 3, Latitude 38° 00.6693092' N., Longitude 76° 32.4161866' W.; thence southwesterly to Corner 4, Latitude 38° 00.6418466' N., Longitude 76°

32.5394849' W.; thence northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 107 of Northumberland County is located in the South Yeocomico River, beginning at a point approximately 1,000 feet southwest of Barn Point and 1,300 feet northwest of Tom Jones Point, said point being Corner 1, located at Longitude 38° 01.1389367' N., Latitude 76° 32.3425617' W.; thence east-southeasterly to Corner 2, Latitude 38° 01.4106421' N., Longitude 76° 32.1077962' W.; thence southwesterly to Corner 3, Latitude 38° 01.2717197' N., Longitude 76° 32.2917989' W.; thence north-northwesterly to Corner 1, said corner being the point of beginning.

Public Ground 112 of Northumberland County is located in the Yeocomico River, beginning at said point being Corner 1, located at Latitude 38° 01.8449428' N., Longitude 76° 32.2191877' W.; thence northeasterly to Corner 2, Latitude 38° 01.8783929' N., Longitude 76° 31.9970988' W.; thence southeasterly to Corner 3, Latitude 38° 01.7997003' N., 76° 31.9569302' W.; thence continuing southeasterly to Corner 4, Latitude 38° 01.6848729' N., Longitude 76° 31.5931801' W.; thence southerly to Corner 5, Latitude 38° 01.5760153' N., 76° 31.5931801' W.; thence westerly to Corner 6, Latitude 38° 01.6860521' N., Longitude 76° 32.2820100' W.; thence northerly to Corner 1, said corner being the point of beginning.

"York River Rotation Area 1" means all public grounds in the York River, within Gloucester County, between a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.; upstream to a line from the Flashing Yellow VIMS Data Buoy "CB", Latitude 37° 20.4670000' N., Longitude 76° 37.4830000' W.; thence northeasterly to the inshore end of the wharf at Clay Bank.

"York River Rotation Area 2" means all public grounds in the York River, within Gloucester County, from the George P. Coleman Memorial Bridge (U.S. Route 17), upstream to a line from Upper York River Flashing Red Channel Marker "8", Latitude 37° 17.8863666' N., Longitude 76° 34.6534166' W.; thence northeasterly to Red Day Marker "2" at the mouth of Cedar Bush Creek, Latitude 37° 18.6422166' N., Longitude 76° 33.8216000' W.

4VAC20-720-40. Open oyster harvest season and areas.

A. It shall be unlawful for any person to harvest oysters from public and unassigned grounds outside of the seasons and areas set forth in this section.

B. It shall be unlawful to harvest clean cull oysters from the public oyster grounds and unassigned grounds except during the lawful seasons and from the lawful areas as described in the following subdivisions of this subsection.

1. James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area: October 1, ~~2017~~ 2018, through April 30, ~~2018~~ 2019.

2. Milford Haven: December 1, ~~2017~~ 2018, through February 28, ~~2018~~ 2019.

3. Rappahannock River Area 9: November 1, ~~2017~~ 2018, through December 31, ~~2017~~ 2018.

4. Little Wicomico River: October 1, ~~2017~~ 2018, through December 31, ~~2017~~ 2018.

5. Coan River Area: October 1, ~~2017~~ 2018, through December 31, ~~2017~~ 2018.

6. Yeocomico River Area: October 1, ~~2017~~ 2018, through December 31, ~~2017~~ 2018.

7. Nomini Creek Area: October 1, ~~2017~~ 2018, through December 31, ~~2017~~ 2018.

8. Mobjack Bay Area: ~~October 1, 2017, through October 31, 2017 (hand tong only) and~~ February 1, ~~2018~~ 2019, through February 28, ~~2018 (hand scrape only)~~ 2019.

~~9. York River Rotation Area 1: January 1, 2018, through January 31, 2018.~~

~~10.~~ 9. Rappahannock River Rotation Area ~~1: October 1, 2017~~ 3: November 1, 2018, through November 30, ~~2017~~ 2018 (patent tong only), and January 1, 2019, through February 28, 2019 (hand scrape only).

~~11. Rappahannock River Rotation Area 6: November 1, 2017, through November 30, 2017 (patent tong only) and December 1, 2017, through January 31, 2018 (hand scrape only).~~

~~12. Rappahannock River Area 7: December 1, 2017, through January 31, 2018.~~

~~13. Great Wicomico River Rotation Area 1: December 1, 2017, through January 31, 2018.~~

~~14.~~ 10. Rappahannock River Rotation Area 5: October 1, 2018, through November 30, 2018.

11. Great Wicomico River Rotation Area 2: December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019.

12. Upper Chesapeake Bay - Blackberry Hangs Area: December 1, ~~2017~~ 2018, through ~~January~~ December 31, 2018, and February 1, 2019, through February 28, 2019.

~~15.~~ 13. James River Hand Scrape Areas 1 and 3: ~~December 1, 2017, through February 28, 2018~~ November 1, 2018, through January 31, 2019.

~~16.~~ 14. James River Hand Scrape Area 2: October 1, ~~2017~~ 2018, through December 31, ~~2017~~ 2018.

~~17. Pocomoke and Tangier Sounds Rotation Area 1: December 1, 2017, through February 28, 2018.~~

~~18.~~ 15. Pocomoke Sound Rotation Area 2: December 1, 2018, through January 31, 2019.

16. Tangier Sound Rotation Area 2: December 1, 2018, through February 28, 2019.

17. Pocomoke Sound Area: November 1, 2018, through November 30, 2018.

18. Rappahannock River Area 8: October 1, 2018, through October 31, 2018 (patent tong only), and December 1, 2018, through December 31, 2018 (hand scrape only).

19. Deep Rock Area: December 1, ~~2017~~ 2018, through February 28, ~~2018~~ 2019.

~~19.~~ 20. Seaside of the Eastern Shore (for clean cull oysters only): November 1, ~~2017~~ 2018, through March 31, ~~2018~~ 2019.

C. It shall be unlawful to harvest seed oysters from the public oyster grounds or unassigned grounds, except during the lawful seasons. The harvest of seed oysters from the lawful areas is described in the following subdivisions of this subsection.

1. James River Seed Area: October 1, ~~2017~~ 2018, through May 31, ~~2018~~ 2019.

2. Deep Water Shoal State Replenishment Seed Area: October 1, ~~2017~~ 2018, through May 31, ~~2018~~ 2019.

4VAC20-720-60. Day and time limit.

A. It shall be unlawful to take, catch, or possess oysters on Saturday and Sunday from the public oyster grounds or unassigned grounds in the waters of the Commonwealth of Virginia, for commercial purposes, except that this provision shall not apply to any person harvesting no more than one bushel per day by hand or ordinary tong for household use only during the season when the public oyster grounds or unassigned grounds are legally open for harvest.

B. It shall be unlawful for any person to harvest or attempt to harvest oysters prior to sunrise or after 2 p.m. from the areas described in 4VAC20-720-40 B 1 through B ~~18~~ 19 and 4VAC20-720-40 C. In addition, it shall be unlawful for any boat with an oyster dredge or hand scrape aboard to leave the dock until one hour before sunrise or return to the dock after sunset.

4VAC20-720-70. Gear restrictions.

A. It shall be unlawful for any person to harvest oysters in the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, the Rappahannock River Area 9, Milford Haven, Little Wicomico River, Coan River Area, Nomini Creek Area and Yeocomico River Area, except by hand tong. It shall be unlawful for any person to have a hand scrape on board a boat that is harvesting or attempting to harvest oysters from public grounds by hand tong.

B. It shall be unlawful to harvest oysters by any gear from the seaside of the Eastern Shore except by hand or hand tong. It shall be unlawful to harvest oysters that are not submerged at mean low water by any gear other than by hand.

C. It shall be unlawful to harvest oysters in the ~~Rappahannock River Rotation Area 1, Rappahannock River Area 7, James River Hand Scrape Areas, Upper Chesapeake Bay – Blackberry Hangs Area, York River Area, and Great Wicomico River Areas~~ following areas by any gear except by hand scrape: Rappahannock River Rotation Area 3, from January 1, 2018, through February 28, 2019; Rappahannock River Area 5, from October 1, 2018, through November 30, 2018; James River Hand Scrape Areas 1 and 3, from November 1, 2018, through January 31, 2019; James River Hand Scrape Area 2, from October 1, 2018, through December 31, 2018; Upper Chesapeake Bay - Blackberry Hangs Area, from December 1, 2018, through December 31, 2018, and February 1, 2019, through February 28, 2019; Mobjack Bay Area, from February 1, 2019, through February 28, 2019; Pocomoke Sound Area, from November 1, 2018, through November 30, 2018; and Great Wicomico River Areas, from December 1, 2018, through December 31, 2018 and February 1, 2019, through February 28, 2019.

D. It shall be unlawful to harvest oysters ~~in the Rappahannock River Rotation Area 6 by any gear except an oyster patent tong from November 1, 2017, through November 30, 2017. It shall be unlawful to harvest oysters in the Rappahannock River Rotation Area 6 by any gear except hand scrape from December 1, 2017, through January~~ from the following areas by any gear except an oyster patent tong: Rappahannock River Rotation Area 3, from November 1, 2018, through November 30, 2018, and Rappahannock River Rotation Area 8, from October 1, 2018, through October 31, 2018.

~~E. It shall be unlawful to harvest oysters in the Mobjack Bay Area by any gear except by hand tong from October 1, 2017, through October 31, 2017. It shall be unlawful to harvest oysters in the Mobjack Bay Area by any gear except by hand scrape from February 1, 2018, through February 28, 2018.~~

~~F.~~ E. It shall be unlawful for any person to have more than one hand scrape on board ~~any boat that is~~ his vessel while he is harvesting oysters or attempting to harvest oysters from public grounds. It shall be unlawful for any person to have a hand tong on board ~~a boat that is~~ his vessel while he is harvesting or attempting to harvest oysters from public grounds by hand scrape.

~~G.~~ F. It shall be unlawful to harvest oysters from the Pocomoke and Tangier Sounds Rotation Area ~~1~~ 2, except by an oyster dredge.

~~H.~~ G. It shall be unlawful to harvest oysters from the Deep Rock Area, except by an oyster patent tong.

4VAC20-720-75. Gear license.

A. It shall be unlawful for any person to harvest shellfish ~~from the hand scrape areas in the Rappahannock River, James River, Upper Chesapeake Bay, York River, Mobjack Bay, and Great Wicomico River~~ with a hand scrape from the public oyster grounds as described in 4VAC20-720-70 C unless that person has first obtained a valid hand scrape license.

B. It shall be unlawful for any person to harvest shellfish with an oyster dredge from the public oyster grounds in the Pocomoke and Tangier Sounds Rotation Area ~~1~~ 2, unless that person has first obtained a valid oyster dredge license.

C. It shall be unlawful for any person to harvest shellfish with a patent tong from the public oyster grounds ~~in the Deep Rock Area or Rappahannock River Rotation Area 6 when open to patent tong use~~, as described in 4VAC20-720-70 D and G unless that person has first obtained a valid oyster patent tong license.

D. It shall be unlawful for any person to harvest shellfish with a hand tong from the public oyster grounds, as described in 4VAC20-720-70 A, unless that person has first obtained a valid hand tong license.

E. It shall be unlawful for any person to harvest shellfish by hand from the public oyster grounds on the seaside of the Eastern Shore, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster by hand license. It shall be unlawful for any person to harvest shellfish from the public oyster grounds on the seaside of the Eastern Shore by hand tong, as described in 4VAC20-720-70 B, unless that person has first obtained a valid oyster hand tong license.

4VAC20-720-80. Quotas and harvest limits.

A. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required ~~by~~ for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses ~~the valid licenses~~ a valid hand scrape or dredge license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of eight bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 16 bushels clean cull oysters harvested from the areas described in 4VAC20-720-40 B 8 through 18 when the vessel is using the hand scrape or oyster dredge.

B. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required ~~by~~ for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses ~~the valid licenses~~ a valid hand or hand tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of ~~eight~~ 12 bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 2 through 7 and ~~19~~ 20, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and ~~who~~ have paid the oyster resource user fee multiplied by ~~eight~~ 12.

C. It shall be unlawful for any vessel to exceed a daily vessel limit for clean cull oysters harvested from the areas described in 4VAC20-720-40 B 1, whereby that vessel limit shall equal the number of registered commercial fisherman licensees on board the vessel who hold a valid gear license and who have paid the oyster resource user fee multiplied by 12. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and hold a valid gear license required ~~by~~ for any harvest area, as described in 4VAC20-720-75, and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses the valid licenses and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 12 bushels per day.

D. It shall be unlawful for any person who does not possess a valid commercial fisherman's registration license and a valid gear license required for any harvest area as described in 4VAC20-720-75 and has not paid the current year's oyster resource user fee to harvest or possess any oysters for commercial purposes. Any individual who possesses a valid patent tong license and has paid the oyster resource user fee as described in this subsection shall be limited to a maximum harvest of 10 bushels per day. It shall be unlawful for any vessel to exceed a daily vessel limit of 20 bushels of clean cull oysters harvested from the areas described in 4VAC20-720-40 B when the vessel is using patent tongs.

E. In the Pocomoke and Tangier Sounds Rotation Area ~~1~~ 2, no blue crab bycatch is allowed. It shall be unlawful to possess on board any vessel more than 250 hard clams.

4VAC20-720-91. Harvest permit required for the James River Seed Area, including the Deep Water Shoal State Replenishment Area.

A. A harvest permit shall be required for the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, for the harvesting of seed oysters. It shall be unlawful for any person to harvest or attempt to

harvest seed oysters from the James River Seed Area, including the Deep Water Shoal State Replenishment Seed Area, without first obtaining and having on board a harvest permit.

B. The commissioner may cease granting permits required by § 28.2-546 of the Code of Virginia when he determines that the seed areas currently open to harvest are becoming depleted and the additional granting of such permits could seriously injure the seed areas.

VA.R. Doc. No. R19-5653; Filed August 31, 2018, 8:53 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

Title of Regulation: **6VAC20-130. Regulations Governing the Privacy and Security of Criminal History Record Information Checks for Firearm Purchases (amending 6VAC20-130-20 through 6VAC20-130-100; repealing 6VAC20-130-10).**

Statutory Authority: § 18.2-308.2:2 of the Code of Virginia.

Effective Date: October 19, 2018.

Agency Contact: Barbara Peterson-Wilson, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 225-4503, FAX (804) 786-0410, or email barbara.peterson-wilson@dcjs.virginia.gov.

Summary:

The amendments (i) add the VCheck system, or other communication method authorized by the Department of State Police, as a method to obtain a criminal history record information check; (ii) remove language that is redundant, obsolete, or conflicts with statutory provisions; and (iii) clarify existing language.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
General

6VAC20-130-10. ~~Purpose.~~ (Repealed.)

~~Pursuant to the provisions of § 18.2 308.2:2 of the Code of Virginia, criminal history record information checks are required prior to the sale, rental, trade or transfer of certain firearms. A criminal history record information check shall be requested by licensed dealers from the Department of State Police to determine the legal eligibility of a prospective purchaser to possess or transport certain firearms under state or federal law. The Department of Criminal Justice Services hereby promulgates the following regulations governing these criminal history record information checks as required under § 18.2 308.2:2 H of the Code of Virginia. The purpose of this chapter is to ensure that criminal history record information checks are conducted in a manner which ensures the integrity of criminal history record information, guarantees individual rights to privacy, and supports the needs of law enforcement, while allowing nearly instantaneous sales of firearms to the law abiding public.~~

6VAC20-130-20. Definitions.

The following words and terms~~,~~ when used in this chapter~~,~~ shall have the following meaning unless the context clearly dictates otherwise:

"Antique firearm" means any firearm~~, including those with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898, and any replica of such a firearm, provided such replica: (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or (ii) uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade~~ meeting the statutory definition provided in § 18.2-308.2:2 G of the Code of Virginia.

"Criminal history record information" means records and data collected by criminal justice agencies on adult individuals, consisting of notations of arrests, detentions, indictments, ~~informations~~ information, or other formal charges and any disposition arising therefrom.

"Criminal history record information check," ~~(also~~ "criminal record check," and "record check"~~) means~~ mean a review of a potential purchaser's criminal history record information, to be conducted by the Department of State Police at the initiation of a dealer in order to establish a prospective purchaser's eligibility to possess or transport a firearm, as defined ~~herein~~ in this chapter, under state or federal law.

"Dealer" means any person licensed as a dealer pursuant to 18 ~~U.S.C.~~ USC § 921 et seq.

"Dealer identification number" ~~(DIN)~~ or "DIN" means a unique identifying number assigned by the Department of State Police to each individual dealer as defined in § 18.2-308.2:2 G of the Code of Virginia, in order to identify such dealers when they request criminal history record information to determine the eligibility of a prospective purchaser to possess or transport a firearm.

"Department" means the Virginia Department of State Police.

"Firearm" ~~means any handgun, shotgun, or rifle which expels a projectile by action of an explosion~~ means any

firearm meeting the statutory definition provided in § 18.2-308.2:2 G of the Code of Virginia.

"Handgun" ~~means any firearm including a pistol or revolver designed to be fired by the use of a single hand~~ means any firearm meeting the statutory definition provided in § 18.2-308.2:2 G of the Code of Virginia.

"Law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is a part of or administered by the Commonwealth or any political subdivision thereof, or any full-time or part-time employee of a private police department, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth~~,~~ and shall include any ~~member of the Regulatory Division~~ (i) special agent of the Department of Alcoholic Beverage Control ~~vested with police authority, any~~; (ii) police agent appointed under the provisions of § 56-353 of the Code of Virginia ~~(provides railroad officials with the authority to appoint police agents), or any game warden~~; (iii) officer of the Virginia Marine Police; (iv) conservation police officer who is a full-time sworn member of the enforcement division of the Department of Game and Inland Fisheries; (v) investigator who is a full-time sworn member of the security division of the Virginia Lottery; (vi) conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115 of the Code of Virginia; (vii) full-time sworn member of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217 of the Code of Virginia; (viii) animal protection police officer employed under § 15.2-632 of the Code of Virginia; (ix) campus police officer appointed under Chapter 17 (§ 23-232 et seq.) of Title 23 of the Code of Virginia; or (x) private police officer employed by a private police department. Part-time employees are those compensated officers who are not full-time employees as defined by the employing police department ~~or~~, sheriff's office, or private police department.

"Prospective purchaser" means an individual who intends to buy, rent, trade, or transfer a firearm [~~or firearms~~] as defined ~~herein~~ in this chapter, and has notified a dealer of his intent.

"Resident of Virginia" means a person who resides and has a present intent to remain within the Commonwealth, as shown by an ongoing physical presence and a residential address within Virginia. If a person does not reside in Virginia, but is on active duty as a member of the U.S. Armed Forces and Virginia is the person's permanent duty station, the person shall, for the purpose of these regulations, be considered a resident of Virginia.

"Transfer" means to sell, rent, trade, or transfer a firearm as defined ~~herein~~ in this chapter.

"VCheck" means Virginia's instant criminal background check program authorized by the Department of State Police and available via the Internet to all firearms dealers registered with the State Police Firearms Transaction Center.

"Virginia Firearms Transaction Record Form" or "VFTR form" means the form issued by the Department of State Police provided to dealers and required for obtaining a criminal history record check, also known as ~~"SP-65," the "VFTR form"~~ "SP-65" or the "VFTR."

Part II
Regulations

6VAC20-130-30. Applicability of ~~regulations concerning criminal history record checks for firearm purchase~~ chapter.

A. ~~These regulations apply~~ This chapter applies to:

1. All licensed dealers in firearms; and

2. The Department of State Police.

B. ~~These regulations~~ This chapter shall not apply to:

1. Transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 ~~U.S.C.~~ USC § 921 et seq.;

2. Purchases by or sale to any law-enforcement officer or agent of the United States, the Commonwealth, or any local government; or

3. Antique firearms~~; or~~.

~~4. Transactions in any county, city or town that has a local ordinance adopted prior to January 1, 1987, governing the purchase, possession, transfer, ownership, conveyance or transportation of firearms which is more stringent than § 18.2-308.2:2 of the Code of Virginia.~~

6VAC20-130-40. Responsibilities of dealers.

It shall be the responsibility of dealers that transfer firearms in Virginia to comply with the following:

1. Register with the ~~department and~~ Department of State Police to obtain from the department a dealer identification number (DIN) and to access the ~~toll-free telephone number to participate in the~~ department's criminal history record ~~check~~ VCheck program by telephone or via the Internet.

2. Prior to transferring any firearm, determine if the firearm is a "firearm" as defined in ~~these regulations~~ this chapter and § 18.2-308.2:2 of the Code of Virginia.

3. Deny the transfer of a handgun to a non-Virginia resident in accordance with 18 ~~U.S.C.~~ USC § 922(b)(3).

4. Complete the VFTR form.

5. Request a criminal history record information check prior to the transfer of any such firearm.

6. Request a criminal history record check either by telephone ~~or by~~, mail, VCheck, or other communication

authorized by the Department of State Police prior to the sale of shotguns and rifles to non-Virginia residents.

7. Maintain required forms and records according to the procedures outlined in these regulations.

8. Deny the transfer of a firearm if advised by the Department of State Police that the prospective purchaser is ineligible to possess such a firearm and the department disapproved the transfer of a firearm to the prospective purchaser.

9. ~~Allow the Department of Criminal Justice Services access to all forms and records required by these regulations~~ Notify the Department of State Police promptly upon any change in registration information (telephone number, address, federal firearms license number, etc.).

10. Provide written notice of the closing of the business to Department State Police in advance of the actual closing date.

6VAC20-130-50. Responsibilities of the Department of State Police.

A. The Department of State Police shall operate ~~a~~ telephone, ~~and~~ mail, VCheck, or other authorized communication response ~~system~~ systems to provide dealers in firearms (as defined ~~herein)~~ in this chapter) with information on the legal eligibility of prospective purchasers to possess or transport firearms covered under these regulations. This information shall be released only to authorized dealers. Prior to the release of the information, the identity of the dealer and the prospective purchaser can be reasonably established.

B. In no case shall the department release to any dealer actual criminal history record information as defined ~~herein~~ in this chapter. The dealer shall only receive from the department a statement of the department's approval or disapproval of the transfer, and an approval code number, if applicable, unique to the transaction. A statement of approval or disapproval shall be based on the department's review of the prospective purchaser's criminal history record information and restrictions on the transfer of firearms to felons enumerated in § 18.2-308.2 of the Code of Virginia or federal law. This statement shall take one of the following two statuses: (i) approval with an approval code number~~,~~ or (ii) disapproval with no approval code number.

C. The department shall provide to dealers a supply of VFTR forms, a DIN, and a toll-free number to allow access to the telephone criminal history record check system available for approval of firearms purchases.

D. The department shall supply all dealers in the Commonwealth with VFTR forms in a manner ~~which~~ that allows the department to use the forms to identify dealers and monitor dealers' use of the system to avoid illegal access to criminal history records and other department information systems.

E. The department shall hire and train such personnel as are necessary to administer criminal history record information checks, ensure the security and privacy of criminal histories used in such record checks, and monitor the record check system.

F. ~~Allow~~ The department shall allow the Department of Criminal Justice Services access to all forms and records required by this chapter.

6VAC20-130-60. Preparing for a criminal history record check.

A. General procedures.

1. If any firearm, which a prospective purchaser intends to obtain in transfer, is a firearm as defined ~~herein~~ in this chapter, the dealer shall request that the Department of State Police conduct a criminal history record check on the purchaser. The dealer may obtain the required record check from the department for purchasers who are residents of Virginia by (i) telephoning the department~~,~~ using the provided toll-free number, (ii) using VCheck, or (iii) using another communication authorized by the Department of State Police and requesting the record check. For out-of-state residents who purchase rifles or shotguns, the dealer may request the record check from the department by telephone, mail, or delivery. However, Virginia residents may, if they elect, request the dealer to obtain a record check by mail. The initial required steps of completion of the VFTR, obtaining consent of the purchaser, determining residency and verifying identity are common to ~~both~~ telephone ~~and~~, mail ~~methods of~~, VCheck, or other communication authorized by the Department of State Police for obtaining the record check.

2. The dealer shall request a criminal history record check and obtain the prospective purchaser's signature on the consent portion of the form for each new transfer of a firearm [~~or firearms~~] to a given purchaser. One record check is sufficient for any number of firearms in a given transfer, but once a transaction has been completed, no transfer to the same purchaser shall proceed without a new record check.

3. A criminal history record check shall be conducted prior to the actual transfer of a firearm.

B. Completing section A of the Virginia Firearms Transaction Record: Obtaining consent for a criminal history record information check for firearms purchase. As a condition of any sale, the dealer shall advise the prospective purchaser to legibly complete and sign section A of a VFTR form.

1. The dealer shall require the prospective purchaser to complete section A of the VFTR form in the prospective purchaser's own handwriting, and without the dealer's assistance. The purchaser shall answer the questions listed

and shall complete the items that establish residency and describe identity, including name, sex, height, weight, race, date of birth [,] and place of birth.

2. If the prospective purchaser cannot read or write, section A of the VFTR form may be completed by any person other than the dealer or any employee of the dealer according to the procedures specified on the reverse side of the VFTR form.

3. The dealer shall also obtain the prospective purchaser's signature or, if he cannot read or write, his mark, following the consent paragraph at the bottom of section A, which shall certify that the information supplied by the purchaser in section A is true and correct.

C. Completing section B of the Virginia Firearms Transaction Record: Establishing purchaser identity and residency and dealer identity. Prior to making a request for a criminal history record information check, the dealer shall complete all of section B of the VFTR form for which the dealer is responsible. Information recorded on the VFTR form shall be sufficient to~~:~~ (i) reasonably establish a prospective purchaser's identity and determine the residency of the prospective purchaser~~;~~ and (ii) identify the dealer.

1. Identify prospective purchaser and determine residency. The dealer shall determine residency and verify the prospective purchaser's identity as required in section B of the VFTR, by requiring at least two forms of identification that denote the address of the prospective purchaser. Only the forms of identification listed in this subsection shall be acceptable to establish identity and residency.

a. For Virginia residents, ~~the primary form of identification shall consist of a valid photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense. Except where the photo identification was issued by the Department of Defense, the prospective purchaser shall furnish a secondary form of identification that includes an address identical to that shown on the primary identification and corroborates the purchaser's identification and residence in Virginia. A Department of Defense photo identification plus one secondary form of identification showing the purchaser's residence in Virginia meets the requirements of the exception. The following are acceptable forms of secondary identification:~~ a dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the U.S. Department of Defense.

~~(1) Valid Virginia driver's license or photo identification card issued by the Virginia Department of Motor Vehicles;~~

~~(2) Passport;~~

~~(3) Voter registration card;~~

~~(4) Evidence of paid personal property tax or real estate taxes;~~

~~(5) Automobile registration;~~

~~(6) Hunting or fishing license;~~

~~(7) Lease;~~

~~(8) Utility or telephone bill;~~

~~(9) Bank check; or~~

~~(10) Other identification allowed as evidence of residency by Part 178.124 of Title 27, Code of Federal Regulations, and ATF Ruling 79-7.~~

If, for purposes of this chapter, a prospective purchaser's Virginia residency is based upon active duty status with the Armed Forces of the United States with a permanent duty station in Virginia, including the Pentagon, and the primary form of identification consists of a photo identification issued by the ~~United States~~ U.S. Department of Defense, the purchaser may use as a secondary identification proof of permanent duty station within Virginia signed by the station commander or duly designated representative. ~~If such primary and secondary documentation are presented, the prospective purchaser shall not be required to present any other form of secondary identification listed in subdivisions C 1 a (1) through (10).~~ For the purpose of establishing residency for a firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post.

b. For non-Virginia residents purchasing shotguns or rifles, the dealer shall require the prospective purchaser to furnish one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification as provided in subdivision C 1 a, which corroborates the identity and residency shown on the photo-identification form.

c. The dealer will ensure that the ~~form(s)~~ forms of identification support the listing of the identifying characteristics and the resident's address as supplied by the prospective purchaser in section A of the VFTR.

d. If the dealer discovers any unexplained discrepancy between the two forms of identification (different addresses, birth dates, [or] names), the dealer shall not request a criminal history record check until the prospective purchaser can be adequately identified with two acceptable forms of identification as required.

e. The dealer shall name and identify on the VFTR form the ~~document(s)~~ documents used to verify the

prospective purchaser's identity and residence~~,~~ and shall record all pertinent identifying numbers on the VFTR form.

f. While the dealer is required to collect sufficient information to establish the prospective purchaser's identity and residency from the ~~form(s)~~ forms of identification ~~listed above~~, in no case is the dealer authorized to collect more information on the prospective purchaser than is reasonably required to establish identity ~~and~~, state of residence, and citizenship.

2. Identify dealer. The dealer or his employee shall note on section B of the VFTR form:

a. The dealer's or employee's signature;

b. His position title (owner, employee);

c. The trade or corporate name and business address; and

d. The dealer's federal firearms license number.

D. No dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence. To establish citizenship or lawful admission for a permanent residence for purposes of purchasing an assault firearm, a dealer shall require a prospective purchaser to present a certified birth certificate or a certificate of birth abroad issued by the U.S. State Department, a certificate of citizenship or a certificate of naturalization issued by the U.S. Citizenship and Immigration Services, an unexpired United States passport, a U.S. citizen identification card, a current voter registration card, a current selective service registration card, or an immigrant visa or other documentation of status as a person lawfully admitted for permanent residence issued by the U.S. Citizenship and Immigration Services.

6VAC20-130-70. Procedures for requesting a criminal history record information check by telephone or other communication authorized by the Department of State Police.

A. Once the prospective purchaser has completed section A of the VFTR form and the dealer has completed the necessary portions of the VFTR form and determined that the prospective purchaser is a resident of Virginia, the dealer shall ~~call~~ contact the Department of State Police and request a criminal history record information check by telephone, through VCheck, or through other authorized communication for the firearm transfer. For non-Virginia residents purchasing rifles or shotguns, the dealer may also request a criminal history record check by telephone. The dealer shall use the toll-free number provided by the Department of State Police. However, no provision of these regulations shall prohibit a Virginia resident from obtaining a written record check through the dealer for any firearm transfer.

B. The dealer shall identify himself to the department by providing his DIN and the printed number on the upper right-hand corner of the VFTR form prepared by the prospective purchaser.

C. The dealer shall allow the department to verify this identifying information. The Department of State Police ~~may~~ shall disapprove a firearm purchase if the department determines that the identifying information supplied by the dealer is incomplete, incomprehensible or in error, raises a reasonable doubt as to the origin of the ~~call~~ request, or is otherwise unusable.

D. The dealer shall then supply to the department over the telephone, through VCheck, or through another authorized communication all identifying data on the prospective purchaser ~~which~~ that is recorded on section A of the VFTR, in the order requested by the department. This information shall be transmitted to the department in a discreet and confidential manner, assuring to the extent possible that the identifying data is not overheard or viewed by other persons in the dealer's place of business. If the dealer cannot provide sufficient information to allow the department to conduct a criminal history record check, the department will not accept the request on the basis of insufficient information to conduct a check. The department may adopt procedures to appropriately address such occurrences.

E. The Department of State Police will respond to the dealer's request for a criminal history record check by consulting the criminal history record information indexes and files, during the dealer's call or VCheck submission. In the event of electronic failure or other difficulties, the department shall immediately advise the dealer of the reason for such delay and provide to the dealer an estimate of the length of such delay.

F. If no evidence of a criminal record or other information is found that would preclude the purchaser from possessing or transporting a firearm under state or federal law, the department will immediately notify the dealer that the transfer may proceed, and will provide the dealer with a unique approval code number, which the dealer shall enter in a clear, visible, and convenient manner on the original of the VFTR form.

G. If the initial search discloses that the prospective purchaser may not be eligible to possess a firearm, the department will notify the dealer that a further check must be completed before the end of the dealer's next business day, to determine if the prospective purchaser has a criminal record that makes him ineligible to possess or transport a firearm under state or federal law. This statement of ineligibility shall then be communicated by the dealer to the prospective purchaser in a discrete and confidential manner, recognizing the individual's rights to the privacy of this information.

H. In any circumstance in which the department must return the dealer's telephone call, whether due to electronic or other failure or in order to allow a further search, the dealer shall await the department's call and make no transfer of a firearm to the individual whose record is being checked until:

1. The dealer receives notification of approval of the transfer by telephone or other authorized communication from the department; or

2. The department fails to disapprove the transaction of the prospective purchaser before the end of the next business day.

~~3.~~ Exception: If the department knows at the time of the dealer's telephone call or VCheck submission that it will not be able to respond to the request by the end of the dealer's next business day, it will so notify the dealer. Upon receiving notification, the dealer shall note in a clear and visible manner on the VFTR that the department was unable to respond. The dealer may in such cases complete the transfer immediately after his telephone call or receipt of an authorized communication.

I. In the event that the department is unable to immediately respond to the dealer's request for a criminal history record check and the prospective purchaser is also unable to await the department's response to the dealer's request and the department ultimately approves of the transfer, the dealer may transfer any firearm [~~or firearms~~], as listed on the VFTR form that initiated the request for a record check, to the prospective purchaser, after the receipt of the approval of the transfer from the department. The actual transfer of the firearm shall be accomplished in a timely manner. A second record check shall not be required provided that the actual transfer of the firearm occurs within a time period specified by the department.

J. If the dealer is notified by the department that the prospective purchaser is not eligible to possess or transport a firearm [~~or firearms~~] under state or federal law, and the transfer is disapproved, and if he is so notified before the end of the next business day after his accepted telephone request or VCheck confirmation, the dealer shall not complete the transfer.

K. On the last day of the week following transfer of a firearm covered by these regulations on the basis of a telephone inquiry, the dealer shall send by mail or shall deliver to the department the appropriate copies of the VFTR other than the original, with sections A and B properly completed. No information on the type, caliber, serial number, or characteristics of the firearms transferred shall be noted on the copies of the VFTR submitted to the department, but the forms shall otherwise be complete. The dealer shall note the date of mailing on the form, or shall have the form date stamped or receive a dated receipt if the dealer delivers the form.

~~L. After sale check.~~

~~1. Following the receipt of the required copies of a completed VFTR form recording a transfer, the department shall immediately initiate a search of all data bases in order to verify that the purchaser was eligible to possess or transport the firearm(s) under state or federal law.~~

~~2. If the search discloses that the purchaser is ineligible to possess or transport a firearm, the department shall inform the chief law enforcement officer in the jurisdiction where the transfer occurred and the dealer of the purchaser's ineligibility without delay. The department shall mark "disapproved" on a copy of the VFTR submitted by the dealer after the transfer and return the form by mail to the dealer.~~

6VAC20-130-80. Procedures for requesting a criminal history record check by mail.

A. At the request of a Virginia resident or a non-Virginia resident, a dealer may request a record check by mail for a firearm transfer. In either case, the dealer shall follow the procedures as set forth ~~below~~ in this chapter. In addition, the dealer shall follow the provisions for establishing identity and residency as set forth in 6VAC20-130-60 C 1 a and C 1 b ~~of this chapter~~, and, if applicable, 6VAC20-130-60 D.

B. The dealer shall mail or deliver to the department the appropriate copies of the completed VFTR form according to procedures established by the department ~~(which~~ (that shall not describe, list, or note the actual firearms to be transferred) within 24 hours of the prospective purchaser's signing and dating of the consent paragraph in section A of the VFTR form. This shall be evidenced by the dealer's notation of the mailing date on the VFTR, if mailed, or the date stamp of the department on the VFTR form or a receipt provided to the deliverer, if delivered. The original of the completed VFTR form shall be retained at the dealer's place of business.

C. The department will initiate a search only upon receipt of the appropriate copies of the VFTR form at department headquarters. The department may challenge and refuse to accept any VFTR form if there is an unreasonable, extended time period between the date of the mailing and the date of receipt of the copies of the form at the department.

D. Following its search of Virginia and national criminal history record indexes and files, the department will return to the dealer a copy of the VFTR form, marked "approved," or "not approved." When a dealer receives approval, he may transfer any firearm [~~or firearms~~], as listed on the VFTR form that initiated the request for a record check, to the prospective purchaser, after his receipt of the approval. The actual transfer of the firearm shall be accomplished in a timely manner. A second record check shall not be required provided that the actual transfer of the firearm occurs within a time period specified by the department. If the transfer is

disapproved, he is not authorized to transfer any firearm to the prospective purchaser.

E. In the case of written requests for criminal history record check, initiated by the submission of VFTR forms, the dealer shall wait up to 10 days after the mailing date (noted on the form) or delivery date stamp (if not mailed) of the request for written approval from the department, prior to transferring a firearm as defined ~~herein~~ in this chapter.

F. However, if 10 days elapse from the date the VFTR form was mailed (as noted on the VFTR form) or delivered to the Department of State Police (as indicated by the date stamped by the department), and the department has not responded to the request initiated by the form by approving or disapproving the transaction proposed, the dealer may complete the transfer to the prospective purchaser on his next business day, after the ~~tenth~~ 10th day, or thereafter, and not be in violation of the law or ~~these regulations~~ this chapter. After completion of the transfer in this case, as in all cases, any new or further transfer of firearms not listed on the VFTR form that initiated the request for a record check to the same purchaser will require a new criminal history record check.

6VAC20-130-90. Proper use of the components of the criminal history record check system: Forms, records, toll-free telephone number, VCheck passwords, and DIN.

A. The VFTR forms will be provided to the dealer by the department. VFTR forms shall not be transferred from one dealer to another. All VFTR forms partially completed, torn, defaced or otherwise rendered unusable shall be marked "VOID" and disposed of in a manner ~~which~~ that will not allow their reuse. All unused forms shall remain the property of the Department of State Police and shall be returned to the department in the event that a dealer ceases to engage in the transfer of firearms in a manner which is regulated by the Department of Criminal Justice Services.

B. The dealer will retain the original of the VFTR form for his own files.

C. The dealer shall keep all blank and completed VFTR originals~~,~~ and all returned copies in a secure area, which will restrict access to the information contained on the VFTR forms to authorized employees only.

D. The department shall retain a copy of all VFTR forms received from dealers according to the procedures outlined ~~below~~ in this subsection.

1. Approved transfers. Thirty days after the department has notified the dealer of an approved transfer, the department shall destroy the VFTR form still in its possession and all identifiable information collected pertaining to a prospective purchaser.

2. Disapproved transfers. VFTR forms recording a transfer that was not approved shall be maintained by the department in a separate file, maintained by name of prospective purchaser.

a. The information contained in these forms shall be used by the department for legitimate law-enforcement purposes only~~,~~ and shall be governed by existing regulations concerning the privacy and security of criminal history record information.

b. The department may maintain any other printouts or reports with these copies of the VFTR form, provided they are treated as criminal history record information.

E. The Department of State Police shall maintain a running log of all requests for criminal history record information checks for firearms transfer, which shall include the following:

1. DIN and name of requester;

2. Dealer's transaction number;

3. Approval code number~~,~~ if sale is approved;

4. Date of telephone request ~~or,~~ mailing, VCheck, or delivery date of mail request;

5. Notation of type of record request ~~—either~~: telephone ~~or,~~ mail, or VCheck request;

6. Approved or not approved status; and

7. Date of clearance from department file through mailing of VFTR form to the dealer or other final action.

F. A log shall be retained at the department on each request ~~which~~ that leads to approvals of firearm transfers for 12 months from the date of each request.

G. Requests ~~which~~ that lead to disapprovals shall be maintained by the department on a log for a period of two years from the date the request was accepted by the department for processing.

H. The department shall monitor and distribute all VFTR forms in an appropriate manner to ensure their proper control and use. This includes designing, redesigning, numbering, distributing, tracking, and processing all VFTR forms.

I. No dealer shall provide his DIN or the toll-free number VCheck password to another party for any reason.

J. The ~~DIN's and the toll-free number~~ VCheck password may be changed periodically to ensure that these numbers are not improperly used by unauthorized dealers or unauthorized parties.

6VAC20-130-100. ~~Audits~~ Monitor.

~~A.~~ The Department of State Police shall continuously observe compliance with requirements regarding VFTR form completion, notification of the Department of State Police following firearm transfers, form management and storage, and confidentiality and proper use of the DIN and the ~~toll-free~~

~~telephone number~~ VCheck password information for Virginia resident telephone and VCheck record checks.

~~B. The Department of State Police shall notify the Department of Criminal Justice Services if a dealer has used or may have used the criminal history record information check system improperly in a manner that may jeopardize the confidentiality and security of criminal history record information systems.~~

~~C. Upon such notification, the Department of Criminal Justice Services shall audit the dealership in question and recommend corrective action without delay.~~

1. ~~Pending the outcome of an audit, the~~ The department may invalidate a particular DIN to ensure the continuous integrity of the criminal history record information. Prior to such invalidation, the department shall notify the dealer orally, ~~telephonically~~ by telephone, or in writing of the reasons for such invalidation and allow the dealer the opportunity to respond. ~~The department shall also notify the Department of Criminal Justice Services when a DIN has been invalidated.~~

~~2. Should the results of an audit reveal that the provisions of these regulations have not been violated, the Department of Criminal Justice Services shall advise the department to immediately reinstate the invalidated DIN.~~

~~3.~~ 2. Should the department identify ~~results of an audit reveal~~ minor violations of the provisions of ~~these regulations~~ this chapter, ~~the Department of Criminal Justice Services may notify~~ the department ~~to~~ may monitor all future requests of the dealer for criminal history record checks ~~for a period not to exceed 90 days. In the event that the DIN of the dealer has been invalidated, the Department of Criminal Justice Services shall also notify the department to reinstate the invalidated DIN. Any additional violations that may occur during this time period shall be reported to the Department of Criminal Justice Services~~ as needed. Occurrences of additional violations ~~shall invoke the provisions of these regulations for the handling of~~ or major or repeated violations~~, as outlined below, and~~ may result in a subsequent ~~audit~~ monitoring or a criminal investigation of the dealer.

~~4. Should the results of an audit reveal major or repeated violations of the provisions of these regulations, the Department of Criminal Justice Services shall advise the department to invalidate the DIN if not invalidated previously and that the invalidated DIN should not be reinstated until the dealer submits a written request to the Department of Criminal Justice Services for reinstatement of the DIN. The request shall demonstrate to the reasonable satisfaction of the Department of Criminal Justice Services that corrective action has been taken by the dealer to comply with the provisions of these regulations.~~

~~5. Should the results of an audit reveal that the privacy and security of criminal history record information have been compromised, the Department of Criminal Justice Services shall send written notification to the dealer, the office of the local commonwealth's attorney and the department.~~

~~D. The Department of Criminal Justice Services shall annually audit the Department of State Police to ensure the following:~~

~~1. That records, VFTR's and other materials, except for the maintenance of the log as outlined above, on purchasers found to be eligible to possess or transport firearms (approved) are being routinely destroyed 30 days from the notification, mailing or delivery date of the accepted request for a record check; and~~

~~2. That VFTR's and other materials gathered on persons found to be ineligible to purchase a firearm (disapproved) are governed by the regulations for criminal history record information; and~~

~~3. That logs recording the approvals and disapprovals of firearm transfers are being correctly maintained according to the provisions of these regulations.~~

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 follow instructions with 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 (6VAC20-130)

~~Criminal History Record Request, Form SP-167, eff. 7/1/94~~.

Virginia Firearms Transaction Record, Form SP-65, ~~eff. 7/1/94.~~ (eff. 7/2015) (Form SP-65 is obtained directly from the Virginia State Police, Firearms Transaction Center Help Desk, (804) 674-2292 or (804) 674-2788, or email firearms@vsp.virginia.gov.)

VA.R. Doc. No. R16-4648; Filed August 24, 2018, 9:40 a.m.

TITLE 8. EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-11. Parking and Traffic (amending 8VAC105-11-10).**

Statutory Authority: § 23.1-1301 of the Code of Virginia.

Effective Date: September 7, 2018.

Agency Contact: Lori Buchanan, Business Services Specialist, Office of the Vice President for Policy and Governance, 319 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-9512, or email lorib90@vt.edu.

Summary:

The amendment updates the university's parking regulations to reflect revised parking procedures.

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the Parking and Traffic ~~Procedures~~ Operational Manual, Virginia Tech Parking Services, effective August 1, ~~2017~~ 2018.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

DOCUMENTS INCORPORATED BY REFERENCE (8VAC105-11)

~~Parking and Traffic Operational Manual, Volume 25, 2017-2018 Academic Year, Virginia Tech Division of Operations, Parking and Transportation (rev. 8/2017)~~

Parking and Traffic Operational Manual, Volume 26, 2018-2019 Academic Year, Virginia Tech Division of Operations, Parking and Transportation (rev. 8/2018)

VA.R. Doc. No. R19-5656; Filed September 4, 2018, 3:38 p.m.

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TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Proposed Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-800. Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters (amending 9VAC25-800-10 through 9VAC25-800-60).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act.

Public Hearing Information:

October 18, 2018 - 2 p.m. - Department of Environmental Quality, Piedmont Regional Office, Training Room, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: November 16, 2018.

Agency Contact: Peter Sherman, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4044, FAX (804) 698-4032, or email peter.sherman@deq.virginia.gov.

Small Business Impact Review Report of Findings: This proposed regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

The Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges Resulting from the Application of Pesticides to Surface Waters has existed since 2011. This general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of pesticides to surface waters. The proposed amendments reissue this general permit and include changing the effective dates and two definitions, clarifying two points, and making minor changes to the duty to reapply and the transfer of permit coverage. No substantive changes are proposed to the existing regulation.

CHAPTER 800
VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS

9VAC25-800-10. Definitions.

The words and terms used in this chapter shall have the same meanings as given in the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the VPDES Permit Regulation (9VAC25-31), unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Action threshold" means the point at which pest populations or environmental conditions necessitate that pest control action be taken based on economic, human health, aesthetic, or other effects. An action threshold may be based on current or past environmental factors that are or have been demonstrated to be conducive to pest emergence or growth, as well as past or current pest presence. Action thresholds are those conditions that indicate both the need for control actions and the proper timing of such actions.

"Active ingredient" means any substance (or group of structurally similar substances if specified by the federal Environmental Protection Agency (EPA) that will prevent, destroy, repel, or mitigate any pest, or that functions as a plant regulator, desiccant, or defoliant within the meaning of § 2(a) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) ~~(7 USC § 136 et seq.)~~ (40 CFR 152.3). Active ingredient also means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for the production of such a pesticidal substance (40 CFR 174.3).

"Adverse incident" means an unusual or unexpected incident that the operator observes upon inspection or of which otherwise becomes aware, in which there is evidence that:

1. A person or nontarget organism has likely been exposed to a pesticide residue; and

2. The person or nontarget organism suffered a toxic or adverse effect.

The phrase "toxic or adverse effects" includes effects that occur within surface waters on nontarget plants, fish, or wildlife that are unusual or unexpected (e.g., effects are to organisms not described on the pesticide product labels or not expected to be present) as a result of exposure to a pesticide residue and may include:

1. Distressed or dead juvenile and small fishes;

2. Washed up or floating fish;

3. Fish swimming abnormally or erratically;

4. Fish lying lethargically at water surface or in shallow water;

5. Fish that are listless or nonresponsive to disturbance;

6. Stunting, wilting, or desiccation of nontarget submerged or emergent aquatic plants; and

7. Other dead or visibly distressed nontarget aquatic or semi-aquatic organisms (amphibians, turtles, invertebrates, etc.).

The phrase "toxic or adverse effects" also includes any adverse effects to humans (e.g., skin rashes)~~,~~ or domesticated animals ~~or wildlife~~ (e.g., vomiting, lethargy) that occur either from direct contact with or as a secondary effect from a discharge (e.g., sickness from consumption of plants or animals containing pesticides) to surface waters that are temporally and spatially related to exposure to a pesticide residue.

"Biological control" means organisms that can be introduced to sites, such as herbivores, predators, parasites, and hyperparasites.

"Biological pesticides" or "biopesticides" includes microbial pesticides, biochemical pesticides, and plant-incorporated protectants (PIP).

1. "Microbial pesticide" means a microbial agent intended for preventing, destroying, repelling, or mitigating any pest, or intended for use as a plant regulator, defoliant, or desiccant, that:

a. Is a eukaryotic microorganism, including ~~but not limited to~~ protozoa, algae, and fungi;

b. Is a prokaryotic microorganism, including ~~but not limited to~~ Eubacteria and Archaebacteria; or

c. Is a parasitically replicating microscopic element, including ~~but not limited to~~ viruses.

2. "Biochemical pesticide" means a pesticide that:

a. Is a naturally occurring substance or structurally similar and functionally identical to a naturally occurring substance;

b. Has a history of exposure to humans and the environment demonstrating minimal toxicity, or in the case of a synthetically derived biochemical pesticide, is equivalent to a naturally occurring substance that has such a history; and

c. Has a nontoxic mode of action to the target ~~pest(s)~~ pests.

3. "Plant-incorporated protectant" means a pesticidal substance that is intended to be produced and used in a living plant, or in the produce thereof, and the genetic material necessary for production of such a pesticidal

substance. It also includes any inert ingredient contained in the plant or produce thereof.

"Chemical pesticides" means all pesticides not otherwise classified as biological pesticides.

"Cultural methods" means manipulation of the habitat to increase pest mortality by making the habitat less suitable to the pest.

"Declared pest emergency situation" means an event defined by a public declaration by a federal agency, state, or local government of a pest problem determined to require control through application of a pesticide beginning less than 10 days after identification of the need for pest control. This public declaration may be based on:

1. Significant risk to human health;

2. Significant economic loss; or

3. Significant risk to:

a. Endangered species;

b. Threatened species;

c. Beneficial organisms; or

d. The environment.

"DEQ" or "department" means the Virginia Department of Environmental Quality.

"Discharge of a pollutant" means the addition of any "pollutant" or combination of pollutants to surface waters from any point source, or the addition of any pollutant or combination of pollutants to the water of the contiguous zone or the ocean from any point source.

"FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act (7 USC § 136 et seq.) as amended.

"Impaired water" or "water quality impaired water" or "water quality limited segment" means any stream segment where the water quality does not or will not meet applicable water quality standards, even after the application of technology-based effluent limitations required by §§ 301(b) and 306 of the Clean Water Act (CWA) (33 USC § 1251 et seq. as of 1987). Impaired waters include both impaired waters with approved or established TMDLs, and impaired waters for which a TMDL has not yet been approved or established.

"Inert ingredient" means any substance (or group of structurally similar substances if designated by EPA), other than an active ingredient, that is intentionally included in a pesticide product. Inert ingredient also means any substance, such as a selectable marker, other than the active ingredient, where the substance is used to confirm or ensure the presence of the active ingredient, and includes the genetic material necessary for the production of the substance, provided that genetic material is intentionally introduced into a living plant in addition to the active ingredient.

"Integrated pest management" or "IPM" means an effective and environmentally sensitive approach to pest management that relies on a combination of common-sense practices. IPM uses current, comprehensive information on the life cycles of pests and their interaction with the environment. This information, in combination with available pest control methods, is used to manage pest damage by the most economical means, and with the least possible hazard to people, property, and the environment.

"Label" means the written, printed, or graphic matter on, or attached to, the pesticide or device, or the immediate container thereof, and the outside container or wrapper of the retail package, if any, of the pesticide or device.

"Labeling" means all labels and other written, printed, or graphic matter:

1. Upon the pesticide or device or any of its containers or wrappers;

2. Accompanying the pesticide or device at any time; or

3. To which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the agricultural experiment station, the Virginia Polytechnic Institute and State University, the Virginia Department of Agriculture and Consumer Services, the State Board of Health, or similar federal institutions or other official agencies of the Commonwealth or other states when such states are authorized by law to conduct research in the field of pesticides.

~~"Mechanical/physical~~ "Mechanical or physical methods" means mechanical tools or physical alterations of the environment~~,~~ for pest prevention or removal.

"Minimize" means to reduce or eliminate pesticide discharges to surface waters through the use of pest management measures to the extent technologically available and economically practicable and achievable.

"Nontarget organisms" means the plant and animal hosts of the target species, the natural enemies of the target species living in the community, and other plants and animals, including vertebrates, living in or near the community that are not the target of the pesticide.

"Operator" means any person involved in the application of a pesticide that results in a discharge to surface waters that meets either or both of the following two criteria:

1. The person who has control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions; or

2. The person who performs the application of a pesticide or who has day-to-day control of the application (e.g., they are authorized to direct workers to carry out those activities that result in discharges to surface waters).

"Person" means an individual; a corporation; a partnership; an association; a local, state, or federal governmental body; a municipal corporation; or any other legal entity.

"Pest" means any deleterious organism that is:

1. Any vertebrate animal other than man;

2. Any invertebrate animal excluding any internal parasite of living man or other living animals;

3. Any plant growing where not wanted, and any plant part such as a root; or

4. Any bacterium, virus, or other microorganisms, except for those on or in living man or other living animals and those on or in processed food or processed animal feed, beverages, drugs (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(g)(1)), and cosmetics (as defined by the federal Food, Drug, and Cosmetic Act at 21 USC § 321(i)).

Any organism classified by state or federal law or regulation as endangered or threatened shall not be deemed a pest for the purposes of this chapter.

"Pest management area" means the area of land, including any water, for which pest management activities covered by this permit are conducted.

"Pest management measure" means any practice used to meet the effluent limitations that comply with manufacturer specifications, industry standards, and recommended industry practices related to the application of pesticides, relevant legal requirements, and other provisions that a prudent operator would implement to reduce or eliminate pesticide discharges to surface waters.

"Pesticide" means:

1. Any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any insects, rodents, fungi, bacteria, weeds, or other forms of plant or animal life or viruses, except viruses on or in living man or other animals, which the Commissioner of Agriculture and Consumer Services shall declare to be a pest;

2. Any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

3. Any substance which is intended to become an active ingredient thereof.

Pesticides that are used or applied shall only be those that are approved and registered for use by the Virginia Department of Agriculture and Consumer Services.

"Pesticide product" means a pesticide in the particular form (including active and inert ingredients, packaging, and labeling) in which the pesticide is, or is intended to be, distributed or sold. The term includes any physical apparatus used to deliver or apply the pesticide if distributed or sold with the pesticide.

"Pesticide research and development" means activities undertaken on a systematic basis to gain new knowledge (research) or apply research findings or other scientific knowledge for the creation of new or significantly improved products or processes (experimental development).

"Pesticide residue" means that portion of a pesticide application that has been discharged from a point source to surface waters and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

"Point source" means any discernible, confined, and discrete conveyance including~~, but not limited to,~~ any pipe, ditch, channel, tunnel, conduit, or container from which pollutants are or may be discharged. This includes biological pesticides or ~~pesticide residuals~~ chemical pesticides that leave a residue coming from a container or nozzle of a pesticide application device. This term does not include return flows from irrigated agriculture or agricultural ~~storm water~~ stormwater run-off.

"Pollutant" means biological pesticides and any pesticide residue resulting from use of a chemical pesticide.

"Surface waters" means:

1. All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate wetlands;

3. All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. That are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. That are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as surface waters under this definition;

5. Tributaries of waters identified in subdivisions 1 through 4 of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters, other than waters that are themselves wetlands, identified in subdivisions 1 through 6 of this definition.

Surface waters do not include wastewater treatment systems, including treatment ponds or lagoons designed to meet the requirements of the Clean Water Act (CWA) and the law. Surface waters do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other agency, for the purposes of the CWA, the final authority regarding the CWA jurisdiction remains with the EPA.

"Target pest" means the organism toward which pest management measures are being directed.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Treatment area" means the area of land including any waters, or the linear distance along water or water's edge, to which pesticides are being applied. Multiple treatment areas may be located within a single pest management area.

Treatment area includes the entire area, whether over land or water, where the pesticide application is intended to provide pesticidal benefits. In some instances, the treatment area will be larger than the area where pesticides are actually applied. For example, the treatment area for a stationary drip treatment into a canal should be calculated by multiplying the width of the canal by the length over which the pesticide is intended to control weeds. The treatment area for a lake or marine area is the water surface area where the application is intended to provide pesticidal benefits.

Treatment area calculations for pesticide applications that occur at water's edge, where the discharge of pesticides directly to waters is unavoidable, are determined by the linear distance over which pesticides are applied.

"VDACS" means the Virginia Department of Agriculture and Consumer Services. VDACS administers the provisions of Virginia's pesticide statute, Chapter 39 (§ 3.2-3900 et seq.) of Title 3.2 of the Code of Virginia, as well as the regulations promulgated by the Virginia Pesticide Control Board. VDACS also has delegated authority to enforce the provisions of FIFRA. As such, VDACS is the primary agency for the regulatory oversight of pesticides in the Commonwealth.

"Wetlands" means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

9VAC25-800-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations (CFR) is referenced and incorporated ~~herein~~ in this chapter, that regulation shall be as it exists and has been published as of the July 1, ~~2012~~ 2018, CFR update.

9VAC25-800-20. Purpose; delegation of authority; effective date of permit.

A. This general permit regulation governs discharges resulting from the application of pesticides to surface waters.

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

C. This ~~general~~ VPDES general permit will become effective on January 1, ~~2014~~ 2019, and expire on December 31, ~~2018~~ 2023.

9VAC25-800-30. Authorization to discharge.

A. Any operator that meets the eligibility requirements in subsection B of this section is hereby authorized for his discharges resulting from the application of pesticides to surface waters of the Commonwealth of Virginia.

The definition of operator in 9VAC25-800-10 provides that more than one person may be responsible for the same discharge resulting from pesticide application. Any operator authorized to discharge under this general permit is responsible for compliance with the terms of this permit for discharges resulting from the application of pesticides.

B. Eligibility. This permit is available to operators who discharge to surface waters from the application of (i) biological pesticides, or (ii) chemical pesticides that leave a residue (~~hereinafter collectively "~~pesticides~~"~~), when the pesticide application is for one of the following pesticide use patterns:

1. Mosquito and other flying insect pest control - to control public ~~health/nuisance~~ health, nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.

2. Weed and algae pest control - to control weeds, algae, and pathogens that are pests in surface waters.

3. Animal pest control - to control animal pests in surface waters.

4. Forest canopy pest control - application of a pesticide to the forest canopy to control the population of a pest species (e.g., insect or pathogen) where to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface water.

5. Intrusive vegetation pest control - to control vegetation along roads, ditches, canals, waterways, and utility rights of way where to target the intrusive pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface water.

C. Operators applying pesticides are required to maintain a pesticide discharge management plan (PDMP) if they exceed the annual calendar year treatment area thresholds in Table 1 of this subsection:

Table 1. Annual Treatment Area Thresholds

Pesticide Use	Annual Threshold
Mosquito and Other Flying Insect Pest Control	6400 acres of treatment area[1]
Weed and Algae Pest Control	80 acres of treatment area[1] or 20 linear miles of treatment area[2]
Animal Pest Control	80 acres of treatment area[1] or 20 linear miles of treatment area[2]
Forest Canopy Pest Control	6400 acres of treatment area[1]
Intrusive Vegetation Pest Control	6400 acres of treatment area[1] or 20 linear miles of treatment area[2]

[1]Calculations include the area of the applications made to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment area totals, count each pesticide application activity as a separate activity. For example, applying pesticides twice a year to a 10-acre site is counted as 20 acres of treatment area.

[2]Calculations include the extent of the application made to linear features (e.g., roads, ditches, canals, waterways, and utility rights of way) or along the water's edge adjacent to: (i) surface waters and (ii) conveyances with a hydrologic surface connection to surface waters at the time of pesticide application. For calculating annual treatment totals, count each pesticide application activity or area as a separate activity. For example, applying pesticides twice a year to a one mile linear feature (e.g., ditch) equals two miles of treatment area regardless of whether one or both sides of the ditch are treated. Applying pesticides twice a year along one mile of lake shoreline equals two miles of treatment area.

D. An operator's discharge resulting from the application of pesticides is not authorized under this permit in the event of any of the following:

1. The operator is required to obtain an individual VPDES permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation.

2. The discharge would violate the antidegradation policy stated in 9VAC25-260-30 of the Virginia Water Quality Standards. Discharges resulting from the application of pesticides are temporary and allowable in exceptional waters (see 9VAC25-260-30 A 3 (b) (3)).

3. The operator is proposing a discharge from a pesticide application to surface waters that have been identified as impaired by that pesticide or its degradates. Impaired waters include both impaired waters with board-adopted, EPA-approved or EPA-imposed TMDLs, and impaired waters for which a TMDL has not yet been approved, established, or imposed.

If the proposed discharge would not be eligible for coverage under this permit because the surface water is listed as impaired for that specific pesticide, but the applicant has evidence that shows the water is no longer impaired, the applicant may submit this information to the board and request that coverage be allowed under this permit.

E. Discharge authorization date. Operators are not required to submit a registration statement and are authorized to discharge under this permit immediately upon the permit's effective date of January 1, ~~2014~~ 2019.

F. Compliance with this general permit constitutes compliance with the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this ~~general~~ VPDES general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation. For example, this permit does not negate the requirements under FIFRA and its implementing regulations to use registered pesticides consistent with the product's labeling. It also does not negate the requirement to fully comply with applicable state wetland program requirements administered by DEQ and the Virginia Marine Resources Commission.

G. Continuation of permit coverage.

1. This general permit shall expire on December 31, ~~2018~~ 2023, except that the conditions of the expired pesticides general permit will continue in force for an operator until coverage is granted under a reissued pesticides general permit if the board, through no fault of the operator, does not reissue a pesticides general permit on or before the expiration date of the expiring general permit.

2. General permit coverages continued under this section remain fully effective and enforceable.

3. When the operator that was covered under the expiring or expired pesticides general permit is not in compliance with the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the pesticides general permit that has been continued;

b. Issue a notice of intent to deny coverage under a reissued pesticides general permit. If the general permit coverage is denied, the operator would then be required to cease the activities authorized by the continued general permit or be subject to enforcement action for operating without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-800-40. Registration statement.

Operators are not required to submit a registration statement to apply for coverage under this ~~general~~ VPDES general permit for discharges resulting from the application of pesticides to surface waters.

9VAC25-800-50. Termination of permit coverage.

Operators are not required to submit a notice of termination to terminate permit coverage under this ~~general~~ VPDES general permit for discharges resulting from the application of pesticides to surface waters.

9VAC25-800-60. General permit.

Any operator who is authorized to discharge shall comply with the requirements contained ~~herein~~ in this general permit and be subject to all requirements of 9VAC25-31-170.

General Permit No.: VAG87
Effective Date: January 1, ~~2014~~ 2019
Expiration Date: December 31, ~~2018~~ 2023

GENERAL PERMIT FOR DISCHARGES RESULTING FROM THE APPLICATION OF PESTICIDES TO SURFACE WATERS OF VIRGINIA

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act (33 USC § 1251 et seq.), as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, operators that apply pesticides that result in a discharge to surface waters are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia.

The authorized discharge shall be in accordance with this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, and Part II-Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this general permit. Coverage under this ~~general~~ VPDES general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation, including the pesticide product label.

Part I
Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations.

1. Technology-based effluent limitations. To meet the effluent limitations in this permit, the operator shall implement pest management measures that minimize discharges of pesticides to surface waters.

a. Minimize pesticide discharges to surface waters. All operators who perform the application of pesticides or who have day-to-day control of applications shall minimize the discharge of pollutants resulting from the application of pesticides, and:

(1) Use the lowest effective amount of pesticide product per application and optimum frequency of pesticide applications necessary to control the target pest, consistent with reducing the potential for development of pest resistance without exceeding the maximum allowable rate of the product label;

(2) No person shall apply, dispense, or use any pesticide in or through any equipment or application apparatus unless the equipment or apparatus is in sound mechanical condition and capable of satisfactory operation. All pesticide application equipment shall be properly equipped to dispense the proper amount of material. All pesticide mixing, storage, or holding tanks, whether on application equipment or not, shall be leak proof. All spray distribution systems shall be leak proof, and any pumps that these systems may have shall be capable of operating at sufficient pressure to assure a uniform and adequate rate of pesticide application;

(3) All pesticide application equipment shall be equipped with cut-off valves and discharge orifices to enable the operator to pass over nontarget areas without contaminating them. All hoses, pumps, or other equipment used to fill pesticide handling, storage, or application equipment shall be fitted with an effective valve or device to prevent backflow into water supply systems, streams, lakes, other sources of water, or other materials. However, these backflow devices or valves are

not required for separate water storage tanks used to fill pesticide application equipment by gravity systems when the fill spout, tube, or pipe is not allowed to contact or fall below the water level of the application equipment being filled, and no other possible means of establishing a back siphon or backflow exists; and

(4) Assess weather conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to ensure application is consistent with product label requirements.

b. Integrated pest management (IPM) practices. The operator with control over the financing for or the decision to perform pesticide applications that result in discharges, including the ability to modify those decisions, shall to the extent practicable consider integrated pest management practices to ensure that discharges resulting from the application of pesticides to surface waters are minimized. Operators that exceed the annual treatment area thresholds established in 9VAC25-800-30 C are also required to maintain a pesticide discharge management plan (PDMP) in accordance with Part I C of this permit. The PDMP documents the operator's IPM practices.

The operator's IPM practices shall consider the following for each pesticide use pattern:

(Note: If the operator's discharge of pollutants results from the application of a pesticide that is being used solely for the purpose of "pesticide research and development," as defined in 9VAC25-800-10, the operator is only required to fully implement IPM practices to the extent that the requirements do not compromise the research design.)

(1) Mosquito and other flying insect pest control. This subpart applies to discharges resulting from the application of pesticides to control public ~~health/nuisance~~ health, nuisance and other flying insect pests that develop or are present during a portion of their life cycle in or above standing or flowing water.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish densities for pest populations or identify environmental conditions, either current or based on historical data, to serve as action thresholds for implementing pest management measures;

(iii) Identify known breeding sites for source reduction, larval control program, and habitat management;

(iv) Analyze existing surveillance data to identify new or unidentified sources of pest problems as well as sites that have recurring pest problems; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 b (1) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control mosquitoes or other flying insect pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage mosquitoes or flying insect pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct larval or adult surveillance in an area that is representative of the pest problem or evaluate existing larval surveillance data, environmental conditions, or data from adjacent areas prior to each pesticide application to assess the pest management area and to determine when the action threshold is met;

(ii) Reduce the impact on the environment and on nontarget organisms by applying the pesticide only when the action threshold has been met;

(iii) In situations or locations where practicable and feasible for efficacious control, use larvicides as a preferred pesticide for mosquito or flying insect pest control when larval action thresholds have been met; and

(iv) In situations or locations where larvicide use is not practicable or feasible for efficacious control, use adulticides for mosquito or flying insect pest control when adult action thresholds have been met.

(2) Weed and algae pest control. This subpart applies to discharges resulting from the application of pesticides to control weeds, algae, and pathogens that are pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the pest problem (e.g., nutrients, invasive species, etc.);

(iv) Establish past or present pest densities to serve as action thresholds for implementing pest management strategies; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 b (2) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement, for each pest management area, efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance in an area that is representative of the pest problem prior to each pesticide application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by applying the pesticide only when the action threshold has been met.

(3) Animal pest control. This subpart applies to discharges resulting from the application of pesticides to control animal pests in surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Identify areas with pest problems and characterize the extent of the problems, including, for example, water use goals not attained (e.g., wildlife habitat, fisheries, vegetation, and recreation);

(iii) Identify possible factors causing or contributing to the problem (e.g., nutrients and invasive species);

(iv) Establish past or present pest densities to serve as action thresholds for implementing pest management strategies; and

(v) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 b (3) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each year thereafter prior to the first pesticide application during that calendar year, the operator shall select and implement, for each pest management area, efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control animal pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Biological control; and

(v) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage animal pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the action threshold is met that necessitates the need for pest management; and

(ii) Reduce the impact on the environment and nontarget organisms by evaluating site restrictions, application timing, and application method in addition to applying the pesticide only when the action threshold has been met.

(4) Forest canopy pest control. This subpart applies to discharges resulting from the application of pesticides to the forest canopy to control the population of a pest species where, to target the pests effectively, a portion of the pesticide unavoidably will be applied over and deposited to surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish target pest densities to serve as action thresholds for implementing pest management measures;

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of pest management measures; and

(iv) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 (b) (4) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to control forestry pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage forestry pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

(5) Intrusive vegetation pest control. This subpart applies to discharges resulting from the application of pesticides along roads, ditches, canals, waterways, and utility rights of way where, to target the intrusive pests effectively, a portion of the pesticide will unavoidably be applied over and deposited to surface waters.

(a) Identify the problem. Prior to the first pesticide application covered under this permit that will result in a discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application in that calendar year, the operator shall consider the following for each pest management area:

(i) Identify target pests;

(ii) Establish target pest densities to serve as action thresholds for implementing pest management measures;

(iii) Identify current distribution of the target pest and assess potential distribution in the absence of pest management measures; and

(iv) In the event there are no data for the pest management area in the past calendar year, use other available data as appropriate to meet the conditions in ~~subdivision~~ Part I A 1 (b) (5) (a) ~~above~~.

(b) Pest management options. Prior to the first pesticide application covered under this permit that will result in a

discharge to surface waters, and at least once each calendar year thereafter prior to the first pesticide application for that calendar year, the operator shall select and implement for each pest management area efficient and effective pest management measures that minimize discharges resulting from application of pesticides to intrusive vegetation pests. In developing these pest management measures, the operator shall evaluate the following management options, including a combination of these options, considering impact to water quality, impact to nontarget organisms, pest resistance, feasibility, and cost effectiveness:

(i) No action;

(ii) Prevention;

(iii) Mechanical or physical methods;

(iv) Cultural methods;

(v) Biological control; and

(vi) Pesticides.

(c) Pesticide use. If a pesticide is selected to manage intrusive vegetation pests and application of the pesticide will result in a discharge to surface waters, the operator shall:

(i) Conduct surveillance prior to each application to assess the pest management area and to determine when the pest action threshold is met that necessitates the need for pest management;

(ii) Assess environmental conditions (e.g., temperature, precipitation, and wind speed) in the treatment area to identify conditions that support target pest development and are conducive for treatment activities;

(iii) Reduce the impact on the environment and nontarget organisms by evaluating the restrictions, application timing, and application methods in addition to applying the pesticide only when the action thresholds have been met; and

(iv) Evaluate using pesticides against the most susceptible developmental stage.

2. Water quality-based effluent limitations. The operator's discharge of pollutants must be controlled as necessary to meet applicable numeric and narrative water quality standards for any discharges authorized under this permit, with compliance required upon beginning such discharge.

If at any time the operator become aware, or the board determines, that the operator's discharge of pollutants causes or contributes to an excursion of applicable water quality standards, corrective action must be taken as required in Part I D 1 of this permit.

B. Monitoring requirements.

All operators covered under this permit must conduct a visual monitoring assessment (i.e., spot checks in the area to and around where pesticides are applied) for possible and observable adverse incidents caused by application of pesticides, including ~~but not limited to~~ the unanticipated death or distress of nontarget organisms and disruption of wildlife habitat, recreational, or municipal water use.

A visual monitoring assessment is only required during the pesticide application when feasibility and safety allow. For example, visual monitoring assessment is not required during the course of treatment when that treatment is performed in darkness as it would be infeasible to note adverse effects under these circumstances. Visual monitoring assessments of the application site must be performed:

1. During any post-application surveillance or efficacy check that the operator conducts, if surveillance or an efficacy check is conducted.

2. During any pesticide application, when considerations for safety and feasibility allow.

C. Pesticide discharge management plan (PDMP). Any operator applying pesticides and exceeding the annual application thresholds established in 9VAC25-800-30 C must prepare a PDMP for the pest management area. The plan must be kept up-to-date thereafter for the duration of coverage under this general permit, even if discharges subsequently fall below the annual application threshold levels. The operator applying pesticides shall develop a PDMP consistent with the deadline outlined in Table I-1 below.

Table I-1. Pesticide Discharge Management Plan Deadline

Category	PDMP Deadline
Operators who know prior to commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to first pesticide application covered under this permit.
Operators who do not know until after commencement of discharge that they will exceed an annual treatment area threshold identified in 9VAC25-800-30 C for that year.	Prior to exceeding an annual treatment area threshold.
Operators commencing discharge in response to a declared pest emergency situation as defined in 9VAC25-800-10 that will cause the operator to exceed an annual treatment area threshold.	No later than 90 days after responding to declared pest emergency situation.

The PDMP does not contain effluent limitations; the limitations are contained in Parts I A 1 and I A 2 of the permit. The PDMP documents how the operator will implement the effluent limitations in Parts I A 1 and I A 2 of the permit, including the evaluation and selection of pest management measures to meet those effluent limitations and minimize discharges. In the PDMP, the operator may incorporate by reference any procedures or plans in other documents that meet the requirements of this permit. If other documents are being relied upon by the operator to describe how compliance with the effluent limitations in this permit will be achieved, such as a pre-existing integrated pest management (IPM) plan, a copy of the portions of any documents that are being used to document the implementation of the effluent limitations shall be attached to the PDMP. The pest management measures implemented must be documented and the documentation must be kept up to date.

1. Contents of the pesticide discharge management plan. The PDMP must include the following elements:

a. Pesticide discharge management team;

b. Problem identification;

c. Pest management options evaluation;

d. Response procedures:

(1) Spill response procedures;

(2) Adverse incident response procedures; and

e. Signature requirements.

2. PDMP team. The operator shall identify all the persons (by name and contact information) who compose the team as well as each person's individual responsibilities, including:

a. Persons responsible for managing pests in relation to the pest management area;

b. Persons responsible for developing and revising the PDMP; and

c. Persons responsible for developing, revising, and implementing corrective actions and other effluent limitation requirements.

3. Problem identification. The operator shall document the following:

a. Pest problem description. Describe the pest problem at the pest management area, including identification of the target pests, sources of the pest problem, and sources of data used to identify the problem in ~~Parts~~ Part I A 1 b (1)~~, I A 1 b (2), I A 1 b (3), I A 1 b (4) and I A 1~~ through b (5).

b. Action thresholds. Describe the action thresholds for the pest management area, including how they were determined.

c. General location map. Include a general location map that identifies the geographic boundaries of the area to which the plan applies and location of major surface waters.

4. Integrated pest management options evaluation. Operators shall document the evaluation of the pest management options, including a combination of the pest management options, to control the target pests. Pest management options include the following: no action, prevention, ~~mechanical/physical~~ mechanical or physical methods, cultural methods, biological control agents, and pesticides. In the evaluation, decision makers shall consider the impact to water quality, impact to nontarget organisms, feasibility, cost effectiveness, and any relevant previous pest management measures.

5. Response procedures. Document the following procedures in the PDMP:

a. Spill response procedures. At a minimum the PDMP must have:

(1) Procedures for expeditiously stopping, containing, and cleaning up leaks, spills, and other releases to surface waters. Employees who may cause, detect, or respond to a spill or leak must be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals should be a member of the PDMP team.

(2) Procedures for notification of appropriate facility personnel, emergency response agencies, and regulatory agencies.

b. Adverse incident response procedures. At a minimum the PDMP must have:

(1) Procedures for responding to any incident resulting from pesticide applications; and

(2) Procedures for notification of the incident, both internal to the operator's agency or organization and external. Contact information for DEQ, nearest emergency medical facility, and nearest hazardous chemical responder must be in locations that are readily accessible and available.

6. PDMP signature requirements.

a. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in Part II G 1 or by a duly authorized representative of that person described in Part II G 2.

b. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

c. Any person signing documents in accordance with ~~subdivision~~ Part I C 6 a ~~above~~ must include the certification from Part II G 4.

7. PDMP modifications and availability.

a. PDMP modifications. The operator shall modify the PDMP whenever necessary to address any of the triggering conditions for corrective action in Part I D 1 a, or when a change in pest control activities significantly changes the type or quantity of pollutants discharged. Changes to the PDMP must be made before the next pesticide application that results in a discharge, if practicable, or if not, as soon as possible thereafter. The revised PDMP must be signed and dated in accordance with Part II G.

The operator shall review the PDMP at a minimum once per calendar year and whenever necessary to update the pest problem identified and pest management strategies evaluated for the pest management area.

b. PDMP availability. The operator shall retain a copy of the current PDMP, along with all supporting maps and documents. The operator shall make the PDMP and supporting information available to the department upon request. The PDMP is subject to the provisions and exclusions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq. of the Code of Virginia).

D. Special conditions.

1. Corrective action.

a. Situations requiring revision of pest management measures. If any of the following situations occur, the operator shall review and, as necessary, revise the evaluation and selection of pest management measures to ensure that the situation is eliminated and will not be repeated in the future:

(1) An unauthorized release or discharge associated with the application of pesticides occurs (e.g., spill, leak, or discharge not authorized by this or another VPDES permit);

(2) The operator becomes aware, or the board concludes, that the pest management measures are not adequate or sufficient for the discharge of pollutants to meet applicable water quality standards;

(3) Any monitoring activities indicate that the operator failed to meet the technology-based effluent limitations in Part I A 1 a of this permit;

(4) An inspection or evaluation of the operator's activities by DEQ, VDACS, EPA, or a locality reveals that modifications to the pest management measures are necessary to meet the non-numeric effluent limits in this permit; or

(5) The operator observes (e.g., during visual monitoring that is required in Part I B) or is otherwise made aware of an adverse incident.

b. Corrective action deadlines. If the operator determines that changes to the pest management measures are necessary to eliminate any situation identified in Part I D 1 a, such changes must be made before the next pesticide application that results in a discharge if practicable, or if not, as soon as possible thereafter.

2. Adverse incident documentation and reporting.

a. Twenty-four-hour adverse incident notification. If the operator observes or is otherwise made aware of an adverse incident that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the department (see Part I D 5). This notification must be made within 24 hours of when the operator becomes aware of the adverse incident and must include at least the following information:

(1) The caller's name and telephone number;

(2) Operator's name and mailing address;

(3) The name and telephone number of a contact person if different than the person providing the 24-hour notice;

(4) How and when the operator became aware of the adverse incident;

(5) Description of the location of the adverse incident;

(6) Description of the adverse incident identified and the EPA pesticide registration number for each product that was applied in the area of the adverse incident; and

(7) Description of any steps the operator has taken or will take to correct, repair, remedy, cleanup, or otherwise address any adverse effects.

If the operator is unable to notify the department within 24 hours, notification shall be made as soon as possible and the rationale for why the notification was not possible within 24 hours shall be provided.

The adverse incident notification and reporting requirements are in addition to what the registrant is required to submit under FIFRA § 6(a)(2) and its implementing regulations at 40 CFR Part 159.

b. Reporting of adverse incidents is not required under this permit in the following situations:

(1) The operator is aware of facts that clearly establish that the adverse incident was not related to toxic effects or exposure from the pesticide application.

(2) The operator has been notified in writing by the board that the reporting requirement has been waived for this incident or category of incidents.

(3) The operator receives notification of a potential adverse incident but that notification and supporting information are clearly erroneous.

(4) An adverse incident occurs to pests that are similar in kind to pests identified as potential targets.

c. Five-day adverse incident written report. Within five days of a reportable adverse incident pursuant to Part I D 2 a, the operator shall provide a written report of the adverse incident to the appropriate DEQ regional office at the address listed in Part I D 5. The adverse incident report must include at least the following information:

(1) Information required to be provided in Part I D 2 a;

(2) Date and time the operator contacted DEQ notifying the department of the adverse incident, and with whom the operator spoke at DEQ, and any instructions the operator received from DEQ;

(3) Location of incident, including the names of any waters affected and appearance of those waters (sheen, color, clarity, etc.);

(4) A description of the circumstances of the adverse incident including species affected, estimated number of individuals, and approximate size of dead or distressed organisms;

(5) Magnitude and scope of the affected area (e.g., aquatic square area or total stream distance affected);

(6) Pesticide application rate, intended use site, method of application, and name of pesticide product, description of pesticide ingredients, and EPA registration number;

(7) Description of the habitat and the circumstances under which the adverse incident occurred (including any available ambient water data for pesticides applied);

(8) If laboratory tests were performed, indicate what tests were performed, and when, and provide a summary of the test results within five days after they become available;

(9) If applicable, explain why it is believed the adverse incident could not have been caused by exposure to the pesticide;

(10) Actions to be taken to prevent recurrence of adverse incidents; and

(11) Signed and dated in accordance with Part II G.

The operator shall report adverse incidents even for those instances when the pesticide labeling states that adverse effects may occur.

d. Adverse incident to threatened or endangered species or critical habitat.

(1) Notwithstanding any of the other adverse incident notification requirements of this section, if the operator becomes aware of an adverse incident to threatened or endangered species or critical habitat that may have resulted from a discharge from the operator's pesticide application, the operator shall immediately notify the:

(a) National Marine Fisheries Service (NMFS) and the Virginia Department of Game and Inland Fisheries (DGIF) in the case of an anadromous or marine species;

(b) U.S. Fish and Wildlife Service (FWS) and the DGIF in the case of an animal or invertebrate species; or

(c) FWS and the Virginia Department of Agriculture and Consumer Services in the case of plants or insects.

(2) Threatened or endangered species or critical habitats include the following:

(a) Federally listed threatened or endangered species;

(b) Federally designated critical habitat;

(c) State-listed threatened or endangered species; and

(d) Tier I (critical conservation need)~~,~~ or Tier II (very high conservation need) species of greatest conservation need (SGCN) as defined in Virginia's Wildlife Action Plan (www.bewildvirginia.org).

(3) This notification must be made by telephone immediately upon the operator becoming aware of the adverse incident and must include at least the following information:

(a) The caller's name and telephone number;

(b) Operator's name and mailing address;

(c) The name of the affected species, size of area impacted, and if applicable, the approximate number of animals affected;

(d) How and when the operator became aware of the adverse incident;

(e) Description of the location of the adverse incident;

(f) Description of the adverse incident, including the EPA pesticide registration number for each product the operator applied in the area of the adverse incident;

(g) Description of any steps the operator has taken or will take to alleviate the adverse impact to the species; and

(h) Date and time of application. Additional information on federally listed threatened or endangered species and

federally designated critical habitat is available from NMFS (www.nmfs.noaa.gov) for anadromous or marine species or FWS (www.fws.gov) for terrestrial or freshwater species. Additional information on state-listed threatened or endangered wildlife species is available through the Virginia Fish and Wildlife Information Service (www.dgif.virginia.gov). Listing of state threatened or endangered plants and insects can be found in §§ 3.2-1000 through 3.2-1011 of the Code of Virginia and 2VAC5-320-10 of the Virginia Administrative Code (both the Code of Virginia and the Virginia Administrative Code must be referenced in order to obtain the complete plant and insect list). (Contact information for these agencies can be found on the contact information form or through the DEQ website.)

3. Reportable spills and leaks.

a. Spill, leak, or other unauthorized discharge notification. Where a leak, spill, or other release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 117, or 302 occurs in any 24-hour period, the operator shall notify the department (see Part I D 2) as soon as the operator has knowledge of the release. Department contact information must be kept in locations that are readily accessible and available in the area where a spill, leak, or other unpermitted discharge may occur.

b. Five-day spill, leak, or other unauthorized discharge report. Within five days of the operator becoming aware of a spill, leak, or other unauthorized discharge triggering the notification in subdivision 3 of this subsection, the operator shall submit a written report to the appropriate DEQ regional office at the address listed in Part I D 5. The report shall contain the following information:

(1) A description of the nature and location of the spill, leak, or discharge;

(2) The cause of the spill, leak, or discharge;

(3) The date on which the spill, leak, or discharge occurred;

(4) The length of time that the spill, leak, or discharge continued;

(5) The volume of the spill, leak, or discharge;

(6) If the discharge is continuing, how long it is expected to continue and what the expected total volume of the discharge will be;

(7) A summary of corrective action taken or to be taken including date initiated and date completed or expected to be completed; and

(8) Any steps planned or taken to prevent recurrence of such a spill, leak, or other discharge, including notice of whether PDMP modifications are required as a result of the spill or leak.

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

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

4. Recordkeeping and annual reporting. The operator shall keep records as required in this permit. These records must be accurate, complete, and sufficient to demonstrate compliance with the conditions of this permit. The operator can rely on records and documents developed for other obligations, such as requirements under FIFRA and state or local pesticide programs, provided all requirements of this permit are satisfied. The board recommends that all operators covered under this permit keep records of acres or linear miles treated for all applicable use patterns covered under this general permit.

a. All operators must keep the following records:

(1) A copy of any adverse incident reports (see Part I D 2 c).

(2) The operator's rationale for any determination that reporting of an identified adverse incident is not required consistent with allowances identified in Part I D 2 b.

b. Any operator performing the application of a pesticide or who has day-to-day control of the application and exceeding the annual application thresholds established in 9VAC25-800-30 C must also maintain a record of each pesticide applied. This shall apply to both general use and restricted use pesticides. Each record shall contain the:

(1) Name, address, and telephone number of customer and address or location, if different, of site of application;

(2) Name and VDACS certification number of the person making the application or certification number of the supervising certified applicator;

(3) Day, month, and year of application;

(4) Type of plants, crop, animals, or sites treated and principal pests to be controlled;

(5) Acreage, area, or number of plants or animals treated;

(6) Brand name or common product name;

(7) EPA registration number;

(8) Amount of pesticide concentrate and amount of diluting used, by weight or volume, in mixture applied; and

(9) Type of application equipment used.

c. All required records must be assembled as soon as possible but no later than 30 days following completion of such activity. The operator shall retain any records required under this permit for at least three years from the date of the pesticide application. The operator shall make available to the board, including an authorized representative of the board, all records kept under this permit upon request and provide copies of such records, upon request.

d. Annual reporting.

(1) Any operator applying pesticides that reports an adverse incident as described in Part I D 2 must submit an annual report to the department no later than February 10 of the following year (and retain a copy for the operator's records).

(2) The annual report must contain the following information:

(a) Operator's name;

(b) Contact person name, title, email address (where available), and phone number;

(c) A summary report of all adverse incidents that occurred during the previous calendar year; and

(d) A summary of any corrective actions, including spill responses, in response to adverse incidents, and the rationale for such actions.

5. DEQ contact information and mailing addresses.

a. All incident reports under Part I D 2 must be sent to the appropriate DEQ regional office within five days of the operator becoming aware of the adverse incident.

b. All other written correspondence concerning discharges must be sent to the address of the appropriate DEQ regional office listed in Part I D 5 c.

NOTE: The immediate (within 24-hours) reports required in Part I D 2 may be made to the department's regional office. Reports may be made by telephone, fax, or online (http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx). For reports outside normal working hours, leave a message, and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

c. DEQ regional office addresses.

~~(1) Blue Ridge Regional Office - Lynchburg (BRRO-L)~~

~~7705 Timberlake Road~~

~~Lynchburg, VA 24502~~

~~(434) 582-5120~~

~~(2)~~ (1) Blue Ridge Regional Office ~~- Roanoke (BRRO-R)~~ (BRRO)

3019 Peters Creek Road

Roanoke, VA 24019

(540) 562-6700

~~(3)~~ (2) Northern Virginia Regional Office (NVRO)

13901 Crown Court

Woodbridge, VA 22193

(703) 583-3800

~~(4)~~ (3) Piedmont Regional Office (PRO)

4949-A Cox Road

Glen Allen, VA 23060

(804) 527-5020

~~(5)~~ (4) Southwest Regional Office (SWRO)

355 Deadmore St.

P.O. Box 1688

Abingdon, VA 24212

(276) 676-4800

~~(6)~~ (5) Tidewater Regional Office (TRO)

5636 Southern Blvd.

Virginia Beach, VA 23462

(757) 518-2000

~~(7)~~ (6) Valley Regional Office (VRO)

4411 Early Road

Mailing address: P.O. Box 3000

Harrisonburg, VA 22801

(540) 574-7800

Part II
Conditions Applicable to all VPDES Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

3. The operator shall periodically calibrate and perform maintenance procedures on all monitoring and analytical

instrumentation at intervals that will ensure accuracy of measurements.

B. Records.

1. Records of monitoring information shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and copies of all reports required by this permit for a period of at least three years from the date that coverage under this permit expires. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the department request that the operator submit monitoring results, the following subdivisions would apply.

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

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved, or specified by the department.

3. If the operator monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.

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

D. Duty to provide information. The operator shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating coverage under this permit or to determine compliance with this permit. The board may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from ~~his~~ the permittee's discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The operator shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

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

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

G. Signature requirements.

1. The PDMP, including changes to the PDMP to document any corrective actions taken as required by Part I D 1, and all reports submitted to the department must be signed by a person described in this subsection or by a duly authorized representative of that person described in subdivision 2 of this subsection.

a. For a corporation: by a responsible corporate officer. For the purpose of this subsection, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated activity including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other

comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.;

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

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

2. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in subdivision 1 of this subsection;

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

c. The signed and dated written authorization is included in the PDMP. A copy of this authorization must be submitted to the department if requested.

3. All other changes to the PDMP, and other compliance documentation required under this permit, must be signed and dated by the person preparing the change or documentation.

4. Any person signing documents in accordance with subdivision 1 or 2 of this subsection must include the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information contained therein. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information contained is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

H. Duty to comply. The operator shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action;, for permit coverage termination, ~~revocation and reissuance, or modification;~~ or denial of ~~a~~ permit coverage renewal ~~application~~.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions, even if this permit has not yet been modified to incorporate the requirement.

I. Duty to reapply. ~~1.~~ If the operator wishes to continue an activity regulated by this permit after the expiration date of this permit~~, and the operator does not qualify for automatic permit coverage renewal, the operator shall submit a registration statement at least 30 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing~~ the operator must have coverage under a new permit.

~~2. An operator qualifies for automatic permit coverage renewal and is not required to submit a registration statement if:~~

~~a. The operator information has not changed since this general permit went into effect on October 31, 2011; and~~

~~b. The board has no objection to the automatic permit coverage renewal for this operator based on performance issues or enforcement issues. If the board objects to the automatic renewal, the operator will be notified in writing.~~

~~Any operator that does not qualify for automatic permit coverage renewal shall submit a new registration statement in accordance with Part II I 1.~~

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

K. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the operator from any responsibilities, liabilities, or penalties established pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean Water Act.

Nothing in this permit shall be construed to relieve the operator from civil and criminal penalties for noncompliance.

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

M. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the operator to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of backup or auxiliary facilities or similar systems that are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this permit.

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

O. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

P. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

Q. Inspection and entry. The operator shall allow the director, or an authorized representative (including an authorized contractor acting as a representative of the director), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

R. Permit actions. ~~Permits~~ Permit coverage may be ~~modified, revoked and reissued, or~~ terminated for cause. The filing of a request by the operator for a permit ~~modification, revocation and reissuance,~~ termination~~,~~ or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Transfer of ~~permits~~ permit coverage. Permits are not transferable to any person except after notice to the department. The transfer of permit coverage under this pesticide general permit is not anticipated since coverage is automatic where an operator meets the permit eligibility requirements.

~~Coverage under this permit may be automatically transferred to a new operator if:~~

~~1. The current operator notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property unless permission for a later date has been granted by the board;~~

~~2. The notice includes a written agreement between the existing and new operator's containing a specific date for transfer of permit responsibility, coverage, and liability between them; and~~

~~3. The board does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in subdivision 2 of this subsection.~~

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

VA.R. Doc. No. R17-5142; Filed August 29, 2018, 10:38 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 8 of the Code of Virginia, which exempts general permits issued by the State Water Control Board pursuant to the State Water Control Law (§ 62.1-44.2 et seq.), Chapter 24 (§ 62.1-242 et seq.) of Title 62.1, and Chapter 25 (§ 62.1-254 et seq.) of Title 62.1 of the

Code of Virginia if the board (i) provides a Notice of Intended Regulatory Action in conformance with the provisions of § 2.2-4007.01; (ii) following the passage of 30 days from the publication of the Notice of Intended Regulatory Action, forms a technical advisory committee composed of relevant stakeholders, including potentially affected citizens groups, to assist in the development of the general permit; (iii) provides notice and receives oral and written comment as provided in § 2.2-4007.03; and (iv) conducts at least one public hearing on the proposed general permit.

Title of Regulation: **9VAC25-890. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (amending 9VAC25-890-1 through 9VAC25-890-40; repealing 9VAC25-890-50).**

Statutory Authority: § 62.1-44.15:28 of the Code of Virginia.

Effective Date: November 1, 2018.

Agency Contact: Jaime Bauer, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4416, FAX (804) 698-5106, or email jaime.bauer@deq.virginia.gov.

Small Business Impact Review Report of Findings: This final regulatory action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Summary:

This regulatory action reissues the existing Virginia Pollutant Discharge Elimination System general permit that expires on June 30, 2018. The proposed regulatory action establishes appropriate and necessary permitting requirements for discharges from small municipal separate stormwater systems (MS4s) located within the census urbanized areas to discharge stormwater to waters of the state. The general permit establishes the minimum control measures to reduce the potential discharge of pollutants in municipal stormwater as well as requirements for demonstration of compliance with total maximum daily load (TMDL) wasteload allocations for local watersheds and the Chesapeake Bay. The existing general permit expires on June 30, 2018, and must be reissued to authorize small MS4s to continue to discharge after that date.

Substantive changes to the existing regulation include (i) revising the permit in accordance with the U.S. Environmental Protection Agency's small MS4 federal regulations (Small MS4 Remand Rule) promulgated on January 9, 2017, such as revising registration statement requirements to eliminate submittal of the permittee's MS4 program plan, including more specific best management practices (BMPs) and strategies for implementation as part of the permit, and removing the requirement approval of MS4 program plans and TMDL action plans by the Department of Environmental Quality; (ii) requiring permittees to provide MS4 maps in a geographic information system shapefile format; (iii) streamlining construction site stormwater runoff control and post-construction stormwater management for new development and development on prior developed lands by incorporating existing erosion and sediment control and Virginia Stormwater Management Program regulations by reference; (iv) revising existing and new source load reductions to be implemented during the permit term for those permittees discharging to the Chesapeake Bay watershed in accordance with the Chesapeake Bay TMDL and Watershed Implementation Plans; (v) adding a requirement that local TMDL action plans be made available for public review; (iv) providing appropriate controls to prevent nonstormwater discharges to an MS4; (vii) specifying an alternative inspection frequency requirement for permittee owned BMPs; and (viii) defining maintenance and inspection requirements to include a specific frequency of no less than once per year.

9VAC25-890-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia~~, this chapter,~~ and 9VAC25-870 unless the context clearly indicates otherwise, except that for the purposes of this chapter:

"Date brought [~~on line"~~ online"] means the date when the ~~operator~~ permittee determines that a new stormwater management facility is properly functioning ~~to meet its designed pollutant load reduction~~.

~~"MS4 Program Plan" means the completed registration statement and all approved additions, changes and modifications detailing the comprehensive program implemented by the operator under this state permit to reduce the pollutants in the stormwater discharged from its municipal separate storm sewer system (MS4) that has been submitted and accepted by the department.~~

~~"Operator" means the MS4 operator that has been issued coverage under the General Permit for Discharges of Stormwater from small municipal separate storm sewer systems.~~

"High-priority facilities" means facilities owned or operated by the permittee that actively [~~engaged~~ engage] in [one or more of] the following activities: (i) composting [~~facilities~~], (ii) equipment storage and maintenance [~~facilities~~], (iii) materials storage [~~yards~~], (iv) pesticide storage [~~facilities~~], (v) [storage for] public works [~~yards~~], (vi) recycling [~~facilities~~], (vii) salt storage [~~facilities~~], (viii) solid waste handling and transfer [~~facilities~~], and (ix) vehicle storage and maintenance [~~yards~~].

"MS4 regulated service area" or "service area" means for Phase II permittees, the drainage area served by the permittee's MS4 that is located within an urbanized area as determined by the 2010 decennial census performed by the Bureau of the Census. MS4 regulated service area may also be referred to as "served by the MS4" as it pertains to the tables in Part II A of this permit.

"Physically interconnected" means that one MS4 is connected to a second MS4 in such a manner that it allows for direct discharges to the second system.

"Pollutants of concern" or "POC" means pollutants specifically identified in a U.S. Environmental Protection Agency approved total maximum daily load (TMDL) report as causing a water quality impairment.

9VAC25-890-10. Purpose; delegation of authority; effective date of the state permit.

A. This general permit regulation governs point source stormwater discharges from regulated small municipal separate storm sewer systems (small MS4s) to surface waters of the Commonwealth of Virginia. Nonmunicipal stormwater or wastewater discharges are not authorized by this permit except in accordance with 9VAC25-890-20 [~~C~~ D].

B. This general permit will become effective on [~~July 1, 2013~~ November 1,] 2018 and will expire ~~five years from the effective date~~ [~~June 30~~ October 31,] 2023.

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

9VAC25-890-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the ~~United States~~ U.S. Environmental Protection Agency set forth in ~~the Code of Federal Regulations~~ Title 40 CFR is referenced and incorporated ~~herein~~ in this chapter, that regulation shall be as it exists and has been published in the July 1, ~~2012~~ 2017, update. [The final rule published in the Federal Register on August 28, 2017 (82 FR 40836), which amends 40 CFR Part 136, is also incorporated by reference in this chapter.]

9VAC25-890-20. Authorization to discharge.

A. Any operator covered by this general permit is authorized to discharge stormwater from the small ~~MS4~~ municipal separate storm sewer system (MS4) to surface waters of the Commonwealth of Virginia provided that ~~the~~:

1. The operator submits a complete and accurate registration statement in accordance with 9VAC25-890-30 and that registration statement is accepted by the board~~,~~;

2. The operator submits any permit fees required by 9VAC25-870-700 et seq. (Part XIII)~~, and~~;

3. The operator complies with the requirements of 9VAC25-890-40; and

4. The board has not notified the [~~owner~~ operator] that the discharge is ineligible for coverage in accordance with subsection C of this section.

B. The operator is not authorized by this general permit to discharge to surface waters specifically named in other board regulations that prohibit such discharges.

C. The board will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The operator is required to obtain an individual permit in accordance with 9VAC25-870-410 B;

2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges; or

3. The operator fails to implement BMPs [to reduce pollutants] to the [~~MEP~~ maximum extent practicable (MEP)] standard in order to demonstrate progress toward meeting the water quality requirements as listed in 9VAC25-31-220 D 1 a [in accordance with 9VAC25-31-220 K 2].

D. Nonstormwater discharges or flows into the small MS4 are authorized by this state permit and do not need to be addressed in the MS4 ~~Program~~ program required under 9VAC25-890-40~~, Section II B 3,~~ Part I E 3 if:

1. The nonstormwater discharges or flows are covered by a separate individual or general VPDES or state permit for nonstormwater discharges;

2. The individual nonstormwater discharges or flows have been identified ~~in writing~~ by the department as de minimis discharges that are not significant sources of pollutants to surface waters and do not require a separate VPDES permit;

3. The nonstormwater discharges or flows are identified ~~at 9VAC25-870-400 D 2 c (3)~~ in this subdivision D 3 and have not been identified by the operator or by the board as significant contributors of pollutants to the small MS4~~; or~~:

a. [~~Dechlorinated water~~ Water] line flushing [, managed in a manner to avoid an instream impact];

b. Landscape irrigation;

c. Diverted stream flows;

d. Rising groundwaters;

e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);

f. Uncontaminated pumped groundwater;

g. Discharges from potable water sources;

h. Foundation drains;

i. Air conditioning condensation;

j. Irrigation water;

k. Springs;

l. Water from crawl space pumps;

m. Footing drains;

n. Lawn watering;

o. Individual residential car washing;

p. Flows from riparian habitats and wetlands;

q. Dechlorinated swimming pool discharges;

r. Street wash water;

s. Discharges or flows from firefighting activities; [~~or~~]

t. [Discharges from noncommercial fundraising car washes if the washing uses only biodegradable, phosphate-free, water-based cleaners; or

u.] Other activities generating discharges identified by the department as not requiring VPDES authorization.

4. The immediate discharge of materials ~~resulting from a spill~~ is necessary to ~~prevent loss of~~ protect life~~, personal injury,~~ or ~~severe~~ property ~~damage~~ as determined by fire department personnel or emergency management officials or any discharge in accordance with 9VAC25-31-40. The operator shall take, or ensure that the responsible party takes, all reasonable steps to minimize or prevent any adverse effect on human health or the environment. This state permit does not transfer liability for a spill itself from the ~~party(ies)~~ party responsible for the spill to the operator nor relieve the ~~party(ies)~~ party responsible for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302.

~~D.~~ E. In the event the operator is unable to meet certain conditions of this permit due to circumstances beyond the operator's control, the operator shall submit a written explanation of the circumstances that prevented state permit compliance to the department in the annual report. Circumstances beyond the control of the operator include ~~but are not limited to~~ abnormal climatic conditions; weather conditions that make certain requirements unsafe or impracticable; or unavoidable equipment failures caused by weather conditions or other conditions beyond the reasonable control of the operator (operator error is not a condition beyond the control of the operator). The failure to provide adequate program funding, staffing or equipment maintenance shall not be an acceptable explanation for failure to meet state permit conditions. The board will determine, at its sole discretion, whether the reported information will result in an enforcement action.

~~E.~~ F. Discharges that are excluded from ~~obtaining a state permit~~ permitting requirements pursuant to 9VAC25-870-300 are exempted from the regulatory requirements of this state permit.

~~F. Pursuant to 9VAC25-870-400 D 3, for~~ G. For those portions of ~~a~~ the small MS4 engaging in activities that are covered under a separate VPDES permit for discharges associated with industrial ~~stormwater discharges~~ activities, the ~~operator~~ permittee shall follow the conditions established ~~under~~ by the separate VPDES permit.

H. Upon termination of ~~separate VPDES~~ permit coverage for those activities addressed in subsection G of this section, the discharges from the outfalls previously ~~separate VPDES~~ authorized ~~outfalls~~ under the VPDES permit for stormwater discharges associated with industrial activities shall meet the conditions of this state permit provided it has been determined by the board that an individual MS4 permit is not required.

~~G.~~ I. Stormwater discharges from specific MS4 ~~operator~~ permittee activities that have been granted conditional exclusion for "no exposure" of industrial activities and materials to stormwater under the separate VPDES permitting program shall comply with this state permit unless a separate VPDES permit is obtained. The department is responsible for determining compliance with the conditional exclusion under the State Water Control Law and attendant regulations.

~~H.~~ J. Receipt of this general permit does not relieve any ~~operator~~ permittee of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

~~I.~~ K. Continuation of permit coverage.

1. Any ~~operator~~ permittee that was authorized to discharge under the state permit ~~issued in 2008~~ effective July 1, 2013, and that submits a complete registration statement ~~in accordance with Section III M of 9VAC25-890-40~~ on or before June 1, 2018, is authorized to continue to discharge under the terms of the ~~2008~~ July 1, 2013, state permit until such time as the board either:

~~1.~~ a. Issues coverage to the ~~operator~~ permittee under this state permit; or

~~2.~~ b. Notifies the ~~operator~~ permittee that the discharge is not eligible for coverage under this state permit.

2. When the permittee is not in compliance with the conditions of the expiring or expired general permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the 2013 general permit;

b. Issue a notice of intent to deny coverage under the new general permit. If coverage under the general permit is denied, the permittee would then be required to cease the

activities authorized by the continued general permit or be subject to enforcement action for operating without a state permit;

c. Issue a new state permit with appropriate conditions; or

d. Take other actions authorized by the VPDES (9VAC25-31) and VSMP (9VAC25-870) regulations.

9VAC25-890-30. ~~State permit application (registration statement)~~ Registration statement.

A. Deadline for submitting a registration statement.

1. Operators of small MS4s ~~designated~~ described under 9VAC25-870-400 B~~,~~ that are applying for initial coverage under this general permit must submit a complete registration statement to the department within 180 days of notice of designation, unless the board grants a later date.

2. In order to continue uninterrupted coverage under the general permit, operators of small MS4s shall submit a new registration statement ~~at least 90 days before the expiration date of the existing state permit~~ no later than June 1, 2018, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

B. ~~Registration statement.~~ The registration statement shall include the following information:

1. The name and location ~~(county or city name)~~ of the small MS4 ~~for which the registration statement is submitted~~;

2. The name~~,~~ of the owner or operator of the small MS4;

3. The mailing address of the owner [~~of~~ or] operator of the small MS4;

4. The type [of small MS4] (city, county, incorporated town, unincorporated town, college or university, local school board, military installation, transportation system, federal or state facility, or other)~~, and address of the operator of the small MS4~~;

5. The name, title, mailing address, telephone number, and email address for the following individuals:

a. The responsible official who meets the criteria established in 9VAC-25-870-370 A 3;

b. The MS4 permit contact; and

c. The annual permit maintenance fee contact [~~,~~ ;]

6. The following [~~outfall~~ receiving waters] information:

~~a. The unique outfall identifier;~~

~~b. The estimated MS4 acreage served;~~

~~c. The name of the receiving surface water to which the outfall discharges;~~

~~d. Whether or not the receiving water is listed as impaired in the Virginia 2014 305(b)/303(d) Water Quality Assessment Integrated Report; and~~

~~e. The name of any applicable TMDL for the segment of the receiving water.~~

a. The names of the receiving surfaces waters to which the MS4 system discharges; [and]

b. Whether or not the receiving waters are listed as impaired in the Virginia 2016 305(b)/303(d) Water Quality Assessment Integrated Report;]

~~3.~~ [~~7. The 6th Order Hydrologic Unit~~] ~~Code(s)~~ [~~Codes as identified in the~~] ~~most recent version of Virginia's 6th Order~~ [~~Virginia National Watershed Boundary Dataset~~] ~~(available on the department website)~~ [~~(version 5, July 2016) currently receiving discharges or that have potential to receive discharges from the small MS4;~~]

~~4.~~ [~~8. The estimated drainage area, in acres, served by the small MS4 directly discharging to any impaired receiving surface waters listed in the~~] ~~2010~~ [~~2014 Virginia 305(b)/303(d) Water Quality Assessment Integrated Report, and a description of the land use for each~~] ~~such~~ [~~drainage area;~~]

~~5. A listing of any TMDL wasteloads allocated to the small MS4. This information may be found on the department website;~~

~~6.~~ [~~9.~~ 7.] The ~~name(s)~~ names of any physically interconnected MS4s to which the small MS4 discharges;

~~7. For operators that had coverage under the previous VSMP General Permit, a copy of the currently implemented MS4 Program Plan. The operator shall continue to implement this plan and any updates as required by this state permit in accordance with Table 1 in 9VAC25-890-40;~~

~~8. For operators applying for initial coverage designated under 9VAC25-890-10 A, a schedule of development of an MS4 Program Plan that includes the following:~~

~~a. A list of best management practices (BMPs) that the operator proposes to implement for each of the stormwater minimum control measures and their associated measurable goals pursuant to 9VAC25-890-40, Section II B, that includes:~~

~~(1) A list of the existing policies, ordinances, schedules, inspection forms, written procedures, and any other documents necessary for best management practice implementation, upon which the operator expects to rely for such implementation; and~~

~~(2) The individuals, departments, divisions, or units responsible for implementing the best management practices;~~

~~b. The objective and expected results of each best management practice in meeting the measurable goals of the stormwater minimum control measures;~~

~~c. The implementation schedule for BMPs including any interim milestones for the implementation of a proposed new best management practice; and~~

~~d. The method that will be utilized to determine the effectiveness of each best management practice and the MS4 Program as a whole;~~

~~9.~~ [~~10.~~ 8.] A list of all existing signed agreements between the operator and any applicable third parties where the operator has entered into an agreement in order to implement minimum control measures or portions of minimum control measures;

~~10. The name, address, telephone number and email address of either the principal executive officer or ranking elected official as defined in 9VAC25-870-370;~~

[~~11.~~ 9.] ~~The name, position title, address, telephone number and email address of any duly authorized representative as defined in 9VAC25-870-370; and~~ For those permittees whose regulated MS4 is located partially or entirely in the Chesapeake Bay watershed, a draft second phase Chesapeake Bay TMDL action plan; and

[~~12.~~ 10.] The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with ~~9VAC25-870-370~~ 9VAC25-890-40 Part III K 4.

D. An operator may file its own registration statement, or the operator and other operators of small MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater minimum control measures will be shared with other municipalities or governmental entities, the registration statement must describe which stormwater minimum control measures the operator will implement and identify the entities that will implement the other stormwater minimum control measures within the area served by the small MS4.

E. ~~Where to submit.~~ The registration statement ~~shall be submitted to the department~~ may be delivered to the DEQ Central Office, Office of VPDES Permits or by electronic mail to an electronic mailbox specified by the department.

9VAC25-890-40. General permit.

Any MS4 operator whose registration statement is accepted by the ~~department~~ board will receive coverage under the following ~~state~~ general permit and shall comply with the requirements ~~therein~~ in this general permit and be subject to [all applicable requirements of] ~~the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia) and~~ [the Virginia Stormwater Management Program (VSMP) Regulations (9VAC25-870) ~~the requirements of 9VAC25-870 and 9VAC25-31~~ and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulations (9VAC25-31)].

General Permit No.: VAR04
Effective Date: [~~July 1,~~ November 1,] ~~2013~~ 2018
Expiration Date: [~~June 30,~~ October 31,] ~~2018~~ 2023

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEMS
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM REGULATIONS, VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM REGULATIONS, AND THE VIRGINIA ~~STORMWATER MANAGEMENT ACT~~ STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended and pursuant to the ~~Virginia Stormwater Management Act~~ State Water Control Law and regulations adopted pursuant thereto, ~~this state permit authorizes~~ [~~operators~~ permittees] of small municipal separate storm sewer systems are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in State Water Control Board regulations which prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with [~~DEQ,~~ the department,] this cover page, ~~Section~~ Part I - Discharge Authorization and Special Conditions, ~~Section II - MS4 Program~~ Part II - TMDL Special Conditions, and ~~Section~~ Part III - Conditions Applicable ~~To~~ to All State and VPDES Permits, as set forth ~~herein~~ in this general permit. ~~The operator shall utilize all legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, specific contract language, order or interjurisdictional agreements.~~

~~For operators of small MS4s that are applying for initial coverage under this general permit, the schedule to develop~~

and implement the MS4 Program Plan shall be submitted with the completed registration statement.

For operators that have previously held MS4 state permit coverage, the operator shall update the MS4 Program Plan in accordance with the following schedule. Until such time as the required updates are completed and implemented, the operator shall continue to implement the MS4 Program consistent with the MS4 Program Plan submitted with the registration statement.

Table 1: Schedule of MS4 Program Plan Updates Required in this Permit

Program Update Requirement	Permit Reference	Update Completed By
Public Education Outreach Plan (Minimum Control Measure 1 – Public Education and Outreach on Stormwater Impacts)	Section II B 1	12 months after permit coverage
Illicit Discharge Procedures – (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination)	Section II B 3	
Individual Residential Lot Special Criteria (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)	Section II B 5 c (1) (d)	
Operator-Owned Stormwater Management Inspection Procedures (Minimum Control Measure 5 – Post-Construction Stormwater Management in New Development and Development on Prior Developed Lands)	Section II B 5	
Identification of Locations Requiring SWPPPs (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 b	
Nutrient Management Plan (NMP) Locations – (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 c (1) (a)	
Training Schedule and Program – (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6	
Updated TMDL Action Plans (TMDLs approved before July of 2008) – (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)	Section I B	24 months after permit coverage
Chesapeake Bay TMDL Action Plan – (Special Condition for Chesapeake Bay TMDL)	Section I C	
Stormwater Management Progressive Compliance and Enforcement – (Minimum Control Measure 4 – Construction Site Stormwater Runoff Control)	Section II B 5	
Daily Good Housekeeping Procedures (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 a	
Other TMDL Action Plans for applicable TMDLs approved between July 2008 and June 2013 – (Special Conditions for Approved Total Maximum Daily Loads (TMDL) Other Than Chesapeake Bay)	Section I B	36 months after permit coverage
Outfall Map Completed – (Minimum Control Measure 3 – Illicit Discharge Detection and Elimination) – Applicable to new boundaries identified as "urbanized" areas in the 2010 Decennial Census	Section II B 3 a (3)	48 months after permit coverage
SWPPP Implementation – (Minimum Control Measure 6 – Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 b (3)	

NMP Implementation - (Minimum Control Measure 6 - Pollution Prevention/Good Housekeeping for Municipal Operations)	Section II B 6 c (1) (b)	60 months after permit coverage
*Updates should be submitted with the appropriate annual report.		

SECTION Part I
DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS Discharge Authorization and Special Conditions

A. Coverage under this state permit. During the period beginning with the date of coverage under this general permit and lasting until the expiration and reissuance of this state permit, the operator permittee is authorized to discharge stormwater and those authorized nonstormwater discharges described in 9VAC25-890-20 [C D] in accordance with this state permit from the small municipal separate storm sewer system identified in the registration statement into surface waters within the boundaries of the Commonwealth of Virginia and consistent with 9VAC25-890-30.

B. Special conditions for approved total maximum daily loads (TMDL) other than the Chesapeake Bay TMDL. An approved TMDL may allocate an applicable wasteload to a small MS4 that identifies a pollutant or pollutants for which additional stormwater controls are necessary for the surface waters to meet water quality standards. The MS4 operator shall address the pollutants in accordance with this special condition where the MS4 has been allocated a wasteload in an approved TMDL.

1. The operator shall maintain an updated MS4 Program Plan that includes a specific TMDL Action Plan for pollutants allocated to the MS4 in approved TMDLs. TMDL Action Plans may be implemented in multiple phases over more than one state permit cycle using the adaptive iterative approach provided adequate progress to reduce the pollutant discharge in a manner consistent with the assumptions and requirements of the specific TMDL wasteload is demonstrated in accordance with subdivision 2 e of this subsection. These TMDL Actions Plans shall identify the best management practices and other interim milestone activities to be implemented during the remaining terms of this state permit.

a. In accordance with Table 1, the operator shall update the MS4 Program Plans to address any new or modified requirements established under this special condition for pollutants identified in TMDL wasteload allocations approved prior to July 9, 2008.

b. In accordance with Table 1, the operator shall update the MS4 Program Plan to incorporate approvable TMDL Action Plans that identify the best management practices and other interim milestone activities that will be implemented during the remaining term of this permit for pollutants identified in TMDL wasteload allocations approved either on or after July 9, 2008, and prior to issuance of this permit.

c. Unless specifically denied in writing by the department, TMDL Action Plans and updates developed in accordance with this section become effective and enforceable 90 days after the date received by the department.

2. The operator shall:

a. Develop and maintain a list of its legal authorities such as ordinances, state and other permits, orders, specific contract language, and interjurisdictional agreements applicable to reducing the pollutant identified in each applicable WLA;

b. Identify and maintain an updated list of all additional management practices, control techniques and system design and engineering methods, beyond those identified in Section II B, that have been implemented as part of the MS4 Program Plan that are applicable to reducing the pollutant identified in the WLA;

c. Enhance its public education and outreach and employee training programs to also promote methods to eliminate and reduce discharges of the pollutants identified in the WLA;

d. Assess all significant sources of pollutant(s) from facilities of concern owned or operated by the MS4 operator that are not covered under a separate VPDES permit and identify all municipal facilities that may be a significant source of the identified pollutant. For the purposes of this assessment, a significant source of pollutant(s) from a facility of concern means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL. (For example, a significant source of pollutant from a facility of concern for a bacteria TMDL would be expected to be greater at a dog park than at other recreational facilities where dogs are prohibited);

e. Develop and implement a method to assess TMDL Action Plans for their effectiveness in reducing the pollutants identified in the WLAs. The evaluation shall use any newly available information, representative and adequate water quality monitoring results, or modeling tools to estimate pollutant reductions for the pollutant or pollutants of concern from implementation of the MS4 Program Plan. Monitoring may include BMP, outfall, or in-stream monitoring, as appropriate, to estimate pollutant reductions. The operator may conduct monitoring, utilize existing data, establish partnerships, or collaborate with other MS4 operators or other third parties, as appropriate. This evaluation shall include assessment of the facilities identified in subdivision 2 d

of this subsection. The methodology used for assessment shall be described in the TMDL Action Plan.

3. Analytical methods for any monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the Environmental Protection Agency (EPA). Where an approved method does not exist, the operator must use a method consistent with the TMDL.

4. The operator is encouraged to participate as a stakeholder in the development of any TMDL implementation plans applicable to their discharge. The operator may incorporate applicable best management practices identified in the TMDL implementation plan in the MS4 Program Plan or may choose to implement BMPs of equivalent design and efficiency provided that the rationale for any substituted BMP is provided and the substituted BMP is consistent with the assumptions and requirements of the TMDL WLA.

5. Annual reporting requirements.

a. The operator shall submit the required TMDL Action Plans with the appropriate annual report and in accordance with the associated schedule identified in this state permit.

b. On an annual basis, the operator shall report on the implementation of the TMDL Action Plans and associated evaluation including the results of any monitoring conducted as part of the evaluation.

6. The operator shall identify the best management practices and other steps that will be implemented during the next state permit term as part of the operator's reapplication for coverage as required under Section III M.

7. For planning purposes, the operator shall include an estimated end date for achieving the applicable wasteload allocations as part of its reapplication package due in accordance with Section III M.

C. Special condition for the Chesapeake Bay TMDL. The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIP) committed to a phased approach for MS4s, affording MS4 operators up to three full five year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of 5.0% of L2 as specified in the 2010 Phase I WIP. Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

1. Definitions. The following definitions apply to this state permit for the purpose of the special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.

"Pollutants of concern" or "POC" means total nitrogen, total phosphorus, and total suspended solids.

"Transitional sources" means regulated land disturbing activities that are temporary in nature and discharge through the MS4.

2. Chesapeake Bay TMDL planning.

a. In accordance with Table 1, the operator shall develop and submit to the department for its review and acceptance an approvable Chesapeake Bay TMDL Action Plan. Unless specifically denied in writing by the department, this plan becomes effective and enforceable 90 days after the date received by the department. The plan shall include:

(1) A review of the current MS4 program implemented as a requirement of this state permit including a review of the existing legal authorities and the operator's ability to ensure compliance with this special condition;

(2) The identification of any new or modified legal authorities such as ordinances, state and other permits, orders, specific contract language, and interjurisdictional agreements implemented or needing to be implemented to meet the requirements of this special condition;

(3) The means and methods that will be utilized to address discharges into the MS4 from new sources;

(4) An estimate of the annual POC loads discharged from the existing sources as of June 30, 2009, based on the 2009 progress run. The operator shall utilize the applicable versions of Tables 2 a-d in this section based on the river basin to which the MS4 discharges by multiplying the total existing acres served by the MS4 on June 30, 2009, and the 2009 Edge of Stream (EOS) loading rate:

Table 2 a: Calculation Sheet for Estimating Existing Source Loads for the James River Basin *Based on Chesapeake Bay Program Watershed Model Phase 5.3.2				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		9.39	
Regulated Urban Pervious			6.99	
Regulated Urban Impervious	Phosphorus		1.76	
Regulated Urban Pervious			0.5	
Regulated Urban Impervious	Total Suspended Solids		676.94	
Regulated Urban Pervious			101.08	

Table 2 b: Calculation Sheet for Estimating Existing Source Loads for the Potomac River Basin *Based on Chesapeake Bay Program Watershed Model Phase 5.3.2				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		16.86	
Regulated Urban Pervious			10.07	
Regulated Urban Impervious	Phosphorus		1.62	
Regulated Urban Pervious			0.41	
Regulated Urban Impervious	Total Suspended Solids		1,171.32	
Regulated Urban Pervious			175.8	

Table 2 c: Calculation Sheet for Estimating Existing Source Loads for the Rappahannock River Basin *Based on Chesapeake Bay Program Watershed Model Phase 5.3.2				
Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		9.38	
Regulated Urban Pervious			5.34	

Regulated Urban Impervious	Phosphorus		1.41	
Regulated Urban Pervious			0.38	
Regulated Urban Impervious	Total Suspended Solids		423.97	
Regulated Urban Pervious			56.01	

Table 2 d: Calculation Sheet for Estimating Existing Source Loads for the York River Basin

*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	2009 EOS Loading Rate (lbs/acre)	Estimated Total POC Load Based on 2009 Progress Run
Regulated Urban Impervious	Nitrogen		7.31	
Regulated Urban Pervious			7.65	
Regulated Urban Impervious	Phosphorus		1.51	
Regulated Urban Pervious			0.51	
Regulated Urban Impervious	Total Suspended Solids		456.68	
Regulated Urban Pervious			72.78	

(5) A determination of the total pollutant load reductions necessary to reduce the annual POC loads from existing sources utilizing the applicable versions of Tables 3 a–d in this section based on the river basin to which the MS4 discharges. This shall be calculated by multiplying the total existing acres served by the MS4 by the first permit cycle required reduction in loading rate. For the purposes of this determination, the operator shall utilize those existing acres identified by the 2000 U.S. Census Bureau urbanized area and served by the MS4.

Table 3 a: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the James River Basin

*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.04	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	

Regulated Urban Impervious	Total Suspended Solids		6.67	
Regulated Urban Pervious			0.44	

Table 3 b: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Potomac River Basin

*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.08	
Regulated Urban Pervious			0.03	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.001	
Regulated Urban Impervious	Total Suspended Solids		11.71	
Regulated Urban Pervious			0.77	

Table 3 c: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the Rappahannock River Basin

*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.04	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	
Regulated Urban Impervious	Total Suspended Solids		4.24	
Regulated Urban Pervious			0.25	

Table 3-d: Calculation Sheet for Determining Total POC Reductions Required During this Permit Cycle for the York River Basin

*Based on Chesapeake Bay Program Watershed Model Phase 5.3.2

Subsource	Pollutant	Total Existing Acres Served by MS4 (6/30/09)	First Permit Cycle Required Reduction in Loading Rate (lbs/acre)	Total Reduction Required First Permit Cycle (lbs)
Regulated Urban Impervious	Nitrogen		0.03	
Regulated Urban Pervious			0.02	
Regulated Urban Impervious	Phosphorus		0.01	
Regulated Urban Pervious			0.002	
Regulated Urban Impervious	Total Suspended Solids		4.60	
Regulated Urban Pervious			0.32	

(6) The means and methods, such as management practices and retrofit programs that will be utilized to meet the required reductions included in subdivision 2 a (5) of this subsection, and a schedule to achieve those reductions. The schedule should include annual benchmarks to demonstrate the ongoing progress in meeting those reductions;

(7) The means and methods to offset the increased loads from new sources initiating construction between July 1, 2009, and June 30, 2014, that disturb one acre or greater as a result of the utilization of an average land cover condition greater than 16% impervious cover for the design of post-development stormwater management facilities. The operator shall utilize Table 4 to develop the equivalent pollutant load for nitrogen and total suspended solids. The operator shall offset 5.0% of the calculated increased load from these new sources during the permit cycle.

(8) The means and methods to offset the increased loads from projects as grandfathered in accordance with 9VAC25-870-48, that disturb one acre or greater that begin construction after July 1, 2014, where the project utilizes an average land cover condition greater than 16% impervious cover in the design of post-development stormwater management facilities. The operator shall utilize Table 4 to develop the equivalent pollutant load for nitrogen and total suspended solids.

(9) The operator shall address any modification to the TMDL or watershed implementation plan that occurs during the term of this state permit as part of its permit reapplication and not during the term of this state permit.

Table 4: Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)	Total Suspended Solids Loading Rate (lbs/acre)
James River Basin	1.0	5.2	420.9
Potomac River Basin	1.0	6.9	469.2
Rappahannock River Basin	1.0	6.7	320.9
York River Basin	1.0	9.5	531.6

(10) A list of future projects and associated acreage that qualify as grandfathered in accordance with 9VAC25-870-48;

(11) An estimate of the expected costs to implement the requirements of this special condition during the state permit cycle; and

(12) An opportunity for receipt and consideration of public comment regarding the draft Chesapeake Bay TMDL Action Plan.

b. As part of development of the Chesapeake Bay TMDL Action Plan, the operator may consider:

(1) Implementation of BMPs on unregulated lands provided any necessary baseline reduction is not included toward meeting the required reduction in this permit;

(2) Utilization of stream restoration projects, provided that the credit applied to the required POC load reduction is prorated based on the ratio of regulated urban acres to total drainage acres upstream of the restored area;

(3) Establishment of a memorandum of understanding (MOU) with other MS4 operators that discharge to the same or adjacent eight digit hydrologic unit within the same basin to implement BMPs collectively. The MOU shall include a mechanism for dividing the POC reductions created by BMP implementation between the cooperative MS4s;

(4) Utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting;

(5) A more stringent average land cover condition based on less than 16% impervious cover for new sources initiating construction between July 1, 2009, and June 30, 2014, and all grandfathered projects where allowed by law; and

(6) Any BMPs installed after June 30, 2009, as part of a retrofit program may be applied towards meeting the required load reductions provided any necessary baseline reductions are not included.

3. Chesapeake Bay TMDL Action Plan implementation. The operator shall implement the TMDL Action Plan according to the schedule therein. Compliance with this requirement represents adequate progress for this state permit term towards achieving TMDL wasteload allocations consistent with the assumptions and requirements of the TMDL. For the purposes of this permit, the implementation of the following represents implementation to the maximum extent practicable and demonstrates adequate progress:

a. Implementation of nutrient management plans in accordance with the schedule identified in the minimum control measure in Section II related to pollution prevention/good housekeeping for municipal operations;

b. Implementation of the minimum control measure in Section II related to construction site stormwater runoff control in accordance with this state permit shall address discharges from transitional sources;

c. Implementation of the means and methods to address discharges from new sources in accordance with the minimum control measure in Section II related to post-construction stormwater management in new development and development of prior developed lands and in order to offset 5.0% of the total increase in POC loads between July 1, 2009, and June 30, 2014. Increases in the POC load from grandfathered projects initiating construction after July 1, 2014, must be offset prior to completion of the project; and

d. Implementation of means and methods sufficient to meet the required reductions of POC loads from existing sources in accordance with the Chesapeake Bay TMDL Action Plan.

4. Annual reporting requirements.

a. In accordance with Table 1, the operator shall submit the Chesapeake Bay Action Plan with the appropriate annual report.

b. Each subsequent annual report shall include a list of control measures implemented during the reporting period and the cumulative progress toward meeting the compliance targets for nitrogen, phosphorus, and total suspended solids.

c. Each subsequent annual report shall include a list of control measures, in an electronic format provided by the department, that were implemented during the reporting cycle and the estimated reduction achieved by the control. For stormwater management controls, the report shall include the information required in Section II B 5 e and shall include whether an existing stormwater management control was retrofitted, and if so, the existing stormwater management control type retrofit used.

d. Each annual report shall include a list of control measures that are expected to be implemented during the next reporting period and the expected progress toward meeting the compliance targets for nitrogen, phosphorus, and total suspended solids.

5. The operator shall include the following as part of its reapplication package due in accordance with Section III M:

a. Documentation that sufficient control measures have been implemented to meet the compliance target identified in this special condition. If temporary credits or offsets have been purchased in order to meet the compliance target, the list of temporary reductions utilized to meet the required reduction in this state permit and a schedule of implementation to ensure the permanent reduction must be provided; and

b. A draft second phase Chesapeake Bay TMDL Action Plan designed to reduce the existing pollutant load as follows:

~~(1) The existing pollutant of concern loads by an additional seven times the required reductions in loading rates using the applicable Table 3 for sources included in the 2000 U.S. Census Bureau urbanized areas;~~

~~(2) The existing pollutant of concerns loads by an additional eight times the required reductions in loading rates using the applicable Table 3 for expanded sources identified in the U.S. Census Bureau 2010 urbanized areas;~~

~~(3) An additional 35% reduction in new sources developed between 2009 and 2014 and for which the land use cover condition was greater than 16%; and~~

~~(4) Accounts for any modifications to the applicable loading rate provided to the operator as a result of TMDL modification.~~

~~SECTION II~~
~~MUNICIPAL SEPARATE STORM SEWER SYSTEM MANAGEMENT PROGRAM~~

~~A.~~ B. The ~~operator of a small MS4 must~~ permittee shall develop, implement, and enforce a MS4 ~~Program~~ program designed to reduce the discharge of pollutants from the small MS4 to the maximum extent practicable (MEP) [in accordance with this permit], to protect water quality, [~~to ensure compliance by the~~] ~~operator~~ [~~permittee with water quality standards,~~] and to satisfy the appropriate water quality requirements of the ~~Clean Water Act~~ State Water Control Law and its attendant regulations. The permittee shall utilize the legal authority provided by the laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4. This legal authority may be a combination of statute, ordinance, permit, policy, specific contract language, order, or interjurisdictional agreements. The MS4 ~~Program must~~ program shall include the minimum control measures (MCM) described in ~~paragraph B of this section~~ Part I E. [~~Implementation~~ For the purposes of this permit term, implementation] of [~~best management practices (BMP)~~ MCMs in Part I E and the Chesapeake Bay and local TMDL requirements in Part II (as applicable)] consistent with the provisions of an iterative MS4 ~~Program~~ program required pursuant to this ~~section~~ general permit constitutes compliance with the standard of reducing pollutants to the "maximum extent practicable," [~~protects water quality in the absence of a TMDL wasteload allocation (WLA), ensures compliance by the~~ provides adequate progress in meeting] ~~operator~~ [~~permittee with~~] water quality standards, and satisfies the appropriate water quality requirements of the [~~Clean Water Act and regulations in the absence of a TMDL WLA. The requirements of this section and those special conditions set out in Section I B Part II also apply where a WLA is applicable~~ State Water Control Law and its attendant regulations].

C. The MS4 program plan.

1. The MS4 program plan shall include, at a minimum, the following [written items]:

a. The roles and responsibilities of each of the permittee's divisions and departments in the implementation of the requirements of the permit tasked with ensuring that the permit requirements are met;

b. If the permittee utilizes another entity to implement portions of the MS4 program, a copy of the written agreement. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary;

c. For each [~~of the~~] MCM in Part I E, the following information shall be included:

(1) Each specific requirement as listed in Part I E for each MCM;

(2) A description of the BMPs [or strategies] that the permittee anticipates will be implemented to demonstrate compliance with the permit conditions in Part I E;

(3) All standard operating procedures or policies necessary to implement the BMPs;

(4) The measurable goal by which each BMP or strategy will be evaluated; and

(5) The persons, positions, or departments responsible for implementing each BMP or strategy; and

d. A list of documents incorporated by reference including the version and date of the document being incorporated.

2. If the permittee is receiving initial coverage under this general VPDES permit for the discharge of stormwater, the permittee shall:

a. No later than six months following the date of permit coverage, submit to the department a schedule for the development of each component of the MS4 program plan in accordance with Part I C 1 that does not exceed the expiration date of this permit; and

b. Provide to the department a copy of the MS4 program plan upon completion of development.

3. If the permittee was previously covered under the General VPDES Permit for the Discharge of Stormwater from MS4 effective July 1, 2013, the permittee shall [update the MS4 program plan to meet the requirements of this permit no later than six months after the effective date of this permit unless otherwise specified in another permit condition and shall] post the most up-to-date version of MS4 program plan on the permittee's [~~stormwater~~] website or location where the [~~small~~] MS4 program plan can be obtained as required by Part I E 2 [within 30 days

of updating the MS4 program plan]. Until such time that the MS4 program plan is updated in accordance with Part I E, the permittee shall continue to implement the MS4 program plan in effect at the time that coverage is issued under this general permit.

4. Revisions to the MS4 program plan are expected throughout the life of this permit as part of the iterative process to reduce pollutant loading and protect water quality to the MEP. As such, revisions made in accordance with this permit as a result of the iterative process do not require modification of this permit. The permittee shall summarize revisions to the MS4 program plan as part of the annual report as described in Part I D 2.

5. The permittee may demonstrate compliance with one or more [~~of the~~] MCM in Part I E through implementation of separate statutory or regulatory programs provided that the permittee's MS4 program identifies and fully describes any program that will be used to satisfy one or more of the minimum control measures of Part I E. If the program that the permittee is using requires the approval of a third party, the program shall be fully approved by the third party, or the permittee shall be working toward getting full approval. Documentation of the program's approval status, or the progress toward achieving full approval, shall be included in the annual report required by Part I D. The permittee shall remain responsible for compliance with the permit requirements if the other entity fails to implement one or more components of the control measures.

6. The permittee may rely on another entity to satisfy the permit requirements to implement a minimum control measure if:

a. The other entity, in fact, implements the control measure;

b. The particular control measure, or component thereof, is at least as stringent as the corresponding permit requirement;

c. The other entity agrees to implement the control measure on behalf of the permittee; and

d. The agreement between the parties is documented in writing and retained by the permittee with the MS4 program plan for as long as the agreement is active.

The permittee shall remain responsible for compliance with requirements of the permit and shall document in the annual reports required in accordance with Part I D that another entity is being relied on to satisfy all or part of the state permit requirements. The permittee shall provide the information required in Part I D.

7. If the permittee relies on another governmental entity regulated under 9VAC25-870-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Part I D, the permittee must note that fact in the registration statement, but is not required to file the periodic reports. The permittee remains responsible for compliance with the state permit requirements if the other entity fails to implement the control measures or components thereof.

D. Annual reporting requirements.

1. The permittee shall submit an annual report to the department no later than October 1 of each year [in a format as specified by the department]. The report shall cover the previous year from July 1 to June 30.

2. The annual report shall include the following general information:

a. The permittee, system name, and permit number;

b. The reporting period for which the annual report is being submitted;

c. A signed certification as per Part III K;

d. Each annual reporting item as specified in [~~the~~ an] MCM in Part I E; and

e. An evaluation of the MS4 program implementation, including a review of each MCM, to determine the MS4 program's effectiveness and whether or not changes to the MS4 program plan are necessary.

3. For permittees receiving initial coverage under this general VPDES permit for the discharge of stormwater, the annual report shall include a status update on each component of the MS4 program plan being developed. Once the MS4 program plan has been updated to include implementation of a specific MCM in Part I E, the permittee shall follow the reporting requirements established in Part I D 2.

4. For those permittees with requirements established under Part II A, the annual report shall include a status report on the implementation of the Chesapeake Bay TMDL action plan in accordance with Part II A of this permit including any revisions to the plan.

5. For those permittees with requirements established under Part II B, the annual report shall include a status report on the implementation of the local TMDL action plans in accordance with Part II B including any revisions to the plan.

6. For the purposes of this permit, the MS4 program plan and annual report shall be maintained separately and submitted to the department as required by this permit as two separate documents.

~~B.~~ E. Minimum control measures.

~~NOTE regarding minimum control measures for public education and outreach on stormwater impacts and public involvement/participation: "Public" is not defined in this~~

~~permit. However, the department concurs with the following EPA statement, which was published in the Federal Register, Volume 64, No. 235, page 68,750 on December 8, 1999, regarding "public" and its applicability to MS4 programs: "EPA acknowledges that federal and state facilities are different from municipalities. EPA believes, however, that the minimum measures are flexible enough that they can be implemented by these facilities. As an example, DOD commentators asked about how to interpret the term "public" for military installations when implementing the public education measure. EPA agrees with the suggested interpretation of "public" for DOD facilities as "the resident and employee population within the fence line of the facility." The department recommends that nontraditional MS4 operators, such as state and federal entities and local school districts, utilize this statement as guidance when determining their applicable "public" for compliance with this permit.~~

1. Public education and outreach ~~on stormwater impacts~~.

a. The ~~operator~~ permittee shall ~~continue to~~ implement ~~the~~ a public education and outreach program ~~as included in the registration statement until the program is updated to meet the conditions of this state permit. Operators who have not previously held MS4 permit coverage shall implement this program in accordance with the schedule provided with the completed registration statement.~~ designed to:

~~b. The public education and outreach program should be designed with consideration of the following goals:~~

(1) ~~Increasing target audience~~ Increase the public's knowledge ~~about the steps that can be taken~~ of how to reduce stormwater pollution, placing priority on reducing impacts to impaired waters and other local water pollution concerns;

(2) ~~Increasing target audience~~ Increase the public's knowledge of hazards associated with illegal discharges and improper disposal of waste, including pertinent legal implications; and

(3) ~~Implementing~~ Implement a diverse program with strategies that are targeted ~~towards audiences~~ toward individuals or groups most likely to have significant stormwater impacts.

~~c.~~ b. The ~~updated program shall be designed to: (1) Identify, at a minimum,~~ permittee shall identify no less than three high-priority ~~water quality~~ stormwater issues~~, that contribute to the discharge of stormwater (e.g.,~~ to meet the goal of educating the public in accordance with Part I E 1 a. High-priority issues may include the following examples: Chesapeake Bay nutrients, pet wastes ~~and~~, local ~~bacteria~~ receiving water impairments, TMDLs, high-quality receiving waters, and illicit discharges from commercial ~~sites) and a rationale for the selection of the three high priority water quality issues;~~ sites.

~~(2) Identify and estimate the population size of the target audience or audiences who is most likely to have significant impacts for each high priority water quality issue;~~

~~(3) Develop relevant message or messages and associated educational and outreach materials (e.g., various media such as printed materials, billboard and mass transit advertisements, signage at select locations, radio advertisements, television advertisements, websites, and social media) for message distribution to the selected target audiences while considering the viewpoints and concerns of the target audiences including minorities, disadvantaged audiences, and minors;~~

~~(4) Provide for public participation during public education and outreach program development;~~

~~(5) Annually conduct sufficient education and outreach activities designed to reach an equivalent 20% of each high priority issue target audience. It shall not be considered noncompliance for failure to reach 20% of the target audience. However, it shall be a compliance issue if insufficient effort is made to annually reach a minimum of 20% of the target audience; and~~

~~(6) Provide for the adjustment of target audiences and messages including educational materials and delivery mechanisms to reach target audiences in order to address any observed weaknesses or shortcomings.~~

c. The high-priority public education and outreach program, as a whole, shall:

(1) Clearly identify the high-priority stormwater issues;

(2) Explain the importance of the high-priority stormwater issues;

(3) Include measures or actions the public can take to minimize the impact of the high-priority stormwater issues; and

(4) Provide a contact [~~name~~] and telephone number [, website,] or location where the public can find out more information.

d. The permittee shall use two or more of the strategies listed in Table 1 below [per year] to communicate to the public the high-priority stormwater issues identified in accordance with Part I E 1 b including how to reduce stormwater pollution.

Table 1 Strategies for Public [~~Outreach and~~] Education [and Outreach]	
Strategies	Examples (provided as examples and are not meant to be all inclusive or limiting)
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides for targeted groups of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, bill boards, or storm drain stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, or newspaper
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or extension classes offered to local citizens
Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organization, or industrial officials

~~d.~~ e. The ~~operator~~ permittee may coordinate ~~their~~ its public education and outreach efforts with other MS4 ~~operators~~ permittees; however, each [~~operator~~ permittee] shall be individually responsible for meeting all of its state permit requirements.

~~e. Prior to application for continued state permit coverage required in Section III M, the operator shall evaluate the education and outreach program for:~~

~~(1) Appropriateness of the high priority stormwater issues;~~

~~(2) Appropriateness of the selected target audiences for each high priority stormwater issue;~~

~~(3) Effectiveness of the message or messages being delivered; and~~

~~(4) Effectiveness of the mechanism or mechanisms of delivery employed in reaching the target audiences.~~

f. The MS4 ~~Program Plan~~ program plan shall ~~describe how the conditions of this permit shall be updated in accordance with Table 1.~~ include:

(1) A list of the high-priority stormwater issues the permittee will communicate to the public as part of the public education and outreach program;

(2) The rationale for selection of each high-priority stormwater issue and an explanation of how each education or outreach strategy is intended to have a positive impact on stormwater discharges;

(3) Identification of the public audience to receive each high-priority stormwater message;

(4) The strategies from Table 1 of Part I E 1 d to be used to communicate each high-priority stormwater message; and

(5) The anticipated time periods the messages will be communicated or made available to the public.

g. The ~~operator~~ annual report shall include the following information ~~in each annual report submitted to the department during this permit term~~:

(1) A list of the ~~education and outreach activities conducted during the reporting period for each high-priority water quality issue, the estimated number of people reached, and an estimated percentage of the target audience or audiences that will be reached~~ high-priority stormwater issues the permittee addressed in the public education and outreach program; and

(2) A list of the ~~education and outreach activities that will be conducted during the next reporting period for each high-priority water quality issue, the estimated number of people that will be reached, and an estimated percentage of the target audience or audiences that will be reached~~ strategies used to communicate each high-priority stormwater issue.

2. Public ~~involvement/participation~~ involvement and participation.

~~a. Public involvement.~~

~~(1) The operator shall comply with any applicable federal, state, and local public notice requirements.~~

~~(2)~~ a. The ~~operator~~ permittee shall develop and implement procedures for the following:

~~(a) Maintain an updated MS4 Program Plan. Any required updates to the MS4 Program Plan shall be completed at a minimum of once a year and shall be updated in conjunction with the annual report. The operator shall post copies of each MS4 program plan on~~

~~its webpage at a minimum of once a year and within 30 days of submittal of the annual report to the department.~~

~~(b) Post copies of each annual report on the operator's webpage within 30 days of submittal to the department and retain copies of annual reports online for the duration of this state permit; and~~

~~(c) Prior to applying for coverage as required by Section III M, notify the public and provide for receipt of comment of the proposed MS4 Program Plan that will be submitted with the registration statement. As part of the reapplication, the operator shall address how it considered the comments received in the development of its MS4 Program Plan. The operator shall give public notice by a method reasonably calculated to give actual notice of the action in question to the persons potentially affected by it, including press releases or any other forum or medium to solicit public participation.~~

(1) The public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns;

(2) The public to provide input on the permittee's MS4 program [plan];

(3) Receiving public input or complaints;

(4) Responding to public input [received on the MS4 program plan] or complaints; and

(5) Maintaining documentation of public input received [on the MS4 program and associated MS4 program plan] and the permittee's response.

b. No later than three months after this permit's effective date, the permittee shall develop and maintain a webpage dedicated to the MS4 program and stormwater pollution prevention. The following information shall be posted on this webpage:

(1) The effective MS4 permit and coverage letter;

(2) The most current MS4 program plan or location where the MS4 program plan can be obtained;

(3) The annual report for each year of the term covered by this permit [no later than 30 days after submittal to the department];

(4) A mechanism for the public to report potential illicit discharges, improper disposal, or spills to the MS4, complaints regarding land disturbing activities, or other potential stormwater pollution concerns in accordance with Part I E 2 a (1); and

(5) Methods for how the public can provide input on the permittee's MS4 program [plan] in accordance with Part I E 2 a (2).

~~b. Public participation. The operator shall participate, through promotion, sponsorship, or other involvement, in a minimum of four local activities annually (e.g., stream cleanups; hazardous waste cleanup days; and meetings with watershed associations, environmental advisory committees, and other environmental organizations that operate within proximity to the operator's small MS4). The activities shall be aimed at increasing public participation to reduce stormwater pollutant loads; improve water quality; and support local restoration and clean up projects, programs, groups, meetings, or other opportunities for public involvement.~~

c. The permittee shall implement no less than four activities per year from two or more of the categories listed in Table 2 below to provide an opportunity for public involvement to improve water quality and support local restoration and clean-up projects.

Table 2
Public Involvement Opportunities

Public involvement opportunities	Examples (provided as example and are not meant to be all inclusive or limiting)
Monitoring	Establish or support citizen monitoring group
Restoration	Stream or watershed clean-up day, adopt-a-water way program,
Educational events	Booth at community fair, demonstration of stormwater control projects, presentation of stormwater materials to schools to meet applicable education Standards of Learning or curriculum requirements, watershed walks, participation on environmental advisory committees
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of residential stormwater BMPs, implement pet waste stations in public areas, adopt-a-street program.

d. The permittee may coordinate the public involvement opportunities listed in Table 2 with other MS4 permittees; however, each permittee shall be individually responsible for meeting all of the permit requirements.

~~c.~~ e. The MS4 ~~Program Plan~~ program plan shall include ~~written procedures for implementing this program.~~:

(1) The webpage address where mechanisms for the public to report (i) potential illicit discharges, improper disposal, or spills to the MS4, (ii) complaints regarding land disturbing activities, or (iii) other potential stormwater pollution concerns;

(2) The webpage address that contains the methods for how the public can provide input on the permittee's MS4 program; and

(3) A description of the public involvement activities to be implemented by the permittee, the anticipated time period the activities will occur, and a metric for each activity to determine if the activity is beneficial to water quality. An example of metrics may include the weight of trash collected from a stream cleanup, the number of participants in a hazardous waste collection event, etc.

~~d. Each~~ f. The annual report shall include the following information:

(1) A ~~web link to the MS4 Program Plan and annual report; and~~ summary of any public input on the MS4 program received [(including stormwater complaints)] and how the permittee responded;

(2) ~~Documentation of compliance with the public participation requirements of this section.~~ A webpage [~~link~~ address] to the permittee's MS4 program and stormwater website;

(3) A description of the public involvement activities implemented by the permittee;

(4) A report of the metric as defined for each activity and an evaluation as to whether or not the activity is beneficial to improving water quality; and

(5) The name of other MS4 permittees [~~who participated~~ with whom the permittee collaborated] in the public involvement opportunities.

3. Illicit discharge detection and elimination.

a. The ~~operator~~ permittee shall develop and maintain an accurate ~~storm sewer system~~ MS4 map and information table ~~and shall update it in accordance with the schedule set out in Table 1.~~ as follows:

(1) ~~The storm sewer system map must show the following~~ A map of the storm sewer system owned or operated by the permittee within the [~~Census Urbanized Area~~ census urbanized area] identified by the 2010 decennial census that includes, at a minimum:

(a) ~~The location of all MS4 outfalls.~~ MS4 outfalls discharging to surface waters, except as follows:

(i) In cases where the outfall is located outside of the MS4 ~~operator's~~ permittee's legal responsibility, the ~~operator~~ permittee may elect to map the known point of discharge location closest to the actual [outfall]~~. Each mapped outfall must be given a unique identifier, which must be noted on the map~~; and

(ii) In cases where the MS4 outfall discharges to receiving water channelized underground, the permittee may elect to map the point downstream at which the receiving water emerges above ground as [~~a point of~~ an outfall] discharge [location]. If there are multiple outfalls discharging to an underground channelized receiving water, the map shall identify that [~~the a point of~~ an outfall] discharge [location] represents more than one outfall. [This is an option a permittee may choose to use and recognizes the difficulties in accessing outfalls to underground channelized stream conveyances for purposes of mapping, screening, or monitoring.]

(b) A unique identifier for each mapped item required in Part I E 3; [~~and~~]

(c) The name and location of ~~all~~ receiving waters ~~receiving discharges from the MS4 outfalls and the associated HUC~~ to which the MS4 outfall or point of discharge discharges [~~.~~;

(d) MS4 regulated service area; and

(e) stormwater management facilities owned or operated by the permittee.]

(2) The ~~associated information table shall include for each outfall the following:~~ permittee shall maintain an information table associated with the storm sewer system map that includes the following information for each outfall or point of discharge for those cases in which the permittee elects to map the known point of discharge in accordance with Part I E 3 a (1) (a):

(a) ~~The~~ A unique identifier as specified on the storm sewer system map;

(b) The latitude and longitude of the outfall or point of discharge;

(c) The estimated ~~MS4 acreage served;~~ regulated acreage draining to the outfall or point of discharge;

~~(c)~~ (d) The name of the receiving ~~surface~~ water ~~and~~;

(e) The 6th Order Hydrologic Unit Code of the receiving water;

(f) An indication as to whether the receiving water is listed as impaired in the Virginia ~~2010 303(d)/305(b)~~ [~~2014~~ 2016] 305(b)/303(d) Water Quality Assessment Integrated Report; [~~and~~

(g) The predominant land use for each outfall discharging to an impaired water; and]

~~(d)~~ [~~(g)~~ (h)] The name of any ~~applicable TMDL or~~ EPA approved TMDLs for which the permittee is assigned a wasteload allocation.

~~(3) Within 48 months of coverage under this state permit, the operator shall have a complete and updated storm sewer system map and information table that includes all MS4 outfalls located within the boundaries identified as "urbanized" areas in the 2010 Decennial Census and shall submit the updated information table as an appendix to the annual report.~~

(3) No later than [~~December 31, 2018~~ July 1, 2019], the permittee shall submit to DEQ a GIS-compatible shapefile of the permittee's MS4 map as described in Part I E 3 a. If the permittee does not have an MS4 map in a GIS format, the permittee shall provide the map as a PDF document.

(4) ~~The operator shall maintain a copy of the current storm sewer system map and outfall information table for review upon request by the public or by the department.~~ No later than October 1 of each year, the permittee shall update the storm sewer system map and outfall information table to include any new outfalls constructed or TMDLs approved or both during the immediate preceding reporting period.

(5) The ~~operator~~ permittee shall ~~continue to identify other points of discharge. The operator shall notify in writing the~~ provide written notification to any downstream adjacent MS4 of any known physical interconnection established or discovered after the effective date of this permit.

b. The ~~operator~~ permittee shall ~~effectively~~ prohibit, through ordinance, policy, standard operating procedures, or other legal mechanism, to the extent allowable under federal, state, or local law, regulations, or ordinances, unauthorized nonstormwater discharges into the storm sewer system ~~to the extent allowable under federal, state, or local law, regulation, or ordinance~~. ~~Categories of nonstormwater~~ Nonstormwater discharges or flows ~~(i.e., illicit discharges)~~ identified in ~~9VAC25-870-400 D 2 c (3) must~~ 9VAC25-890-20 [~~C~~ D] 3 shall only be addressed ~~only~~ if they are identified by the ~~operator~~ permittee as a significant ~~contributors~~ contributor of pollutants discharging to the ~~small~~ MS4. Flows that have been identified ~~in writing~~ by the department as de minimis discharges are not significant sources of pollutants to surface water ~~and do not require a VPDES permit~~.

c. The ~~operator~~ permittee shall ~~develop,~~ maintain [~~and,~~] implement [, and enforce] ~~and update, when appropriate,~~ illicit discharge detection and elimination (IDDE) written procedures [designed] to detect, identify, and address unauthorized nonstormwater discharges, including illegal dumping, to the small MS4 [~~with the goal of eliminating~~ to effectively eliminate] the unauthorized discharge. ~~These~~ Written procedures shall include:

(1) A description of the legal authorities, policies, standard operating procedures or other legal mechanisms available to the permittee to eliminate identified sources of ongoing illicit discharges including procedures for using legal enforcement authorities.

~~Written dry~~ (2) Dry weather field screening ~~methodologies~~ protocols to detect, identify, and eliminate illicit discharges to the MS4 ~~that include field observations and field screening monitoring and that provide~~. The protocol shall include:

(a) A prioritized schedule of field screening activities and rationale for prioritization determined by the ~~operator~~ permittee based on such criteria as age of the infrastructure, land use, historical illegal discharges, dumping or cross connections [~~.~~ ;]

~~(b) The minimum number of field screening activities the operator shall complete annually to be determined as follows: (i) if the total number of outfalls in the small MS4 is less than 50, all outfalls shall be screened annually or (ii) if the small MS4 has 50 or more total outfalls, a minimum of 50 outfalls shall be screened annually.~~

(b) If the total number of MS4 outfalls is equal to or less than 50, a schedule to screen all outfalls annually;

(c) If the total number of MS4 outfalls is greater than 50, a schedule to screen a minimum of 50 outfalls annually such that no more than 50% are screened in the previous 12-month period [~~.~~ ; The 50% criteria is not applicable if all outfalls have been screened in the previous three years;] and

~~(c) Methodologies to collect the general information such as time~~ (d) A mechanism to track the following information:

(i) The [unique] outfall [~~unique~~] identifier;

(ii) Time since the last ~~rain, the~~ precipitation event;

(iii) The estimated quantity of the last ~~rain, site~~ precipitation event;

(iv) Site descriptions (e.g., conveyance type and dominant watershed land uses)~~.~~ ;

(v) Whether or not a discharge was observed; [and]

(vi) If a discharge was observed, the estimated discharge rate (e.g., width ~~of water surface, approximate~~ and depth of ~~water, approximate flow velocity, and~~ discharge flow

rate)~~, and visual observations~~ [~~:~~] and [~~(vii) Visual~~ visual] characteristics of the discharge (e.g., [~~order,~~ odor,] color, clarity, floatables, deposits or stains, vegetation condition, structural condition, and biology).

~~(d)~~ (3) A ~~time frame~~ timeframe upon which to conduct an investigation ~~or investigations~~ to identify and locate the source of any observed ~~continuous or intermittent~~ [unauthorized] nonstormwater [~~unauthorized~~] discharge ~~prioritized as follows: (i) illicit discharges suspected of being sanitary sewage or significantly contaminated must be investigated first and (ii) investigations of illicit discharges suspected of being less hazardous to human health and safety such as noncontact cooling water or wash water may be delayed until after all suspected sanitary sewage or significantly contaminated discharges have been investigated, eliminated, or identified~~. Priority of investigations shall be given to discharges of sanitary sewage and those believed to be a risk to human health and public safety. Discharges authorized under a separate VPDES or state permit require no further action under this permit.

~~(e)~~ (4) Methodologies to determine the source of all illicit discharges ~~shall be conducted~~. If the permittee is unable to identify the source of an illicit discharge ~~is found, but~~ within six months of ~~the~~ beginning ~~of~~ the investigation ~~neither the source nor the same nonstormwater discharge has been identified,~~ then the ~~operator~~ permittee shall document ~~such in accordance with Section II B 3 f~~ that the source remains unidentified. If the observed discharge is intermittent, the ~~operator must~~ permittee shall document ~~that a minimum of three separate investigations were made in an attempt~~ that attempts to observe the discharge ~~when it was~~ flowing were unsuccessful. ~~If these attempts are unsuccessful, the operator shall document such in accordance with Section II B 3 f.~~

~~(f) Mechanisms to eliminate identified sources of illicit discharges including a description of the policies and procedures for when and how to use legal authorities.~~

~~(g) Methods~~ (5) Methodologies for conducting a follow-up investigation ~~in order to verify that the discharge has been eliminated.~~ [~~as necessary~~] for illicit discharges that are continuous or that permittees expect to occur more frequently than a one-time discharge to verify that the discharge has been eliminated [except as provided for in Part I E 3 c (4)];

~~(h)~~ (6) A mechanism to track all illicit discharge investigations to document the following:

~~(i) the~~ (a) The [~~date or~~ dates] that the illicit discharge was initially observed [~~,~~] ~~and~~ [reported, or both];

~~(ii) the~~ (b) The results of the investigation, including the source, if identified;

~~(iii) any~~ (c) Any follow-up to the investigation;

~~(iv) resolution~~ (d) Resolution of the investigation; and

~~(v) the~~ (e) The date that the investigation was closed.

~~d. The operator shall promote, publicize, and facilitate public reporting of illicit discharges into or from MS4s. The operator shall conduct inspections in response to complaints and follow-up inspections as needed to ensure that corrective measures have been implemented by the responsible party.~~

~~e.~~ d. The MS4 ~~Program Plan~~ program plan shall include ~~all procedures developed by the operator to detect, identify, and address nonstormwater discharges to the MS4 in accordance with the schedule in Table 1. In the interim, the operator shall continue to implement the program as included as part of the registration statement until the program is updated to meet the conditions of this permit. Operators, who have not previously held MS4 permit coverage, shall implement this program in accordance with the schedule provided with the completed registration statement.~~:

(1) The MS4 map and information table required by Part I E 3 a. The map and information table may be incorporated into the MS4 program plan by reference. The map shall be made available to the department within 14 days upon request;

(2) Copies of written notifications of new physical interconnections given by the permittee to other MS4s; and

(3) The IDDE procedures described in Part I E 3 c.

~~f. Annual reporting requirements. Each~~ e. The annual report shall include:

(1) ~~A list of any written notifications of physical interconnection given by the operator to other MS4s;~~ A confirmation statement that the MS4 map and information table [~~are up to date as of~~ have been updated to reflect any changes to the MS4 occurring on or before] June 30 of the reporting year;

(2) The total number of outfalls screened during the reporting period~~, the screening results, and detail of any follow up actions necessitated by the screening results~~ as part of the dry weather screening program; and

(3) ~~A summary of each investigation conducted by the operator of any suspected illicit discharge. The summary must include: (i) the date that the suspected discharge was observed, reported, or both; (ii) how the investigation was resolved, including any follow up, and (iii) resolution of the investigation and the date the investigation was closed.~~ A list of illicit discharges to the MS4 including spills reaching the MS4 with information as follows:

(a) The source of illicit discharge;

(b) The [~~date or~~ dates] that the discharge was observed, reported, or both;

(c) Whether the discharge was discovered by the permittee during dry weather screening, reported by the public, or other method (describe);

(d) How the investigation was resolved;

(e) A description of any follow-up activities; and

(f) The date the investigation was closed.

4. Construction site stormwater runoff control.

a. ~~Applicable oversight requirements.~~ The ~~operator~~ permittee shall utilize its legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to address discharges entering the MS4 [from regulated construction site stormwater runoff]. ~~from the following land-disturbing activities:~~ The permittee shall control construction site stormwater runoff as follows:

~~(1) Land-disturbing activities as defined in § 62.1-44.15:51 of the Code of Virginia that result in the disturbance of 10,000 square feet or greater;~~

~~(2) Land-disturbing activities in jurisdictions in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Code of Virginia, that disturb 2,500 square feet or greater and are located in areas designated as Resource Protection Areas (RPA), Resource Management Areas (RMA) or Intensely Developed Acres (IDA), pursuant to the Chesapeake Bay Preservation Area Designation and Management Regulations adopted pursuant to the Chesapeake Bay Preservation Act;~~

~~(3) Land-disturbing activities disturbing less than the minimum land disturbance identified in subdivision (1) or (2) above for which a local ordinance requires that an erosion and sediment control plan be developed; and~~

~~(4) Land-disturbing activities on individual residential lots or sections of residential developments being developed by different property owners and where the total land disturbance of the residential development is 10,000 square feet or greater. The operator may utilize an agreement in lieu of a plan as provided in § 62.1-44.15:55 of the Code of Virginia for this category of land disturbances.~~

(1) If the permittee is a city, county, or town that has adopted a Virginia Erosion and Sediment Control Program (VESCP), the permittee shall implement the VESCP consistent with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840);

(2) If the permittee is a town that has not adopted a VESCP, [~~the permittee shall rely on the surrounding city or county in which the town is located to implement~~ implementation of] a VESCP consistent with the Virginia Erosion and Sediment Control Law (§ 62.1-44:15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations [(9VAC25-840) [by the surrounding county shall constitute compliance with Part I E 4 a; such town shall notify the surrounding county of erosion, sedimentation or other construction stormwater runoff problems];

(3) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840), the permittee shall implement the most recent department approved standards and specifications; or

(4) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control Regulations (9VAC25-840), the permittee shall inspect all land disturbing activities as defined in § 62.1-44.15:51 of the Code of Virginia that result in the disturbance activities of 10,000 square feet or greater, or 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

(5) If the permittee is a subdivision of a local government such as a school board or other local government body, the permittee shall inspect those projects resulting in a land disturbance as defined in § 62.1-44.15.51 of the Code of Virginia occurring on lands owned or operated by the permittee that result in the disturbance of 10,000 square feet or greater, 2,500 square feet or greater in accordance with areas designated under the Chesapeake Bay Preservation Act, or in accordance with more stringent thresholds established by the local government, as follows:

(a) During or immediately following initial installation of erosion and sediment controls;

(b) At least once per every two-week period;

(c) Within 48 hours following any runoff producing storm event; and

(d) At the completion of the project prior to the release of any performance bond.

~~b. Required plan approval prior to commencement of the land disturbing activity. The operator shall require that land disturbance not begin until an erosion and sediment control plan or an agreement in lieu of a plan as provided in § 62.1-44.15:55 is approved by a VESCP authority in accordance with the Erosion and Sediment Control Law (§ 62.1-44.15:51 et seq. of the Code of Virginia). The plan shall be:~~

~~(1) Compliant with the minimum standards identified in 9VAC25-840-40 of the Erosion and Sediment Control Regulations; or~~

~~(2) Compliant with department approved annual standards and specifications. Where applicable, the plan shall be consistent with any additional or more stringent, or both, erosion and sediment control requirements established by state regulation or local ordinance.~~

~~c. Compliance and enforcement.~~

~~(1) The operator shall inspect land disturbing activities for compliance with an approved erosion and sediment control plan or agreement in lieu of a plan in accordance with the minimum standards identified in 9VAC25-840-40 or with department approved annual standards and specifications.~~

~~(2) The operator shall implement an inspection schedule for land disturbing activities identified in Section II B 4 a as follows:~~

~~(a) Upon initial installation of erosion and sediment controls;~~

~~(b) At least once during every two-week period;~~

~~(c) Within 48 hours of any runoff producing storm event; and~~

~~(d) Upon completion of the project and prior to the release of any applicable performance bonds.~~

~~Where an operator establishes an alternative inspection program as provided for in 9VAC25-840-60 B 2, the written schedule shall be implemented in lieu of Section II B 4 c (2) and the written plan shall be included in the MS4 Program Plan.~~

~~(3) Operator inspections shall be conducted by personnel who hold a certificate of competence in accordance with 9VAC25-850-40. Documentation of certification shall be made available upon request by the VESCP authority or other regulatory agency.~~

~~(4) The operator shall promote to the public a mechanism for receipt of complaints regarding regulated land disturbing activities and shall follow up on any complaints regarding potential water quality and compliance issues.~~

~~(5) The operator shall utilize its legal authority to require compliance with the approved plan where an inspection finds that the approved plan is not being properly implemented.~~

~~(6) The operator shall utilize, as appropriate, its legal authority to require changes to an approved plan when an inspection finds that the approved plan is inadequate to effectively control soil erosion, sediment deposition, and runoff to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources.~~

~~(7) The operator shall require implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections of the MS4. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 through the MS4 is not authorized by this state permit.~~

~~(8) The operator may develop and implement a progressive compliance and enforcement strategy provided that such strategy is included in the MS4 Program Plan and is consistent with 9VAC25-840.~~

~~d. Regulatory coordination. The operator shall implement enforceable procedures to require that large construction activities as defined in 9VAC25-870-10 and small construction activities as defined in 9VAC25-870-10, including municipal construction activities, secure necessary state permit authorizations from the department to discharge stormwater.~~

[b. The permittee shall require implementation of appropriate controls to prevent nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels and oils, and other illicit discharges identified during land disturbing activity inspections of the MS4. The discharge of nonstormwater discharges other than those identified in 9VAC25-890-20 D through the MS4 is not authorized by this state permit.]

~~e. MS4 Program requirements.~~ [~~b.~~ c.] The ~~operator's~~ permittee's MS4 ~~Program Plan~~ program plan shall include:

(1) If the permittee implements a construction site stormwater runoff control program in accordance with

Part I E 4 a (1), the local ordinance citations for the VESCP program;

(2) If the permittee implements a construction site stormwater runoff control program in accordance with Part I E 4 a (3):

(a) The most recently approved standards and [~~specification~~ specifications] or if incorporated by reference, the location where the standards and [~~specification~~ specifications] can be viewed; and

(b) A copy of the most recent [~~standard and specification~~ standards and specifications] approval letter from the department;

~~(1)~~ (3) A description of the legal authorities utilized to ensure compliance with ~~the minimum control measure in Section II related to~~ Part I E 4 a to control construction site stormwater runoff control such as ordinances, permits, orders, specific contract language, policies, and interjurisdictional agreements;

~~(2) Written plan review procedures and all associated documents utilized in plan review;~~

~~(3) For the MS4 operators who obtain department approved standards and specifications, a copy of the current standards and specifications;~~

(4) Written inspection procedures to ensure the erosion and sediment controls are properly implemented and all associated documents utilized during inspection including the inspection schedule;

(5) Written procedures for requiring compliance ~~and enforcement, including a progressive compliance and enforcement strategy, where appropriate~~ through corrective action or enforcement action to the extent allowable under federal, state, or local law, regulation, ordinance, or other legal mechanisms; and

(6) The roles and responsibilities of each of the ~~operator's~~ permittee's departments, divisions, or subdivisions in implementing the ~~minimum control measure in Section II related to~~ construction site stormwater runoff control ~~If the operator utilizes another entity to implement portions of the MS4 Program Plan, a copy of the written agreement must be retained in the MS4 Program Plan. The description of each party's roles and responsibilities, including any written agreements with third parties, shall be updated as necessary~~ requirements in Part I E 4.

~~Reference may be made to any listed requirements in this subdivision provided the location of where the reference material can be found is included and the reference material is made available to the public upon request.~~

~~f. Reporting requirements. The operator shall track regulated land disturbing activities and submit the following information in all annual reports:~~ [~~e.~~ d.] The annual report shall include the following:

(1) ~~Total number of regulated land disturbing activities;~~ If the permittee implements a construction site stormwater runoff program in accordance with Part I E 4 a (3):

(a) A confirmation statement that land disturbing projects that occurred during the reporting period have been conducted in accordance with the current department approved standards and specifications for [~~erosions~~ erosion] and sediment control; and

(b) If one or more of the land disturbing projects were not conducted with the department approved standards and specifications, an explanation as to why the projects did not conform to the approved standards and specifications.

~~(2) Total number of acres disturbed;~~

~~(3)~~ (2) Total number of inspections conducted; and

~~(4) A summary of the enforcement actions taken, including the~~ (3) The total number and type of enforcement actions ~~taken during the reporting period~~ implemented and the type of enforcement actions.

5. Post-construction stormwater management ~~in~~ for new development and development on prior developed lands.

a. ~~Applicable oversight requirements. The operator~~ The permittee shall address post-construction stormwater runoff that enters the MS4 from the following [~~land disturbing~~ land disturbing] activities by implementing a post-construction stormwater runoff management program as follows:

~~(1) New development and development on prior developed lands that are defined as large construction activities or small construction activities in 9VAC25-870-10;~~

~~(2) New development and development on prior developed lands that disturb greater than or equal to 2,500 square feet, but less than one acre, located in a Chesapeake Bay Preservation Area designated by a local government located in Tidewater, Virginia, as defined in § 62.1-44.15:68 of the Code of Virginia; and~~

~~(3) New development and development on prior developed lands where an applicable state regulation or local ordinance has designated a more stringent regulatory size threshold than that identified in subdivision (1) or (2) above.~~

(1) If the permittee is a city, county, or town, with an approved Virginia Stormwater Management Program (VSMP), the permittee shall implement the VSMP consistent with the Virginia Stormwater Management

Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) as well as develop an inspection and maintenance program in accordance with Parts I E 5 b and c;

(2) If the permittee is a town that has not adopted a VSMP, [~~the permittee shall rely on the surrounding city or county in which the town is located to implement~~ implementation of] a VSMP consistent with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) [by the surrounding county shall constitute compliance with Part I E 5 a; such town shall notify the surrounding county of erosion, sedimentation, or other post-construction stormwater runoff problems] and develop an inspection and maintenance program in accordance with Part I E 5 b and c;

(3) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has developed standards and specifications in accordance with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and VSMP Regulations (9VAC25-870) [,] the permittee shall implement the most recent department approved standards and specifications and develop an inspection and maintenance program in accordance with Part I E 5 b;

(4) If the permittee is a state agency; public institution of higher education including community colleges, colleges, and universities; or federal entity and has not developed standards and specifications in accordance with the Virginia Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and Virginia Stormwater Management Regulations (9VAC25-870) [;] the permittee shall implement a post-construction stormwater runoff control [program] through compliance with 9VAC25-870 and with the implementation of a maintenance and inspection program consistent with Part I E 5 b; or

(5) If the permittee is a subdivision of a local government such as a school board or other local government body, the permittee shall implement a post-construction stormwater runoff control [program] through compliance with 9VAC25-870 or in accordance with more stringent local requirements, if applicable, and with the implementation of a maintenance and inspection program consistent with Part I E 5 b.

~~b. Required design criteria for stormwater runoff controls. The operator shall utilize legal authority, such as ordinances, permits, orders, specific contract language, and interjurisdictional agreements, to require that activities identified in Section II B 5 a address stormwater runoff in such a manner that stormwater runoff controls are designed and installed:~~

~~(1) In accordance with the appropriate water quality and water quantity design criteria as required in Part II (9VAC25-870-40 et seq.) of 9VAC25-870;~~

~~(2) In accordance with any additional applicable state or local design criteria required at project initiation; and~~

~~(3) Where applicable, in accordance with any department approved annual standards and specifications.~~

~~Upon board approval of a Virginia Stormwater Management Program authority (VSMP Authority) as defined in § 62.1-44.15:24 of the Code of Virginia and reissuance of the Virginia Stormwater Management Program (VSMP) General Permit for Discharges of Stormwater from Construction Activities, the operator shall require that stormwater management plans are approved by the appropriate VSMP Authority prior to land disturbance. In accordance with § 62.1-44.15:27 M of the Code of Virginia, VSMPs shall become effective July 1, 2014, unless otherwise specified by state law or by the board.~~

~~c. Inspection, operation, and maintenance verification of stormwater management facilities.~~ b. The permittee shall implement an inspection and maintenance program for those stormwater management facilities owned or operated by the permittee that discharges to the MS4 as follows:

~~(1) For stormwater management facilities not owned by the MS4 operator, the following conditions apply:~~

~~(a) The operator shall require adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop a recorded inspection schedule and maintenance agreement to the extent allowable under state or local law or other legal mechanism;~~

~~(b) The operator or his designee shall implement a schedule designed to inspect all privately owned stormwater management facilities that discharge into the MS4 at least once every five years to document that maintenance is being conducted in such a manner to ensure long-term operation in accordance with the approved designs.~~

~~(c) The operator shall utilize its legal authority for enforcement of maintenance responsibilities if maintenance is neglected by the owner. The operator may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 Program Plan.~~

~~(d) Beginning with the issuance of this state permit, the operator may utilize strategies other than maintenance agreements such as periodic inspections, homeowner outreach and education, and other methods targeted at~~

~~promoting the long-term maintenance of stormwater control measures that are designed to treat stormwater runoff solely from the individual residential lot. Within 12 months of coverage under this permit, the operator shall develop and implement these alternative strategies and include them in the MS4 Program Plan.~~

~~(2) For stormwater management facilities owned by the MS4 operator, the following conditions apply:~~

~~(a) The operator shall provide for adequate long-term operation and maintenance of its stormwater management facilities in accordance with written inspection and maintenance procedures included in the MS4 Program Plan.~~ (1) The permittee shall develop and maintain written inspection and maintenance procedures in order to ensure adequate long-term operation and maintenance of its stormwater management facilities;

~~(b)~~ (2) The ~~operator~~ permittee shall inspect ~~these~~ stormwater management facilities ~~annually~~ owned or operated by the permittee no less than once per year. The ~~operator~~ permittee may choose to implement an alternative schedule to inspect these stormwater management facilities based on facility type and expected maintenance needs provided that the alternative schedule and rationale is included in the MS4 ~~Program Plan.~~ program plan [. The alternative inspection frequency shall be no less than once per five years]; and

~~(c) The operator shall conduct maintenance on its stormwater management facilities as necessary.~~ (3) If during the inspection of the stormwater management facility conducted in accordance with Part I E 5 b (2), it is determined that maintenance is required, the permittee shall conduct the maintenance in accordance with the written procedures developed under Part I E 5 b (1).

c. For those permittees described in Part I E 5 a (1) or (2), the permittee shall:

(1) Implement an inspection and enforcement program for stormwater management facilities not owned by the permittee (i.e., privately owned) that includes:

(a) An inspection frequency of no less than once per five years for all privately owned stormwater management facilities that discharge into the MS4; and

(b) Adequate long-term operation and maintenance by the owner of the stormwater management facility by requiring the owner to develop [~~a recorded inspection schedule~~] and [record a] maintenance agreement [, including an inspection schedule] to the extent allowable under state or local law or other legal mechanism;

(2) Utilize its legal authority for enforcement of the maintenance responsibilities if maintenance is neglected by the owner; and

(3) The permittee may develop and implement a progressive compliance and enforcement strategy provided that the strategy is included in the MS4 program plan.

~~d. MS4 Program Plan requirements. The operator's MS4 Program Plan shall be updated in accordance with Table 1 to include:~~

~~(1) A list of the applicable legal authorities such as ordinance, state and other permits, orders, specific contract language, and interjurisdictional agreements to ensure compliance with the minimum control measure in Section II related to post-construction stormwater management in new development and development on prior developed lands;~~

~~(2) Written policies and procedures utilized to ensure that stormwater management facilities are designed and installed in accordance with Section II B 5 b;~~

~~(3) Written inspection policies and procedures utilized in conducting inspections;~~

~~(4) Written procedures for inspection, compliance and enforcement to ensure maintenance is conducted on private stormwater facilities to ensure long-term operation in accordance with approved design;~~

~~(5) Written procedures for inspection and maintenance of operator-owned stormwater management facilities;~~

~~(6) The roles and responsibilities of each of the operator's departments, divisions, or subdivisions in implementing the minimum control measure in Section II related to post-construction stormwater management in new development and development on prior developed lands. If the operator utilizes another entity to implement portions of the MS4 Program Plan, a copy of the written agreement must be retained in the MS4 Program Plan. Roles and responsibilities shall be updated as necessary.~~

~~e. Stormwater management facility tracking and reporting requirements. The operator shall maintain an updated electronic database of all known operator-owned and privately-owned stormwater management facilities that discharge into the MS4. The database shall include the following:~~ d. The permittee shall maintain an electronic database or spreadsheet of all known permittee-owned or permittee-operated and privately owned stormwater management facilities that discharge into the MS4. The database shall also include all BMPs implemented by the permittee to meet the Chesapeake Bay TMDL load reduction as required in Part II A. A database shall include the following information as applicable:

(1) The stormwater management facility [or BMP] type;

(2) ~~A general description of the facility's location, including the address or latitude and longitude;~~ The stormwater management facility or BMPs location as latitude and longitude;

(3) The acres treated by the ~~facility, including total acres, as well as the breakdown of pervious and impervious acres;~~ stormwater management facility or BMP, including total acres, pervious acres, and impervious acres;

(4) The date the facility was brought online (MM/YYYY). If the date brought online is not known, the ~~operator~~ permittee shall use June 30, 2005 ~~as the date brought online for all previously existing stormwater management facilities~~;

(5) The ~~sixth order hydrologic unit code (HUC)~~ 6th Order Hydrologic Unit Code in which the stormwater management facility is located;

~~(6) The name of any impaired water segments within each HUC listed in the 2010 § 305(b)/303(d) Water Quality Assessment Integrated Report to which the stormwater management facility discharges;~~

~~(7)~~ (6) Whether the stormwater management facility or BMP is ~~operator owned~~ owned or operated by the permittee or ~~privately owned~~ privately owned;

(7) Whether or not the stormwater management facility [or BMP] is part of the permittee's Chesapeake Bay TMDL action plan required in Part II A or local TMDL action plan required in Part II B, or both;

(8) ~~Whether a maintenance agreement exists if the stormwater management facility is privately owned; and~~ If the stormwater management facility [or BMP] is privately owned, whether a maintenance agreement exists; and

(9) The date of the ~~operator's~~ permittee's most recent inspection of the stormwater management facility or BMP.

e. The electronic database or spreadsheet shall be updated no later than 30 days after a new stormwater management facility is brought online, a new BMP is implemented to meet a TMDL load reduction as required in Part II, or discovered if it is an existing stormwater management facility.

f. The permittee shall use the DEQ Construction Stormwater Database or other application as specified by the department to report each stormwater management facility installed after July 1, 2014, to address the control of post-construction runoff from land disturbing activities for which the permittee is required to obtain a General VPDES Permit for Discharges of Stormwater from Construction Activities.

g. No later than October 1 of each year, the permittee shall electronically report the stormwater management facilities and BMPs implemented between July 1 and June 30 of each year using the DEQ BMP Warehouse and associated reporting template for any practices not reported in accordance with Part I E 5 f including stormwater management facilities installed to control post-development stormwater runoff from land disturbing activities less than one acre in accordance with the Chesapeake Bay Preservation Act regulations (9VAC25-830) and for which a General VPDES Permit for Discharges of Stormwater from Construction Activities was not required.

h. The MS4 program plan shall include:

(1) If the permittee implements a VSMP in accordance with Part I E 5 a (1) and (2):

(a) A copy of the VSMP approval letter issued by the department;

(b) Written inspection procedures and all associated documents utilized in the inspection of privately owned stormwater management facilities; and

(c) Written procedures for compliance and enforcement of inspection and maintenance requirements for privately owned BMPs.

(2) If the permittee implements a post-development stormwater runoff control program in accordance with Part I E 5 a (3):

(a) The most recently approved standards and [~~specification~~ specifications] or if incorporated by reference, the location where the standards and [~~specification~~ specifications] can be viewed; and

(b) A copy of the most recent [~~standard and specification~~ standards and specifications] approval letter from the department.

(3) A description of the legal authorities utilized to ensure compliance with Part I E 5 a for post-construction stormwater runoff control such as ordinances [(provide citation as appropriate)], permits, orders, specific contract language, and interjurisdictional agreements;

(4) Written inspection procedures and all associated documents utilized during inspection of stormwater management facilities owned or operated by the permittee;

(5) The roles and responsibilities of each of the permittee's departments, divisions, or subdivisions in implementing the post-construction stormwater runoff control program; and

(6) The stormwater management facility spreadsheet or database incorporated by reference and the location or

[~~link~~ webpage address] where the spreadsheet or database can be reviewed.

~~In addition, the operator shall annually track and report the total number of inspections completed and, when applicable, the number of enforcement actions taken to ensure long-term maintenance.~~

~~The operator shall submit an electronic database or spreadsheet of all stormwater management facilities brought online during each reporting year with the appropriate annual report. Upon such time as the department provides the operators access to a statewide web-based reporting electronic database or spreadsheet, the operator shall utilize such database to complete the pertinent reporting requirements of this state permit.~~

i. The annual report shall include the following information:

(1) If the permittee implements a Virginia Stormwater Management Program in accordance with Part I E 5 a (1) and (2):

(a) The number of privately owned stormwater management facility inspections conducted; and

(b) The number of enforcement actions initiated by the permittee to ensure long-term maintenance of privately owned stormwater management facilities including the type of enforcement action;

(2) Total number of inspections conducted on stormwater management facilities owned or operated by the permittee;

(3) A description of the significant [maintenance, repair, or retrofit] activities performed on the stormwater management facilities owned or operated by the permittee to ensure it continues to perform as designed. This does not include [routine] activities such as grass mowing or trash collection;

(4) A confirmation statement that the permittee submitted stormwater management facility information through the Virginia Construction Stormwater General Permit database for those land disturbing activities for which the permittee was required to obtain coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities in accordance with Part I E 5 f or a statement that the permittee did not complete any projects requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities; and

(5) A confirmation statement that the permittee electronically reported BMPs using the DEQ BMP Warehouse in accordance with Part I E 5 g and the date on which the information was submitted.

6. ~~Pollution prevention/good housekeeping for municipal operations.~~ Pollution prevention and good housekeeping for facilities owned or operated by the permittee [within the MS4 service area].

a. ~~Operations and maintenance activities. The MS4 Program Plan submitted with the registration statement shall be implemented by the operator until updated in accordance with this state permit. In accordance with Table 1, the operator~~ The permittee shall ~~develop~~ maintain and implement written procedures ~~designed to minimize or prevent pollutant discharge from: (i) daily operations~~ for those activities at facilities owned or operated by the permittee, such as road, street, and parking lot maintenance; ~~(ii)~~ equipment maintenance; and ~~(iii)~~ the application, storage, transport, and disposal of pesticides, herbicides, and fertilizers~~. The written procedures shall be utilized as part of the employee training. At a minimum, the written procedures shall be~~ designed to:

(1) Prevent illicit discharges;

(2) Ensure the proper disposal of waste materials, including landscape wastes;

(3) Prevent the discharge of ~~municipal~~ wastewater or permittee vehicle wash water or both into the MS4 without authorization under a separate VPDES permit;

~~(4) Prevent the discharge of wastewater into the MS4 without authorization under a separate VPDES permit;~~

~~(5)~~ (4) Require implementation of best management practices when discharging water pumped from utility construction and maintenance activities;

~~(6)~~ (5) Minimize the pollutants in stormwater runoff from bulk storage areas (e.g., salt storage, topsoil stockpiles) through the use of best management practices;

~~(7)~~ (6) Prevent pollutant discharge into the MS4 from leaking municipal automobiles and equipment; and

~~(8)~~ (7) Ensure that the application of materials, including fertilizers and pesticides, is conducted in accordance with the manufacturer's recommendations.

b. ~~Municipal facility pollution prevention and good housekeeping.~~ The written procedures established in accordance with Part I E 6 a shall be utilized as part of the employee training program [at Part I E 6 m].

~~(1) Within 12 months of state permit coverage, the operator shall identify all municipal high priority facilities. These high priority facilities shall include: (i) composting facilities, (ii) equipment storage and maintenance facilities, (iii) materials storage yards, (iv) pesticide storage facilities, (v) public works yards, (vi) recycling facilities, (vii) salt storage facilities, (viii) solid~~

~~waste handling and transfer facilities, and (ix) vehicle storage and maintenance yards.~~

~~(2)~~ c. Within 12 months of state permit coverage, the [~~operator~~ permittee] shall identify which of the [~~municipal~~] high-priority facilities have a high potential of discharging pollutants. [~~Municipal high priority facilities that have a high potential for discharging pollutants are those facilities identified in~~] ~~subsection (1) above~~ [~~Part I E 6 a.~~] The permittee shall maintain and implement a site [specific] stormwater pollution prevention plan [~~(SWMPP)~~ (SWPPP)] for each [~~high priority facility owned or operated by the permittee with a high potential to discharge pollutants~~ facility identified. High priority facilities that have a high potential for discharging pollutants are those facilities] that are not covered under a separate VPDES permit and which any of the following materials or activities occur and are expected to have exposure to stormwater resulting from rain, snow, snowmelt or runoff:

~~(a)~~ (1) Areas where residuals from using, storing or cleaning machinery or equipment remain and are exposed to stormwater;

~~(b)~~ (2) Materials or residuals on the ground or in stormwater inlets from spills or leaks;

~~(c)~~ (3) Material handling equipment ~~(except adequately maintained vehicles)~~;

~~(d)~~ (4) Materials or products that would be expected to be mobilized in stormwater runoff during ~~loading/unloading~~ loading or unloading or transporting activities (e.g., rock, salt, fill dirt);

~~(e)~~ (5) Materials or products stored outdoors (except final products intended for outside use where exposure to stormwater does not result in the discharge of pollutants);

~~(f)~~ (6) Materials or products that would be expected to be mobilized in stormwater runoff contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

~~(g)~~ (7) Waste material except waste in covered, ~~non-leaking~~ nonleaking containers (e.g., dumpsters);

~~(h)~~ (8) Application or disposal of process wastewater (unless otherwise permitted); or

~~(i)~~ (9) Particulate matter or visible deposits of residuals from roof stacks, vents or both not otherwise regulated (i.e., under an air quality control permit) and evident in the stormwater runoff.

~~(3) The operator shall develop and implement specific stormwater pollution prevention plans for all high-priority facilities identified in subdivision 2 of this subsection. The operator shall complete SWPPP development and implementation shall be completed within 48 months of coverage under this state permit. Facilities covered under a separate VPDES permit shall adhere to the conditions established in that permit and are excluded from this requirement.~~

~~(4)~~ d. Each SWPPP as required in Part I E 6 c shall include the following:

~~(a)~~ (1) A site description that includes a site map identifying all outfalls, direction of stormwater flows, existing source controls, and receiving water bodies;

~~(b)~~ (2) A ~~discussion~~ description and checklist of the potential pollutants and pollutant sources;

~~(c)~~ (3) A ~~discussion~~ description of all potential nonstormwater discharges;

~~(d)~~ (4) Written procedures designed to reduce and prevent pollutant discharge;

~~(e)~~ (5) A description of the applicable training as required in ~~Section II B 6 d;~~ Part I E 6 m;

~~(f)~~ (6) Procedures to conduct an annual comprehensive site compliance evaluation;

~~(g)~~ (7) An inspection [frequency of no less than once per year] and maintenance [~~schedule~~ requirements] for site specific source controls. The date of each inspection and associated findings and follow-up shall be logged in each SWPPP; [and]

[~~(8) An inspection log for each site specific source control including the date and inspection findings; and~~]

~~(h) The contents of each SWPPP shall be evaluated and modified as necessary to accurately reflect any discharge, release, or spill from the high priority facility reported in accordance with Section III G. For each such discharge, release, or spill, the SWPPP must include the following information: date of incident; material discharged, released, or spilled; and quantity discharged, released or spilled; and~~ [~~(9)~~ (8)] A log of each unauthorized discharge, release, or spill incident reported in accordance with Part III G including the following information:

(a) Date of incident;

(b) Material discharged, released, or spilled; and

(c) Estimated quantity discharged, released or spilled [~~.~~]

e. No later than June 30 of each year, the permittee shall annually review any high-priority facility owned or operated by the permittee for which a SWPPP has not been developed to determine if the facility has a high potential to discharge pollutants as described in Part I E 6 c. If the facility is determined to be a high-priority facility with a high potential to discharge pollutants, the

permittee shall develop a SWPPP meeting the requirements of Part I E 6 d no later than December 31 of that same year.

f. The permittee shall review the contents of any site specific SWPPP no later than 30 days after any unauthorized discharge, release, or spill reported in accordance with Part III G to determine if additional measures are necessary to prevent future unauthorized discharges, releases, or spills. If necessary, the SWPPP shall be updated no later than 90 days after the unauthorized discharge.

~~(i) A copy of each SWPPP shall be kept at each facility and shall be kept updated and utilized as part of staff training required in Section II B 6 d.~~ g. The SWPPP shall be kept at the high-priority facility with a high potential to discharge and utilized as part of staff training required in Part I E 6 m. The SWPPP and associated documents may be maintained as a hard copy or electronically as long as the documents are available to employees at the applicable site.

h. If activities change at a facility such that the facility no longer meets the criteria of a high-priority facility with a high potential to discharge pollutants as described in Part I E 6 c, the permittee may remove the facility from the list of high-priority facilities with a high potential to discharge pollutants.

~~c. Turf and landscape management.~~

~~(1)~~ i. The ~~operator~~ permittee shall maintain and implement turf and landscape nutrient management plans that have been developed by a certified turf and landscape nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia on all lands owned or operated by the ~~MS4 operator~~ permittee where nutrients are applied to a contiguous area greater than one acre. ~~Implementation shall be in accordance with the following schedule:~~ If nutrients are being applied to achieve final stabilization of a land disturbance project, application shall follow the manufacturer's recommendations.

~~(a) Within 12 months of state permit coverage, the operator shall identify all applicable lands where nutrients are applied to a contiguous area of more than one acre. A latitude and longitude shall be provided for each such piece of land and reported in the annual report.~~

~~(b) Within 60 months of state permit coverage, the operator shall implement turf and landscape nutrient management plans on all lands where nutrients are applied to a contiguous area of more than one acre. The following measurable outcomes are established for the implementation of turf and landscape nutrient management plans: (i) within 24 months of permit coverage, not less than 15% of all identified acres will be covered by turf and landscape nutrient management plans; (ii) within 36 months of permit coverage, not less than 40% of all identified acres will be covered by turf and landscape nutrient management plans; and (iii) within 48 months of permit coverage, not less than 75% of all identified acres will be covered by turf and landscape nutrient management plans. The operator shall not fail to meet the measurable goals for two consecutive years.~~

~~(c) MS4 operators with lands regulated under § 10.1-104.4 of the Code of Virginia shall continue to implement turf and landscape nutrient management plans in accordance with this statutory requirement.~~ j. Permittees with lands regulated under § 10.1-104.4 of the Code of Virginia, including state agencies, state colleges and universities, and other state government entities, shall continue to implement turf and landscape nutrient management plans in accordance with this statutory requirement.

~~(2) Operators shall annually track the following:~~

~~(a) The total acreage of lands where turf and landscape nutrient management plans are required; and~~

~~(b) The acreage of lands upon which turf and landscape nutrient management plans have been implemented.~~

~~(3)~~ k. The ~~operator~~ permittee shall not apply any deicing agent containing urea or other forms of nitrogen or phosphorus to parking lots, roadways, and sidewalks, or other paved surfaces.

l. The permittee shall require through the use of contract language, training, standard operating procedures, [~~etc.,~~ or other measures within the permittee's legal authority] that contractors employed by the permittee and engaging in activities with the potential to discharge pollutants use appropriate control measures to minimize the discharge of pollutants to the MS4.

~~d. Training. The operator shall conduct training for employees. The training requirements may be fulfilled, in total or in part, through regional training programs involving two or more MS4 localities provided; however, that each operator shall remain individually liable for its failure to comply with the training requirements in this permit. Training is not required if the topic is not applicable to the operator's operations and therefore does not have applicable personnel provided the lack of applicability is documented in the MS4 Program Plan. The operator shall determine and document the applicable employees or positions to receive each type of training. The operator shall develop an annual written training plan including a schedule of training events that ensures implementation of the training requirements as follows:~~ m. The permittee shall develop a training plan in writing for applicable staff that ensures the following:

(1) ~~The operator shall provide biennial training to applicable field~~ Field personnel [~~received~~ receive] training in the recognition and reporting of illicit discharges~~.~~ no less than once per 24 months;

(2) ~~The operator shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed during road, street, and parking lot maintenance.~~ Employees performing road, street, and parking lot maintenance receive training in pollution prevention and good housekeeping associated with those activities no less than once per 24 months;

(3) ~~The operator shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around maintenance and public works facilities.~~ Employees working in and around maintenance, public works, or recreational facilities receive training in good housekeeping and pollution prevention practices associated with those facilities no less than once per 24 months;

(4) ~~The operator shall ensure that employees,~~ Employees and ~~require that~~ contractors~~,~~ hired by the permittee who apply pesticides and herbicides are ~~properly~~ trained or certified in accordance with the Virginia Pesticide Control Act (§ 3.2-3900 et seq. of the Code of Virginia) [.] Certification by the Virginia Department of Agriculture and Consumer Services (VCACS) Pesticide and Herbicide Applicator program shall constitute compliance with this requirement];

(5) ~~The operator shall ensure that employees~~ Employees and contractors serving as plan reviewers, inspectors, program administrators, and construction site operators obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations~~.~~;

(6) ~~The operator shall ensure that applicable employees obtain the appropriate certifications as required under the Virginia Erosion and Sediment Control Law and its attendant regulations.~~ Employees and contractors implementing the stormwater program obtain the appropriate certifications as required under the Virginia Stormwater Management Act and its attendant regulations; and

~~(7) The operators shall provide biennial training to applicable employees in good housekeeping and pollution prevention practices that are to be employed in and around recreational facilities.~~

~~(8) The appropriate emergency response employees shall have training in spill responses. A summary of the training or certification program provided to emergency response employees shall be included in the first annual report.~~ (7) Employees whose duties include emergency response have been trained in spill response. Training of emergency responders such as firefighters and law-enforcement officers on the handling of spill releases as part of a larger emergency response training shall satisfy this training requirement and be documented in the training plan.

~~(9) The operator shall keep documentation on each training event including the training date, the number of employees attending the training, and the objective of the training event for a period of three years after each training event.~~ n. The permittee shall maintain documentation of each training event conducted [by the permittee] to fulfill the requirements of Part I E 6 m for a minimum of three years after the training event. The documentation shall include the following information:

(1) The date of the training event;

(2) The number of employees attending the training event; and

(3) The objective of the training event.

o. The permittee may fulfill the training requirements in Part I E 6 m, in total or in part, through regional training programs involving two or more MS4 permittees; however, the permittee shall remain responsible for ensuring compliance with the training requirements.

~~e. The operator shall require that municipal contractors use appropriate control measures and procedures for stormwater discharges to the MS4 system. Oversight procedures shall be described in the MS4 Program Plan.~~

~~f. At a minimum, the MS4 Program Plan shall contain:~~ p. The MS4 program plan shall include:

(1) The written ~~protocols being used to satisfy~~ procedures for the ~~daily~~ operations and maintenance ~~requirements;~~ activities as required by Part I E 6 a;

(2) ~~A list of all municipal high priority facilities that identifies those facilities that have a high potential for chemicals or other materials to be discharged in stormwater and a schedule that identifies the year in which an individual SWPPP will be developed for those facilities required to have a SWPPP. Upon completion of a SWPPP, the SWPPP shall be part of the MS4 Program Plan. The MS4 Program Plan shall include the location in which the individual SWPPP is located;~~ A list of all high-priority facilities owned or operated by the permittee required in accordance with Part I E 6 c, and whether or not the facility has a high potential to discharge;

(3) ~~A list of lands where nutrients are applied to a contiguous area of more than one acre. Upon completion of a turf and landscape nutrient management plan, the turf and landscape nutrient management plan shall be~~

~~part of the MS4 Program Plan. The MS4 Program Plan shall include the location in which the individual turf and landscape nutrient management plan is located; and~~ A list of lands for which turf and landscape nutrient management plans are required in accordance with Part I E 6 i and j, including the following information:

(a) The total acreage on which nutrients are applied;

(b) The date of the most recently approved nutrient management plan for the property; and

(c) The [~~MS4 program plan shall include the~~] location in which the individual turf and landscape nutrient management plan is located [~~.~~ :]

(4) A summary of mechanisms the permittee uses to ensure contractors working on behalf of the permittees implement the necessary good housekeeping and pollution prevention procedures, and stormwater pollution plans as appropriate; and

~~(4)~~ (5) The ~~annual~~ written training plan ~~for the next reporting cycle.~~ as required in Part I E 6 m.

~~g. Annual reporting requirements.~~ q. The annual report shall include the following:

(1) ~~A summary report on the development and implementation of the daily operational procedures;~~ A summary of any [~~daily~~] operational procedures developed or modified in accordance with Part I E 6 a during the reporting period;

(2) ~~A summary report on the development and implementation of the required SWPPPs;~~ A summary of any new SWPPPs developed in accordance Part I E 6 c during the reporting period;

(3) A summary of any SWPPPs modified in accordance with Part I E 6 f [or the rationale of any high priority facilities delisted in accordance with Part I E 6 h] during the reporting period;

~~(3) A summary report on the development and implementation of the turf and landscape nutrient management plans that includes:~~ (4) A summary of any new turf and landscape nutrient management plans developed that includes:

(a) ~~The total acreage of lands where turf and landscape nutrient management plans are required~~ Location and the total acreage of each land area; and

(b) ~~The acreage of lands upon which turf and landscape nutrient management plans have been implemented~~ The date of the approved nutrient management plan; and

~~(4) A summary report on the required training, including a list of training events, the training date, the number of employees attending training and the objective of the training.~~ (5) A list of the training events conducted in accordance with Part I E 6 m, including the following information:

(a) The date of the training event;

(b) The number of employees who attended the training event; and

(c) The objective of the training event.

~~C. If an existing program requires the implementation of one or more of the minimum control measures of Section II B, the operator, with the approval of the board, may follow that program's requirements rather than the requirements of Section II B. A program that may be considered includes, but is not limited to, a local, state or tribal program that imposes, at a minimum, the relevant requirements of Section II B.~~

~~The operator's MS4 Program Plan shall identify and fully describe any program that will be used to satisfy one or more of the minimum control measures of Section II B.~~

~~If the program the operator is using requires the approval of a third party, the program must be fully approved by the third party, or the operator must be working towards getting full approval. Documentation of the program's approval status, or the progress towards achieving full approval, must be included in the annual report required by Section II E 3. The operator remains responsible for compliance with the permit requirements if the other entity fails to implement the control measures (or component thereof).~~

~~D. The operator may rely on another entity to satisfy the state permit requirements to implement a minimum control measure if: (i) the other entity, in fact, implements the control measure; (ii) the particular control measure, or component thereof, is at least as stringent as the corresponding state permit requirement; and (iii) the other entity agrees to implement the control measure on behalf of the operator. The agreement between the parties must be documented in writing and retained by the operator with the MS4 Program Plan for the duration of this state permit.~~

~~In the annual reports that must be submitted under Section II E 3, the operator must specify that another entity is being relied on to satisfy some of the state permit requirements.~~

~~If the operator is relying on another governmental entity regulated under 9VAC25-870-380 to satisfy all of the state permit obligations, including the obligation to file periodic reports required by Section II E 3, the operator must note that fact in the registration statement, but is not required to file the periodic reports.~~

~~The operator remains responsible for compliance with the state permit requirements if the other entity fails to implement the control measure (or component thereof).~~

E. Evaluation and assessment.

1. MS4 Program Evaluation. The operator must annually evaluate:

a. Program compliance;

b. The appropriateness of the identified BMPs (as part of this evaluation, the operator shall evaluate the effectiveness of BMPs in addressing discharges into waters that are identified as impaired in the 2010 § 305(b)/303(d) Water Quality Assessment Integrated Report); and

c. Progress towards achieving the identified measurable goals.

2. Recordkeeping. The operator must keep records required by the state permit for at least three years. These records must be submitted to the department only upon specific request. The operator must make the records, including a description of the stormwater management program, available to the public at reasonable times during regular business hours.

3. Annual reports. The operator must submit an annual report for the reporting period of July 1 through June 30 to the department by the following October 1 of that year. The reports shall include:

a. Background Information.

(1) The name and state permit number of the program submitting the annual report;

(2) The annual report permit year;

(3) Modifications to any operator's department's roles and responsibilities;

(4) Number of new MS4 outfalls and associated acreage by HUC added during the permit year; and

(5) Signed certification;

b. The status of compliance with state permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

c. Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

d. A summary of the stormwater activities the operator plans to undertake during the next reporting cycle;

e. A change in any identified best management practices or measurable goals for any of the minimum control measures including steps to be taken to address any deficiencies;

f. Notice that the operator is relying on another government entity to satisfy some of the state permit obligations (if applicable);

g. The approval status of any programs pursuant to Section II C (if appropriate), or the progress towards achieving full approval of these programs; and

h. Information required for any applicable TMDL special condition contained in Section I.

F. Program Plan modifications.

1. Program modifications requested by the operator. Modifications to the MS4 Program are expected throughout the life of this state permit as part of the iterative process to reduce the pollutant loadings and to protect water quality. As such, modifications made in accordance with this state permit as a result of the iterative process do not require modification of this permit unless the department determines that the changes meet the criteria referenced in 9VAC25-870-630 or 9VAC25-870-650. Updates and modifications to the MS4 Program may be made during the life of this state permit in accordance with the following procedures:

a. Adding (but not eliminating or replacing) components, controls, or requirements to the MS4 Program may be made by the operator at any time. Additions shall be reported as part of the annual report.

b. Updates and modifications to specific standards and specifications, schedules, operating procedures, ordinances, manuals, checklists, and other documents routinely evaluated and modified are permitted under this state permit provided that the updates and modifications are done in a manner that (i) is consistent with the conditions of this state permit, (ii) follow any public notice and participation requirements established in this state permit, and (iii) are documented in the annual report.

c. Replacing, or eliminating without replacement, any ineffective or infeasible strategies, policies, and BMPs specifically identified in this permit with alternate strategies, policies, and BMPs may be requested at any time. Such requests must be made in writing to the department and signed in accordance with 9VAC25-870-370, and include the following:

(1) An analysis of how or why the BMPs, strategies, or policies are ineffective or infeasible, including information on whether the BMPs, strategies, or policies are cost prohibitive;

(2) Expectations regarding the effectiveness of the replacement BMPs, strategies, or policies;

~~(3) An analysis of how the replacement BMPs are expected to achieve the goals of the BMPs to be replaced;~~

~~(4) A schedule for implementing the replacement BMPs, strategies, and policies; and~~

~~(5) An analysis of how the replacement strategies and policies are expected to improve the operator's ability to meet the goals of the strategies and policies being replaced.~~

~~d. The operator follows the public involvement requirements identified in Section II B 2 (a).~~

~~2. MS4 Program updates requested by the department. In a manner and following procedures in accordance with the Virginia Administrative Process Act, the Virginia Stormwater Management regulations, and other applicable state law and regulations, the department may request changes to the MS4 Program to assure compliance with the statutory requirements of the Virginia Stormwater Management Act and its attendant regulations to:~~

~~a. Address impacts on receiving water quality caused by discharges from the MS4;~~

~~b. Include more stringent requirements necessary to comply with new state or federal laws or regulations; or~~

~~c. Include such other conditions necessary to comply with state or federal law or regulation.~~

~~Proposed changes requested by the department shall be made in writing and set forth the basis for and objective of the modification as well as the proposed time schedule for the operator to develop and implement the modification. The operator may propose alternative program modifications or time schedules to meet the objective of the requested modification, but any such modifications are at the discretion of the department.~~

Part II
TMDL Special Conditions

A. Chesapeake Bay TMDL special condition.

1. The Commonwealth in its Phase I and Phase II Chesapeake Bay TMDL Watershed Implementation Plans (WIPs) committed to a phased approach for MS4s, affording MS4 permittees up to three full five-year permit cycles to implement necessary reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia Phase I and [Phase] II WIPs to meet the Level 2 (L2) scoping run for existing developed lands as it represents an implementation of an additional 35% of L2 as specified in the 2010 Phase I and [Phase] II WIPs. In combination with the 5.0% reduction of L2 that has already been achieved [~~for,~~] a total reduction at the end of this permit term of 40% of L2 [will be achieved.] Conditions of future permits will be consistent with the TMDL or WIP conditions in place at the time of permit issuance.

2. The following definitions apply to Part II of this state permit for the purpose of the Chesapeake Bay TMDL special condition for discharges in the Chesapeake Bay Watershed:

"Existing sources" means pervious and impervious urban land uses served by the MS4 as of June 30, 2009.

"New sources" means pervious and impervious urban land uses served by the MS4 developed or redeveloped on or after July 1, 2009.

"Pollutants of concern" or "POC" means total nitrogen, total phosphorus, and total suspended solids.

"Transitional sources" means regulated land disturbing activities that are temporary in nature and discharge through the MS4.

3. Reduction requirements. No later than the expiration date of this permit, the permittee shall reduce the load of total nitrogen, total phosphorus, and total suspended solids from existing developed lands served by the MS4 as of June 30, 2009, within the 2010 Census [~~Urbanized Area~~ urbanized areas] by at least 40% of the Level 2 (L2) Scoping Run Reductions. The 40% reduction is the sum of (i) the first phase reduction of 5.0% of the L2 Scoping Run Reductions based on the lands located within the 2000 Census [~~Urbanized Areas~~ urbanized areas] required by June 30, 2018; (ii) the second phase reduction of at least 35% of the L2 Scoping Run based on lands within the 2000 Census [~~Urbanized Areas~~ urbanized areas] required by June 30, 2023; and (iii) the reduction of at least 40% of the L2 Scoping Run [~~based on~~, which shall only apply to the additional] lands [~~within~~ that were added by] the 2010 expanded Census [~~Urbanized Areas~~ urbanized areas] required by June 30, 2023. The required reduction shall be calculated using Tables 3a, 3b, 3c, and 3d below as applicable:

Table 3a
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the James River, Lynnhaven, and Little Creek Basins

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	[~~Loading~~ Load] (lbs/yr)[3]	[Percentage of] MS4 required Chesapeake Bay total L2 loading [~~rate~~] reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction Required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	9.39			9%	40%		
	Regulated urban pervious	6.99			6%	40%		
Phosphorus	Regulated urban impervious	1.76			16%	40%		
	Regulated urban pervious	0.5			7.25%	40%		
Total suspended solids	Regulated urban impervious	676.94			20%	40%		
	Regulated urban pervious	101.08			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x [~~(Column D ÷ 100)~~ Column D] x [~~(Column E ÷ 100)~~ Column E].

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

Table 3b
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Potomac River Basin

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	[~~Loading (lbs/ac/yr)~~[3] Load (lbs/yr)[3]]	[Percentage of] MS4 required Chesapeake Bay total L2 loading [~~rate~~] reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	16.86			9%	40%		
	Regulated urban pervious	10.07			6%	40%		
Phosphorus	Regulated Urban Impervious	1.62			16%	40%		
	Regulated urban pervious	0.41			7.25%	40%		
Total suspended solids	Regulated urban impervious	1171.32			20%	40%		
	Regulated urban pervious	175.8			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x [~~(Column D ÷ 100)~~ Column D] x [~~(Column E ÷ 100)~~ Column E].

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

Table 3c
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Rappahannock River Basin

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	[~~Loading (lbs/ac/yr)~~[3] Load (lbs/yr)[3]]	[Percentage of] MS4 required Chesapeake Bay total L2 loading [~~rate~~] reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction Required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	9.38			9%	40%		
	Regulated urban pervious	5.34			6%	40%		
Phosphorus	Regulated urban impervious	1.41			16%	40%		

	Regulated urban pervious	0.38			7.25%	40%		
Total suspended solids	Regulated urban impervious	423.97			20%	40%		
	Regulated urban pervious	56.01			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x [~~(Column D ÷ 100)~~ Column D] x [~~(Column E ÷ 100)~~ Column E].

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

Table 3d
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the York River and Poquoson Coastal Basin

		A	B	C	D	E	F	G
Pollutant	Subsource	Loading rate (lbs/ac/yr)[1]	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres)[2]	[~~Loading (lbs/ac/yr)~~[3] Load (lbs/yr)[3]]	[Percentage of] MS4 required Chesapeake Bay total L2 loading [~~rate~~] reduction	Percentage of L2 required reduction by 6/30/2023	40% cumulative reduction required by 6/30/2023 (lbs/yr)[4]	Sum of 40% cumulative reduction (lb/yr)[5]
Nitrogen	Regulated urban impervious	7.31			9%	40%		
	Regulated urban pervious	7.65			6%	40%		
Phosphorus	Regulated urban impervious	1.51			16%	40%		
	Regulated urban pervious	0.51			7.25%	40%		
Total suspended solids	Regulated urban impervious	456.68			20%	40%		
	Regulated urban pervious	72.78			8.75%	40%		

[1]Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

[2]To determine the existing developed acres required in Column B, permittees should first determine the extent of their regulated service area based on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA served by the MS4 as pervious or impervious as of the baseline date of June 30, 2009.

[3]Column C = Column A x Column B.

[4]Column F = Column C x [~~(Column D ÷ 100)~~ Column D] x [~~(Column E ÷ 100)~~ Column E].

[5]Column G = The sum of the subsource cumulative reduction required by 6/30/23 (lbs/yr) as calculated in Column F.

4. No later than the expiration date of this permit, the permittee shall offset 40% of the increased loads from new sources initiating construction between July 1, 2009, and June 30, 2019, and designed in accordance with 9VAC25-870 Part II C (9VAC25-870-93 et seq.) if the following conditions apply:

a. The activity disturbed one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent pollutant load for nitrogen and total suspended solids for new sources meeting the requirements of this condition.

5. No later than the expiration date of this permit, the permittee shall offset the increased loads from projects grandfathered in accordance with 9VAC25-870-48 that begin construction after July 1, 2014, if the following conditions apply:

a. The activity disturbs one acre or greater; and

b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is equivalent to an average land cover condition of 16% impervious cover.

The permittee shall utilize Table 4 below to develop the equivalent pollutant load for nitrogen and total suspended solids for grandfathered sources meeting the requirements of this condition.

Table 4
Ratio of Phosphorus Loading Rate to Nitrogen and Total Suspended Solids Loading Rates for Chesapeake Bay Basins

Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)	Nitrogen Loading Rate (lbs/acre)	Total Suspended Solids Loading Rate (lbs/acre)
James River Basin, Lynnhaven, and Little Creek Basins	1.0	5.2	420.9
Potomac River Basin	1.0	6.9	469.2
Rappahannock River Basin	1.0	6.7	320.9
York River Basin (including Poquoson Coastal Basin)	1.0	9.5	531.6

6. Reductions achieved in accordance with the General VPDES Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems effective July 1, 2013, shall be applied [~~to~~ toward] the total reduction requirements to demonstrate compliance with Part II A 3, A 4, and A 5.

7. Reductions shall be achieved in each river basin as calculated in Part II A 3 or for reductions in accordance with Part II A 4 and A 5 in the basin in which the new source or grandfathered project occurred.

8. Loading and reduction values greater than or equal to 10 pounds calculated in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to the nearest pound without regard to mathematical rules of precision. Loading and reduction values of less than 10 pounds reported in accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to two significant digits.

9. Reductions required in Part II A 3, A 4, and A 5 shall be achieved through one or more of the following:

a. BMPs approved by the Chesapeake Bay Program;

b. BMPs approved by the department; or

c. A trading program described in Part II A 10.

10. The permittee may acquire and use total nitrogen and total phosphorus credits in accordance with § 62.1-44.19:21 of the Code of Virginia and total [~~suspend~~ suspended] solids in accordance with § 62.1-44.19:21.1 of the Code of Virginia for purposes of compliance with the required reductions in [~~Part II A 3 a through A 3 d, A 4, and A 5,~~ Table 3a, Table 3b, Table 3c, and Table 3d of Part II A 3; Part II A 4; and Part II A 5,] provided the use of credits has been approved by the department. The exchange of credits is subject to the following requirements:

a. The credits are generated and applied to a compliance obligation in the same calendar year;

b. The credits are generated and applied to a compliance obligation in the same tributary;

c. The credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied;

d. No later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on [~~a credit exchange notification form supplied by the department~~ an MS4 Nutrient Credit Acquisition Form] that the permittee has acquired the credits;

e. Total nitrogen and total phosphorus credits shall be either point source credits generated by point sources covered by the Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia, or nonpoint source credits certified pursuant to § 62.1-44.19:20 of the Code of Virginia;

f. Sediment credits shall be derived from one of the following:

(1) Implementation of BMP in a defined area outside of an MS4 service area, in which case the necessary baseline sediment reduction for such defined area shall be achieved prior to the permittee's use of additional reductions as credit; or

(2) A point source wasteload allocation established by the Chesapeake Bay total maximum daily load, in which case the credit is the difference between the wasteload

allocation specified as an annual mass load and any lower monitored annual mass load that is discharged as certified on [~~a form supplied by the department~~ an MS4 Sediment Credit Acquisition Form].

g. Sediment credits shall not be associated with phosphorus credits used for compliance with the stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28 of the Code of Virginia.

11. No later than 12 months after the permit effective date, the permittee shall submit an updated Chesapeake Bay TMDL action plan for the reductions required in Part II A 3, A 4, and A 5 that includes the following information:

a. Any new or modified legal authorities, such as ordinances, permits, policy, specific contract language, orders, and interjurisdictional agreements, implemented or needing to be implemented to meet the requirements of Part II A 3, A 4, and A 5.

b. The load and cumulative reduction calculations for each river basin calculated in accordance with Part II A 3, A 4, and A 5.

c. The total reductions achieved as of July 1, 2018, for each pollutant of concern in each river basin [~~:~~ .]

d. A list of BMPs implemented prior to July 1, 2018, to achieve reductions associated with the Chesapeake Bay TMDL including:

(1) The date of implementation; and

(2) The reductions achieved.

e. The BMPs to be implemented by the permittee prior to the expiration of this permit to meet the cumulative reductions calculated in Part II A 3, A 4, and A 5, including as applicable:

(1) Type of BMP;

(2) Project name;

(3) Location;

(4) Percent removal efficiency for each pollutant of concern; and

(5) Calculation of the reduction expected to be achieved by the BMP calculated and reported in accordance with the methodologies established in Part II A 8 for each pollutant of concern; and

f. A summary of any comments received as a result of public participation required in Part II A 12, the permittee's response, identification of any public meetings to address public concerns, and any revisions made to Chesapeake Bay TMDL action plan as a result of public participation.

12. Prior to submittal of the action plan required in Part II A 11, the permittee shall provide an opportunity for public comment on the additional BMPs proposed to meet the reductions not previously approved by the department in the first phase Chesapeake Bay TMDL action plan for no less than 15 days.

[~~13. The Chesapeake Bay TMDL action plan shall be incorporated by reference into the MS4 program plan required by Part I B of this permit.~~

~~14.~~ 13.] For each reporting period, the corresponding annual report shall include the following information:

a. A list of BMPs implemented during the reporting period but not reported to the DEQ BMP Warehouse in accordance with Part I E 5 g and the estimated reduction of pollutants of concern achieved by each and reported in pounds per year;

b. If the permittee acquired credits during the reporting period to meet all or a portion of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were acquired;

c. The progress, using the final design efficiency of the BMPs, toward meeting the required cumulative reductions for total nitrogen, total phosphorus, and total suspended solids; and

d. A list of BMPs that are planned to be implemented during the next reporting period.

B. Local TMDL special condition [.]

1. The permittee shall develop a local TMDL action plan designed to reduce loadings for pollutants of concern if the permittee discharges the pollutants of concern to an impaired water for which a TMDL has been approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B 1 a and 1 b:

a. For TMDLs approved by the EPA prior to July 1, 2013, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall update the previously approved local TMDL action plans to meet the conditions of Part II B 3, B 4, B 5, B 6, and B 7 as applicable, no later than 18 months after the permit effective date and continue implementation of the action plan; and

b. For TMDLs approved by EPA on or after July 1, 2013, and prior to June 30, 2018, and in which an individual or aggregate wasteload has been allocated to the permittee, the permittee shall develop and initiate implementation of action plans to meet the conditions of Part II B 3, B 4, B 5, B 6, and B 7 as applicable for each pollutant for which wasteloads have been allocated to the permittee's MS4 no later than 30 months after the permit effective date.

2. [The permittee shall complete implementation of the TMDL action plans as soon as practicable.] TMDL action plans may be implemented in multiple phases over more than one permit cycle using the adaptive iterative approach provided adequate progress is achieved in the implementation of BMPs designed to reduce pollutant discharges in a manner that is consistent with the assumptions and requirements of the applicable TMDL.

3. Each local TMDL action plan developed by the permittee shall include the following:

a. The TMDL project name;

b. The EPA approval date of the TMDL;

c. The wasteload allocated to the permittee (individually or in aggregate), and the corresponding percent reduction, if applicable;

d. Identification of the significant sources of the pollutants of concern discharging to the permittee's MS4 and [that] are not covered under a separate VPDES permit. For the purposes of this requirement, a significant source of pollutants means a discharge where the expected pollutant loading is greater than the average pollutant loading for the land use identified in the TMDL;

e. The BMPs designed to reduce the pollutants of concern in accordance with Parts II B 4, B 5, and B 6;

f. Any calculations required in accordance with Part II B 4, B 5, or B 6;

g. For action plans developed in accordance with Part II B 4 and B 5, an outreach strategy to enhance the public's education (including employees) on methods to eliminate and reduce discharges of the pollutants; and

h. A schedule of anticipated actions planned for implementation during this permit term.

4. Bacterial TMDLs.

a. If the permittee is an approved VSMP authority, the permittee shall select and implement at least three of the strategies listed in Table 5 below designed to reduce the load of bacteria to the MS4. Selection of the strategies shall correspond to sources identified in Part II B 3 [e d].

b. If the permittee is not an approved VSMP authority, the permittee shall select at least one strategy listed in Table 5 below designed to reduce the load of bacteria to the MS4 relevant to sources of bacteria applicable within the MS4 regulated service area. Selection of the strategies shall correspond to sources identified in Part II B 3 [e d].

Table 5
Strategies for Bacteria Reduction Stormwater Control/Management Strategy

Source	Strategies (provided as an example and not meant to be all inclusive or limiting)
Domestic pets (dogs and cats)	Provide signage to pick up dog waste, providing pet waste bags and disposal containers. Adopt and enforce pet waste ordinances or policies, or leash laws or policies. Place dog parks away from environmentally sensitive areas. Maintain dog parks by removing disposed of pet waste bags and cleaning up other sources of bacteria. Protect riparian buffers and provide unmanicured vegetative buffers along streams to dissuade stream access.
Urban wildlife	Educate the public on how to reduce food sources accessible to urban wildlife (e.g., manage restaurant dumpsters and grease traps, residential garbage, feed pets indoors). Install storm drain inlet or outlet controls. Clean out storm drains to remove waste from wildlife. Implement and enforce urban trash management practices. Implement rooftop disconnection programs or site designs that minimize connections to reduce bacteria from rooftops Implement a program for removing animal carcasses from roadways and properly disposing of the same (either through proper storage or through transport to a licensed facility).
Illicit connections or illicit discharges to the MS4	Implement an enhanced dry weather screening and illicit discharge, detection, and elimination program beyond the requirements of Part I E 3 to identify and remove illicit connections and identify leaking sanitary sewer lines infiltrating to the MS4 and implement repairs. Implement a program to identify potentially failing septic systems. Educate the public on how to determine whether their septic system is failing. Implement septic tank inspection and maintenance program. Implement an educational program beyond any requirements in Part I E 1 though E 6

	to explain to citizens why they should not dump materials into the MS4. [~~Marinas.~~]
Dry weather urban flows (irrigations, carwashing, powerwashing, etc.)	Implement public education programs to reduce dry weather flows from storm sewers related to lawn and park irrigation practices, carwashing, powerwashing and other nonstormwater flows. Provide irrigation controller rebates. Implement and enforce ordinances or policies related to outdoor water waste. Inspect commercial trash areas, grease traps, washdown practices, and enforce corresponding ordinances or policies.
Birds (Canadian geese, gulls, pigeons, etc.)	Identify areas with high bird populations and evaluate deterrents, population controls, habitat modifications and other measures that may reduce bird-associated bacteria loading. Prohibit feeding of birds.
Other sources	Enhance maintenance of stormwater management facilities owned or operated by the permittee. Enhance requirements for third parties to maintain stormwater management facilities. Develop BMPs for locating, transporting, and maintaining portable toilets used on permittee-owned sites. Educate third parties that use portable toilets on BMPs for use. Provide public education on appropriate recreational vehicle dumping practices.

5. Local sediment, phosphorus, and nitrogen TMDLs.

a. The permittee shall reduce the loads associated with sediment, phosphorus, or nitrogen through implementation of one or more of the following:

(1) One or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in 9VAC25-870-65 or other approved BMPs found on the Virginia Stormwater BMP Clearinghouse website;

(2) One or more BMPs approved by the Chesapeake Bay [~~program~~ Program]; or

(3) Land disturbance thresholds lower than Virginia's regulatory requirements for erosion and sediment control and post development stormwater management.

b. The permittee may meet the local TMDL requirements for sediment, phosphorus, or nitrogen through BMPs implemented to meet the requirements of the Chesapeake Bay TMDL in Part II A as long as the BMPs are implemented in the watershed for which local water quality is impaired.

c. The permittee shall calculate the anticipated load reduction achieved from each BMP and include the calculations in the action plan required in Part II B 3 [~~g~~ f].

d. No later than 36 months after the effective date of this permit, the permittee shall submit to the department the anticipated end dates by which the permittee will meet each WLA for sediment, phosphorus, or nitrogen. The proposed end date may be developed in accordance with Part II B 2.

6. Polychlorinated biphenyl (PCB) TMDLs.

a. For each PCB TMDL action plan, the permittee shall include an inventory of potentially significant sources of PCBs owned or operated by the permittee that drains to the MS4 that includes the following information:

(1) Location of the potential source;

(2) Whether or not the potential source is from current site activities or activities previously conducted at the site that have been terminated (i.e. legacy activities); and

(3) A description of any measures being implemented or to be implemented to prevent exposure to stormwater and the discharge of PCBs from the site.

b. If at any time during the term of this permit, the permittee discovers a previously unidentified significant source of PCBs within the permittee's MS4 regulated service area, the permittee shall notify DEQ in writing within 30 days of discovery.

7. Prior to submittal of the action plan required in Part II B 1, the permittee shall provide an opportunity for public comment proposed to meet the local TMDL action plan requirements for no less than 15 days.

8. The MS4 program plan as required by Part I B of this permit shall incorporate each local TMDL action plan. Local TMDL action plans may be incorporated by reference into the MS4 program plan provided that the program plan includes the date of the most recent local TMDL action plan and identification of the location where a copy of the local TMDL action plan may be obtained.

9. For each reporting period, each annual report shall include a summary of actions conducted to implement each local TMDL action [~~plans~~ plan].

~~SECTION~~ Part III

~~CONDITIONS APPLICABLE TO ALL STATE PERMITS~~

Conditions Applicable to All State and VPDES Permits

NOTE: Discharge monitoring is not required for [compliance purposes by] this general permit. If the operator chooses to monitor stormwater discharges [~~or control~~

~~measures, the operator must comply with the requirements of Part III A, B, and C as appropriate~~ for informational or screening purposes, the operator does not need to comply with the requirements of Parts III A, B, or C].

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the ~~monitored~~ monitoring activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this state permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

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

B. Records.

1. Monitoring ~~records/reports~~ records and reports shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this state permit, and records of all data used to complete the registration statement for this state permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results.

1. The operator shall submit the results of the monitoring ~~required by~~ as may be performed in accordance with this state permit with the annual report unless another reporting schedule is specified elsewhere in this state permit.

2. Monitoring results shall be reported on a ~~Discharge Monitoring Report~~ discharge monitoring report (DMR); on forms provided, approved or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this state permit more frequently than required by this state permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this state permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

D. Duty to provide information. The operator shall furnish ~~to the department,~~ within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this state permit or to determine compliance with this state permit. The board, department, or EPA may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and Virginia Stormwater Management Act. The operator shall also furnish to the board, department, or EPA upon request, copies of records required to be kept by this state permit.

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

F. Unauthorized stormwater discharges. Pursuant to ~~§ 62.1-44.15:26~~ § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the ~~board~~ department, it shall be unlawful to cause a stormwater discharge from a MS4.

G. Reports of unauthorized discharges. Any operator of a small MS4 who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an

amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117 ~~or,~~ 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters~~;~~ or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters~~,~~ shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" (Part III U) or "upset," ~~as defined herein~~ (Part III V), should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with ~~Section~~ Part III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

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

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

a. Any unanticipated bypass; and

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

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

a. A description of the noncompliance and its cause;

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

c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The ~~board or its designee~~ department may waive the written report on a case-by-case basis for reports of noncompliance under ~~Section~~ Part III I if the oral report has been received within 24 hours and no adverse impact on surface waters has been reported.

3. The operator shall report all instances of noncompliance not reported under ~~Sections~~ Part III I 1 or 2, in writing, ~~at~~ as part of the ~~time the next monitoring~~ annual reports that are submitted. The reports shall contain the information listed in ~~Section~~ Part III I 2.

NOTE: The ~~immediate (within 24 hours)~~ reports required ~~to be provided to the department~~ in ~~Sections~~ Part III G, H, and I ~~may~~ shall be made to the ~~appropriate Regional Office Pollution Response Program as found at http://deq.virginia.gov/Programs/PollutionResponsePreparedness.aspx~~ department. Reports may be made by telephone, email, or ~~by~~ fax. For reports outside normal working hours, ~~leave~~ leaving a recorded message ~~and this~~ shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency ~~Services~~ Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registrations statement, to the department, ~~it~~ the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The operator plans an alteration or addition to any building, structure, facility, or installation ~~from which there is or may be a discharge of pollutants, the construction of which commenced~~ that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420:

~~(1) After promulgation of standards of performance under § 306 of the Clean Water Act that are applicable to such source; or~~

~~(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;~~

b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this state permit; or

2. The operator shall give advance notice to the department of any planned changes in the permitted facility or activity~~; which~~ that may result in noncompliance with state permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this ~~subsection,~~ chapter, a responsible corporate officer means: (i) ~~A~~ a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions ~~which~~ that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

c. For a municipality, state, federal, or other public agency: ~~By~~ by either a principal executive officer or ranking elected official. For purposes of this ~~subsection~~ chapter, a principal executive officer of a public agency includes:

(1) The chief executive officer of the agency, or

(2) A senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

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

a. The authorization is made in writing by a person described in ~~Section~~ Part III K 1;

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

c. The signed and dated written authorization is submitted to the department.

3. Changes to authorization. If an authorization under ~~Section~~ Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the ~~facility,~~ MS4, a new authorization satisfying the requirements of ~~Section~~ Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.

4. Certification. Any person signing a document under ~~Sections~~ Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly [gather ~~gathered~~] and [evaluate ~~evaluated~~] the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of

my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this state permit. Any state permit noncompliance constitutes a violation of the Virginia Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this state permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. ~~State permit~~ Permit noncompliance is grounds for enforcement action; for state permit termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this state permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this state permit after the expiration date of this state permit, the operator shall submit a new registration statement at least 90 days before the expiration date of the existing state permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing state permit.

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

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

P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this state permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this state permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

S. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any discharge in violation of this state permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this state permit.

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ~~assure~~ ensure efficient operation. These bypasses are not subject to the provisions of ~~Sections~~ Part III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice ~~shall be submitted,~~ to the department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in ~~Section~~ Part III I.

3. Prohibition of bypass.

a. ~~Bypass~~ Except as provided in Part III U 1, bypass is prohibited, and the board or ~~its designee~~ department may take enforcement action against an operator for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The operator submitted notices as required under ~~Section~~ Part III U 2.

b. The ~~board or its designee~~ department may approve an anticipated bypass, after considering its adverse effects, if the ~~board or its designee~~ department determines that it will meet the three conditions listed ~~above~~ in ~~Section~~ Part III U 3 a.

V. Upset.

1. An "upset," as defined in 9VAC25-870-10, ~~constitutes an affirmative defense to an action brought for noncompliance with technology based state permit effluent limitations if the requirements of Section III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review. 2.~~ means an exceptional incident in which there is unintentional and temporary noncompliance with technology based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part III V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

~~3.~~ 4. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the operator can identify the ~~cause(s)~~ causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The operator submitted notice of the upset as required in ~~Section~~ Part III I; and

d. The operator complied with any remedial measures required under ~~Section~~ Part III S.

~~4.~~ 5. In any enforcement proceeding the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department as the board's designee, EPA, or an authorized representative (including an authorized ~~contractor acting as a representative of the administrator),~~ contractor), upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this state permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this state permit;

3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this state permit; and

4. Sample or monitor at reasonable times, for the purposes of ~~assuring state~~ ensuring permit compliance or as otherwise authorized by the Clean Water Act and the Virginia Stormwater Management Act, any substances or parameters at any location.

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

X. State permit actions. State permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

Y. Transfer of state permits.

1. State permits are not transferable to any person except after notice to the department. Except as provided in ~~Section~~ Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has

been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under ~~Section~~ Part III Y 1, this state permit may be automatically transferred to a new operator if:

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

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

c. The ~~board~~ department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in ~~Section~~ Part III Y 2 b.

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

9VAC25-890-50. ~~Delegation of authority.~~ (Repealed.)

~~The director, or his designee, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.~~

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (9VAC25-890)

Application Form 1 - General Information, Consolidated Permits Program, EPA Form 3510-1 (eff. 8/1990)

MS4 Nutrient Credit Acquisition Form, MS4-SCAFv1 (eff. 9/2018)

MS4 Sediment Credit Acquisition Form, MS4-SCAFv1 (eff. 9/2018)

VA.R. Doc. No. R16-4777; Filed August 29, 2018, 10:42 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-10, 12VAC5-31-910).**

Statutory Authority: §§ 32.1-12 and 32.1-111.4 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 17, 2018.

Effective Date: November 2, 2018.

Agency Contact: Ron Passmore, Regulatory and Compliance Manager, Office of Emergency Management Services, Virginia Department of Health, 1001 Technology Park Drive, Glen Allen, VA 23059-4500, telephone (804) 888-9131, or email ron.passmore@vdh.virginia.gov.

Basis: Section 32.1-111.4 of the Code of Virginia authorizes the Virginia Department of Health to regulate emergency medical services (EMS) personnel, vehicles, response times, enforcement provisions, and civil penalties.

Purpose: This is a technical change to amend the current EMS regulations to prohibit individuals with an adverse criminal history from affiliating with an EMS agency licensed by the Virginia Department of Health's Office of Emergency Medical Services, as was the case in the previous version of the regulations. Individuals who provide care to patients in their time of need must meet high moral, ethical, and legal standards in order to maintain the trust and confidence of the communities they serve. Being able to restrict EMS agency affiliation and certification to those who have not committed heinous crimes adds a layer of protection to the health, safety, and welfare of the citizens and visitors of the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: Changes to the regulations are not expected to be controversial. Key stakeholder groups and the general EMS community requested this technical change to reflect language that was previously in the 2003 version of the EMS regulations but did not convey to the current version of the regulations.

Substance: 12VAC5-31-910 prohibits the certification of individuals who have been found guilty of certain crimes. The technical changes add the term "affiliation" in order to reflect the previous version of the EMS regulations. This change is designed to prohibit an individual who has committed crimes of a certain nature from affiliating with an EMS agency in addition to restricting their ability to apply for certification as an EMS provider. In addition, there are certain crimes, after a defined waiting period, which do not affect an individual's

ability to apply to become affiliated or certified as an EMS provider in Virginia.

Issues: There are no disadvantages anticipated to citizens or businesses by amending these provisions. It will add an additional layer of scrutiny for those desiring to become affiliated with an EMS agency. For the Commonwealth, these recommended changes will work to assure a level of credibility for those seeking affiliation with or certification with an EMS agency providing service to the Commonwealth. There are no anticipated issues with this technical change. It restores the criteria as previously accepted by EMS system stakeholders in order to maintain the high standards the community expects for those providing emergency medical services in the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health (Board) proposes to limit an individual's ability to become employed by or a member of an emergency medical services (EMS) agency[1] if they have a prior history of committing certain crimes. This language was in the 2003 version of the Virginia EMS Regulations, but was inadvertently deleted when the current regulations were adopted in 2012.

Result of Analysis. Whether the benefits exceed the costs depend on the policy views of the observer.

Estimated Economic Impact. The current regulations deny Office of Emergency Medical Services certification to individuals who have been convicted of the following crimes:

1. Felonies involving sexual misconduct where the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

2. Felonies involving the sexual or physical abuse of children, the elderly or the infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, or assault on an elderly or infirm person.

3. Any crime in which the victim is an out-of-hospital patient or a patient or resident of a health care facility including abuse of, neglect of, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant.

4. Serious crimes of violence against persons such as assault or battery with a dangerous weapon, aggravated assault and battery, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree, or arson.

5. Has been subject to a permanent revocation of license or certification by another state EMS office or other recognized state or national health care provider licensing or certifying body.

Further, the current regulations deny Office of Emergency Medical Services certification to individuals in the following categories except in extraordinary circumstances, and then will be granted only if the applicant or provider establishes by clear and convincing evidence that certification will not jeopardize public health and safety.

1. Application for affiliation or certification by individuals who have been convicted of any crime and who are currently incarcerated, on work release, on probation, or on parole.

2. Application for affiliation or certification by individuals convicted of crimes in the following categories unless at least five years have passed since the conviction or five years have passed since release from custodial confinement whichever occurs later:

a. Crimes involving controlled substances or synthetics, including unlawful possession or distribution or intent to distribute unlawfully Schedule I through V drugs as defined by the Virginia Drug Control Act (§ 54.1-3400 seq. of the Code of Virginia).

b. Serious crimes against property, such as grand larceny, burglary, embezzlement, or insurance fraud.

c. Any other crime involving sexual misconduct.

3. Is currently under any disciplinary or enforcement action from another state EMS office or other recognized state or national health care provider licensing or certifying body. Personnel subject to these disciplinary or enforcement actions may be eligible for affiliation or certification provided there have been no further disciplinary or enforcement actions for five years prior to application for certification in Virginia.

In addition to denying certification, the Board proposes to ban employment or membership in an EMS agency for individuals with the above-described attributes.

Banning the employment of people with criminal backgrounds in EMS agencies may reduce their exposure to people in vulnerable positions. This may reduce the likelihood that people receiving EMS services, as well as other EMS employees, may be victimized. Protecting the well-being of patients and other employees has significant value.

On the other hand, there is a cost to limiting job opportunities for people who are otherwise qualified and have "paid their debt to society." These individuals are worse off by the denial of opportunity to make a living within the law. Also, roadblocks to legitimate employment may potentially encourage recidivism for individuals who otherwise might not have repeat offended.

Businesses and Entities Affected. The proposed amendments affect the 681 licensed EMS agencies[2] in Virginia.[3]

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

Projected Impact on Employment. The proposed amendments will not significantly affect total employment. Individuals with specified categories of criminal backgrounds will be prevented from gaining employment at EMS agencies.

Effects on the Use and Value of Private Property. The proposed amendments will prevent private EMS agencies from employing individuals with specified categories of criminal backgrounds.

Small Businesses: Costs and Other Effects. The proposed amendments will moderately reduce the potential employee pool for small EMS agencies. In most circumstances, this will not significantly affect costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. For the most part, the proposed amendments will not significantly adversely affect small businesses.

Real Estate Development Costs. The proposed amendments will not affect real estate development costs.

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[1]Virginia Code § 32.1-111.1 defines agency as "any person engaged in the business, service or regular activity, whether or not for profit, of transporting persons who are sick, injured, wounded or otherwise incapacitated or helpless, or of rendering immediate medical care to such persons."

[2]Ibid

[3]Data source: Virginia Department of Health

Agency's Response to Economic Impact Analysis:

Purpose. To provide a response to the Department of Planning and Budget review and comments regarding the recommendation to add the term "affiliation" to the Virginia EMS Regulations, specifically 12VAC5-31-910 Criminal or enforcement history http://townhall.virginia.gov/?L?viewstage.cfm?stageid=7067. The following language was submitted by DPB, "On the other hand, there is a cost to limiting job opportunities for people who are otherwise qualified and have "paid their debt to society." These individuals are worse off by the denial of opportunity to make a living within the law. Also, roadblocks to legitimate employment may potentially encourage recidivism for individuals who otherwise might not have repeat offended."

Background. This revision adds criteria that prevent an individual from becoming affiliated with an EMS agency if they have a prior history of committing certain crimes that would also exclude them from becoming certified as a Virginia EMS provider. This proposed language was in the 2003 version of the Virginia EMS Regulations and is a technical revision for inclusion in the current version of the EMS Regulations.

It is important to note that the language adopted is reflective of that of the National Registry of EMTS (NREMT) exclusionary criteria for criminal convictions. The following is an excerpt as to the justification of their rationale for such criteria:

"EMS professionals, under the authority of their state licensure, have unsupervised, intimate, physical and emotional contact with patients at a time of maximum physical and emotional vulnerability, as well as unsupervised access to a patient's personal property. These patients may be unable to defend or protect themselves, voice objections to particular actions, or provide accurate accounts of events at a later time. EMS professionals, therefore, are placed in a position of the highest public trust.

"The public in need of out-of-hospital medical services relies on state licensure and national certification to assure that those EMS professionals who respond to their calls for aid qualify for this extraordinary trust. For these reasons, the NREMT has adopted the following Criminal Conviction Policy to ensure that individuals, who have been convicted of certain crimes, are identified and appropriately evaluated as to whether they would pose a risk to public safety as an EMS provider https://www.nremt.org/nremt/about/policy_felony.asp."

Based on provisions within the Virginia EMS Regulations individuals who have been convicted of certain crimes, after a defined waiting period, may apply to gain Virginia EMS certification and also affiliate with an EMS agency as a volunteer or an employee. Furthermore, individuals who have been pardoned by the Governor and/or had their rights restored may be eligible for Virginia EMS certification as well as affiliation with a volunteer or career EMS agency.

Justification. Although certain serious and heinous crimes prevent an individual from entering the Virginia EMS system, other criminal convictions do not hinder an individual from seeking affiliation (employment or volunteer) after waiting a defined time period once they have met all of their judicial obligations. It is for these reasons; we do not agree with DPB's opinion that the requested language amendment will negatively impact the opportunities for individuals seeking EMS employment in Virginia.

Summary:

The amendments limit an individual's ability to become affiliated with an emergency medical services (EMS) agency if the individual has been convicted of certain crimes. This provision was in the 2003 version of the Virginia EMS Regulations but was inadvertently deleted when the current regulations were adopted in 2012; the amendments restore the limitation.

Part I
General Provisions

Article 1
Definitions

12VAC5-31-10. Definitions.

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

"Abandonment" means the termination of a health care provider-patient relationship without assurance that an equal or higher level of care meeting the assessed needs of the patient's condition is present and available.

"Accreditation" means approval granted to an entity by the Office of Emergency Medical Services (EMS) after the institution has met specific requirements enabling the institution to conduct basic or advanced life support training and education programs. There are four levels of accreditation: interim, provisional, full, and probationary.

"Accreditation cycle" means the term or cycle at the conclusion of which accreditation expires unless a full self-study is performed. Accreditation cycles are typically quinquennial (five-year) but these terms may be shorter, triennial (three-year) or biennial (two-year), if the Office of EMS deems it necessary.

"Accreditation date" means the date of the accreditation decision that is awarded to an entity following its full site visit and review.

"Accreditation decision" means the conclusion reached about an entity status after evaluation of the results of the onsite survey, recommendations of the site review team, and any other relevant information such as documentation of compliance with standards, documentation of plans to correct deficiencies, or evidence of recent improvements.

"Accreditation denied" means an accreditation decision that results when an entity has been denied accreditation. This accreditation decision becomes effective only when all available appeal procedures have been exhausted.

"Acute" means a medical condition having a rapid onset and a short duration.

"Acute care hospital" means any hospital that provides emergency medical services on a 24-hour basis.

"Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Advanced life support" or "ALS" means the provision of care by EMS personnel who are certified as an Emergency Medical Technician (EMT) - Enhanced, Advanced EMT, Intermediate, or Paramedic or equivalent as approved by the Board of Health.

Advanced life support in the air medical environment is a mission generally defined as the transport of a patient who receives care during a transport that includes an invasive medical procedure or the administration of medications, including IV infusions, in addition to any noninvasive care that is authorized by the Office of EMS.

"Advanced life support certification course" means a training program that allows a student to become eligible for a new ALS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective advanced life support curriculum. Initial certification courses include:

1. Emergency Medical Technician-Enhanced;
2. Advanced EMT;
3. Advanced EMT to Intermediate Bridge;
4. EMT-Enhanced to Intermediate Bridge;
5. Intermediate;
6. Intermediate to Paramedic Bridge;
7. Paramedic;
8. Registered Nurse to Paramedic Bridge; and
9. Other programs approved by the Office of EMS.

"Advanced life support coordinator" means a person who has met the criteria established by the Office of EMS to assume responsibility for conducting ALS training programs.

"Advanced life support transport" means the transportation of a patient who is receiving ALS level care.

"Affiliated" means a person who is employed by or a member of an EMS agency.

"Air medical specialist" means a person trained in the concept of flight physiology and the effects of flight on patients through documented completion of a program approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Ambulance" means, as defined by § 32.1-111.1 of the Code of Virginia, any vehicle, vessel or craft that holds a valid permit issued by the Office of EMS and that is specially constructed, equipped, maintained and operated, and intended to be used for emergency medical care and the transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless. The word "ambulance" may not appear on any vehicle, vessel or aircraft that does not hold a valid EMS vehicle permit.

"Approved locking device" means a mechanism that prevents removal or opening of a drug kit by means other than securing the drug kit by the handle only.

"Assistant director" means the Assistant Director of the Office of Emergency Medical Services.

"Attendant-in-charge" or "AIC" means the certified or licensed person who is qualified and designated to be primarily responsible for the provision of emergency medical care.

"Attendant" means a certified or licensed person qualified to assist in the provision of emergency medical care.

"Basic life support" or "BLS" means the provision of care by EMS personnel who are certified as First Responder, Emergency Medical Responder (EMR), or Emergency Medical Technician or equivalent as approved by the Board of Health.

Basic life support in the air medical environment means a mission generally defined as the transport of a patient who receives care during a transport that is commensurate with the scope of practice of an EMT. In the Commonwealth of Virginia care that is provided in the air medical environment must be assumed at a minimum by a Virginia certified Paramedic who is a part of the regular air medical crew. (fixed wing excluded)

"BLS certification course" means a training program that allows a student to become eligible for a new BLS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective basic life support curriculum. Initial certification courses include:

1. EMS First Responder;
2. EMS First Responder Bridge to EMT;
3. Emergency Medical Responder;
4. Emergency Medical Responder Bridge to EMT;
5. Emergency Medical Technician; and
6. Other programs approved by the Office of EMS.

"Board" or "state board" means the State Board of Health.

"Candidate" means any person who is enrolled in or is taking a course leading toward initial certification.

"Candidate status" means the status awarded to a program that has made application to the Office of EMS for accreditation but that is not yet accredited.

"CDC" means the United States Centers for Disease Control and Prevention.

"Certification" means a credential issued by the Office of EMS for a specified period of time to a person who has successfully completed an approved training program.

"Certification candidate" means a person seeking EMS certification from the Office of EMS.

"Certification candidate status" means any candidate or provider who becomes eligible for certification testing but who has not yet taken the certification test using that eligibility.

"Certification examiner" means an individual designated by the Office of EMS to administer a state certification examination.

"Certification transfer" means the issuance of certification through reciprocity, legal recognition, challenge or equivalency based on prior training, certification or licensure.

"Chief executive officer" means the person authorized or designated by the agency or service as the highest in administrative rank or authority.

"Commercial mobile radio service" or "CMRS" means the same as that term is defined in §§ 3 (27) and 332 (d) of the Federal Telecommunications Act of 1996 (47 USC § 151 et seq.) and the Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66, 107 USC § 312) and includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service or personal communications service (e.g., cellular telephone, 800/900 MHz Specialized Mobile Radio, Personal Communications Service, etc.).

"Commissioner" means the State Health Commissioner, the commissioner's duly authorized representative, or in the event of the commissioner's absence or a vacancy in the office of State Health Commissioner, the Acting Commissioner or Deputy Commissioner.

"Continuing education" or "CE" means an instructional program that enhances a particular area of knowledge or skills beyond compulsory or required initial training.

"Course" means a basic or advanced life support training program leading to certification or award of continuing education credit hours.

"Course coordinator" means the person identified on the course approval request as the coordinator who is responsible with the physician course director for all aspects of the program including but not limited to assuring adherence to the rules and regulations, office policies, and any contract components.

"Critical care" or "CC" in the air medical environment is a mission defined as an interfacility transport of a critically ill or injured patient whose condition warrants care commensurate with the scope of practice of a physician or registered nurse.

"Critical criteria" means an identified essential element of a state practical certification examination that must be properly performed to successfully pass the station.

"Defibrillation" means the discharge of an electrical current through a patient's heart for the purpose of restoring a perfusing cardiac rhythm. For the purpose of these regulations, defibrillation includes cardioversion.

"Defibrillator -- automated external" or "AED" means an automatic or semi-automatic device, or both, capable of rhythm analysis and defibrillation after electronically detecting the presence of ventricular fibrillation and ventricular tachycardia, approved by the U.S. Food and Drug Administration.

"Defibrillator -- manual" means a monitor/defibrillator that has no capability for rhythm analysis and will charge and deliver a shock only at the command of the operator. For the purpose of compliance with these regulations, a manual defibrillator must be capable of synchronized cardioversion and noninvasive external pacing. A manual defibrillator must be approved by the U.S. Food and Drug Administration.

"Designated emergency response agency" means an EMS agency recognized by an ordinance or a resolution of the governing body of any county, city or town as an integral part of the official public safety program of the county, city or town with a responsibility for providing emergency medical response.

"Designated infection control officer" means a liaison between the medical facility treating the source patient and the exposed employee. This person has been formally trained for this position and is knowledgeable in proper post exposure medical follow up procedures and current regulations and laws governing disease transmission.

"Director" means the Director of the Office of Emergency Medical Services.

"Diversion" means a change in the normal or established pattern of patient transport at the direction of a medical care facility.

"Emergency medical services" or "EMS" means health care, public health, and public safety services used in the medical response to the real or perceived need for immediate medical assessment, care, or transportation and preventive care or transportation in order to prevent loss of life or aggravation of physiological or psychological illness or injury.

"EMS Advisory Board" means the Emergency Medical Services Advisory Board as appointed by the Governor.

"EMS agency status report" means a report submitted on forms specified by the Office of EMS that documents the operational capabilities of an EMS agency including data on personnel, vehicles and other related resources.

"EMS education coordinator" means any EMS provider, registered nurse, physician assistant, doctor of osteopathic medicine, or doctor of medicine who possesses Virginia certification as an EMS education coordinator. Such certification does not confer authorization to practice EMS.

"Emergency medical services agency" or "EMS agency" means any person engaged in the business, service, or regular activity, whether or not for profit, of transporting or rendering immediate medical care and providing transportation to persons who are sick, injured, or otherwise incapacitated or helpless and that holds a valid license as an emergency medical services agency issued by the commissioner in accordance with § 32.1-111.6 of the Code of Virginia.

"Emergency medical services personnel" or "EMS personnel" means individuals who are employed by or affiliated members of an emergency medical services agency and who provide emergency medical services pursuant to an emergency medical services agency license issued to that agency by the commissioner and in accordance with the authorization of that agency's operational medical director.

"Emergency medical services physician" or "EMS physician" means a physician who holds current endorsement from the Office of EMS and may serve as an EMS agency operational medical director or training program physician course director.

"Emergency medical services provider" or "EMS provider" means any person who holds a valid certificate as an emergency medical services provider issued by the commissioner.

"Emergency medical services system" or "EMS system" means the system of emergency medical services agencies, vehicles, equipment, and personnel; health care facilities; other health care and emergency services providers; and other components engaged in the planning, coordination, and delivery of emergency medical services in the Commonwealth, including individuals and facilities providing communications and other services necessary to facilitate the delivery of emergency medical services in the Commonwealth.

"Emergency medical services vehicle" or "EMS vehicle" means any vehicle, vessel, aircraft, or ambulance that holds a valid emergency medical services vehicle permit issued by the Office of EMS that is equipped, maintained or operated to provide emergency medical care or transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless.

"Emergency medical services vehicle permit" means an authorization issued by the Office of EMS for any vehicle, vessel or aircraft meeting the standards and criteria established by regulation for emergency medical services vehicles.

"Emergency medical technician instructor" means an EMS provider who holds a valid certification issued by the Office of EMS to announce and coordinate BLS programs.

"Emergency vehicle operator's course" or "EVOC" means an approved course of instruction for EMS vehicle operators that includes safe driving skills, knowledge of the state motor vehicle code affecting emergency vehicles, and driving skills necessary for operation of emergency vehicles during response to an incident or transport of a patient to a health care facility. This course must include classroom and driving range skill instruction. An approved course of instruction includes the course objectives as identified within the U.S. Department of Transportation Emergency Vehicle Operator curriculum or as approved by the Office of EMS.

"Exam series" means a sequence of opportunities to complete a certification examination with any allowed retest.

"FAA" means the U.S. Federal Aviation Administration.

"FAR" means Federal Aviation Regulations.

"FCC" means the U.S. Federal Communications Commission.

"Financial Assistance Review Committee" or "FARC" means the committee appointed by the EMS Advisory Board to administer the Rescue Squad Assistance Fund.

"Full accreditation" means an accreditation decision awarded to an entity that demonstrates satisfactory compliance with applicable Virginia standards in all performance areas.

"Fund" means the Virginia Rescue Squad Assistance Fund.

"Institutional self study" means a document whereby training programs seeking accreditation answer questions about their program for the purpose of determining their level of preparation to conduct initial EMS training programs.

"Instructor" means the teacher for a specific class or lesson of an EMS training program.

"Instructor aide" means providers certified at or above the level of instruction.

"Interfacility transport" in the air medical environment means as a mission for whom an admitted patient or patients were transported from a hospital or care giving facility (clinic, nursing home, etc.) to a receiving facility or airport.

"Interim accreditation" means an accreditation decision that results when a previously unaccredited EMS entity has been granted approval to operate one training program, for a period not to exceed 120 days, during which its application is being considered and before a provisional or full accreditation is issued, providing the following conditions are satisfied: (i) a complete application for accreditation is received by the Office of EMS and (ii) a complete institutional self study is submitted to the Office of EMS. Students attending a program with interim accreditation will not be eligible to sit for state testing until the entity achieves official notification of accreditation at the provisional or full level.

"Invasive procedure" means a medical procedure that involves entry into the living body, as by incision or by insertion of an instrument.

"License" means an authorization issued by the Office of EMS to provide emergency medical services in the state as an EMS agency.

"Local EMS resource" means a person recognized by the Office of EMS to perform specified functions for a designated geographic area. This person may be designated to perform one or more of the functions otherwise provided by regional EMS councils.

"Local EMS response plan" means a written document that details the primary service area and responding interval standards as approved by the local government and the operational medical director.

"Local governing body" or "governing body" means members of the governing body of a city, county, or town in the Commonwealth who are elected to that position or their designee.

"Major medical emergency" means an emergency that cannot be managed through the use of locally available emergency medical resources and that requires implementation of special procedures to ensure the best outcome for the greatest number of patients as determined by the EMS provider in charge or incident commander on the scene. This event includes local emergencies declared by the locality's government and states of emergency declared by the Governor.

"Medical care facility" means, as defined by § 32.1-102.1 of the Code of Virginia, any institution, place, building or agency, whether licensed or required to be licensed by the board or the Department of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical.

"Medical control" means the direction and advice provided through a communications device (on-line) to on-site and in-transit EMS personnel from a designated medical care facility staffed by appropriate personnel and operating under physician supervision.

"Medical direction" means the direction and supervision of EMS personnel by the Operational Medical Director of the EMS agency with which he is affiliated.

"Medical emergency" means the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Medical practitioner" means a physician, dentist, podiatrist, licensed nurse practitioner, licensed physician's assistant, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

"Mutual aid agreement" means a written document specifying a formal understanding to lend aid to an EMS agency.

"Neonatal" or "neonate" means, for the purpose of interfacility transportation, any infant who is deemed a newborn within a hospital, has not been discharged since the birthing process, and is currently receiving medical care under a physician.

"Nonprofit" means without the intention of financial gain, advantage, or benefit as defined by federal tax law.

"OSHA" means the U.S. Occupational Safety and Health Administration or Virginia Occupational Safety and Health, the state agency designated to perform its functions in Virginia.

"Office of EMS" means the Office of Emergency Medical Services within the Virginia Department of Health.

"Operational medical director" or "OMD" means an EMS physician, currently licensed to practice medicine or osteopathic medicine in the Commonwealth, who is formally recognized and responsible for providing medical direction, oversight and quality improvement to an EMS agency and personnel.

"Operator" means a person qualified and designated to drive or pilot a specified class of permitted EMS vehicle.

"Patient" means a person who needs immediate medical attention or transport, or both, whose physical or mental condition is such that he is in danger of loss of life or health impairment, or who may be incapacitated or helpless as a result of physical or mental condition or a person who requires medical attention during transport from one medical care facility to another.

"Person" means, as defined in the Code of Virginia, any person, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose or organization of any kind, including any government agency other than an agency of the United States government.

"Physician" means an individual who holds a valid, unrestricted license to practice medicine or osteopathy in the Commonwealth.

"Physician assistant" means an individual who holds a valid, unrestricted license to practice as a physician assistant in the Commonwealth.

"Physician course director" or "PCD" means an EMS physician who is responsible for the clinical aspects of emergency medical care training programs, including the clinical and field actions of enrolled students.

"Prehospital patient care report" or "PPCR" means a document used to summarize the facts and events of an EMS incident and includes, but is not limited to, the type of medical emergency or nature of the call, the response time, the treatment provided and other minimum data items as prescribed by the board. "PPCR" includes any supplements, addenda, or other related attachments that document patient information or care provided.

"Prehospital scene" means, in the air medical environment, the direct response to the scene of incident or injury, such as a roadway, etc.

"Prescriber" means a practitioner who is authorized pursuant to §§ 54.1-3303 and 54.1-3408 of the Code of Virginia to issue a prescription.

"Primary retest status" means any candidate or provider who failed his primary certification attempt. Primary retest status expires 90 days after the primary test date.

"Primary service area" means the specific geographic area designated or prescribed by a locality (county, city or town) in which an EMS agency provides prehospital emergency medical care or transportation. This designated or prescribed geographic area served must include all locations for which the EMS agency is principally dispatched (i.e., first due response agency).

"Private Mobile Radio Service" or "PMRS" means the same as that term is defined in § 20.3 of the Federal Communications Commission's Rules, 47 CFR 20.3. For purposes of this definition, PMRS includes "industrial" and "public safety" radio services authorized under Part 90 of the Federal Communications Commission's Rules, 47 CFR 90.1 et seq., with the exception of certain for-profit commercial paging services and 800/900 MHz Specialized Mobile Radio Services that are interconnected to the public switched telephone network and are therefore classified as CMRS.

"Probationary status" means the Office of EMS will place an institution on publicly disclosed probation when it has not completed a timely, thorough, and credible root cause

analysis and action plan of any sentinel event occurring there. When the entity completes an acceptable root cause analysis and develops an acceptable action plan, the Office of EMS will remove the probation designation from the entity's accreditation status.

"Provisional accreditation" means an accreditation decision that results when a previously unaccredited entity has demonstrated satisfactory compliance with a subset of standards during a preliminary on-site evaluation. This decision remains in effect for a period not to exceed 365 days, until one of the other official accreditation decision categories is assigned based upon an a follow-up site visit against all applicable standards.

"Public safety answering point" or "PSAP" means a facility equipped and staffed on a 24-hour basis to receive requests for emergency medical assistance for one or more EMS agencies.

"Quality management program" or "QM" means the continuous study of and improvement of an EMS agency or system including the collection of data, the identification of deficiencies through continuous evaluation, the education of personnel and the establishment of goals, policies and programs that improve patient outcomes in EMS systems.

"Reaccreditation date" means the date of the reaccreditation decision that is awarded to an entity following a full site visit and review.

"Recertification" means the process used by certified EMS personnel to maintain their training certifications.

"Reentry" means the process by which EMS personnel may regain a training certification that has lapsed within the last two years.

"Reentry status" means any candidate or provider whose certification has lapsed within the last two years.

"Regional EMS council" means an organization designated by the board that is authorized to receive and disburse public funds in compliance with established performance standards and whose function is to plan, develop, maintain, expand and improve an efficient and effective regional emergency medical services system within a designated geographical area pursuant to § 32.1-111.4:2 of the Code of Virginia.

"Regional trauma triage plan" means a formal written plan developed by a regional EMS council or local EMS resource and approved by the commissioner that incorporates the region's geographic variations, trauma care capabilities and resources for the triage of trauma patients pursuant to § 32.1-111.3 of the Code of Virginia.

"Registered nurse" means a person who is licensed or holds a multistate privilege under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Regulated medical device" means equipment or other items that may only be purchased or possessed upon the approval of a physician and that the manufacture or sale of which is regulated by the U.S. Food and Drug Administration.

"Regulated waste" means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or potentially infectious materials and are capable of releasing these materials during handling; items dripping with liquid product; contaminated sharps; pathological and microbiological waste containing blood or other potentially infectious materials.

"Regulations" means, as defined in the Code of Virginia, any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an authorized board or agency.

"Rescue" means a service that may include the search for lost persons, gaining access to persons trapped, extrication of persons from potentially dangerous situations and the rendering of other assistance to such persons.

"Rescue vehicle" means a vehicle, vessel or aircraft that is maintained and operated to assist with the location and removal of victims from a hazardous or life-threatening situation to areas of safety or treatment.

"Responding time" means the elapsed time in minutes between the time a call for emergency medical services is received by the PSAP until the appropriate emergency medical response unit arrives on the scene.

"Responding time standard" means a time standard in minutes, established by the EMS agency, the locality and OMD, in which the EMS agency will comply with 90% or greater reliability.

"Response obligation to locality" means a requirement of a designated emergency response agency to lend aid to all other designated emergency response agencies within the locality or localities in which the EMS agency is based.

"Revocation" means the permanent removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Safety apparel" means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107–2010 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear."

"Secondary certification status" means any candidate or provider who is no longer in primary retest status.

"Secondary retest status" means any candidate or provider who failed their secondary certification attempt. Secondary retest status expires 90 days after the secondary test date.

"Sentinel event" means any significant occurrence, action, or change in the operational status of the entity from the time when it either applied for candidate status or was accredited. The change in status can be based on but not limited to one or all of the events indicated below:

Entering into an agreement of sale of an accredited entity or an accreditation candidate.

Entering into an agreement to purchase or otherwise directly or indirectly acquire an accredited entity or accreditation candidate.

Financial impairment of an accredited entity or candidate for accreditation, which affects its operational performance or entity control.

Insolvency or bankruptcy filing.

Change in ownership or control greater than 25%.

Disruption of service to student body.

Discontinuance of classes or business operations.

Failure to report a change in program personnel, location, change in training level or Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) accreditation status.

Failure to meet minimum examination scores as established by the Office of EMS.

Loss of CoAEMSP or Commission on Accreditation of Allied Health Education Programs (CAAHEP) accreditation.

Company fine or fines of greater than $100,000 for regulatory violation, marketing or advertising practices, antitrust, or tax disputes.

"Special conditions" means a notation placed upon an EMS agency or registration, variance or exemption documents that modifies or restricts specific requirements of these regulations.

"Specialized air medical training" means a course of instruction and continuing education in the concept of flight physiology and the effects of flight on patients that has been approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Specialty care mission" in the air medical environment means the transport of a patient requiring specialty patient care by one or more medical professionals who are added to the regularly scheduled medical transport team.

"Specialty care provider" in the air medical environment means a provider of specialized medical care, to include but not limited to neonatal, pediatric, and perinatal.

"Standard of care" means the established approach to the provision of basic and advanced medical care that is considered appropriate, prudent and in the best interests of patients within a geographic area as derived by consensus among the physicians responsible for the delivery and oversight of that care. The standard of care is dynamic with changes reflective of knowledge gained by research and practice.

"Standard operating procedure" or "SOP" means preestablished written agency authorized procedures and guidelines for activities performed by affiliated EMS agency.

"Supplemented transport" means an interfacility transport for which the sending physician has determined that the medically necessary care and equipment needs of a critically injured or ill patient is beyond the scope of practice of the available EMS personnel of the EMS agency.

"Suspension" means the temporary removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Test site coordinator" means an individual designated by the Office of EMS to coordinate the logistics of a state certification examination site.

"Training officer" means an individual who is responsible for the maintenance and completion of agency personnel training records and who acts as a liaison between the agency, the operational medical director, and a participant in the agency and regional quality assurance process.

"Trauma center" means a specialized hospital facility distinguished by the immediate availability of specialized surgeons, physician specialists, anesthesiologists, nurses, and resuscitation and life support equipment on a 24-hour basis to care for severely injured patients or those at risk for severe injury. In Virginia, trauma centers are designated by the Virginia Department of Health as Level I, II or III.

"Trauma center designation" means the formal recognition by the board of a hospital as a provider of specialized services to meet the needs of the severely injured patient. This usually involves a contractual relationship based on adherence to standards.

"Triage" means the process of sorting patients to establish treatment and transportation priorities according to severity of injury and medical need.

"USDOT" means the U.S. Department of Transportation.

"Vehicle operating weight" means the combined weight of the vehicle, vessel or craft; a full complement of fuel; and all required and optional equipment and supplies.

"Virginia Statewide Trauma Registry" or "Trauma Registry" means a collection of data on patients who receive hospital care for certain types of injuries. The collection and analysis of such data is primarily intended to evaluate the quality of trauma care and outcomes in individual institutions and trauma systems. The secondary purpose is to provide useful information for the surveillance of injury morbidity and mortality.

12VAC5-31-910. Criminal or enforcement history.

A. General denial. Application for affiliation or certification of individuals convicted of certain crimes present an unreasonable risk to public health and safety. Thus, applications for affiliation or certification by individuals convicted of the following crimes will be denied in all cases:

1. Felonies involving sexual misconduct where the victim's failure to affirmatively consent is an element of the crime, such as forcible rape.

2. Felonies involving the sexual or physical abuse of children, the elderly or the infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, or assault on an elderly or infirm person.

3. Any crime in which the victim is an out-of-hospital patient or a patient or resident of a ~~healthcare~~ health care facility including abuse of, neglect of, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant.

4. Serious crimes of violence against persons such as assault or battery with a dangerous weapon, aggravated assault and battery, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree, or arson.

5. Has been subject to a permanent revocation of license or certification by another state EMS office or other recognized state or national ~~healthcare~~ health care provider licensing or certifying body.

B. Presumptive denial. Application for affiliation or current certification by individuals in the following categories will be denied except in extraordinary circumstances, and then will be granted only if the applicant or provider establishes by clear and convincing evidence that certification will not jeopardize public health and safety.

1. Application for affiliation or certification by individuals who have been convicted of any crime and who are currently incarcerated, on work release, on probation, or on parole.

2. Application for affiliation or certification by individuals convicted of crimes in the following categories unless at least five years have passed since the conviction or five years have passed since release from custodial confinement whichever occurs later:

a. Crimes involving controlled substances or synthetics, including unlawful possession or distribution or intent to distribute unlawfully Schedule I through V drugs as defined by the Virginia Drug Control Act (§ 54.1-3400 seq. of the Code of Virginia).

b. Serious crimes against property, such as grand larceny, burglary, embezzlement, or insurance fraud.

c. Any other crime involving sexual misconduct.

3. Is currently under any disciplinary or enforcement action from another state EMS office or other recognized state or national healthcare provider licensing or certifying body. Personnel subject to these disciplinary or enforcement actions may be eligible for affiliation or certification provided there have been no further disciplinary or enforcement actions for five years prior to application for certification in Virginia.

C. Permitted vehicle operations. Agencies are responsible for the monitoring of compliance with all driving criteria set forth in these regulations.

1. Personnel operating OEMS permitted vehicles shall posses a valid operator's or driver's license from his state of residence.

2. Personnel operating OEMS permitted vehicles shall not have been convicted on any charge as described in subsections A and B of this section.

3. Personnel who as the proximate result of having operated an OEMS permitted vehicle are (i) convicted of driving under the influence of alcohol or drugs or (ii) sentenced or assigned to any alcohol safety action program or any driver alcohol rehabilitation program pursuant to the Code of Virginia shall be prohibited from operating any OEMS permitted vehicle. Personnel or agencies shall be required to report these situations to OEMS.

4. Agencies shall develop and maintain policies that address driver eligibility, record review, and vehicle operation. Such policies must minimally address:

a. Driving education or training required for personnel to include information on the agency's policy content;

b. Safe operation of vehicles;

c. Agency driving record review procedures;

d. Requirement for immediate agency notification by personnel regarding any convictions, regardless of the state where an infraction occurred or changes to his operator's or driver's license. The immediate agency

notification shall be defined as no more than 10 calendar days following the conviction date; and

e. Identification of internal mechanisms regarding agency level actions for driver penalties (i.e., probation or suspension of driving privileges).

D. All references to criminal acts or convictions under this section refer to substantially similar laws or regulations of any other state or the United States. Convictions include prior adult convictions, juvenile convictions and adjudications of delinquency based on an offense that would have been, at the time of conviction, a felony conviction if committed by an adult within or outside Virginia.

E. Agencies shall submit a report regarding items in this section to OEMS upon request.

VA.R. Doc. No. R19-3991; Filed August 22, 2018, 4:47 p.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health is claiming an exemption 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 or the appropriation act 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: **12VAC5-71. Regulations Governing Virginia Newborn Screening Services (amending 12VAC5-71-30).**

Statutory Authority: §§ 32.1-12 and 32.1-67 of the Code of Virginia.

Effective Date: January 1, 2019.

Agency Contact: Joseph Hilbert, Director of Governmental and Regulatory Affairs, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7001, FAX (804) 864-7022, or email joe.hilbert@vdh.virginia.gov.

Summary:

Pursuant to Chapters 562 and 563 of the 2018 Acts of Assembly, the amendments add Pompe disease and mucopolysaccharidosis type I (MPS I) to the Virginia Newborn Screening System's core panel of heritable disorders and genetic diseases.

12VAC5-71-30. Core panel of heritable disorders and genetic diseases.

A. The Virginia Newborn Screening System, which includes the Virginia Newborn Screening Program, the Virginia Early Hearing Detection and Intervention Program, and the Virginia critical congenital heart disease screening, shall ensure that the core panel of heritable disorders and genetic diseases for which newborn screening is conducted is consistent with but not necessarily identical to the U.S. Department of Health and Human Services Secretary's Recommended Uniform Screening Panel.

B. The department shall review, at least biennially, national recommendations and guidelines and may propose changes to the core panel of heritable disorders and genetic diseases for which newborn dried-blood-spot screening tests are conducted.

C. The Virginia Genetics Advisory Committee may be consulted and provide advice to the commissioner on proposed changes to the core panel of heritable disorders and genetic diseases for which newborn dried-blood-spot screening tests are conducted.

D. Infants under six months of age who are born in Virginia shall be screened in accordance with the provisions set forth in this chapter for the following heritable disorders and genetic diseases, which are identified through newborn dried-blood-spot screening tests:

1. Argininosuccinic aciduria (ASA);

2. Beta-Ketothiolase deficiency (BKT);

3. Biotinidase deficiency (BIOT);

4. Carnitine uptake defect (CUD);

5. Classical galactosemia (galactose-1-phosphate uridyltransferase deficiency) (GALT);

6. Citrullinemia type I (CIT-I);

7. Congenital adrenal hyperplasia (CAH);

8. Cystic fibrosis (CF);

9. Glutaric acidemia type I (GA I);

10. Hb S beta-thalassemia (Hb F,S,A);

11. Hb SC-disease (Hb F,S,C);

12. Hb SS-disease (sickle cell anemia) (Hb F, S);

13. Homocystinuria (HCY);

14. Isovaleric acidemia (IVA);

15. Long chain L-3-Hydroxy acyl-CoA dehydrogenase deficiency (LCHAD);

16. Maple syrup urine disease (MSUD);

17. Medium-chain acyl-CoA dehydrogenase deficiency (MCAD);

18. Methylmalonic acidemia (Methylmalonyl-CoA mutase deficiency) (MUT);

19. Methylmalonic acidemia (Adenosylcobalamin synthesis deficiency) (CBL A, CBL B);

20. Multiple carboxylase deficiency (MCD);

21. Phenylketonuria (PKU);

22. Primary congenital hypothyroidism (CH);

23. Propionic acidemia (PROP);

24. Severe combined immunodeficiency (SCID);

25. Tyrosinemia type I (TYR I);

26. Trifunctional protein deficiency (TFP);

27. Very long-chain acyl-CoA dehydrogenase deficiency (VLCAD);

28. 3-hydroxy 3-methyl glutaric aciduria (HMG); ~~and~~

29. 3-Methylcrotonyl-CoA carboxylase deficiency (3-MCC);

30. Pompe disease; and

31. Mucopolysaccharidosis type I (MPS I).

E. Infants born in Virginia shall be screened for hearing loss in accordance with provisions set forth in §§ 32.1-64.1 and 32.1-64.2 of the Code of Virginia and as governed by 12VAC5-80.

F. Newborns born in Virginia shall be screened for critical congenital heart disease in accordance with provisions set forth in §§ 32.1-65.1 and 32.1-67 of the Code of Virginia and as governed by 12VAC5-71-210 through 12VAC5-71-260.

VA.R. Doc. No. R19-5461; Filed August 23, 2018, 5:34 p.m.

Proposed Regulation

Title of Regulation: **12VAC5-615. Authorized Onsite Soil Evaluator Regulations (repealing 12VAC5-615-10 through 12VAC5-615-470).**

Statutory Authority: §§ 32.1-163.5 and 32.1-164 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 16, 2018.

Agency Contact: Allen Knapp, Director, Office of Environmental Health Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7558, FAX (804) 864-7475, or email allen.knapp@vdh.virginia.gov.

Basis: The State Board of Health does not have a statutory mandate to establish a program for authorized onsite soil evaluators (AOSEs) because of the amendments to the Code of Virginia pursuant to Chapter 892 of the 2007 Acts of Assembly. The board still has legislative authority to accept and review evaluations and designs from licensed onsite soil evaluators pursuant to §§ 32.1-163, 32.1-163.5, 32.1-163.6, and 32.1-164 of the Code of Virginia.

Purpose: The health, safety, and welfare of citizens will not be affected by repeal of the Authorized Onsite Soil Evaluators Regulations, which were promulgated July 1, 2002. Chapter 892 rescinded certificate requirements administered by the Virginia Department of Health (VDH) and directed the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals to promulgate regulations for persons seeking a license as an onsite soil evaluator. The legislation obviates the need for the State Board of Health to administer a certificate program for AOSEs, and the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals adopted regulations for onsite soil evaluators (18VAC160-20).

The VDH AOSE regulations unnecessarily establish a certificate program for qualifying individuals as AOSEs, including conflict of interest requirements. Documentation requirements in the VDH regulations for reports and designs are now contained in VDH policies that implement other regulations (e.g., 12VAC5-610, 12VAC5-613, 12VAC5-640, and 12VAC5-630). Processing time limits and definitions have been established in the Code of Virginia and agency policies, which further render the VDH AOSE regulations unnecessary.

Substance: All requirements in 12VAC5-615 are repealed.

Issues: The primary advantage to the public and the Commonwealth will be to remove unnecessary regulations that are not being implemented by VDH. Repealing the regulation will prevent confusion. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As a result of action by the Virginia General Assembly, the Board of Health (Board) proposes to repeal this regulation.

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

Estimated Economic Impact. Chapter 892, 2007 Virginia Acts of Assembly[1] transferred implementation, administration, and enforcement of licensing requirements for onsite soil evaluators from the Virginia Department of Health (VDH) to the Department of Professional and Occupational Regulation with administration by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals promulgated regulations for onsite soil evaluators on July 1, 2009 (18VAC160-20). House Bill 3134 abrogated the Board's authority to license Authorized Onsite Soil Evaluators (AOSEs); and while Title 32.1 of the Code of Virginia contains other references to the Board's regulation of AOSEs, VDH has successfully implemented those statutory provisions independent of 12VAC5-615. Thus, the proposed repeal of

this regulation will have no impact beyond potentially reducing confusion as toward the licensure rules for AOSEs in effect.

Businesses and Entities Affected. As mentioned above, the proposed repeal of this regulation will have no impact beyond potentially reducing confusion as toward the licensure rules for onsite soil evaluators in effect. Firms involved in onsite soil evaluation would be most interested in the rules. The Department of Professional and Occupational Regulation currently licenses 388 onsite soil evaluators.[2]

Localities Particularly Affected. The proposed repeal of the regulation does not disproportionately affect particular localities.

Projected Impact on Employment. The proposed repeal of the regulation does not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of the regulation does not affect the use and value of private property.

Real Estate Development Costs. The proposed repeal of the regulation does not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed repeal of the regulation does not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed repeal of the regulation does not affect small businesses.

Adverse Impacts:

Businesses. The proposed repeal of the regulation will not adversely affect businesses.

Localities. The proposed repeal of the regulation will not adversely affect localities.

Other Entities. The proposed repeal of the regulation will not adversely affect other entities.

[1]To view the text of this legislation, see http://leg1.state.va.us/cgi-bin/legp504.exe?071+ful+CHAP0892

[2]Data source: Department of Professional and Occupational Regulation

Agency's Response to Economic Impact Analysis: The Virginia Department of Health concurs with the Department of Planning and Budget's economic impact analysis. The benefits of repealing the regulations likely exceed the costs for all of the proposed changes.

Summary:

Chapter 892 of the 2007 Acts of Assembly transferred implementation, administration, and enforcement of licensing requirements for authorized onsite soil evaluators from the Virginia Department of Health (VDH) to the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, which promulgated regulations for onsite soil evaluators on July 1, 2009 (18VAC160-20). VDH successfully implemented statutory provisions for reports and designs independent of 12VAC5-615, making the chapter no longer necessary. The proposed action repeals 12VAC5-615.

VA.R. Doc. No. R13-3127; Filed August 16, 2018, 1:49 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

12VAC30-120. Waivered Services (amending 12VAC30-120-900, 12VAC30-120-935).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Date: October 27, 2018.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Summary:

The amendments (i) require services facilitators for all persons in the Elderly or Disabled with Consumer Direction Waiver receiving consumer-directed personal care services; (ii) revise several definitions for consistency with other home and community-based services waivers; and (iii) establish qualifications, education, and training for services facilitators pursuant to Item 301 FFF of Chapter 665 of the 2015 Acts of Assembly and Item 306 XX of Chapter 780 of the 2016 Acts of Assembly.

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.

12VAC30-50-130. Nursing facility services, EPSDT, including school health services and family planning.

A. Nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older. Service must be ordered or prescribed and directed

or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals younger than 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals younger than 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 § 6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act § 1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 years and older, provided for by § 1905(a) of the Social Security Act.

5. Community mental health services. These services in order to be covered (i) shall meet medical necessity criteria based upon diagnoses made by LMHPs who are practicing within the scope of their licenses and (ii) are reflected in provider records and on providers' claims for services by recognized diagnosis codes that support and are consistent with the requested professional services.

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

"Activities of daily living" means personal care activities and includes bathing, dressing, transferring, toileting, feeding, and eating.

"Adolescent or child" means the individual receiving the services described in this section. For the purpose of the use of these terms, adolescent means an individual 12 through 20 years of age; a child means an individual from birth up to 12 years of age.

"Behavioral health service" means the same as defined in 12VAC30-130-5160.

"Behavioral health services administrator" or "BHSA" means an entity that manages or directs a behavioral health benefits program under contract with DMAS.

"Care coordination" means collaboration and sharing of information among health care providers, who are involved with an individual's health care, to improve the care.

"Caregiver" means the same as defined in 12VAC30-130-5160.

"Certified prescreener" means an employee of the local community services board or behavioral health authority, or its designee, who is skilled in the assessment and treatment of mental illness and has completed a certification program approved by the Department of Behavioral Health and Developmental Services.

"Clinical experience" means providing direct behavioral health services on a full-time basis or equivalent hours of part-time work to children and adolescents who have diagnoses of mental illness and includes supervised internships, supervised practicums, and supervised field experience for the purpose of Medicaid reimbursement of (i) intensive in-home services, (ii) day treatment for children and adolescents, (iii) community-based residential services for children and adolescents who are younger than 21 years of age (Level A), or (iv) therapeutic behavioral services (Level B). Experience shall not include unsupervised internships, unsupervised practicums, and unsupervised field experience. The equivalency of part-time hours to full-time hours for the purpose of this requirement shall be as established by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"DBHDS" means the Department of Behavioral Health and Developmental Services.

"Direct supervisor" means the person who provides direct supervision to the peer recovery specialist. The direct supervisor (i) shall have two consecutive years of documented practical experience rendering peer support services or family support services, have certification training as a PRS under a certifying body approved by DBHDS, and have documented completion of the DBHDS PRS supervisor training; (ii) shall be a qualified mental health professional (QMHP-A, QMHP-C, or QMHP-E) as defined in 12VAC35-105-20 with at least two consecutive years of documented experience as a

QMHP, and who has documented completion of the DBHDS PRS supervisor training; or (iii) shall be an LMHP who has documented completion of the DBHDS PRS supervisor training who is acting within his scope of practice under state law. An LMHP providing services before April 1, 2018, shall have until April 1, 2018, to complete the DBHDS PRS supervisor training.

"DMAS" means the Department of Medical Assistance Services and its contractor or contractors.

"EPSDT" means early and periodic screening, diagnosis, and treatment.

"Family support partners" means the same as defined in 12VAC30-130-5170.

"Human services field" means the same as the term is defined by DBHDS in the document entitled Human Services and Related Fields Approved Degrees/Experience, issued March 12, 2013, revised May 3, 2013.

"Individual service plan" or "ISP" means the same as the term is defined in 12VAC30-50-226.

"Licensed mental health professional" or "LMHP" means the same as defined in 12VAC35-105-20.

"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, as that term is defined in 18VAC125-20-10, program 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," "LMHP-supervisee," 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.

"Peer recovery specialist" or "PRS" means the same as defined in 12VAC30-130-5160.

"Person centered" means the same as defined in 12VAC30-130-5160.

"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. Individualized and member-specific progress notes are part of the minimum documentation requirements and shall convey the individual's status, staff interventions, and, as appropriate, the individual's 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 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.

"Psychoeducation" means (i) a specific form of education aimed at helping individuals who have mental illness and their family members or caregivers to access clear and concise information about mental illness and (ii) a way of accessing and learning strategies to deal with mental illness and its effects in order to design effective treatment plans and strategies.

"Psychoeducational activities" means systematic interventions based on supportive and cognitive behavior therapy that emphasizes an individual's and his family's needs and focuses on increasing the individual's and family's knowledge about mental disorders, adjusting to

mental illness, communicating and facilitating problem solving and increasing coping skills.

"Qualified mental health professional-child" or "QMHP-C" means the same as the term is defined in 12VAC35-105-20.

"Qualified mental health professional-eligible" or "QMHP-E" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-590.

"Qualified paraprofessional in mental health" or "QPPMH" means the same as the term is defined in 12VAC35-105-20 and consistent with the requirements of 12VAC35-105-1370.

"Recovery-oriented services" means the same as defined in 12VAC30-130-5160.

"Recovery, resiliency, and wellness plan" means the same as defined in 12VAC30-130-5160.

"Resiliency" means the same as defined in 12VAC30-130-5160.

"Self-advocacy" means the same as defined in 12VAC30-130-5160.

"Service-specific provider intake" means the face-to-face interaction in which the provider obtains information from the child or adolescent, and parent or other family member or members, as appropriate, about the child's or adolescent's 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/reason for referral, (ii) mental health history/hospitalizations, (iii) previous interventions by providers and 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.

"Services provided under arrangement" means the same as defined in 12VAC30-130-850.

"Strength-based" means the same as defined in 12VAC30-130-5160.

"Supervision" means the same as defined in 12VAC30-130-5160.

b. Intensive in-home services (IIH) to children and adolescents under age 21 shall be time-limited interventions provided in the individual's residence and when clinically necessary in community settings. All interventions and the settings of the intervention shall be defined in the Individual Service Plan. All IIH services shall be designed to specifically improve family dynamics, provide modeling, and the clinically necessary interventions that increase functional and therapeutic interpersonal relations between family members in the home. IIH services are designed to promote psychoeducational benefits in the home setting of an individual who is at risk of being moved into an out-of-home placement or who is being transitioned to home from an out-of-home placement due to a documented medical need of the individual. These services provide crisis treatment; individual and family counseling; communication skills (e.g., counseling to assist the individual and his parents or guardians, as appropriate, to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); care coordination with other required services; and 24-hour emergency response.

(1) These services shall be limited annually to 26 weeks. Service authorization shall be required for Medicaid reimbursement prior to the onset of services. Services rendered before the date of authorization shall not be reimbursed.

(2) Service authorization shall be required for services to continue beyond the initial 26 weeks.

(3) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

(4) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

c. Therapeutic day treatment (TDT) shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family counseling.

(1) Service authorization shall be required for Medicaid reimbursement.

(2) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for service-specific provider intakes and ISPs are set out in this section.

(3) These services may be rendered only by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, or a QMHP-E.

d. Community-based services for children and adolescents under 21 years of age (Level A) pursuant to 42 CFR 440.031(d).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual® Criteria or an equivalent standard authorized in advance by DMAS, shall be required for this service.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by an LMHP, LMHP-supervisee, LMHP-resident, or LMHP-RP.

(3) Individuals shall be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization shall be required for Medicaid reimbursement. Services that were rendered before the date of service authorization shall not be reimbursed.

(5) Room and board costs shall not be reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(6) These residential providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Behavioral Health and Developmental Services under the Standards for Licensed Children's Residential Facilities (22VAC40-151), Regulation Governing Juvenile Group Homes and Halfway Houses (6VAC35-41), or Regulations for Children's Residential Facilities (12VAC35-46).

(7) Daily progress notes shall document a minimum of seven psychoeducational activities per week. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, stress management, and any care coordination activities.

(8) The facility/group home must coordinate services with other providers. Such care coordination shall be documented in the individual's medical record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

(9) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for intakes and ISPs are set out in 12VAC30-60-61.

(10) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH.

e. Therapeutic behavioral services (Level B) pursuant to 42 CFR 440.130(d).

(1) Such services must be therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision, care coordination, and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. The application of a national standardized set of medical necessity criteria in use in the industry, such as McKesson InterQual® Criteria, or an equivalent standard authorized in advance by DMAS shall be required for this service.

(2) Authorization is required for Medicaid reimbursement. Services that are rendered before the date of service authorization shall not be reimbursed.

(3) Room and board costs shall not be reimbursed. Facilities that only provide independent living services are not reimbursed. DMAS shall reimburse only for services provided in facilities or programs with no more than 16 beds.

(4) These residential providers must be licensed by the Department of Behavioral Health and Developmental Services (DBHDS) under the Regulations for Children's Residential Facilities (12VAC35-46).

(5) Daily progress notes shall document that a minimum of seven psychoeducational activities per week occurs. Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The individual must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals shall be discharged from this service when other less intensive services may achieve stabilization.

(8) Service-specific provider intakes shall be required at the onset of services and ISPs shall be required during the entire duration of services. Services that are based upon incomplete, missing, or outdated service-specific provider intakes or ISPs shall be denied reimbursement. Requirements for intakes and ISPs are set out in 12VAC30-60-61.

(9) These services may only be rendered by an LMHP, LMHP-supervisee, LMHP-resident, LMHP-RP, a QMHP-C, a QMHP-E, or a QPPMH.

(10) The facility/group home shall coordinate necessary services with other providers. Documentation of this care coordination shall be maintained by the facility/group home in the individual's record. The documentation shall include who was contacted, when the contact occurred, and what information was transmitted.

f. Mental health family support partners.

(1) Mental health family support partners are peer recovery support services and are nonclinical, peer-to-peer activities that engage, educate, and support the caregiver and an individual's self-help efforts to improve health recovery resiliency and wellness. Mental health family support partners is a peer support service and is a strength-based, individualized service provided to the caregiver of a Medicaid-eligible individual younger than 21 years of age with a mental health disorder that is the focus of support. The services provided to the caregiver and individual must be directed exclusively toward the benefit of the Medicaid-eligible individual. Services are expected to improve outcomes for individuals younger than 21 years of age with complex needs who are involved with multiple systems and increase the individual's and family's confidence and capacity to manage their own services and supports while promoting recovery and healthy relationships. These services are rendered by a PRS who is (i) a parent of a minor or adult child with a similar mental health disorder or (ii) an adult with personal experience with a family member with a similar mental health disorder with experience navigating behavioral health care services. The PRS shall perform the service within the scope of his knowledge, lived experience, and education.

(2) Under the clinical oversight of the LMHP making the recommendation for mental health family support partners, the peer recovery specialist in consultation with his direct supervisor shall develop a recovery, resiliency, and wellness plan based on the LMHP's recommendation for service, the individual's and the caregiver's perceived recovery needs, and any clinical assessments or service specific provider intakes as defined in this section within 30 calendar days of the initiation of service. Development of the recovery, resiliency, and wellness plan shall include collaboration with the individual and the individual's caregiver. Individualized goals and strategies shall be focused on the individual's identified needs for self-advocacy and recovery. The recovery, resiliency, and wellness plan shall also include documentation of how many days per week and how many hours per week are required to carry out the services in order to meet the goals of the plan. The recovery, resiliency, and wellness plan shall be completed, signed, and dated by the LMHP, the PRS, the direct supervisor, the individual, and the individual's caregiver within 30 calendar days of the initiation of service. The PRS shall act as an advocate for the individual, encouraging the individual and the caregiver to take a proactive role in developing and updating goals and objectives in the individualized recovery planning.

(3) Documentation of required activities shall be required as set forth in 12VAC30-130-5200 A and C through J.

(4) Limitations and exclusions to service delivery shall be the same as set forth in 12VAC30-130-5210.

(5) Caregivers of individuals younger than 21 years of age who qualify to receive mental health family support partners (i) care for an individual with a mental health disorder who requires recovery assistance and (ii) meet two or more of the following:

(a) Individual and his caregiver need peer-based recovery-oriented services for the maintenance of wellness and the acquisition of skills needed to support the individual.

(b) Individual and his caregiver need assistance to develop self-advocacy skills to assist the individual in achieving self-management of the individual's health status.

(c) Individual and his caregiver need assistance and support to prepare the individual for a successful work or school experience.

(d) Individual and his caregiver need assistance to help the individual and caregiver assume responsibility for recovery.

(6) Individuals 18 through 20 years of age who meet the medical necessity criteria in 12VAC30-50-226 B 7 e, who would benefit from receiving peer supports directly and who choose to receive mental health peer support services directly instead of through their caregiver, shall be permitted to receive mental health peer support services by an appropriate PRS.

(7) To qualify for continued mental health family support partners, the requirements for continued services set forth in 12VAC30-130-5180 D shall be met.

(8) Discharge criteria from mental health family support partners shall be the same as set forth in 12VAC30-130-5180 E.

(9) Mental health family support partners services shall be rendered on an individual basis or in a group.

(10) Prior to service initiation, a documented recommendation for mental health family support partners services shall be made by a licensed mental health professional (LMHP) who is acting within his scope of practice under state law. The recommendation shall verify that the individual meets the medical necessity criteria set forth in subdivision 5 a (5) of this subsection. The recommendation shall be valid for no longer than 30 calendar days.

(11) Effective July 1, 2017, a peer recovery specialist shall have the qualifications, education, experience, and certification required by DBHDS in order to be eligible to register with the Virginia Board of Counseling on or after July 1, 2018. Upon the promulgation of regulations by the Board of Counseling, registration of peer recovery specialists by the Board of Counseling shall be required. The PRS shall perform mental health family support partners services under the oversight of the LMHP making the recommendation for services and providing the clinical oversight of the recovery, resiliency, and wellness plan.

(12) The PRS shall be employed by or have a contractual relationship with the enrolled provider licensed for one of the following:

(a) Acute care general and emergency department hospital services licensed by the Department of Health.

(b) Freestanding psychiatric hospital and inpatient psychiatric unit licensed by the Department of Behavioral Health and Developmental Services.

(c) Psychiatric residential treatment facility licensed by the Department of Behavioral Health and Developmental Services.

(d) Therapeutic group home licensed by the Department of Behavioral Health and Developmental Services.

(e) Outpatient mental health clinic services licensed by the Department of Behavioral Health and Developmental Services.

(f) Outpatient psychiatric services provider.

(g) A community mental health and rehabilitative services provider licensed by the Department of Behavioral Health and Developmental Services as a provider of one of the following community mental health and rehabilitative services as defined in this section, 12VAC30-50-226, 12VAC30-50-420, or 12VAC30-50-430 for which the individual younger than 21 years meets medical necessity criteria (i) intensive in home; (ii) therapeutic day treatment; (iii) day treatment or partial hospitalization; (iv) crisis intervention; (v) crisis stabilization; (vi) mental health skill building; or (vii) mental health case management.

(13) Only the licensed and enrolled provider as referenced in subdivision 5 f (12) of this subsection shall be eligible to bill and receive reimbursement from DMAS or its contractor for mental health family support partner services. Payments shall not be permitted to providers that fail to enter into an enrollment agreement with DMAS or its contractor. Reimbursement shall be subject to retraction for any billed service that is determined not to be in compliance with DMAS requirements.

(14) Supervision of the PRS shall be required as set forth in 12VAC30-130-5190 E and 12VAC30-130-5200 G.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays in inpatient psychiatric facilities described in 42 CFR 440.160(b)(1) and (b)(2) for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by (i) a psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or (ii) a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations or the Commission on Accreditation of Rehabilitation Facilities. Inpatient psychiatric hospital admissions at

general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of Amount, Duration and Scope of Selected Services.

a. The inpatient psychiatric services benefit for individuals younger than 21 years of age shall include services defined at 42 CFR 440.160 that are provided under the direction of a physician pursuant to a certification of medical necessity and plan of care developed by an interdisciplinary team of professionals and shall involve active treatment designed to achieve the child's discharge from inpatient status at the earliest possible time. The inpatient psychiatric services benefit shall include services provided under arrangement furnished by Medicaid enrolled providers other than the inpatient psychiatric facility, as long as the inpatient psychiatric facility (i) arranges for and oversees the provision of all services, (ii) maintains all medical records of care furnished to the individual, and (iii) ensures that the services are furnished under the direction of a physician. Services provided under arrangement shall be documented by a written referral from the inpatient psychiatric facility. For purposes of pharmacy services, a prescription ordered by an employee or contractor of the facility who is licensed to prescribe drugs shall be considered the referral.

b. Eligible services provided under arrangement with the inpatient psychiatric facility shall vary by provider type as described in this subsection. For purposes of this section, emergency services means the same as is set out in 12VAC30-50-310 B.

(1) State freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order these services: (i) pharmacy services and (ii) emergency services.

(2) Private freestanding psychiatric hospitals shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) outpatient hospital services; (iii) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (iv) laboratory and radiology services; (v) vision services; (vi) dental, oral surgery, and orthodontic services; (vii) transportation services; and (viii) emergency services.

(3) Residential treatment facilities, as defined at 42 CFR 483.352, shall arrange for, maintain records of, and ensure that physicians order these services: (i) medical and psychological services, including those furnished by physicians, licensed mental health professionals, and other licensed or certified health professionals (i.e., nutritionists, podiatrists, respiratory therapists, and substance abuse treatment practitioners); (ii) pharmacy services; (iii) outpatient hospital services; (iv) physical therapy, occupational therapy, and therapy for individuals with speech, hearing, or language disorders; (v) laboratory and radiology services; (vi) durable medical equipment; (vii) vision services; (viii) dental, oral surgery, and orthodontic services; (ix) transportation services; and (x) emergency services.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with (i) 42 CFR Part 441 Subpart D, specifically 42 CFR 441.151(a) and (b) and 441.152 through 441.156, and (ii) the conditions of participation in 42 CFR Part 483 Subpart G. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

d. Service limits may be exceeded based on medical necessity for individuals eligible for EPSDT.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

8. Addiction and recovery treatment services shall be covered under EPSDT consistent with 12VAC30-130-5000 et seq.

9. Services facilitators shall be required for all consumer-directed personal care services consistent with the requirements set out in 12VAC30-120-935.

C. School health services.

1. School health assistant services are repealed effective July 1, 2006.

2. School divisions may provide routine well-child screening services under the State Plan. Diagnostic and treatment services that are otherwise covered under early and periodic screening, diagnosis and treatment services, shall not be covered for school divisions. School divisions to receive reimbursement for the screenings shall be enrolled with DMAS as clinic providers.

a. Children enrolled in managed care organizations shall receive screenings from those organizations. School divisions shall not receive reimbursement for screenings from DMAS for these children.

b. School-based services are listed in a recipient's individualized education program (IEP) and covered under one or more of the service categories described in § 1905(a) of the Social Security Act. These services are necessary to correct or ameliorate defects of physical or mental illnesses or conditions.

3. Service providers shall be licensed under the applicable state practice act or comparable licensing criteria by the Virginia Department of Education, and shall meet applicable qualifications under 42 CFR Part 440. Identification of defects, illnesses or conditions and services necessary to correct or ameliorate them shall be performed by practitioners qualified to make those determinations within their licensed scope of practice, either as a member of the IEP team or by a qualified practitioner outside the IEP team.

a. Service providers shall be employed by the school division or under contract to the school division.

b. Supervision of services by providers recognized in subdivision 4 of this subsection shall occur as allowed under federal regulations and consistent with Virginia law, regulations, and DMAS provider manuals.

c. The services described in subdivision 4 of this subsection shall be delivered by school providers, but may also be available in the community from other providers.

d. Services in this subsection are subject to utilization control as provided under 42 CFR Parts 455 and 456.

e. The IEP shall determine whether or not the services described in subdivision 4 of this subsection are medically necessary and that the treatment prescribed is in accordance with standards of medical practice. Medical necessity is defined as services ordered by IEP providers. The IEP providers are qualified Medicaid providers to make the medical necessity determination in accordance with their scope of practice. The services must be described as to the amount, duration and scope.

4. Covered services include:

a. Physical therapy, occupational therapy and services for individuals with speech, hearing, and language disorders, performed by, or under the direction of, providers who meet the qualifications set forth at 42 CFR 440.110. This coverage includes audiology services.

b. Skilled nursing services are covered under 42 CFR 440.60. These services are to be rendered in accordance to the licensing standards and criteria of the Virginia Board of Nursing. Nursing services are to be provided by licensed registered nurses or licensed practical nurses but may be delegated by licensed registered nurses in accordance with the regulations of the Virginia Board of Nursing, especially the section on delegation of nursing tasks and procedures. The licensed practical nurse is under the supervision of a registered nurse.

(1) The coverage of skilled nursing services shall be of a level of complexity and sophistication (based on assessment, planning, implementation and evaluation) that is consistent with skilled nursing services when performed by a licensed registered nurse or a licensed practical nurse. These skilled nursing services shall include, but not necessarily be limited to dressing changes, maintaining patent airways, medication administration/monitoring and urinary catheterizations.

(2) Skilled nursing services shall be directly and specifically related to an active, written plan of care developed by a registered nurse that is based on a written order from a physician, physician assistant or nurse practitioner for skilled nursing services. This order shall be recertified on an annual basis.

c. Psychiatric and psychological services performed by licensed practitioners within the scope of practice are defined under state law or regulations and covered as physicians' services under 42 CFR 440.50 or medical or other remedial care under 42 CFR 440.60. These outpatient services include individual medical psychotherapy, group medical psychotherapy coverage, and family medical psychotherapy. Psychological and neuropsychological testing are allowed when done for purposes other than educational diagnosis, school admission, evaluation of an individual with intellectual disability prior to admission to a nursing facility, or any placement issue. These services are covered in the nonschool settings also. School providers who may render these services when licensed by the state include psychiatrists, licensed clinical psychologists, school psychologists, licensed clinical social workers, professional counselors, psychiatric clinical nurse specialists, marriage and family therapists, and school social workers.

d. Personal care services are covered under 42 CFR 440.167 and performed by persons qualified under this subsection. The personal care assistant is supervised by a DMAS recognized school-based health professional who is acting within the scope of licensure. This practitioner develops a written plan for meeting the needs of the child, which is implemented by the assistant. The assistant must have qualifications comparable to those for other personal care aides recognized by the Virginia Department of Medical Assistance Services. The assistant performs services such as assisting with toileting, ambulation, and eating. The assistant may serve as an aide on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Children

requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

e. Medical evaluation services are covered as physicians' services under 42 CFR 440.50 or as medical or other remedial care under 42 CFR 440.60. Persons performing these services shall be licensed physicians, physician assistants, or nurse practitioners. These practitioners shall identify the nature or extent of a child's medical or other health related condition.

f. Transportation is covered as allowed under 42 CFR 431.53 and described at State Plan Attachment 3.1-D (12VAC30-50-530). Transportation shall be rendered only by school division personnel or contractors. Transportation is covered for a child who requires transportation on a specially adapted school vehicle that enables transportation to or from the school or school contracted provider on days when the student is receiving a Medicaid-covered service under the IEP. Transportation shall be listed in the child's IEP. Children requiring an aide during transportation on a specially adapted vehicle shall have this stated in the IEP.

g. Assessments are covered as necessary to assess or reassess the need for medical services in a child's IEP and shall be performed by any of the above licensed practitioners within the scope of practice. Assessments and reassessments not tied to medical needs of the child shall not be covered.

5. DMAS will ensure through quality management review that duplication of services will be monitored. School divisions have a responsibility to ensure that if a child is receiving additional therapy outside of the school, that there will be coordination of services to avoid duplication of service.

D. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility or services to promote fertility. Family planning services shall not cover payment for abortion services and no funds shall be used to perform, assist, encourage, or make direct referrals for abortions.

3. Family planning services as established by § 1905(a)(4)(C) of the Social Security Act include annual family planning exams; cervical cancer screening for women; sexually transmitted infection (STI) testing; lab services for family planning and STI testing; family planning education, counseling, and preconception health; sterilization procedures; nonemergency transportation to a family planning service; and U.S. Food and Drug Administration approved prescription and over-the-counter contraceptives, subject to limits in 12VAC30-50-210.

Part IX
Elderly or Disabled with Consumer Direction Waiver

12VAC30-120-900. Definitions.

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

"Activities of daily living" or "ADLs" means 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 " or "ADHC" means 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 waiver individuals who are elderly or who have a disability and who are at risk of placement in a nursing facility (NF). The program shall be licensed by the Virginia Department of Social Services (VDSS) as an 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.

"Agency-directed model of service" means 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 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.

"Barrier crime" means those crimes as defined at § 32.1-162.9:1 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.

"CD" means consumer-directed.

"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 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.

~~"Conservator" means a person appointed by a court to manage the estate and financial affairs of an incapacitated individual.~~

"Consumer-directed attendant" means a person who provides, via the consumer-directed model of services, personal care, companion services, or respite care, or any combination of these three services, [and] who is also exempt from workers' compensation.

"Consumer-directed (CD) model of service" means the model of service delivery for which the ~~waiver~~ individual enrolled in the waiver or the individual's employer of record, as appropriate, ~~are~~ is responsible for hiring, training, supervising, and firing of the ~~person or persons~~ attendant or attendants who ~~actually~~ render the services that are reimbursed by DMAS.

"Consumer-directed services facilitator," "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 attendant management training, and completing ongoing review activities as required by DMAS for consumer-directed personal care and respite services.

"DARS" means the Department for Aging and Rehabilitative 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.

"Direct marketing" means 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'~~ a provider's 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'~~ a provider's services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of ~~the providers'~~ a provider's services or other benefits as a means of influencing the individual's or family/caregiver's use of ~~the providers'~~ a provider's services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD Waiver" means the CMS-approved waiver that covers a range of community support services offered to waiver individuals who are elderly or 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, caregiver, or another person.

"Environmental modifications" or "EM" means physical adaptations to 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.), which are necessary to ensure the individual's health and safety or enable functioning with greater independence 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/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.

"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 individuals as an alternative to institutionalization.

"Individual" or "waiver individual" means the person 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 service needs.

"Level of care" or "LOC" means the specification of the minimum amount of assistance an individual 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.

"Live-in caregiver" means a personal caregiver who resides in the same household as the 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.

"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 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, 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 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 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" or "PERS" means an electronic device and monitoring service that enables certain waiver individuals, who are at least 14 years of age, at risk of institutionalization to secure help in an emergency. PERS services 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.

"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 responsibility to 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 collaboratively by the waiver individual and the waiver individual's family/caregiver, as appropriate, and the provider related solely to the specific services necessary for the individual to remain in the community while ensuring his health, safety, 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~~ individual needs; (iii) evaluate whether a service or a combination of existing community services are available to meet ~~the individuals'~~ individual needs; and (iv) provide a list to individuals of appropriate providers for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening 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 person who consistently assumes the 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.

"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" means a participating provider that renders respite services.

"Respite services" means 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 the unpaid primary caregiver who normally provides the care.

"Service authorization" or "Srv Auth" means the process of approving either by DMAS, its service 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~~, a DMAS-designated entity, or a person who is employed or contracted by a DMAS-enrolled services facilitator 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 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.

"Transition coordinator" means the person defined in 12VAC30-120-2000 who facilitates MFP transition.

"Transition services" means set-up expenses for individuals as defined at 12VAC30-120-2010.

"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.

12VAC30-120-935. Participation standards for specific covered services.

A. The personal care providers, respite care providers, ADHC providers, and CD services facilitators shall develop an individualized POC that addresses the waiver individual's service needs. Such plan 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 who can provide the covered waiver services required by the waiver individuals. 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, are providing services to the waiver individual.

C. Agency staff (RN, LPNs, or aides) or CD ~~employees (attendants)~~ attendants shall not be reimbursed by DMAS for services rendered to waiver individuals when the agency staff or the CD ~~employee~~ attendant 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.

1. Payment shall not be made for services furnished by other family members living under the same roof as the individual enrolled in the waiver receiving services unless there is objective written documentation completed by the consumer-directed services facilitator as to why no other provider is available to render the personal services. The consumer-directed services facilitator shall initially make this determination and document it fully in the individual's record.

2. Family members who are approved to be reimbursed for providing personal services shall meet the same qualifications as all other CD attendants.

D. Failure to provide the required services, conduct the required reviews, and meet the documentation standards as stated ~~herein~~ in this section 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~~ adult day care center (ADCC) shall:

a. Make available a copy of the current VDSS license for ~~DMAS'~~ DMAS review and verification purposes prior to the provider applicant's enrollment as a Medicaid provider;

b. Adhere to ~~VDSS'~~ the ADCC standards of VDSS 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 Srv Auth contractor and shall be responsible for responding to communication from DMAS and the designated Srv Auth contractor. The director shall be responsible for 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 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~~ the waiver individual's POC; 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'~~ 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~~ individual's POC and keep such plans updated, record 30-day progress notes concerning each waiver individual, and review the waiver ~~individuals'~~ individual's 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'~~ individual's 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 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'~~ individual's 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. During a home visit, the RN supervisor shall evaluate, at least every 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'~~ individual's 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 a waiver ~~individuals' POCs~~ individual's POC as developed by the RN in collaboration with ~~individuals~~ the individual and the ~~individuals'~~ individual's 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, 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 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 shall not be made for services furnished by family members or 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~~ provider or ~~aides~~ aide is available to provide the care. The provider shall initially make this determination and document it fully in the waiver individual's record.

5. Required documentation for a waiver ~~individuals'~~ individual's 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. 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. 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.

(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.

(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~~ 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 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 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 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'~~ 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 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~~ provider or ~~aides~~ aide is available to provide the care. The provider shall initially make this determination and document it fully in the waiver individual's record.

3. Required documentation for a waiver ~~individuals'~~ individual's 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:

(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.

(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.

(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 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 ~~Srv Auth~~ service authorization contractor shall not be eligible for Medicaid reimbursement and shall be the responsibility of the waiver individual.

2. If the services facilitator is not an RN, then the services facilitator shall inform the primary health care provider for the individual who is enrolled in the waiver that services are being provided within 30 days from the start of such services and request consultation with the primary health care provider, as needed. This shall be done after the services facilitator secures written permission from the individual to contact the primary health care provider. The documentation of this written permission to contact the primary health care provider shall be retained in the individual's medical record. All contacts with the primary health care provider shall be documented in the individual's medical record.

~~2.~~ 3. The ~~CD~~ consumer-directed services facilitator, whether employed or contracted by a DMAS enrolled services facilitator, shall meet the following qualifications:

a. To be enrolled as a Medicaid ~~CD~~ consumer-directed services facilitator and maintain provider status, the ~~CD~~ consumer-directed services facilitator shall have sufficient knowledge, skills, and abilities to perform the activities required of such providers. In addition, the ~~CD~~ consumer-directed 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. Effective January 11, 2016, all consumer-directed services facilitators shall:

(1) Have a satisfactory work record as evidenced by two references from prior job experiences from any human services work; such references shall not include any evidence of abuse, neglect, or exploitation of older adults or persons with disabilities or children;

(2) Submit to a criminal background check being conducted. The results of such check shall contain no record of conviction of barrier crimes as set forth in § 32.1-162.9:1 of the Code of Virginia. Proof that the criminal record check was conducted shall be maintained in the record of the services facilitator. In accordance with 12VAC30-80-130, DMAS shall not reimburse the provider for any services provided by a services facilitator who has been convicted of committing a barrier crime as set forth in § 32.1-162.9:1 of the Code of Virginia;

(3) Submit to a search of the VDSS Child Protective Services Central Registry that results in no founded complaint; and

(4) Not be debarred, suspended, or otherwise excluded from participating in federal health care programs, as listed on the federal List of Excluded Individuals/Entities (LEIE) database at http://www.olg.hhs.govfraud/exclusions/exclusions%20list.asp.

c. The services facilitator shall not be compensated for services provided to the individual enrolled in the waiver effective on the date in which the record check verifies that the services facilitator (i) has been convicted of barrier crimes described in § 32.1-162.9:1 of the Code of Virginia, (ii) has a founded complaint confirmed by the

VDSS Child Protective Services Central Registry, or (iii) is found to be listed on LEIE.

d. Effective January 11, 2016, all consumer-directed services facilitators shall possess the required degree and experience, as follows:

(1) Prior to initial enrollment by the department as a consumer-directed services facilitator or being hired by a Medicaid-enrolled services facilitator provider, all new applicants shall possess, at a minimum, either (i) an associate's degree from an accredited college in a health or human services field or be a registered nurse currently licensed to practice in the Commonwealth and possess a minimum of two years of satisfactory direct care experience supporting individuals with disabilities or older adults; or (ii) a bachelor's degree in a non-health or human services field and possess a minimum of three years of satisfactory direct care experience supporting individuals with disabilities or older adults.

(2) Persons who are consumer-directed services facilitators prior to January 11, 2016, shall not be required to meet the degree and experience requirements of subdivision 3 d (1) of this subsection unless required to submit a new application to be a consumer-directed services facilitator after January 11, 2016.

e. Effective April 10, 2016, all consumer-directed services facilitators shall complete required training and competency assessments. Satisfactory competency assessment results shall be kept in the service facilitator's record.

(1) All new consumer-directed consumer directed services facilitators shall complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% prior to being approved as a consumer-directed services facilitator or being reimbursed for working with waiver individuals.

(2) Persons who are consumer-directed services facilitators prior to January 11, 2016, shall be required to complete the DMAS-approved consumer-directed services facilitator training and pass the corresponding competency assessment with a score of at least 80% in order to continue being reimbursed for or working with waiver individuals for the purpose of Medicaid reimbursement.

f. Failure to satisfy the competency assessment requirements and meet all other requirements shall result in a retraction of Medicaid payment or the termination of the provider agreement, or both.

g. Failure to satisfy the competency assessment requirements and meet all other requirements may also result in the termination of a CD services facilitator employed by or contracted with a Medicaid enrolled services facilitator provider.

h. As a component of the renewal of the Medicaid provider agreement, all CD services facilitators shall pass the competency assessment every five years and achieve a score of at least 80%.

i. The consumer-directed services facilitator shall have access to a computer with Internet access that meets the security standards of Subpart C of 45 CFR Part 164 for the electronic exchange of information. Electronic exchange of information shall include, for example, checking individual eligibility, submission of service authorizations, submission of information to the fiscal employer agent, and billing for services.

~~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.~~

j. The ~~CD~~ consumer-directed 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~~ consumer-directed 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~~ older adults 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~~ older adults 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~~ older adults 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 the 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~~ older adults 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.~~ 4. Initiation of services and service monitoring.

a. For ~~CD services~~ consumer-directed model of service, the ~~CD~~ consumer-directed services facilitator shall make an initial comprehensive ~~in home~~ home visit at the primary residence of the ~~waiver~~ individual to collaborate with the ~~waiver~~ individual or the individual's family/caregiver, as appropriate, to identify the individual's needs, assist in the development of the ~~POC~~ plan of care with the waiver individual ~~or~~ and individual's family/caregiver, as appropriate, and provide ~~employer of record (EOR) employee~~ EOR 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~~ consumer-directed services. If the ~~waiver~~ individual changes, either voluntarily or involuntarily, the ~~CD~~ consumer-directed services facilitator, the new ~~CD~~ consumer-directed services facilitator ~~must~~ shall complete a reassessment visit in lieu of ~~an initial~~ a comprehensive visit.

b. After the initial comprehensive visit, the ~~CD~~ services facilitator shall continue to monitor the ~~POC~~ plan of care 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~~ consumer-directed 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 and may include the family/caregiver. Such monitoring reviews shall be documented in the individual's medical record.

c. During visits with the ~~waiver~~ individual, the ~~CD~~ services facilitator shall observe, evaluate, and consult with the individual/EOR and may include the family/caregiver, and document the adequacy and appropriateness of ~~CD~~ consumer-directed services with regard to the ~~waiver~~ individual's current functioning, cognitive status, and medical and social needs. The ~~CD~~ consumer-directed services facilitator's written summary of the visit shall include~~, but shall not necessarily be limited to~~ at a minimum:

(1) ~~A discussion~~ Discussion with the waiver individual or family/caregiver/EOR, as appropriate, 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 consumer-directed attendant and the consumer-directed 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 consumer-directed attendant in the home during the ~~CD~~ consumer-directed services facilitator's visit.

~~4.~~ 5. 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 consumer-directed attendant on behalf of the waiver individual and report findings of these records checks to the EOR.

~~5.~~ 6. The ~~CD~~ consumer-directed services facilitator shall review and verify copies of timesheets during the face-to-face visits to ensure that the hours approved in the ~~POC~~ plan of care are being provided and are not exceeded. If discrepancies are identified, the ~~CD~~ consumer-directed services facilitator shall discuss these with the ~~waiver~~ individual or EOR to resolve discrepancies and shall notify the fiscal/employer agent. The ~~CD~~ consumer-directed services facilitator shall also review the ~~waiver~~ individual's ~~POC~~ plan of care to ensure that the ~~waiver~~ individual's needs are being met. Failure to conduct such reviews and verifications of timesheets and maintain the documentation of these reviews shall result in a recovery by DMAS of payments made in accordance with 12VAC30-80-130.

~~6.~~ 7. 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~~ plan of care. Such plans shall be reviewed by the provider every 90 days, annually, and more often as needed, and modified as appropriate. The respite services ~~POC~~ plan of care 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~~ plan of care is modified, the ~~POC~~ plan of care shall be reviewed with the ~~waiver~~ individual, the family/caregiver, and EOR, as appropriate;

c. ~~CD~~ The consumer-directed 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, EOR, family/caregiver, physicians, DMAS, the designated ~~Srv Auth~~ service authorization 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 EOR to include, ~~but not necessarily be limited to~~ for example, (i) the individual's or EOR's receipt of training on their responsibilities for the accuracy of the consumer-directed attendant's timesheets and (ii) the availability of the Consumer-Directed Waiver Services Employer Manual available at http://lis.virginia.gov/000/noc/www.dmas.virginia.gov;

f. All documents signed by the ~~waiver~~ individual 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.

Failure to maintain all required documentation shall result in action by DMAS to recover payments made in accordance with 12VAC30-80-130. Repeated instances of failure to maintain documentation may result in cancellation of the Medicaid provider agreement.

~~7. Payment shall not be made for services furnished by other family members or caregivers who are living under the same roof as the waiver individual 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.~~

8. In instances when ~~either~~ the ~~waiver~~ individual is consistently unable either to hire ~~and~~ or retain the employment of a personal care consumer-directed attendant to provide ~~CD~~ consumer-directed personal care or respite services such as, ~~but not limited to~~ for example, a pattern of discrepancies with the consumer-directed attendant's timesheets, the ~~CD~~ consumer-directed 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.

9. Waiver individual, family/caregiver, and EOR responsibilities.

a. The ~~waiver~~ individual shall be authorized for ~~CD services~~ the consumer-directed model of service, and the EOR shall successfully complete ~~consumer/employee management~~ EOR management training performed by the ~~CD~~ consumer-directed services facilitator before the individual or EOR shall be permitted to hire ~~an~~ a consumer-directed attendant for Medicaid reimbursement. Any ~~services~~ service that may be rendered by ~~an~~ a consumer-directed attendant prior to authorization by Medicaid shall not be eligible for reimbursement by Medicaid. ~~Waiver individuals~~

Individuals who are eligible for ~~CD~~ consumer-directed services shall have the capability to hire and train their own consumer-directed attendants and supervise the consumer-directed attendants' ~~performance~~ performances. ~~Waiver~~ In lieu of handling their consumer-directed attendants themselves, individuals may have a family/caregiver or other designated person serve as the EOR on their behalf. The EOR shall be prohibited from also being the Medicaid-reimbursed consumer-directed attendant for respite or personal care or the services facilitator for the ~~waiver~~ individual.

b. ~~Waiver individuals~~ Individuals shall acknowledge that they will not knowingly continue to accept ~~CD~~ consumer-directed 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~~ the consumer-directed model of services continue after services have been terminated by DMAS or the designated ~~Srv Auth~~ service authorization contractor, the ~~waiver~~ individual shall be held liable for the consumer-directed attendant compensation.

c. ~~Waiver individuals~~ Individuals shall notify the ~~CD~~ consumer-directed services facilitator of all hospitalizations or admissions, ~~such as but not necessarily limited to~~ for example, any rehabilitation facility, rehabilitation unit, or ~~NF~~ nursing facility as ~~CD~~ consumer-directed attendant services shall not be reimbursed during such admissions. Failure to do so may result in the ~~waiver~~ individual being held liable for ~~attendant~~ the consumer-directed employee 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 be 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 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 meet 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.

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 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 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 provider agreements with DMAS. Providers of services shall not be (i) 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.

VA.R. Doc. No. R16-3805; Filed August 22, 2018, 2:48 p.m.

Fast-Track Regulation

Title of Regulation: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-301).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 17, 2018.

Effective Date: November 1, 2018.

Agency Contact: Emily McClellan, Regulatory Supervisor, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-4300, FAX (804) 786-1680, or email emily.mcclellan@dmas.virginia.gov.

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

The Centers for Medicare and Medicaid Services (CMS) approved the changes contained in this regulatory package on December 13, 2017, with an effective date of July 1, 2017.

Purpose: The purpose of this action is to update the disproportionate share hospital (DSH) payment methodology for inpatient psychiatric hospitals. CMS has requested this change in order to avoid paying a hospital more than its uncompensated costs.

Prior to July 1, 2017, the DSH per diem for state inpatient psychiatric hospitals was calculated by dividing the total state inpatient psychiatric hospital allocation by the number of DSH days and multiplying each hospital's DSH days by the DSH per diem.

Updating the reimbursement methodology effective July 1, 2017, increases payments to Catawba Hospital and reduces payments to Piedmont Geriatric Hospital but leaves unchanged total payments to Department of Behavioral Health and Developmental Services facilities.

This regulation is essential to protect the health, safety, and welfare of Medicaid members in that it allocates limited Medicaid funds in a way to help ensure continued access to care across the Commonwealth.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is not expected to be controversial. CMS approved the change, and the updated DSH payment methodology was used for payments made after July 1, 2017.

Substance: Effective July 1, 2017, DSH payments will be calculated by multiplying the annual state inpatient psychiatric DSH allocation by the ratio of each hospital's uncompensated cost for the most recent DSH audited year completed prior to the DSH payment year to the uncompensated care cost of all state inpatient psychiatric hospitals for the same audited year.

Issues: The primary advantage of this regulation to the public and the agency is it helps ensure that DMAS does not pay a hospital more than its uncompensated costs. These changes create no disadvantages to the public, the agency, the Commonwealth, or the regulated community.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services proposes to modify the Medicaid Disproportionate Share Hospital (DSH) payment methodology for state inpatient psychiatric hospitals.

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

Estimated Economic Impact. The two state inpatient psychiatric hospitals, Catawba and Piedmont Geriatric

Hospitals, receive payments from Medicaid to cover their uncompensated care costs. These DSH payments are calculated based on a methodology stated in the regulation. Currently, each hospital's DSH days are multiplied by the DSH per diem to calculate the hospital's share of DSH payments. This methodology can result in a hospital receiving DSH payments in excess of its total uncompensated care costs if the DSH per diem is high enough. Because of this possibility, the Centers for Medicare and Medicaid Services (CMS) has requested a change in methodology in order to avoid paying a hospital more than its uncompensated costs. Under the proposed change, effective July 1, 2017, the annual DSH payment to a state psychiatric hospital will be calculated based on its percent share of total uncompensated care costs so that its DSH payment may not exceed its uncompensated care costs.

While the total DSH payments to the two state hospitals will stay the same, at $7.3 million, Catawba will receive $1,045,730 more and Piedmont Geriatric will receive $1,045,730 less. However, both hospitals are state owned Department of Behavioral Health and Developmental Services facilities. Thus, there will be no change in Medicaid DSH payments made to the Commonwealth at the aggregate level. The proposed change is beneficial however, in that it complies with the CMS request and more accurately allocates DSH payments due to individual state hospitals.

Businesses and Entities Affected. There are two state inpatient psychiatric hospitals affected: Catawba and Piedmont Geriatric Hospitals.

Localities Particularly Affected. Catawba and Piedmont Geriatric Hospitals are located in Roanoke and Nottoway counties respectively.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed regulation does not impose costs and other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. There is no adverse impact on small businesses.

Adverse Impacts:

Businesses. The proposed regulation does not adversely affect businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

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

Summary:

The amendment updates the procedure for the disproportionate share hospital payment calculations for state-owned inpatient psychiatric hospitals, beginning July 1, 2017.

12VAC30-70-301. Payment to disproportionate share hospitals.

A. Payments to disproportionate share hospitals (DSH) shall be prospectively determined in advance of the state fiscal year to which they apply. The payments shall be made on a quarterly basis and shall be final subject to subsections E and K of this section.

B. Effective July 1, 2014, in order to qualify for DSH payments, DSH eligible hospitals shall have a total Medicaid inpatient utilization rate equal to 14% or higher in the base year using Medicaid days eligible for Medicare DSH defined in 42 USC § 1396r-4(b)(2) or a low income utilization rate defined in 42 USC § 1396r-4(b)(3) in excess of 25%. Eligibility for out-of-state cost reporting hospitals shall be based on total Medicaid utilization or on total Medicaid neonatal intensive care unit (NICU) utilization equal to 14% or higher.

C. Effective July 1, 2014, the DSH reimbursement methodology for all hospitals except Type One hospitals is the following:

1. Each hospital's DSH payment shall be equal to the DSH per diem multiplied by each hospital's eligible DSH days in a base year. Days reported in provider fiscal years in state fiscal year (FY) 2011 (available from the Medicaid cost report through the Hospital Cost Report Information System (HCRIS) as of July 30, 2013) will be the base year for FY 2015 prospective DSH payments. DSH shall be recalculated annually with an updated base year. Future base year data shall be extracted from Medicare cost report summary statistics available through HCRIS as of October 1 prior to next year's effective date.

2. Eligible DSH days are the sum of all Medicaid inpatient acute, psychiatric, and rehabilitation days above 14% for

each DSH hospital subject to special rules for out-of-state cost reporting hospitals. Eligible DSH days for out-of-state cost reporting hospitals shall be the higher of the number of eligible days based on the calculation in the first sentence of this subdivision times Virginia Medicaid utilization (Virginia Medicaid days as a percent of total Medicaid days) or the Medicaid NICU days above 14% times Virginia NICU Medicaid utilization (Virginia NICU Medicaid days as a percent of total NICU Medicaid days). Eligible DSH days for out-of-state cost reporting hospitals that qualify for DSH but that have less than 12% Virginia Medicaid utilization shall be 50% of the days that would have otherwise been eligible DSH days.

3. Additional eligible DSH days are days that exceed 28% Medicaid utilization for Virginia Type Two hospitals, excluding Children's Hospital of the Kings Daughters (CHKD).

4. The DSH per diem shall be calculated in the following manner:

a. The DSH per diem for Type Two hospitals is calculated by dividing the total Type Two DSH allocation by the sum of eligible DSH days for all Type Two DSH hospitals. For purposes of DSH, Type Two hospitals do not include CHKD or any hospital whose reimbursement exceeds its federal uncompensated care cost limit. The Type Two hospital DSH allocation shall equal the amount of DSH paid to Type Two hospitals in state FY 2014 increased annually by the percent change in the federal allotment, including any reductions as a result of the Patient Protection and Affordable Care Act (Affordable Care Act), P.L. 111-148, adjusted for the state fiscal year.

b. The DSH per diem for state inpatient psychiatric hospitals is calculated by dividing the total state inpatient psychiatric hospital DSH allocation by the sum of eligible DSH days. The state inpatient psychiatric hospital DSH allocation shall equal the amount of DSH paid in state FY 2013 increased annually by the percent change in the federal allotment, including any reductions as a result of the Affordable Care Act, adjusted for the state fiscal year.

c. Effective July 1, 2017, the annual DSH payment shall be calculated separately for each eligible hospital by multiplying each year's state inpatient psychiatric hospital DSH allocation described in subdivision C 4 b of this section by the ratio of each hospital's uncompensated care cost for the most recent DSH audited year completed prior to the DSH payment year to the uncompensated care cost of all state inpatient psychiatric hospitals for the same audited year.

~~c.~~ d. The DSH per diem for CHKD shall be three times the DSH per diem for Type Two hospitals.

5. Each year, the department shall determine how much Type Two DSH has been reduced as a result of the Affordable Care Act and adjust the percent of cost reimbursed for outpatient hospital reimbursement.

D. Effective July 1, 2014, the DSH reimbursement methodology for Type One hospitals shall be to pay its uncompensated care costs up to the available allotment. Interim payments shall be made based on estimates of the uncompensated care costs and allotment. Payments shall be settled at cost report settlement and at the conclusion of the DSH audit.

E. Prior to July 1, 2014, hospitals qualifying under the 14% inpatient Medicaid utilization percentage shall receive a DSH payment based on the hospital's type and the hospital's Medicaid utilization percentage.

1. Type One hospitals shall receive a DSH payment equal to:

a. The sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times 17, times the hospital's Medicaid operating reimbursement, times 1.4433.

b. Multiplied by the Type One hospital DSH Factor. The Type One hospital DSH factor shall equal a percentage that when applied to the DSH payment calculation yields a DSH payment equal to the total calculated using the methodology outlined in subdivision 1 a of this subsection using an adjustment factor of one in the calculation of operating payments rather than the adjustment factor specified in subdivision B 1 of 12VAC30-70-331.

2. Type Two hospitals shall receive a DSH payment equal to the sum of (i) the hospital's Medicaid utilization percentage in excess of 10.5%, times the hospital's Medicaid operating reimbursement, times 1.2074 and (ii) the hospital's Medicaid utilization percentage in excess of 21%, times the hospital's Medicaid operating reimbursement, times 1.2074. Out-of-state cost reporting hospitals with Virginia utilization in the base year of less than 12% of total Medicaid days shall receive 50% of the payment described in this subsection.

F. Hospitals qualifying under the 25% low-income patient utilization rate shall receive a DSH payment based on the hospital's type and the hospital's low-income utilization rate.

1. Type One hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times 17, times the hospital's Medicaid operating reimbursement.

2. Type Two hospitals shall receive a DSH payment equal to the product of the hospital's low-income utilization in excess of 25%, times the hospital's Medicaid operating reimbursement.

3. Calculation of a hospital's low-income patient utilization percentage is defined in 42 USC § 1396r-4(b)(3).

G. Each hospital's eligibility for DSH payment and the amount of the DSH payment shall be calculated at the time of each rebasing using the most recent reliable utilization data and projected operating reimbursement data available. The utilization data used to determine eligibility for DSH payment and the amount of the DSH payment shall include days for Medicaid recipients enrolled in capitated managed care programs. In years when DSH payments are not rebased in the way described in this section, the previous year's amounts shall be adjusted for inflation.

For freestanding psychiatric facilities licensed as hospitals, DSH payment shall be based on the most recently settled Medicare cost report available before the beginning of the state fiscal year for which a payment is being calculated.

H. Effective July 1, 2010, DSH payments shall be rebased for all hospitals with the final calculation reduced by a uniform percentage such that the expenditures in FY 2011 do not exceed expenditures in FY 2010 separately for Type One and Type Two hospitals. The reduction shall be calculated after determination of eligibility. Payments determined in FY 2011 shall not be adjusted for inflation in FY 2012.

I. Effective July 1, 2013, DSH payments shall not be rebased for all hospitals in FY 2014 and shall be frozen at the payment levels for FY 2013 eligible providers.

J. To be eligible for DSH, a hospital shall also meet the requirements in 42 USC § 1396r-4(d). No DSH payment shall exceed any applicable limitations upon such payment established by 42 USC § 1396r 4(g).

K. If making the DSH payments prescribed in this chapter would exceed the DSH allotment, DMAS shall adjust DSH payments to Type One hospitals. Any DSH payment not made as prescribed in the State Plan as a result of the DSH allotment shall be made upon a determination that an available allotment exists.

VA.R. Doc. No. R19-5388; Filed August 22, 2018, 4:08 p.m.

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC35-115. Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Developmental Services (amending 12VAC35-115-30, 12VAC35-115-105).**

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 17, 2018.

Effective Date: November 1, 2018.

Agency Contact: Deb Lochart, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-0032, FAX (804) 371-2308, TTY (804) 371-8977, or email deb.lochart@dbhds.virginia.gov.

Basis: Sections 37.2-203 and 37.2-304 of the Code of Virginia authorize the State Board of Behavioral Health and Developmental Services to adopt regulations that may be necessary to carry out the provisions of Title 37.2 of the Code of Virginia and other laws of the Commonwealth administered by the commissioner and the department.

Purpose: Licensed behavior analysts (LBAs) are one of the main professions providing behavioral services in Virginia. Currently, there is a six-month waiting list for behavioral plan development. The amendment to the language makes it easier for individuals to have access to behavioral health services, protecting public health.

Rationale for Using Fast-Track Rulemaking Process: The amendments are noncontroversial. LBAs have been a licensed profession in Virginia since the 2012 Session of the General Assembly established the profession (Chapter 3 of the 2012 Acts of Assembly) and since then, LBAs have been active in the behavioral health and developmental services system.

Substance: The amendments will increase the number of those professionals available to develop the plans by adding language allowing licensed behavior analysts to make assessments on the use of restraints or time outs.

Issues: The primary advantage of the amendments to the public and to the agency is the enhancement of the protection of rights for individuals in the system by allowing the most appropriately trained professionals (subject matter experts) to develop and implement behavioral treatment plans. There is no identified disadvantage to the public or the Commonwealth in making this change.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Behavioral Health and Developmental Services (Board) proposes 1) to allow licensed behavior analysts to make assessments on the use of individualized restrictions such as restraints or time outs in a behavioral treatment plan and 2) to limit behavioral treatment plans

requiring review by an independent committee to those involving the use of restraints or time outs.

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

Estimated Economic Impact. Effective February 9, 2017 these regulations were extensively revised. During the rollout of the changes, an inadvertent error was discovered involving the assessment of individualized restrictions and the review of plans involving such restrictions.

The current language specifically allows a "licensed professional" to assess the use of restraints or time outs, but the definition of "licensed professional" does not include licensed behavior analysts who are qualified to make such assessments. The Board proposes to add language allowing licensed behavior analysts to make such assessments. Currently, there are 893 licensed behavior analysts in Virginia.[1] Allowing licensed behavior analysts to make those assessments will broaden the pool of professionals who can make such assessments. A larger number of authorized professionals will likely be beneficial by speeding up the assessment process. According to the Department of Behavioral Health and Developmental Services (DBHDS), there is currently a six-month waiting list for behavioral plan development, and individuals consistently report that this is a service that they have difficulty in accessing due to the limited number of appropriate licensed professionals.

Also, the language in the previous revisions of the regulation requires that all behavioral treatments plans are to be reviewed prior to their implementation by an independent review committee established by the provider. The intent of that revision was not to require review of all plans but rather only those involving the use of individualized restrictions. Thus, the Board proposes to amend the current language to limit the committee review of plans to those involving such restrictions. This proposed change will reduce the number of reviews by the independent review committees and will likely result in some staff time savings to the providers. According to DBHDS, it would take about 30 minutes to conduct a review of a behavioral treatment plan. DBHDS estimates that there are approximately 502 providers utilizing over 800 plans statewide. Of the 800 plans, the number of plans involving restrictions is not known.

Businesses and Entities Affected. This regulation applies to 502 providers. Currently, there are 893 licensed behavior analysts in Virginia.

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

Projected Impact on Employment. The proposed regulation will reduce the demand for labor by reducing the number of plans requiring committee review, but no significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

Definition.

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. Most if not all of the providers are small providers. The proposed changes do not impose costs on them but will benefit them as explained above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed amendments do not have an adverse impact on businesses.

Localities. The proposed amendments will not adversely affect localities.

Other Entities. The proposed amendments will not adversely affect other entities.

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[1]Source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The agency concurs with the economic impact analysis.

Summary:

The amendments (i) adjust the definition of "independent review committee," (ii) add licensed behavior analysts as licensed professionals who may conduct the required detailed and systematic assessment of behavioral treatment plans that include individualized restrictions such as restraint or timeout before a provider is allowed to employ such a plan, and (iii) clarify that behavioral treatment plans involving the use of restraint or timeout must be submitted to an independent review committee prior to implementation.

12VAC35-115-30. Definitions.

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

"Abuse" means any act or failure to act by an employee or other person responsible for the care of an individual in a facility or program operated, licensed, or funded by the

department, excluding those operated by the Department of Corrections, that was performed or was failed to be performed knowingly, recklessly, or intentionally, and that caused or might have caused physical or psychological harm, injury, or death to a person receiving care or treatment for mental illness, intellectual disability, or substance abuse. Examples of abuse include acts such as:

1. Rape, sexual assault, or other criminal sexual behavior;

2. Assault or battery;

3. Use of language that demeans, threatens, intimidates, or humiliates the person;

4. Misuse or misappropriation of the person's assets, goods, or property;

5. Use of excessive force when placing a person in physical or mechanical restraint;

6. Use of physical or mechanical restraints on a person that is not in compliance with federal and state laws, regulations, and policies; professionally accepted standards of practice; or the person's individualized services plan; and

7. Use of more restrictive or intensive services or denial of services to punish the person or that is not consistent with his individualized services plan. See § 37.2-100 of the Code of Virginia.

"Administrative hearing" means an administrative proceeding held pursuant to Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Advance directive" means a document voluntarily executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state where executed (§ 54.1-2993 of the Code of Virginia). This may include a wellness recovery action plan (WRAP) or similar document as long as it is executed in accordance with § 54.1-2983 of the Code of Virginia or the laws of another state. A WRAP or similar document may identify the health care agent who is authorized to act as the individual's substitute decision maker.

"Authorization" means a document signed by the individual receiving services or that individual's authorized representative that authorizes the provider to disclose identifying information about the individual. An authorization shall be voluntary. To be voluntary, the authorization shall be given by the individual receiving services or his authorized representative freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Authorized representative" means a person permitted by law or this chapter to authorize the disclosure of information or to consent to treatment and services or participation in human research. The decision-making authority of an authorized representative recognized or designated under this chapter is limited to decisions pertaining to the designating provider. Legal guardians, attorneys-in-fact, or health care agents appointed pursuant to § 54.1-2983 of the Code of Virginia may have decision-making authority beyond such provider.

"Behavior intervention" means those principles and methods employed by a provider to help an individual to achieve a positive outcome and to address challenging behavior in a constructive and safe manner. Behavior management principles and methods must be employed in accordance with the individualized services plan and written policies and procedures governing service expectations, treatment goals, safety, and security.

"Behavioral treatment plan," "functional plan," or "behavioral support plan" means any set of documented procedures that are an integral part of the individualized services plan and are developed on the basis of a systematic data collection, such as a functional assessment, for the purpose of assisting an individual to achieve the following:

1. Improved behavioral functioning and effectiveness;

2. Alleviation of symptoms of psychopathology; or

3. Reduction of challenging behaviors.

"Board" means the Board of Behavioral Health and Developmental Services.

"Caregiver" means an employee or contractor who provides care and support services; medical services; or other treatment, rehabilitation, or habilitation services.

"Commissioner" means the Commissioner of the Department of Behavioral Health and Developmental Services.

"Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia that provides mental health, developmental, and substance abuse services to individuals within each city and county that established it. For the purpose of these regulations, "community services board" also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia.

"Complaint" means an allegation of a violation of this chapter or a provider's policies and procedures related to this chapter.

"Consent" means the voluntary agreement of an individual or that individual's authorized representative to specific services. Consent shall be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion. Consent may be expressed through any means appropriate for the individual, including verbally, through physical gestures or behaviors, in Braille or American Sign Language, in writing, or through other methods.

"Department" means the Department of Behavioral Health and Developmental Services.

"Director" means the chief executive officer of any provider delivering services. In organizations that also include services not covered by this chapter, the director is the chief executive officer of the services or services licensed, funded, or operated by the department.

"Discharge plan" means the written plan that establishes the criteria for an individual's discharge from a service and identifies and coordinates delivery of any services needed after discharge.

"Disclosure" means the release by a provider of information identifying an individual.

"Emergency" means a situation that requires a person to take immediate action to avoid harm, injury, or death to an individual or to others.

"Exploitation" means the misuse or misappropriation of the individual's assets, goods, or property. Exploitation is a type of abuse. (See § 37.2-100 of the Code of Virginia.) Exploitation also includes the use of a position of authority to extract personal gain from an individual. Exploitation includes violations of 12VAC35-115-120 and 12VAC35-115-130. Exploitation does not include the billing of an individual's third party payer for services. Exploitation also does not include instances of use or appropriation of an individual's assets, goods, or property when permission is given by the individual or his authorized representative:

1. With full knowledge of the consequences;

2. With no inducements; and

3. Without force, misrepresentation, fraud, deceit, duress of any form, constraint, or coercion.

"Governing body of the provider" means the person or group of persons with final authority to establish policy.

"Habilitation" means the provision of individualized services conforming to current acceptable professional practice that enhance the strengths of, teach functional skills to, or reduce or eliminate challenging behaviors of an individual. These services occur in an environment that suits the individual's needs, responds to his preferences, and promotes social interaction and adaptive behaviors.

"Health care operations" means any activities of the provider to the extent that the activities are related to its provision of health care services. Examples include:

1. Conducting quality assessment and improvement activities, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives, and related functions that do not include treatment;

2. Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, and training, licensing, or credentialing activities;

3. Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; and

4. Other activities contained within the definition of health care operations in 45 CFR 164.501.

"Health plan" means an individual or group plan that provides or pays the cost of medical care, including any entity that meets the definition of "health plan" in 45 CFR 160.103.

"Historical research" means the review of information that identifies individuals receiving services for the purpose of evaluating or otherwise collecting data of general historical significance.

"Human research" means any systematic investigation, including research development, testing, and evaluation, utilizing human subjects~~,~~ that is designed to develop or contribute to generalized knowledge. Human research shall not include research exempt from federal research regulations pursuant to 45 CFR 46.101(b).

"Human rights advocate" means a person employed by the commissioner upon recommendation of the State Human Rights Director to help individuals receiving services exercise their rights under this chapter. See 12VAC35-115-260 C.

"Independent review committee" means a committee appointed or accessed by a provider to review and approve the clinical efficacy of the provider's behavioral treatment plans and associated data collection procedures. An independent review committee shall be composed of professionals with training and experience in ~~applied behavioral~~ behavior analysis and interventions who are not involved in the development of the plan or directly providing services to the individual.

"Individual" means a person who is receiving services. This term includes the terms "consumer," "patient," "resident," "recipient," and "client."

"Individualized services plan" or "ISP" means a comprehensive and regularly updated written plan that describes the individual's needs, the measurable goals and objectives to address those needs, and strategies to reach the individual's goals. An ISP is person-centered, empowers the individual, and is designed to meet the needs and preferences of the individual. The ISP is developed through a partnership between the individual and the provider and includes an individual's treatment plan, habilitation plan, person-centered plan, or plan of care.

"Informed consent" means the voluntary written agreement of an individual, or that individual's authorized representative,

to surgery, electroconvulsive treatment, use of psychotropic medications, or any other treatment or service that poses a risk of harm greater than that ordinarily encountered in daily life or for participation in human research. To be voluntary, informed consent must be given freely and without undue inducement; any element of force, fraud, deceit, or duress; or any form of constraint or coercion.

"Investigating authority" means any person or entity that is approved by the provider to conduct investigations of abuse and neglect.

"Licensed professional" means a licensed physician, licensed clinical psychologist, licensed professional counselor, licensed clinical social worker, licensed or certified substance abuse treatment practitioner, or licensed psychiatric nurse practitioner.

"Local human rights committee" or "LHRC" means a group of at least five people appointed by the State Human Rights Committee. See 12VAC35-115-270 A for membership and duties.

"Neglect" means failure by a person, program, or facility operated, licensed, or funded by the department, excluding those operated by the Department of Corrections, responsible for providing services to do so, including nourishment, treatment, care, goods, or services necessary to the health, safety, or welfare of an individual receiving care or treatment for mental illness, intellectual disability, or substance abuse. See § 37.2-100 of the Code of Virginia.

"Next friend" means a person designated in accordance with 12VAC35-115-146 B to serve as the authorized representative of an individual who has been determined to lack capacity to consent or authorize the disclosure of identifying information, when required under this chapter.

"Peer-on-peer aggression" means a physical act, verbal threat, or demeaning expression by an individual against or to another individual that causes physical or emotional harm to that individual. Examples include hitting, kicking, scratching, and other threatening behavior. Such instances may constitute potential neglect.

"Person centered" means focusing on the needs and preferences of the individual, empowering and supporting the individual in defining the direction for his life, and promoting self-determination, community involvement, and recovery.

"Program rules" means the operational rules and expectations that providers establish to promote the general safety and well-being of all individuals in the program and to set standards for how individuals will interact with one another in the program. Program rules include any expectation that produces a consequence for the individual within the program. Program rules may be included in a handbook or policies and shall be available to the individual.

"Protection and advocacy agency" means the state agency designated under the federal Protection and Advocacy for Individuals with Mental Illness Act (PAIMI) and the Developmental Disabilities Assistance and Bill of Rights Act (DD). The protection and advocacy agency is the disAbility Law Center of Virginia (dLCV).

"Provider" means any person, entity, or organization offering services that is licensed, funded, or operated by the department.

"Psychotherapy notes" means comments, recorded in any medium by a health care provider who is a mental health professional, documenting and analyzing the contents of conversation during a private counseling session with an individual or a group, joint, or family counseling session that are separated from the rest of the individual's health record. "Psychotherapy notes" shall not include annotations relating to medication and prescription monitoring, counseling session start and stop times, treatment modalities and frequencies, clinical test results, or any summary of any symptoms, diagnosis, prognosis, functional status, treatment plan, or the individual's progress to date.

"Research review committee" or "institutional review board" means a committee of professionals that provides complete and adequate review of research activities. The committee shall be sufficiently qualified through maturity, experience, and diversity of its members, including consideration of race, gender, and cultural background, to promote respect for its advice and counsel in safeguarding the rights and welfare of participants in human research. (See § 37.2-402 of the Code of Virginia and 12VAC35-180.)

"Restraint" means the use of a mechanical device, medication, physical intervention, or hands-on hold to prevent an individual from moving his body to engage in a behavior that places him or others at imminent risk. There are three kinds of restraints:

1. Mechanical restraint means the use of a mechanical device that cannot be removed by the individual to restrict the freedom of movement or functioning of a limb or a portion of an individual's body when that behavior places him or others at imminent risk.

2. Pharmacological restraint means the use of a medication that is administered involuntarily for the emergency control of an individual's behavior when that individual's behavior places him or others at imminent risk and the administered medication is not a standard treatment for the individual's medical or psychiatric condition.

3. Physical restraint, also referred to as manual hold, means the use of a physical intervention or hands-on hold to prevent an individual from moving his body when that individual's behavior places him or others at imminent risk.

"Restraints for behavioral purposes" means using a physical hold, medication, or a mechanical device to control behavior or involuntarily restrict the freedom of movement of an individual in an instance when all of the following conditions are met: (i) there is an emergency, (ii) nonphysical interventions are not viable, and (iii) safety issues require an immediate response.

"Restraints for medical purposes" means using a physical hold, medication, or mechanical device to limit the mobility of an individual for medical, diagnostic, or surgical purposes, such as routine dental care or radiological procedures and related postprocedure care processes, when use of the restraint is not the accepted clinical practice for treating the individual's condition.

"Restraints for protective purposes" means using a mechanical device to compensate for a physical or cognitive deficit when the individual does not have the option to remove the device. The device may limit an individual's movement, for example, bed rails or a gerichair, and prevent possible harm to the individual or it may create a passive barrier, such as a helmet to protect the individual.

"Restriction" means anything that limits or prevents an individual from freely exercising his rights and privileges.

"SCC" means a specially constituted committee serving an intermediate care facility for individuals with intellectual disabilities as described in the Centers for Medicare and Medicaid Services (CMS) Conditions of Participation (42 CFR 483.440(f)(3)).

"Seclusion" means the involuntary placement of an individual alone in an area secured by a door that is locked or held shut by a staff person, by physically blocking the door, or by any other physical or verbal means, so that the individual cannot leave it.

"Serious injury" means any injury resulting in bodily hurt, damage, harm, or loss that requires medical attention by a licensed physician.

"Services" means care, treatment, training, habilitation, interventions, or other supports, including medical care, delivered by a provider licensed, operated or funded by the department.

"Services record" means all written and electronic information that a provider keeps about an individual who receives services.

"State Human Rights Committee" or "SHRC" means a committee of nine members appointed by the board that is accountable for the duties prescribed in 12VAC35-115-270 C.

"State human rights director" means the person employed by and reporting to the commissioner who is responsible for carrying out the functions prescribed for the position in 12VAC35-115-260 D.

"Time out" means the involuntary removal of an individual by a staff person from a source of reinforcement to a different, open location for a specified period of time or until the problem behavior has subsided to discontinue or reduce the frequency of problematic behavior.

"Treatment" means the individually planned, sound, and therapeutic interventions that are intended to improve or maintain functioning of an individual receiving services delivered by providers licensed, funded, or operated by the department. In order to be considered sound and therapeutic, the treatment shall conform to current acceptable professional practice.

12VAC35-115-105. Behavioral treatment plans.

A. A behavioral treatment plan is used to assist an individual to improve participation in normal activities and conditions of everyday living, reduce challenging behaviors, alleviate symptoms of psychopathology, and maintain a safe and orderly environment.

B. Providers may use individualized restrictions such as restraint or time out in a behavioral treatment plan to address challenging behaviors that present an immediate danger to the individual or others, but only after a licensed professional or licensed behavior analyst has conducted a detailed and systematic assessment of the behavior and the situations in which the behavior occurs. Providers shall document in the individual's services record that the lack of success or probable success of less restrictive procedures attempted or considered, and the risks associated with not treating the behavior, are greater than any risks associated with the use of the proposed restrictions.

C. Providers shall develop any behavioral treatment plan according to their policies and procedures, which shall ensure that:

1. Behavioral treatment plans are initiated, developed, carried out, and monitored by professionals who are qualified by expertise, training, education, or credentials to do so;

2. Behavioral treatment plans include nonrestrictive procedures and environmental modifications that address the targeted behavior; and

3. Behavioral treatment plans involving the use of restraint or timeout are submitted to an independent review committee, prior to implementation, for review and approval of the technical adequacy of the plan and data collection procedures.

D. In addition to any other requirements of 42 CFR 483.440(f)(3), providers that are intermediate care facilities for individuals with intellectual disabilities shall submit any

behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the SCC under 42 CFR 483.440(f)(3) for the SCC's approval prior to implementation.

E. Providers other than intermediate care facilities for individuals with intellectual disabilities shall submit any behavioral treatment plan that involves the use of restraint or time out, and its independent review committee approval, to the LHRC, which shall determine whether the plan is in accordance with this chapter prior to implementation.

F. If either the LHRC or SCC finds that the behavioral treatment plan violates the rights of the individual or is not being implemented in accordance with this chapter, the LHRC or SCC shall notify the director and provide recommendations regarding the proposed plan.

G. Behavioral treatment plans involving the use of restraint or time out shall be reviewed quarterly by the independent review committee and the LHRC or SCC to determine if the use of restraint has resulted in improvements in functioning of the individual.

H. Providers shall not use seclusion in a behavioral treatment plan.

VA.R. Doc. No. R19-5182; Filed August 23, 2018, 10:24 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The Board of Housing and Community Development is claiming an exemption 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 or the appropriation act where no agency discretion is involved. The Board of Housing and Community Development will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **13VAC5-112. Enterprise Zone Grant Program Regulation (amending 13VAC5-112-440, 13VAC5-112-490).**

Statutory Authority: § 59.1-541 of the Code of Virginia.

Effective Date: October 17, 2018.

Agency Contact: Kyle Flanders, Policy Analyst, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 786-6761, FAX (804) 371-7090, TTY (804) 371-7089, or email kyle.flanders@dhcd.virginia.gov.

Summary:

The amendments conform the regulation to Chapter 315 of the 2018 Acts of Assembly, to include that changes to an enterprise zone involving the elimination of an area or areas from the zone shall not exceed the statutory maximum size provisions.

13VAC5-112-440. Zone eligibility requirements.

A. To be eligible for consideration, an application for an enterprise zone must meet the requirements set out in this section.

B. Enterprise zones may consist of no more than three noncontiguous areas. The size of the enterprise zone shall consist of the total of the acreage of all noncontiguous areas. The maximum combined land area cannot exceed maximum size guidelines set forth in subdivisions C 1, 2, 3 ~~and~~, 4, and 5 of this section.

C. All proposed zones shall conform to the following size guidelines:

1. Cities -- minimum: 1/4 square mile (160 acres); maximum: 1 square mile (640 acres) or 7.0% of the jurisdiction's land area or an area that includes 7.0% of the population, whichever is largest. ~~Towns designated as enterprise zones pursuant to former §§ 59.1-274, 59.1-274.1 and 59.1-274.2 of the Code of Virginia shall conform to the size guidelines for cities.~~

2. For towns designated as enterprise zones under former §§ 59.1-272 through 59.1-278, 59.1-279.1, or 59.1-280.2 through 59.1-284 of the Enterprise Zone Act (§ 59.1-270 et seq. of the Code of Virginia), the size of an enterprise zone shall conform to the size requirements for cities in subdivision 1 of this subsection.

~~2.~~ 3. Unincorporated areas of counties -- minimum: 1/2 square mile (320 acres); maximum: 6 square miles (3,840 acres).

~~3.~~ 4. Consolidated cities -- zones in cities the boundaries of which were created through the consolidation of a city and county or the consolidation of two cities shall conform substantially to the minimum and maximum size guidelines for unincorporated areas of counties as set forth in subdivision ~~2~~ 3 of this subsection.

~~4.~~ 5. In no instance shall a zone consist only of a site for a single business firm.

Part IX
Procedures for Zone Amendment

13VAC5-112-490. Amendment of approved applications.

A. A local governing body will be permitted to request amendments to approved applications for zone designation in accordance with the procedures and requirements set out in this section. Each jurisdiction participating in a joint zone may amend their portion of the application, including boundaries and incentives, independently of the other participating jurisdictions.

B. The applicant jurisdiction must be current on the submission of annual reports as set forth in 13VAC5-112-550 in order to amend an approved application.

C. The applicant jurisdiction must hold at least one public hearing on the requested amendment prior to its submission to the department. This public hearing may not have been held more than six months prior to the amendment submission. In the case of a boundary amendment that involves the elimination of area or areas, the applicant jurisdiction must separately notify each property owner and business located within the affected area of the proposed amendment prior to holding the public hearing.

D. A request for an amendment must be submitted to the department on Form EZ-2. This form must be accompanied by a resolution of the local governing body and must certify that the applicant jurisdiction held the public hearing required in subsection C of this section prior to the adoption of the resolution. In the case of a joint application, Form EZ-2 must be completed by the jurisdiction requesting the amendment and must be accompanied by Form EZ-2-JA. This form certifies that the other participating jurisdictions are in agreement in filing the request for amendment.

E. An enterprise zone application may be amended annually, at least 12 months from the last amendment application by the jurisdiction. Amendments may be to the entire application or individual sections such as the boundary or incentives.

F. A zone boundary amendment may not consist of a site for a single business firm or be less than 10 acres.

G. A noncontiguous ~~area(s)~~ area may be added to an enterprise zone through a boundary amendment. However, no enterprise zone shall have more than three noncontiguous areas.

H. The total zone acreage resulting from a boundary amendment must conform to the size guidelines set forth in 13VAC5-112-440.

I. Boundary amendments that involve the elimination of area or areas from a zone shall be reviewed ~~on a case by case basis~~ by the department with the potential impact on affected businesses and property owners being given primary consideration. Such boundary changes ~~cannot involve more than 15% of the total zone acreage~~ shall not exceed the maximum size provisions of 13VAC5-112-440 C.

J. A county may amend its zone boundaries to include as part of the county's total acreage, acreage in any town located within the county provided it meets the provisions of subsections A through I of this section. This shall not constitute a joint zone and does not provide the town with the ability to make any zone amendments, add noncontiguous areas or give the town its own zone acreage allocation. In such situations, towns may provide local incentives in addition to the county incentives.

K. The department will approve an amendment to local incentives only when the proposed incentive is equal to or superior to that in the original application or any previous amendment approved by the department. The department will approve an amendment of zone boundaries only if the proposed amendment is deemed to be consistent with the purposes of the program as determined by the department.

L. A local governing body that is denied an application amendment shall be provided with the reasons for denial.

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 forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (13VAC5-112)

Application for Enterprise Designation Form, EZ-1 (rev. 2/2015)

Joint Application Agreement Form, EZ-1-JA, (rev. 2/2015)

~~Enterprise Zone Amendment Application, EZ-2 (undated, filed 9/7/2016)~~

Enterprise Zone Amendment Application, EZ-2 (undated, filed 8/29/2018)

Joint Amendment Application Agreement Form, EZ-2-JA (undated, filed 9/1/2016)

Local Enterprise Zone Annual Report Form, EZ-3-AR (rev. 5/2016), online form available at https://dmz1.dhcd.virginia.gov/camsportal/Login.aspx

Form EZ-3-AR Business Activity Worksheet (rev. 5/2016)

Job Creation Grant Application Form, EZ-JCG (rev. 11/2015)

Job Creation Grant Application Form, EZ-JCG-HUA (rev. 11/2015)

Real Property Investment Grant Application Form and Supplements, EZ-RPIG (rev. 11/2015)

General Income Tax Credit Application for Existing Firms, EZ-6E (undated, filed 9/7/2016), online form available at https://dmz1.dhcd.virginia.gov/EZApplication/Application6E.aspx

General Income Tax Credit Application for New Firms, EZ-6N (undated, filed 9/7/2016), online form available at https://dmz1.dhcd.virginia.gov/EZApplication/Application6N.aspx

Investment tax Credit Qualification Form, EZ-6I (rev. 1/2015)

VA.R. Doc. No. R19-5533; Filed August 29, 2018, 8:04 a.m.

VIRGINIA HOUSING DEVELOPMENT AUTHORITY

Proposed Regulation

REGISTRAR'S NOTICE: The Virginia Housing Development Authority is claiming an exemption from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4 of the Code of Virginia.

Title of Regulation: **13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (amending 13VAC10-180-50, 13VAC10-180-60, 13VAC10-180-70, 13VAC10-180-90, 13VAC10-180-110).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Public Hearing Information:

September 26, 2018 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220

Public Comment Deadline: September 26, 2018.

Agency Contact: Paul M. Brennan, Chief Counsel, Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA 23220, telephone (804) 343-5798, FAX (804) 833-8344, or email paul.brennan@vhda.com.

Summary:

The proposed amendments (i) require a first leasing preference to individuals in certain identified target populations, having rental assistance from the Commonwealth and referred to the development by approved referring agents, in lieu of points previously awarded for a similar leasing preference; (ii) require applicants to waive his right to pursue a qualified contract and bar applicants having participated in a qualified contract or planned foreclosure in Virginia; (iii) add a baseline energy performance requirement and provide points for additional green building certifications; (iv) approve the use of income averaging, subject to limitations; (v) create an innovation pool in which developments having innovative aspects may compete prior to the traditional competitive process; (vi) restructure the accessible supportive housing pool and require that owners have a supportive housing certification and complete the authority's supportive housing certification; (vii) restructure the revitalization area point category, including providing points for certain deals in opportunity zones; (viii) revise the cost limits for developments by creating a per-square-foot cost limit that is localized and remove the land and acquisition cost from such calculation; (ix) revise maximum allowable developer's fees; (x) require a general contractor's cost certification; (xi) require a physical needs assessment for rehabilitation developments; (xii) require a Phase I environmental site assessment; (xiii) eliminate points for developments with fewer than 100 units; (xiv) require a site visit by authority staff as part of application review; (xv) provide that a prior award of credits to be refreshed in exchange for principals not being permitted to compete in the following year's competitive application process; (xvi) limit requests for additional credits to no more than 10% of the original award of credits, otherwise the applicant must return prior award and re-compete; (xvii) provide that owners seeking both 9.0% and 4.0% credits for a combined transaction must meet with authority staff in advance of application submission, that the two developments must be physically separate, and provide points for such combined applications in the scoring of the 4.0% application; (xviii) provide points for rent and income set-asides for units at the 30% of area median income level that are not subsidized by project-based vouchers; (xix) broaden the subsidized funding points category; (xx) simplify the calculation of points for developments constructed using brick and other low-maintenance materials; (xxi) revise or provide amenity item points for multiple items, including dehumidification systems, Internet service, bath vent fans, solid core interior doors, fire prevention features, USB charging ports, LED lighting, ledges at entry doors, and balconies; (xxii) eliminate amenity item points for multiple items, including certain energy efficiency items that are duplicative in light of the new energy efficiency threshold requirements and for emergency call systems; (xxiii) reduce points awarded to developments for having real estate tax abatements; (xxiv) give the authority the ability to remove basis boost if it determines the development is feasible without such basis boost; (xxv) remove penalty points for certain minor infractions; (xxvi) provide that the analyst preparing the market study must meet the authority's qualifications; (xxvii) expand the type of project-based rental assistance or subsidy that can receive bonus points in the local housing authority pool; and (xxviii) make other miscellaneous administrative clarification changes.

13VAC10-180-50. Application.

Prior to submitting an application for reservation, applicants shall submit on such form as required by the executive director, the letter for authority signature by which the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located to provide such officers a reasonable opportunity to comment on the developments.

Application for a reservation of credits shall be commenced by filing with the authority an application, on such ~~form or~~ forms as the executive director may from time to time prescribe or approve, together with such documents and additional information (including, without limitation, a market study that is prepared by a housing market analyst that meets the authority's requirements for an approved analyst, as set forth on the application form, instructions, or other communication available to the public, that shows adequate demand for the housing units to be produced by the applicant's proposed development) as may be requested by the authority in order to comply with the IRC and this chapter and to make the reservation and allocation of the credits in accordance with this chapter. The executive director may reject any application from consideration for a reservation or allocation of credits if in such application the applicant does not provide the proper documentation or information on the forms prescribed by the executive director. In addition to the market study contained in the application, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development.

All sites in an application for a scattered site development may only serve one primary market area. If the executive director determines that the sites subject to a scattered site development are served by different primary market areas, separate applications for credits must be filed for each primary market area in which scattered sites are located within the deadlines established by the executive director.

The application should include a breakdown of sources and uses of funds sufficiently detailed to enable the authority to ascertain what costs will be incurred and what will comprise the total financing package, including the various subsidies and the anticipated syndication or placement proceeds that will be raised. The following cost information, if applicable, needs to be included in the application to determine the feasible credit amount: site acquisition costs, site preparation costs, construction costs, construction contingency, general contractor's overhead and profit, architect and engineer's fees, permit and survey fees, insurance premiums, real estate taxes during construction, title and recording fees, construction period interest, financing fees, organizational costs, rent-up and marketing costs, accounting and auditing costs, working capital and operating deficit reserves, syndication and legal fees, development fees, and other costs and fees. All applications seeking credits for rehabilitation of existing units must provide for contractor construction costs of at least $10,000 per unit for developments financed with tax-exempt bonds and $15,000 per unit for all other developments.

Any application that exceeds the cost limits ~~set forth~~ described below ~~in subdivisions 1, 2, and 3~~ shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

~~1. Inner Northern Virginia. The Inner Northern Virginia region shall consist of Arlington County, Fairfax County, City of Alexandria, City of Fairfax, and City of Falls Church. The total development cost of proposed developments in the Inner Northern Virginia region may not exceed (i) for new construction or adaptive reuse: $387,809 per unit plus up to an additional $43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition/rehabilitation: $338,564 per unit.~~

~~2. Prince William County, Loudoun County, Fauquier County, Manassas City, and Manassas Park City. The total development cost of proposed developments in Prince William County, Loudoun County, Fauquier County, Manassas City, and Manassas Park City may not exceed (i) for new construction or adaptive reuse: $288,087 per unit plus up to an additional $43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition/rehabilitation: $203,138 per unit.~~

~~3. Balance of state. The total development cost of proposed developments in the balance of the state may not exceed (i) for new construction or adaptive reuse: $215,450 per unit plus up to an additional $43,090 per unit if the proposed development contains underground or structured parking for each unit or (ii) for acquisition/rehabilitation: $166,204 per unit.~~

~~Costs, subject to a per unit limit set by the executive director, attributable to equipping units with electrical and plumbing hook ups for dehumidification systems and attributable to installing approved dehumidification systems will not be included in the calculation of the above per unit cost limits.~~

~~The cost limits in subdivisions 1, 2, and 3 above are 2015 fourth quarter base amounts. The cost limits shall be adjusted annually beginning in the fourth quarter of 2016 by the authority in accordance with Marshall & Swift cost factors for such quarter, and the adjusted~~ The authority will at least annually establish per-square-foot cost limits based upon historical cost data of tax credit developments in the Commonwealth. Such limits will be indicated on the application form, instructions, or other communication available to the public. The cost limits will be established for new construction, rehabilitation, and adaptive reuse development types. The authority will establish geographic

limits utilizing Marshall & Swift cost factors. For the purpose of determining compliance with the cost limits, the value of a development's land and acquisition costs will not be included in total development cost. Compliance with cost limits will be determined both at the time of application and also at the time the authority issues the IRS Form 8609, with the higher of the two limits being applicable at the time of IRS Form 8609 issuance.

Each application shall include plans and specifications ~~or, in the case of rehabilitation for which plans will not be used, a unit by unit work write up for such rehabilitation with certification~~ in such form and from such person satisfactory to the executive director as to the completion of such plans or specifications ~~or work write up~~.

In the case of rehabilitation, the application must include a physical needs assessment in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

Each application must include an environmental site assessment (Phase I) in such form and substance and prepared by such person satisfactory to the executive director pursuant to the authority's requirements as set forth on the application form, instructions, or other communication available to the public.

Each application shall include evidence of (i) sole fee simple ownership of the site of the proposed development by the applicant, (ii) lease of such site by the applicant for a term exceeding the compliance period (as defined in the IRC) or for such longer period as the applicant represents in the application that the development will be held for occupancy by low-income persons or families, or (iii) right to acquire or lease such site pursuant to a valid and binding written option or contract between the applicant and the fee simple owner of such site for a period extending at least four months beyond any application deadline established by the executive director, provided that such option or contract shall have no conditions within the discretion or control of such owner of such site. Any contract for the acquisition of a site with existing residential property may not require an empty building as a condition of such contract, unless relocation assistance is provided to displaced households, if any, at such level required by the authority. A contract that permits the owner to continue to market the property, even if the applicant has a right of first refusal, does not constitute the requisite site control required in clause (iii) above. No application shall be considered for a reservation or allocation of credits unless such evidence is submitted with the application and the authority determines that the applicant owns, leases, or has the right to acquire or lease the site of the proposed development as described in the preceding sentence. In the case of acquisition and rehabilitation of developments funded by Rural Development of the U.S. Department of Agriculture (Rural Development), any site control document subject to approval of the partners of the seller does not need to be approved by all partners of the seller if the general partner of the seller executing the site control document provides (i) an attorney's opinion that such general partner has the authority to enter into the site control document and such document is binding on the seller or (ii) a letter from the existing syndicator indicating a willingness to secure the necessary partner approvals upon the reservation of credits.

Each application shall include written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable.

Each application shall include, in a form ~~or forms~~ required by the executive director, a certification of previous participation listing all developments receiving an allocation of tax credits under § 42 of the IRC in which the ~~principal or~~ principals have or had an ownership or participation interest, the location of such developments, the number of residential units and low-income housing units in such developments and such other information as more fully specified by the executive director. Furthermore, for any such development, the applicant must indicate whether the appropriate state housing credit agency has ever filed a Form 8823 with the IRS reporting noncompliance with the requirements of the IRC and that such noncompliance had not been corrected at the time of the filing of such Form 8823. The executive director may reject any application from consideration for a reservation or allocation of credits unless the above information is submitted with the application. If, after reviewing the above information or any other information available to the authority, the executive director determines that the ~~principal or~~ principals do not have the experience, financial capacity and predisposition to regulatory compliance necessary to carry out the responsibilities for the acquisition, construction, ownership, operation, marketing, maintenance and management of the proposed development or the ability to fully perform all the duties and obligations relating to the proposed development under law, regulation and the reservation and allocation documents of the authority or if an applicant is in substantial noncompliance with the requirements of the IRC, the executive director may reject applications by the applicant. No application will be accepted from any applicant with a principal that has or had an ownership or participation interest in a development at the time the authority reported such development to the IRS as no longer in compliance and is no longer participating in the federal low-income housing tax credit program.

Each application shall include, in a form ~~or forms~~ required by the executive director, a certification that the design of the proposed development meets all applicable amenity and design requirements required by the executive director for the type of housing to be provided by the proposed development.

The application should include pro forma financial statements setting forth the anticipated cash flows during the credit period as defined in the IRC. The application shall include a certification by the applicant as to the full extent of all federal, state and local subsidies that apply (or that the applicant expects to apply) with respect to each building or development. The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance of the proposed development with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the amount of credits requested by the application and certifying, among other things, that under the existing facts and circumstances the applicant will be eligible for the amount of credits requested.

Each applicant shall commit in the application to provide relocation assistance to displaced households, if any, at such level required by the executive director. Each applicant shall commit in the application to use a property management company certified by the executive director to manage the proposed development.

Unless prohibited by an applicable federal subsidy program, each applicant shall commit in the application to provide a leasing preference to individuals (i) in a target population identified in a memorandum of understanding between the authority and one or more participating agencies of the Commonwealth, (ii) having a voucher or other binding commitment for rental assistance from the Commonwealth, and (iii) referred to the development by a referring agent approved by the authority. The leasing preference shall not be applied to more than 10% of the units in the development at any given time. The applicant may not impose more restrictive tenant selection criteria or leasing terms with respect to individuals receiving this preference.

Each applicant shall commit in the application not to require an annual minimum income requirement that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by tenants receiving rental assistance.

Each applicant shall commit in the application to waive its right to request to terminate the extended low-income housing commitment through the qualified contract process, as described in the IRC. Further, any application submitted by an applicant containing a principal that was a principal in an owner that has previously requested, on or after January 1, 2019, a qualified contract in the Commonwealth (regardless of whether the extended low-income housing commitment was terminated through such process) shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits.

Any application submitted by an applicant containing a principal that was a principal in an owner that has, in the authority's determination, previously participated, on or after January 1, 2019, in a foreclosure in Virginia (or instrument in lieu of foreclosure) that was part of an arrangement a purpose of which was to terminate an extended low-income housing commitment (regardless whether the extended low-income housing commitment was terminated through such foreclosure or instrument) shall be rejected from further consideration and shall not be eligible for any reservation or allocation of credits.

If an applicant submits an application for reservation or allocation of credits that contains a material misrepresentation or fails to include information regarding developments involving the applicant that have been determined to be out of compliance with the requirements of the IRC, the executive director may reject the application or stop processing such application upon discovery of such misrepresentation or noncompliance and may prohibit such applicant from submitting applications for credits to the authority in the future.

In any situation in which the executive director deems it appropriate, he may treat two or more applications as a single application. Only one application may be submitted for each location.

The executive director may establish criteria and assumptions to be used by the applicant in the calculation of amounts in the application, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The executive director may prescribe such deadlines for submission of applications for reservation and allocation of credits for any calendar year as he shall deem necessary or desirable to allow sufficient processing time for the authority to make such reservations and allocations. If the executive director determines that an applicant for a reservation of credits has failed to submit one or more mandatory attachments to the application by the reservation application deadline, he may allow such applicant an opportunity to submit such attachments within a certain time established by the executive director with a 10-point scoring penalty per item.

After receipt of the applications local notification information data, if necessary, the authority shall notify the chief executive officers (or the equivalent) of the local jurisdictions in which the developments are to be located and shall provide such officers a reasonable opportunity to comment on the developments.

The development for which an application is submitted may be, but shall not be required to be, financed by the authority. If any such development is to be financed by the authority, the application for such financing shall be submitted to and received by the authority in accordance with its applicable rules and regulations.

The authority may consider and approve, in accordance herewith, both the reservation and the allocation of credits to buildings or developments that the authority may own or may intend to acquire, construct ~~and/or~~ or rehabilitate.

Any application seeking an additional reservation of credits for a development in excess of 10% of an existing reservation of credits for such development shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits pursuant to such application. However, such applicant may execute a consent to cancellation for such existing reservation and submit a new application for the aggregate amount of the existing reservation and any desired increase.

13VAC10-180-60. Review and selection of applications; reservation of credits.

The executive director may divide the amount of credits into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) that is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of this subdivision 2 ~~of this section~~, the executive director may apply such factors as he deems relevant, including~~, without limitation,~~ the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations that, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full

amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round ~~or rounds~~ or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other ~~pool or~~ pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $950,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow ~~and/or~~ or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness. ~~a.~~ Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 ~~a~~ are not eligible for points under subdivision 5 a below)

~~b. For applications submitted prior to January 1, 2016, written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)~~

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. Any such letter must also be accompanied by a legal opinion of the locality's attorney opining that the locality's opposition to the proposed development does not have a discriminatory intent or a discriminatory effect (as defined in 24 CFR 100.500(a)) that is not supported by a legally sufficient justification (as defined in 24 CFR 100.500(b)) in violation of the Fair Housing Act (Title VIII of the Civil Rights Act of 1968, as amended) and the HUD implementing regulations. (minus 25 points)

c. Any proposed development that is to be located in a revitalization area meeting the requirements of § 36-55.30:2 A of the Code of Virginia~~. (10 points)~~ or within an opportunity zone designated by the Commonwealth pursuant to the Federal Tax Cuts and Jobs Act of 2017, as follows: (i) in a qualified census tract or federal targeted area, both as defined in the IRC, deemed under § 36-55.30:2 of the Code of Virginia to be designated as a revitalization area without adoption of a resolution (10 points); (ii) in any redevelopment area, conservation area, or rehabilitation area created or designated by the city or county pursuant to Chapter 1 (§ 36-1 et seq.) of Title 36 of the Code of Virginia and deemed under § 36-55.30:2 to be designated as a revitalization area without adoption of a further resolution (10 points); (iii) in a revitalization area designated by resolution adopted

pursuant to the terms of § 36-55.30:2 (15 points); (iv) in a local housing rehabilitation zone created by an ordinance passed by the city, county, or town and deemed to meet the requirements of § 36-55.30:2 pursuant to § 36-55.64 G of the Code of Virginia (15 points); and (v) in an opportunity zone and having a binding commitment of funding acceptable to the executive director pursuant to requirements as set forth on the application form, instructions, or other communication available to the public. (20 points). If the development is located in more than one such area, only the highest applicable points will be awarded, that is, points in this subdivision c are not cumulative.

d. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (5 points)

e. ~~Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Virginia Housing Trust Fund, funding from VOICE for projects located in Prince William County and donations from unrelated private foundations that have filed an IRS Form 990 (or a variation of such form) or Rural Development for a below market rate loan or grant; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; (iii) a commitment to donate land, buildings or tap fee waivers from the local government; or (iv) a commitment to donate land (including a below market rate land lease) from an entity that is not a principal in the applicant (the donor being the grantee of a right of first refusal or purchase option, with no ownership interest in the applicant, shall not make the donor a principal in the applicant).~~ Any nonfederal funding source, as evidenced by a binding commitment or letter of intent, that is used to reduce the credit request. Loans must be below market-rate (the one-year London Interbank Offered Rate (LIBOR) rate at the time of commitment) or cash-flow only to be eligible for points. Financing from the authority and market rate permanent financing sources are not eligible. Funding from the Federal Home Loan Bank is eligible. (The amount of such ~~financing~~ funding, dollar value of local support, or value of donated land (including a below market rate land lease) will be determined by the executive director and divided by the total development ~~sources of funds and the proposed development~~ cost. The applicant receives two points for each percentage point up to a maximum of 40 points.)

f. Any development subject to (i) HUD's Section 8 or Section 236 program or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is or has any common interests with the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to ~~any~~ developer's fee on acquisition and any other fees associated with the acquisition ~~and rehabilitation (or rehabilitation only)~~ of the development unless permitted by the executive director for good cause.)

g. Any development receiving ~~(i)~~ a real estate tax abatement on the increase in the value of the development ~~or (ii) new project-based subsidy from HUD or Rural Development for the greater of five units or 10% of the units of the proposed development~~. ~~(10~~ (5 points)

~~h. Any proposed elderly development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) (25 points). Effective January 1, 2018, any proposed elderly development located in a census tract that has less than a 12% poverty rate (based upon Census Bureau data) (20 points); any proposed elderly development located in a census tract that has less than a 3.0% poverty rate (based upon Census Bureau data) (30 points).~~

~~i. Any proposed family development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) (25 points). Effective January 1, 2018, any proposed family development located in a census tract that has less than a 12% poverty rate (based upon Census Bureau data) (20 points); any proposed family development located in a census tract that has less than a 3.0% poverty rate (based upon Census Bureau data) (30 points).~~

h. Any development receiving new project-based subsidy from HUD or Rural Development for the greater of five units or 10% of the units of the proposed development. (10 points)

i. Any proposed elderly or family development located in a census tract that has less than a 3.0% poverty rate based upon Census Bureau data (30 points); less than a 10% poverty rate based upon Census Bureau data (25 points); or less than a 12% poverty rate based upon Census Bureau data (20 points).

j. Any proposed development listed in the top 25 developments identified by Rural Development as high

priority for rehabilitation at the time the application is submitted to the authority (15 points).

k. Any proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. ~~(up~~ (Up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool; the executive director may make exceptions in the following circumstances:

(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;

(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or

(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive reuse and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population. ~~(up~~ (Up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool).

3. Development characteristics.

a. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

(a) If a ~~community/meeting~~ community room with a minimum of 749 square feet is provided. (5 points) Community rooms receiving points under this subdivision 3 a (1) (a) may not be used for commercial purposes. ~~Effective January 1, 2018, provided~~ Provided that the cost of the community room is not included in eligible basis, the owner may conduct, or contract with a nonprofit provider to conduct, programs or classes for tenants and members of the community in the community room, so long as (i) tenants compose at least one-third of participants, with first preference given to tenants above the one-third minimum; (ii) no program or class may be offered more than five days per week; (iii) no individual program or class may last more than eight hours per day, and all programs and class sessions may not last more than 10 hours per day in the aggregate; (iv) cost of attendance of the program or class must be below market rate with no profit from the operation of the class or program being generated for the owner (owner may also collect an amount ~~of~~ for reimbursement of supplies and clean-up costs); (v) the community room must be available for use by tenants when programs and classes are not offered, subject to reasonable "quiet hours" established by owner; and (vi) any owner offering programs or classes must provide an annual certification to the authority that it is in compliance with such requirements, with failure to comply with these requirements resulting in a 10-point penalty for three years from the date of such noncompliance for principals in the owner.

(b) If the exterior walls are constructed using ~~the following materials: (i) Brick~~ brick or other similar low-maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) covering ~~30% or more of the exterior walls~~ 25% or greater, up to and including 85%, of the exterior walls of the development. For purposes of making such coverage calculation, the triangular gable end area, doors, windows, knee walls, columns, retaining walls, and any features that are not a part of the façade are excluded from the denominator. Community buildings are included in the foregoing coverage calculations. (Zero points if coverage is less than 25%; 10 points if coverage is at least 25%, and an additional 15 points is available on a sliding scale if coverage is greater than 25% up to and including 85% coverage. No additional points if coverage is greater than 85%). ~~(10 points) and~~

~~(ii) If subdivision 3 a (1) (b) (i) above is met, an additional one fifth point for each percent of exterior wall brick or other similar low maintenance material approved by the authority (as indicated on the application form, instructions, or other communication available to the public) in excess of 30%. (maximum 10 points) and~~

~~(iii) If subdivision 3 a (1) (b) (i) above is met, an additional one tenth point for each percent of exterior wall covered by fiber cement board. (maximum 7 points)~~

~~(c) If all kitchen and laundry appliances (except range hoods) meet the EPA's Energy Star qualified program requirements. (5 points)~~

~~(d) If all the windows and glass doors are Energy Star labeled for the North Central Zone or are National Fenestration Rating Council (NFRC) labeled with a maximum U-Factor of 0.27 and maximum solar heat gain coefficient (SHGC) of 0.40. (5 points)~~

~~(e) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a seasonal energy efficiency ratio (SEER) rating of 15.0 or more and a heating seasonal performance factor (HSPF) rating of 8.5 or more or (ii) air conditioning equipment with a~~

~~SEER rating of 15.0 or more, combined with a gas furnace with an annual fuel utilization efficiency (AFUE) rating of 90% or more. (10 points)~~

~~(f)~~ (c) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

~~(g)~~ (d) If points are not awarded pursuant to subdivision 3 f below for optional certification, if each bathroom contains only WaterSense labeled toilets, faucets and showerheads. ~~(2~~ (3 points)

~~(h)~~ (e) If each unit is provided with the necessary infrastructure for high-speed Internet or broadband service. (1 point)

~~(i) If all the water heaters have an energy factor greater than or equal to 67% for gas water heaters or greater than or equal to 93% for electric water heaters; or any centralized commercial system that has an efficiency performance rating equal to or greater than 95%, or any solar thermal system that meets at least 60% of the development's domestic hot water load~~ If free Wi-Fi access is provided in the community room and such access is restricted to resident only usage. (4 points) If each unit is provided with free individual high-speed Internet access. (6 points, 8 points if such access is Wi-Fi). ~~(5 points)~~

~~(j) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)~~

~~(k) Effective until January 1, 2018, for new construction only, if each full bathroom is equipped with EPA Energy Star qualified bath vent fans. (2 points) Effective January 1, 2018, if each full bathroom is provided either an EPA Energy Star qualified bath vent fan with duct size per manufacturer requirements or a continuous exhaust as part of a dedicated outdoor air system with humidity control. (2 points)~~

~~(l) If the development has or the application provides for installation of continuous R-3 or higher wall sheathing insulation. (5 points)~~

~~(m)~~ (f) If each full bathroom's bath fans are wired to the primary bathroom light with a delayed timer, or continuous exhaust by ERV/DOAS. (3 points) If each full bathroom's bath fans are equipped with a humidistat. (3 points)

(g) If all cooking surfaces are equipped with fire prevention features that meet the authority's requirements as indicated on the application form, instructions, or other communication available to the public. (4 points)

If all cooking surfaces are equipped with fire ~~prevention or~~ suppression features that meet the authority's requirements (as indicated on the application form, instructions, or other communication available to the public). (2 points)

(h) For rehabilitations, equipping all units with dedicated space, drain, and electrical hook-ups for permanently installed dehumidification systems (2 points). For rehabilitations and new construction, providing permanently installed dehumidification systems in each unit. (5 points)

(i) If each interior door is solid core. (3 points)

(j) If each unit has at least one USB charging port in the kitchen, living room, and all bedrooms. (1 point)

(k) If each kitchen has LED lighting in all fixtures that meets the authority's minimum design and construction standards (2 points)

(l) If each unit has a shelf or ledge outside the primary entry door in interior hallway. (2 points)

(m) For new construction only, if each unit has a balcony or patio with a minimum depth of five feet clear from face of building and a size of at least 30 square feet. (4 points)

(2) The following points are available to applications electing to serve elderly tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all ~~units have an emergency call system. (3 points) (c) If all~~ bathrooms have an independent or supplemental heat source. (1 point)

~~(d)~~ (c) If all entrance doors to each unit have two eye viewers, one at 42 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

b. Any development in which (i) the greater of five units or 10% of the units will be assisted by HUD project-based vouchers (as evidenced by the submission of a letter satisfactory to the authority from an authorized public housing authority (PHA) that the development meets all prerequisites for such assistance) or other form of documented and binding federal or state project-based rent subsidies in order to ensure occupancy by extremely low-income persons; and (ii) the greater of five units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to persons with disabilities as defined in the Fair Housing Act in

accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in clause (ii) above must include roll-in showers and roll-under sinks and front control ranges, unless agreed to by the authority prior to the applicant's submission of its application). (60 points)

~~In addition, for any development eligible for the preceding 60 points, subject to appropriate federal approval, any applicant that commits to providing a first preference on its waiting list for persons with a developmental disability as confirmed by the Virginia Department of Behavioral Health and Developmental Services for the greater of five units or 10% of the units. (25 points)~~

c. Any development in which the greater of five units or 10% of the units (i) have rents within HUD's Housing Choice Voucher (HCV) payment standard, (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and (iii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

~~In addition, for any development eligible for the preceding 30 points, subject to appropriate federal approval, any applicant that commits to providing a first preference on its waiting list for persons with a developmental disability as confirmed by the Virginia Department of Behavioral Health and Developmental Services for the greater of five units or 10% of the units. (25 points)~~

d. Any development in which 5.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to persons with disabilities as defined in the Fair Housing Act in accordance with a plan submitted as part of the application for credits. (15 points)

e. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for Northern Virginia or Tidewater Metropolitan Statistical Area (MSA), in which case, the development will receive 20 points if the development is ranked against other developments in such Northern Virginia or Tidewater MSA pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

f. Each development must meet the following baseline energy performance standard applicable to the development's construction category. For new construction, the development must meet all requirements for EPA Energy Star certification. For rehabilitation, the proposed renovation of the development must result in at least a 30% post-rehabilitation increase on the Home Energy Rating System Index (HERS Index) or score an 80 or better on the HERS Index. For adaptive reuse, the proposed development must score a 95 or better on the HERS Index. For mixed construction types, the applicable standard will apply to the development's various construction categories. The development's score on the HERS Index must be verified by a third-party, independent, nonaffiliated, certified Residential Energy Services Network (RESNET) home energy rater.

Any development for which the applicant agrees to obtain ~~either~~ (i) EarthCraft Gold or higher certification ~~or;~~ (ii) U.S. Green Building Council LEED green-building certification; (iii) National Green Building Standard Certification of Silver or higher; or (iv) meet Enterprise Green Communities Criteria prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's ~~architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development or EarthCraft certified development; 35 points for a LEED Gold development or EarthCraft Gold development; 45 points for a LEED Platinum development and an additional 10 points for an EarthCraft certified development or EarthCraft Gold development that performs tenant utility monitoring and benchmarking.)~~ RESNET rater is registered with a provider on the authority's approved RESNET provider list. (10 points, points in this paragraph are not cumulative)

Additionally, points on future applications will be awarded to an applicant having a principal that is also a principal in a tax credit development in the Commonwealth meeting (i) the Zero Energy Ready Home Requirements as promulgated by the U.S. Department of Energy (DOE) and as evidenced by a DOE certificate; or (ii) the Passive House Institute's Passive House standards as evidenced by a certificate from an accredited Passive House certifier. (10 points, points in this paragraph are cumulative)

The executive director may, if needed, designate a proposed development as requiring an increase in credit

in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving ~~25 or 45~~ an additional 10 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to ~~5.0%~~ 10% of the development's eligible basis ~~for 25 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of~~. Provided, however, the authority may remove such increase in the development's eligible basis if the authority determines that the development is financially feasible without such increase in basis.

g. If units are constructed to include the authority's universal design features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

~~h. Any development in which the applicant proposes to produce less than 100 low income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low income housing unit produced down to 0 points for any development that produces 100 or more low income housing units.)~~

~~i.~~ h. Any applicant for a development that, pursuant to a common plan of development, is part of a larger development located on the same or contiguous sites, financed in part by tax-exempt bonds. Combination developments seeking both 9.0% and 4.0% credits must clearly be presented as two separately financed deals including separate equity pricing that would support each respective deal in the event the other were no longer present. While deals are required to be on the same or a contiguous site they must be clearly identifiable as separate. The units financed by tax exempt bonds may not be interspersed throughout the development. Additionally, if co-located within the same building footprint, the property must identify separate entrances. All applicants seeking points in this category must arrange a meeting with authority staff at the authority's offices prior to the deadline for submission of the application in order to review both the 9.0% and the tax-exempt bond financed portion of the project. Any applicant failing to meet with authority staff in advance of applying will not be allowed to compete in the current competitive round as a combination development. (25 points for tax-exempt bond financing of at least 30% of aggregate units, 35 points for tax-exempt bond financing of at least 40% of aggregate units, and 45 points for tax-exempt bond financing of at least 50% of aggregate units; such points being ~~noncumulative)~~ noncumulative; such points will be awarded in both the application and any application submitted for credits associated with the tax-exempt bonds)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the controlling general partner or managing member of the controlling general partner or managing member for the proposed development have developed:

(1) As controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments. (50 points) ~~or~~;

(2) At least three deals as a principal and have at least $500,000 in liquid assets. "Liquid assets" means cash, cash equivalents, and investments held in the name of the ~~entity(s) and~~ entities or ~~person(s)~~ persons, including cash in bank accounts, money market funds, U.S. Treasury bills, and equities traded on the New York Stock Exchange or NASDAQ. Certain cash and investments will not be considered liquid assets, including ~~but not limited to~~: (i) stock held in the applicant's own company or any closely held entity, (ii) investments in retirement accounts, (iii) cash or investments pledged as collateral for any liability, and (iv) cash in property accounts, including reserves. The authority will assess the financial capacity of the applicant based on its financial statements. The authority will accept financial statements audited, reviewed, or compiled by an independent certified public accountant. Only a balance sheet dated on or after December 31 of the year prior to the application deadline is required. The authority will accept a compilation report with or without full note disclosures. Supplementary schedules for all significant assets and liabilities may be required. Financial statements prepared in accordance with accounting principles generally accepted in the United States (U.S. GAAP) are preferred. Statements prepared in the income tax basis or cash basis must disclose that basis in the report. The authority reserves the right to verify information in the financial statements. (50 points); or

(3) As controlling general partner or managing member, at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 shall have the 50 points reduced if the controlling general partner or managing member of the controlling general partner or managing member in the applicant acted as a principal in a development receiving an allocation of credits from the authority where:

(a) ~~such~~ Such principal met the requirements to be eligible for points under 5 (a) (1) or (2) and

(b) ~~any of the following occurred: (i) submission of a Form 8609 application that failed to match the required accountant's cost certification (minus 10 points for~~ For two ~~years); (ii) failure to place a rehabilitation development in service by substantial completion (e.g., placed in service by expenditures after two years) (minus 5 points for two years); (iii)~~ years made more than two requests for final inspection (minus 5 points for two years)~~; or (iv) requests for any deadline extension (minus 1 point for two years)~~.

Applicants receiving points under subdivisions a (1) and a (2) of this subdivision 5 are not eligible for points under ~~subdivision a of~~ subdivision 1 ~~Readiness,~~ above.

b. Any applicant that includes a principal that was a principal in a development at the time the authority inspected such development and discovered a life-threatening hazard under HUD's Uniform Physical Condition Standards and such hazard was not corrected in the timeframe established by the authority. (minus 50 points for a period of three years after the violation has been corrected)

c. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate ~~individual or~~ individuals connected to the principal attend compliance training as recommended by the authority)

d. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the ~~item or~~ items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority. (minus 10 points a period of three years after the credits are returned to the authority)~~.~~

e. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

f. Any applicant that includes a principal that was a principal in a development for which the actual cost of construction (as certified in the Independent Auditor's Report with attached Certification of Sources and Uses that is submitted in connection with the Owner's Application for IRS Form 8609) exceeded the applicable cost limit by 5.0% or more (minus 50 points for a period of three calendar years after December 31 of the year the cost certification is complete; provided, however, if the Board of Commissioners determines that such overage was outside of the applicant's control based upon documented extenuating circumstances, no negative points will be assessed.)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (200 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (~~the~~ "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed

development. (100 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director; negative points will be assessed using the percentage by which the total amount of the per unit cost amount of the proposed development exceeds the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 a may not receive points under subdivision 7 b below. (Up to 50 points, the product of (i) 100 multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.) If the applicant commits to providing housing units in the proposed development both rent-restricted to and occupied by households at or below 30% of the area median gross income and that are not subsidized by project-based rental assistance. (plus 1 point for each percentage point of such housing units in the proposed development, up to an additional 10 points)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision 7 b may not receive points under subdivision 7 a. (Up to 25 points, the product of (i) 50 multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus one point for each percentage point of such housing units in the proposed development that are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points. Points for proposed developments in low-income jurisdictions shall be two times the points calculated in the preceding sentence, up to 50 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision 7 c may not receive bonus points under subdivision 7 d. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision 7 d may not receive bonus points under subdivision 7 c. (60 points; plus five points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

e. Any development participating in the Rental Assistance Demonstration (RAD) program, or other conversion to project-based vouchers or project-based rental assistance approved by the authority, competing in the local housing authority pool will receive an additional 10 points. Applicants must show proof of a commitment to enter into housing assistance payment ~~(CHAP)~~ or a RAD conversion commitment ~~(RCC)~~.

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application.

Any application that is assigned a total number of points less than a threshold amount of 425 points (325 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

8. Innovation. For calendar years 2019, 2020, and 2021, the authority establishes an innovation pool equal to the additional 12.5% of credits established by the federal Consolidated Appropriations Act of 2018. Any applicant intending to submit an application in a particular year's competitive round and having completed the local notification information process may self-select to first compete in the innovation pool. Applications for the innovation pool will be due prior to the deadline for the competitive pool on a date determined by the authority. The authority will evaluate each application in the innovation pool, without scoring it on the traditional points scale, to determine and rank the uniqueness and innovative nature of the development concept based upon the parameters set forth in this subdivision 8. The developments meeting the authority's threshold for innovation will be ranked highest to lowest and only those developments for which there are sufficient credits in the pool to fully fund such developments will be awarded credits. However, the application must meet all the requirements of the IRC and threshold score. The authority may also establish a review committee comprised of external real estate professionals, academic leaders, and other individuals knowledgeable of real estate development, design, construction, accessibility, energy efficiency, or management to assist the authority in determining and ranking the innovative nature of the development. Factors for consideration:

a. Innovative construction methods or materials that reduce the traditional construction time or construction cost of the development while maintaining sustainability;

b. Having more than 50% of funding committed to the development at the time of application;

c. Regional collaboration and support;

d. Utilizing unique up-zoning activities promoting greater density (e.g., a higher number of units per acre than otherwise permitted by zoning);

e. Ability of the development to address an unmet need of an underserved population or geographic location;

f. Unique or innovative tenant services, tenant selection criteria, or eviction policies;

g. Demonstrated capacity of the applicant to complete the proposed development and financial feasibility of the development with the innovative components;

h. Extent to which the proposed development would be at a competitive or financial disadvantage relative to developments considered in the other traditional competitive pools; and

i. The proposed development's contribution to the authority's identified mission and goals.

Applicants in the innovation pool may amend their applications prior to submission for competition in the remaining pools. After review of all applications in the innovation pool, the authority may elect to not award any credits in the innovation pool or to less than fully fund the pool and any unused credits will move to the remaining pools.

During its review of the submitted applications in all pools, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

During its review of the submitted applications in all pools, the authority may conduct a site visit to the applicant's proposed development. Notwithstanding any conclusion in any environmental site assessment submitted with an application, if the authority determines that the applicant's proposed development presents health or safety concerns for potential tenants of the development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application that he determines is not submitted in good faith or that he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 40% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the

executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 ~~above~~, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 ~~above~~ and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness, and if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including~~, without limitation,~~ criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

The following developer's fees may not be exceeded in the application: (i) for 4.0% developments, $20,000 per unit for units zero through 60; $15,000 per unit for units 61 through 120; and $10,000 per unit for any units above 120; and (ii) for 9.0% developments, $20,000 per unit for units zero through 30; $15,000 per unit for units 31 through 60, and $10,000 per unit for any units above 60. For 4.0% developments above 120 units and 9.0% developments above 60 units, the developer fee shall be subject to the authority's determination of reasonableness, and the developer fee per unit may be lower than set forth above. However, in no event shall the developer fee exceed 15% of the development's total development cost, as determined by the authority.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC; provided, however, that in no event shall the amount of credits so

reserved exceed the maximum amount permissible under the IRC.

~~Effective until January 1, 2018, not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 (§ 63.2-1700 et seq.) of Title 63.2 of the Code of Virginia.~~

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed ~~development(s)~~ developments scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed ~~development, or~~ developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated, or canceled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round ~~or rounds~~, (ii) redistribute such unreserved credits to such other ~~pool or~~ pools as the executive director may designate, (iii) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (~~the "~~credit cap~~"~~). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include~~, but not be limited to,~~ the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including~~, without limitation,~~ a spouse, children, parents, grandparents,

grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same ~~person or~~ persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant ~~or applicants~~ shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with the credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments that have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount that is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to

the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including~~, without limitation,~~ any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development that were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits in an accessible supportive housing pool (ASH pool) to any applicant that proposes a nonelderly development that (i) will be assisted by ~~HUD project based vouchers or another form of~~ a documented and binding ~~federal or state project based rent subsidies~~ form of rental assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; ~~and~~ (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for ~~either (a) at least 25% of the units in the development or (b) if HUD Section 811 funds are providing the rent subsidies, at least 15% but not more than 25% of the units in the development.~~ at least 15% of the units in the development; (iv) has a principal with a demonstrated capacity for supportive housing evidenced by a certification

from a certifying body acceptable to the executive director or other preapproved source; and (v) for which the applicant has completed the authority's supportive housing certification form. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year. If the ASH pool application deadline is simultaneous with the deadline for the other pools, the unsuccessful applicants in the ASH pool will also compete in the applicable geographic pool.

13VAC10-180-70. Allocation of credits.

At such time as one or more of an applicant's buildings or an applicant's development which has received a reservation of credits is (i) placed in service or satisfies the requirements of § 42(h)(1)(E) of the IRC and (ii) meets all of the preallocation requirements of this chapter, the binding commitment and any other applicable contractual agreements between the applicant and the authority, the applicant shall so advise the authority, shall request the allocation of all of the credits so reserved or such portion thereof to which the applicant's buildings or development is then entitled under the IRC, this chapter, the binding commitment and the aforementioned contractual agreements, if any, and shall submit such application, certifications, (including an independent certified public accountant's certification of applicant's actual cost and an independent certified public accountant's certification of the general contractor's actual costs), legal and accounting opinions, evidence as to costs, a breakdown of sources and uses of funds, pro forma financial statements setting forth anticipated cash flows, and other documentation as the executive director shall require in order to determine that the applicant's buildings or development is entitled to such credits as described above. The applicant shall certify to the authority the full extent of all federal, state and local subsidies which apply (or which the applicant expects to apply) with respect to the buildings or the development.

As of the date of allocation of credits to any building or development and as of the date such building or such development is placed in service, the executive director shall determine the amount of credits to be necessary for the financial feasibility of the development and its viability as a qualified low-income housing development throughout the credit period under the IRC. In making such determinations, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall then deem reasonable (or he may apply the criteria and assumptions he established pursuant to 13VAC10-180-60) for the purpose of making such determinations, including, ~~without limitation,~~ criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined in 13VAC10-180-60) at fixed interest rates, debt service on the proposed mortgage loan. The amount of credits allocated to the applicant shall in no event exceed such amount as so determined by the executive director by more than a de minimis amount of not more than $100.

Prior to allocating credits to an applicant, the executive director shall require the applicant to execute and deliver to the authority a valid IRS Form 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information. The Forms 8821 of all applicants will be forwarded to the IRS, which will authorize the IRS to furnish the authority with all IRS information pertaining to the applicants' developments, including audit findings and assessments.

Prior to allocating the credits to an applicant, the executive director shall require the applicant to execute, deliver and record among the land records of the appropriate jurisdiction or jurisdictions an extended low-income housing commitment in accordance with the requirements of the IRC. Such commitment shall require that the applicable fraction (as defined in the IRC) for the buildings for each taxable year in the extended use period (as defined in the IRC) will not be less than the applicable fraction specified in such commitment and which prohibits both (i) the eviction or the termination of tenancy (other than for good cause) of an existing tenant of a low-income unit and (ii) any increase in the gross rent with respect to such unit not otherwise permitted under the IRC. The amount of credits allocated to any building shall not exceed the amount necessary to support such applicable fraction, including any increase thereto pursuant to § 42(f)(3) of the IRC reflected in an amendment to such commitment. The commitment shall provide that the extended use period will end on the day 15 years after the close of the compliance period (as defined in the IRC) or on the last day of any longer period of time specified in the

application during which low-income housing units in the development will be occupied by tenants with incomes not in excess of the applicable income limitations; provided, however, that the extended use period for any building shall be subject to termination, in accordance with the IRC, ~~(i)~~ on the date the building is acquired by foreclosure or instrument in lieu thereof unless a determination is made pursuant to the IRC that such acquisition is part of an agreement with the current owner thereof, a purpose of which is to terminate such period ~~or (ii) on the last day of the one-year period following the written request by the applicant as specified in the IRC (such period in no event beginning earlier than the end of the fourteenth year of the compliance period) if the authority is unable to present during such one-year period a qualified contract (as defined in the IRC) for the acquisition of the building by any person who will continue to operate the low-income portion thereof as a qualified low-income building~~. In addition, such termination shall not be construed to permit, prior to close of the three-year period following such termination, the eviction or termination of tenancy of any existing tenant of any low-income housing unit other than for good cause or any increase in the gross rents over the maximum rent levels then permitted by the IRC with respect to such low-income housing units. Such commitment shall contain a waiver of the applicant's right to pursue a qualified contract. Such commitment shall also contain such other terms and conditions as the executive director may deem necessary or appropriate to assure that the applicant and the development conform to the representations, commitments and information in the application and comply with the requirements of the IRC and this chapter. Such commitment shall be a restrictive covenant on the buildings binding on all successors to the applicant and shall be enforceable in any state court of competent jurisdiction by individuals (whether prospective, present or former occupants) who meet the applicable income limitations under the IRC.

In accordance with the IRC, the executive director may, for any calendar year during the project period (as defined in the IRC), allocate credits to a development, as a whole, which contains more than one building. Such an allocation shall apply only to buildings placed in service during or prior to the end of the second calendar year after the calendar year in which such allocation is made, and the portion of such allocation allocated to any building shall be specified not later than the close of the calendar year in which such building is placed in service. Any such allocation shall be subject to satisfaction of all requirements under the IRC.

If the executive director determines that the buildings or development is so entitled to the credits, he shall allocate the credits (or such portion thereof to which he deems the buildings or the development to be entitled) to the applicant's qualified low-income buildings or to the applicant's development in accordance with the requirements of the IRC. If the executive director shall determine that the applicant's buildings or development is not so entitled to the credits, he shall not allocate the credits and shall so notify the applicant within a reasonable time after such determination is made. In the event that any such applicant shall not request an allocation of all of its reserved credits or whose buildings or development shall be deemed by the executive director not to be entitled to any or all of its reserved credits, the executive director may reserve or allocate, as applicable, such unallocated credits to the buildings or developments of other qualified applicants at such time or times and in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

The executive director may prescribe (i) such deadlines for submissions of requests for allocations of credits for any calendar year as he deems necessary or desirable to allow sufficient processing time for the authority to make such allocations within such calendar year and (ii) such deadlines for satisfaction of all preallocation requirements of the IRC the binding commitment, any contractual agreements between the authority and the applicant and this chapter as he deems necessary or desirable to allow the authority sufficient time to allocate to other eligible applicants any credits for which the applicants fail to satisfy such requirements.

The executive director may make the allocation of credits subject to such terms as he may deem necessary or appropriate to assure that the applicant and the development comply with the requirements of the IRC.

The executive director may also (to the extent not already required under 13VAC10-180-60) require that all applicants make such good faith deposits or execute such contractual agreements with the authority as the executive director may require with respect to the credits, (i) to ensure that the buildings or development are completed in accordance with the binding commitment, including all of the representations made in the application for which points were assigned pursuant to 13VAC10-180-60 and (ii) only in the case of any buildings or development which are to receive an allocation of credits hereunder and which are to be placed in service in any future year, to assure that the buildings or the development will be placed in service as a qualified low-income housing project (as defined in the IRC) in accordance with the IRC and that the applicant will otherwise comply with all of the requirements under the IRC.

In the event that the executive director determines that a development for which an allocation of credits is made shall not become a qualified low-income housing project (as defined in the IRC) within the time period required by the IRC or the terms of the allocation or any contractual agreements between the applicant and the authority, the executive director may terminate the allocation and rescind the credits in accordance with the IRC and, in addition, may draw on any good faith deposit and enforce any of the authority's rights and remedies under any contractual

agreement. An allocation of credits to an applicant may also be cancelled with the mutual consent of such applicant and the executive director. Upon the termination or cancellation of any credits, the executive director may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

An applicant that demonstrates a legitimate change in circumstances or delay beyond their reasonable control, as determined by the authority, may return a valid reservation of prior years' tax credits between October 1 and December 31 and receive a reservation of the same amount of current or future year tax credits. The authority must determine that the applicant is capable of completing and placing the development in service within the time required by the IRC for such current or future year tax credits. However, none of the principals in the development for which credits are returned and refreshed may be a principal in an application the following calendar year and the applicant must waive the right to a qualified contract, if applicable.

13VAC10-180-90. Monitoring for IRS compliance.

A. Federal law requires the authority to monitor developments receiving credits for compliance with the requirements of § 42 of the IRC and notify the IRS of any noncompliance of which it becomes aware. Compliance with the requirements of § 42 of the IRC is the responsibility of the owner of the building for which the credit is allowable. The monitoring requirements set forth hereinbelow are to qualify the authority's allocation plan of credits. The authority's obligation to monitor for compliance with the requirements of § 42 of the IRC does not make the authority liable for an owner's noncompliance, nor does the authority's failure to discover any noncompliance by an owner excuse such noncompliance.

B. The owner of a low-income housing development must keep records for each qualified low-income building in the development that show for each year in the compliance period:

1. The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit).

2. The percentage of residential rental units in the building that are low-income units.

3. The rent charged on each residential rental unit in the building (including any utility allowances).

4. The number of occupants in each low-income unit, but only if rent is determined by the number of occupants in each unit under § 42(g)(2) of the IRC (as in effect before the amendments made by the federal Revenue Reconciliation Act of 1989).

5. The low-income unit vacancies in the building and information that shows when, and to whom, the next available units were rented.

6. The annual income certification of each low-income tenant per unit.

7. Documentation to support each low-income tenant's income certification (for example, a copy of the tenant's federal income tax return, Forms W-2, or verifications of income from third parties such as employers or state agencies paying unemployment compensation). Tenant income is calculated in a manner consistent with the determination of annual income under section 8 of the United States Housing Act of 1937, 42 USC § 1401 et seq. ("section 8"), not in accordance with the determination of gross income for federal income tax liability. In the case of a tenant receiving housing assistance payments under section 8, the documentation requirement of this subdivision 7 is satisfied if the public housing authority provides a statement to the building owner declaring that the tenant's income does not exceed the applicable income limit under § 42(g) of the IRC.

8. The eligible basis and qualified basis of the building at the end of the first year of the credit period.

9. The character and use of the nonresidential portion of the building included in the building's eligible basis under § 42(d) of the IRC (e.g., tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the development).

The owner of a low-income housing development must retain the records described in this subsection B for at least six years after the due date (with extensions) for filing the federal income tax return for that year. The records for the first year of the credit period, however, must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the compliance period of the building.

In addition, the owner of a low-income housing development must retain any original local health, safety, or building code violation reports or notices issued by the Commonwealth or local government (as described in subdivision C 6 of this section) for the authority's inspection. Retention of the original violation reports or notices is not required once the authority reviews the violation reports or notices and completes its inspection, unless the violation remains uncorrected.

C. The owner of a low-income housing development must certify annually to the authority, on the form prescribed by the authority, that, for the preceding 12-month period:

1. The development met the requirements of the 20-50 test under § 42(g)(1)(A) of the IRC ~~or,~~ the 40-60 test under

§ 42(g)(2)(B) of the IRC, or the income averaging test of the federal Consolidated Appropriations Act of 2018 (as limited by the executive director), whichever minimum set-aside test was applicable to the development.

2. There was no change in the applicable fraction (as defined in § 42(c)(1)(B) of the IRC) of any building in the development, or that there was a change, and a description of the change.

3. The owner has received an annual income certification from each low-income tenant, and documentation to support that certification; or, in the case of a tenant receiving section 8 housing assistance payments, the statement from a public housing authority described in subdivision 7 of subsection B of this section (unless the owner has obtained a waiver from the IRS pursuant to § 42(g)(8)(B) of the IRC).

4. Each low-income unit in the development was rent-restricted under § 42(g)(2) of the IRC.

5. All units in the development were for use by the general public (as defined in IRS Regulation § 1.42-9) and that no finding of discrimination under the Fair Housing Act has occurred for the development. (A finding of discrimination includes an adverse final decision by the Secretary of HUD, 24 CFR 180.680, an adverse final decision by a substantially equivalent state or local fair housing agency, 42 USC § 3616(a)(1), or adverse judgment from federal court.)

6. Each building in the development was suitable for occupancy, taking into account local health, safety, and building codes (or other habitability standards), and that the Commonwealth or local government unit responsible for making local health, safety, and building code inspections did not issue a violation report for any building or low-income unit in the development. (If a violation report or notice was issued by the governmental unit, the owner must attach a statement summarizing the violation report or notice or a copy of the violation report or notice to the annual certification. In addition the owner must state whether the violation has been corrected.)

7. There was no change in the eligible basis (as defined in § 42(d) of the IRC) of any building in the development, or if there was a change, the nature of the change (e.g., a common area has become commercial space or a fee is now charged for a tenant facility formerly provided without charge).

8. All tenant facilities included in the eligible basis under § 42(d) of the IRC of any building in the development, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building.

9. If a low-income unit in the development became vacant during the year, that reasonable attempts were or are being made to rent that unit or the next available unit of comparable or smaller size to tenants having a qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.

10. If the income of tenants of a low-income unit in the development increased above the limit allowed in § 42(g)(2)(D)(ii) of the IRC, the next available unit of comparable or smaller size in the development was or will be rented to tenants having a qualifying income.

11. An extended low income housing commitment as described in § 42(h)(6) of the IRC was in effect (for buildings subject to § 7108(c)(1) of the federal Omnibus Budget Reconciliation Act of 1989).

12. All units in the development were used on a nontransient basis (except for transitional housing for the homeless provided under § 42(i)(3)(B)(iii) of the IRC or single-room-occupancy units rented on a month-by-month basis under § 42(i)(3)(B)(iv) of the IRC).

Such certifications shall be made annually covering each year of the compliance period and must be made under the penalty of perjury.

In addition, each owner of a low-income housing development must provide to the authority, on a form prescribed by the authority, a certification containing such information necessary for the Commonwealth to determine the eligibility of tax credits for the first year of the development's compliance period.

D. The authority will review each certification set forth in subsection C of this section for compliance with the requirements of § 42 of the IRC. Also, the authority will conduct on-site inspections of all the buildings in the development by the end of the second calendar year following the year the last building in the development is placed in service and, for at least 20% of the development's low-income housing units, inspect the low-income certification, the documentation the owner has received to support that certification, and the rent record for the tenants in those units. In addition, at least once every three years, the authority will conduct on-site inspections of all the buildings in each low-income housing development and, for at least 20% of the development's low-income units, inspect the units, the low-income certifications, the documentation the owner has received to support the certifications, and the rent record for the tenants in those units. The authority will determine which low-income housing developments will be reviewed in a particular year and which tenant's records are to be inspected.

In addition, the authority, at its option, may request an owner of a low-income housing development not selected for the review procedure set forth above in a particular year to submit to the authority for compliance review copies of the

annual income certifications, the documentation such owner has received to support those certifications and the rent record for each low-income tenant of the low-income units in their development.

All low-income housing developments may be subject to review at any time during the compliance period.

E. The authority has the right to perform, and each owner of a development receiving credits shall permit the performance of, an on-site inspection of any low-income housing development through the end of the compliance period of the building. The inspection provision of this subsection E is separate from the review of low-income certifications, supporting documents and rent records under subsection D of this section.

The owner of a low-income housing development should notify the authority when the development is placed in service. The authority reserves the right to inspect the property prior to issuing IRS Form 8609 to verify that the development conforms to the representations made in the Application for Reservation and Application for Allocation.

F. The authority will provide written notice to the owner of a low-income housing development if the authority does not receive the certification described in subsection C of this section, or does not receive or is not permitted to inspect the tenant income certifications, supporting documentation, and rent records described in subsection D of this section or discovers by inspection, review, or in some other manner, that the development is not in compliance with the provisions of § 42 of the IRC.

Such written notice will set forth a correction period which shall be that period specified by the authority during which an owner must supply any missing certifications and bring the development into compliance with the provisions of § 42 of the IRC. The authority will set the correction period for a time not to exceed 90 days from the date of such notice to the owner. The authority may extend the correction period for up to 6 months, but only if the authority determines there is good cause for granting the extension.

The authority will file Form 8823, "Low-Income Housing Credit Agencies Report of Noncompliance," with the IRS no later than 45 days after the end of the correction period (as described above, including any permitted extensions) and no earlier than the end of the correction period, whether or not the noncompliance or failure to certify is corrected. The authority must explain on Form 8823 the nature of the noncompliance or failure to certify and indicate whether the owner has corrected the noncompliance or failure to certify. Any change in either the applicable fraction or eligible basis under subdivisions 2 and 7 of subsection C of this section, respectively, that results in a decrease in the qualified basis of the development under § 42(c)(1)(A) of the IRC is noncompliance that must be reported to the IRS under this subsection F. If the authority reports on Form 8823 that a building is entirely out of compliance and will not be in compliance at any time in the future, the authority need not file Form 8823 in subsequent years to report that building's noncompliance.

The authority will retain records of noncompliance or failure to certify for six years beyond the authority's filing of the respective Form 8823. In all other cases, the authority must retain the certifications and records described in subsection C of this section for three years from the end of the calendar year the authority receives the certifications and records.

G. If the authority decides to enter into the agreements described below, the review requirements under subsection D of this section will not require owners to submit, and the authority is not required to review, the tenant income certifications, supporting documentation and rent records for buildings financed by Rural Development under the § 515 program, or buildings of which 50% or more of the aggregate basis (taking into account the building and the land) is financed with the proceeds of obligations the interest on which is exempt from tax under § 103 (tax-exempt bonds). In order for a monitoring procedure to except these buildings, the authority must enter into an agreement with Rural Development or tax-exempt bond issuer. Under the agreement, Rural Development or tax-exempt bond issuer must agree to provide information concerning the income and rent of the tenants in the building to the authority. The authority may assume the accuracy of the information provided by Rural Development or the tax-exempt bond issuer without verification. The authority will review the information and determine that the income limitation and rent restriction of § 42(g)(1) and (2) of the IRC are met. However, if the information provided by Rural Development or tax-exempt bond issuer is not sufficient for the authority to make this determination, the authority will request the necessary additional income or rent information from the owner of the buildings. For example, because Rural Development determines tenant eligibility based on its definition of "adjusted annual income," rather than "annual income" as defined under section 8, the authority may have to calculate the tenant's income for purposes of § 42 of the IRC and may need to request additional income information from the owner.

H. The owners of low-income housing developments must pay to the authority such fees in such amounts and at such times as the authority shall reasonably require the owners to pay in order to reimburse the authority for the costs of monitoring compliance with § 42 of the IRC.

I. The owners of low-income housing developments that have submitted IRS Forms 8821, Tax Information Authorization, naming the authority as the appointee to receive tax information on such owners shall submit from

time to time renewals of such Forms 8821 as required by the authority throughout the extended use period.

J. The requirements of this section shall continue throughout the extended use period, notwithstanding the use of the term compliance period, except to the extent modified or waived by the executive director.

13VAC10-180-110. Qualified contracts.

After the first day of the 14th year of the compliance period, an owner of a low-income housing tax credit development may seek to terminate the extended use period pursuant to § 42(h)(6)(E) of the IRC by requesting the authority to present a qualified contract for the acquisition of the low-income portion of the development, unless such right to terminate has already been waived by the owner for the tax credits allocated to such development. A request for a qualified contract shall be commenced by filing with the authority a complete application, on such ~~form or~~ forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the IRC and this chapter and to determine the qualified contract price in accordance with § 42(h)(6)(F) of the IRC. The executive director may reject any application from consideration for a qualified contract, if in such application, the owner does not provide the proper documentation or information on the forms prescribed by the executive director. Acceptance of the application and approval of the request shall be contingent upon the developments being in compliance with IRC requirements at the time of the application and continuing through the qualified contract process.

The application should include the following information sufficiently detailed to enable the authority to ascertain the qualified contract amount: first year IRS Form 8609 for each building, the owner's annual tax returns for all years of operation since the start of the credit period ("all years"), annual project financial statements for all years, loan documents for all secured debt during the credit period, the owner's organizational documents (original, current and all interim amendments), and accountant work papers for all years. The application may require a physical needs assessment, appraisal for the entire project, market study for the entire project, a title report showing marketable title, and a Phase I environmental assessment at the time of the original submission of the application or the executive director may permit such items to be obtained after the confirmation of the qualified contract price.

The executive director may also require the submission of a legal opinion or other assurances satisfactory to the executive director as to, among other things, compliance with the IRC and a certification, together with an opinion of an independent certified public accountant or other assurances satisfactory to the executive director, setting forth the calculation of the qualified contract amount requested in the application and certifying, among other things, that the owner is entitled to the qualified contract amount requested.

The executive director may establish criteria and assumptions to be used by the owner in the calculation of qualified contract amount, and any such criteria and assumptions may be indicated on the application form, instructions or other communication available to the public.

The authority shall charge reasonable fees in such amounts as the executive director shall determine to be necessary to cover third party costs and the authority's actual costs incurred in producing a qualified contract. Such fees shall not include any general costs associated with the general operations of the authority. Such fees shall be payable at such time or times as the executive director shall require.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (13VAC10-180)

1995 Annual Owners Certification.

Building Information Report.

Project Information Report.

Occupancy Status Report.

Previous Participation Certification.

Federal Low Income Housing Tax Credit Program, Application for Reservation DRAFT (undated, filed 8/30/2018)

VA.R. Doc. No. R19-5635; Filed August 23, 2018, 2:21 p.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

Title of Regulation: **16VAC25-50. Boiler and Pressure Vessel Regulations (amending 16VAC25-50-10, 16VAC25-50-20, 16VAC25-50-30, 16VAC25-50-260, 16VAC25-50-280, 16VAC25-50-300, 16VAC25-50-330, 16VAC25-50-360, 16VAC25-50-370, 16VAC25-50-380, 16VAC25-50-430, 16VAC25-50-460, 16VAC25-50-540).**

Statutory Authority: § 40.1-51.6 of the Code of Virginia.

Effective Date: November 1, 2018.

Agency Contact: Ed Hilton, Director, Boiler Safety Compliance, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-3169, FAX (804) 371-2324, or email ed.hilton@doli.virginia.gov.

Summary:

The regulatory action incorporates the most recent editions of nationally recognized model codes and forms produced by the American Society of Mechanical Engineers, the National Board of Boiler and Pressure Vessel Inspectors, and other standard-writing groups into the safety and inspection regulations for boilers and pressure vessels.

Summary of Public Comments and Agency's Response: No public comments were received by the promulgating agency.

Part I
Definitions

16VAC25-50-10. Definitions.

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

"Act" means the Boiler and Pressure Vessel Safety Act, Chapter 3.1 (§ 40.1-51.5 et seq.) of Title 40.1 of the Code of Virginia.

"Alteration" means any change in the item described on the original Manufacturers' Data Report which affects the pressure containing capability of the boiler or pressure vessel. Non-physical changes, such as an increase in the maximum allowable working pressure (internal or external) or design temperature of a boiler or pressure vessel, shall be considered an alteration. A reduction in minimum temperature such that additional mechanical tests are required shall also be considered an alteration.

"ANSI/ASME CSD-1" means ASME CSD-1-2012, Controls and Safety Devices for Automatically Fired Boilers, 2012 Edition, American Society of Mechanical Engineers.

"API-510" means API-510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair, and Alteration, Tenth Edition, May 2014, American Petroleum Institute.

"Approved" means acceptable to the board, commissioner or chief inspector as applicable.

"ASME B31" means ASME B31.1-2014, Power Piping, an International Piping Code, The American Society of Mechanical Engineers.

"ASME Code" means the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers ~~approved and adopted by the governing council of such society and approved and adopted by the board~~.

"Authorized inspection agency" means one of the following:

a. A department or division established by a state, commonwealth or municipality of the United States, or a province of Canada, which has adopted one or more sections of the ~~Boiler and Pressure Vessel Code of the~~ ASME Code and whose inspectors hold valid commissions with the National Board of Boiler and Pressure Vessel Inspectors; or equivalent qualifications as defined and set forth in 16VAC25-50-50 and 16VAC25-50-70;

b. An inspection agency of an insurance company which is authorized (licensed) to write boiler and pressure vessel insurance in those jurisdictions which have examined the agency's inspectors to represent such jurisdictions as is evident by the issuance of a valid certificate of competency to the inspector;

c. An owner-user inspection agency as defined in this section; or

d. A contract fee inspector.

"Board" means the Virginia Safety and Health Codes Board.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination of them, under pressure or vacuum for use externally to itself by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

["BTU" means British thermal unit.]

"Certificate of competency" means a certificate issued by the commissioner to a person who has passed the prescribed examination as provided in 16VAC25-50-50. See §§ 40.1-51.9 and ~~40.1-51:9:1~~ 40.1-51.9:1 of the Act.

"Certificate inspection" means an inspection, the report of which is used by the chief inspector to decide whether or not a certificate, as provided for in § 40.1-51.10 of the Act may be issued. This certificate inspection shall be an internal inspection when required; otherwise, it shall be as complete an inspection as possible.

"Chief inspector" means the chief boiler and pressure vessel inspector of the Commonwealth.

"Commission, National Board" means the commission issued by the National Board to a holder of a Certificate of Competency for the purpose of conducting inspections in the Commonwealth in accordance with ~~the National Board Bylaws and~~ this chapter. The employer must submit the inspector's application to the National Board for a commission.

"Commissioner" means the Commissioner of the Department of Labor and Industry.

"Commonwealth inspector" means any agent appointed by the commissioner under the provisions of § 40.1-51.9 of the Act.

"Condemned boiler or pressure vessel" means a boiler or pressure vessel that has been inspected and declared unsafe for use or disqualified by legal requirements and to which a stamping or marking designating its condemnation has been applied by the chief or commonwealth inspector.

"Current edition of the ASME Code" means the 2015 Edition of the ASME Code, which has been adopted by the Safety and Health Codes Board.

"Department" means the Department of Labor and Industry.

"Division" means the Boiler Safety Enforcement Division of the Department of Labor and Industry.

"Electric boiler" means a boiler in which the source of heat is electricity.

"Examining board" means persons appointed by the chief inspector to monitor examinations of inspectors.

"Existing installation" means and includes any boiler or pressure vessel constructed, installed, placed in operation or contracted for before July 1, 1974.

"External inspection" means an inspection of the exterior of the boiler or pressure vessel and its appliances when the item is in operation.

"Heating boiler" means a steam or vapor boiler operating at pressures not exceeding 15 psig, or a hot water boiler operating at pressures not exceeding 160 psig or temperature not exceeding 250°F at or near the boiler outlet.

"High-pressure, high-temperature water boiler" means a water boiler operating at pressures exceeding 160 psig or temperatures exceeding 250°F at or near the boiler outlet.

"Hobby boiler" means a steam boiler which serves no commercial purpose and is used solely for hobby or display and operated solely for the enjoyment of the owner.

"Hot water supply boiler" means a boiler furnishing hot water to be used externally to itself at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the boiler outlet, with the exception of boilers which are directly fired by oil, gas or electricity where none of the following limitations ~~are~~ is exceeded:

a. Heat input of 200,000 BTU per hour;

b. Water temperature of 210°F; or

c. Nominal water containing capacity of 120 gallons.

"Hot water supply storage tanks" means those heated by steam or any other indirect means where any one of the following limitations ~~are~~ is exceeded:

a. Heat input of 200,000 BTU per hour;

b. Water temperature of 210°F; or

c. Nominal water containing capacity of 120 gallons.

"Inspection certificate" means a certificate issued by the chief inspector for the operation of a boiler or pressure vessel.

"Inspector" means the chief inspector, commonwealth inspector or special inspector.

"Internal inspection" means a complete examination of the internal and external surfaces of a boiler or pressure vessel and its appliances while it is shut down and manhole plates, handhole plates or other inspection openings removed.

"Lap seam crack" means a failure in a lap joint extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

"Miniature boiler" means any boiler which does not exceed any one of the following limits:

a. 16 inches inside diameter of shell;

b. 20 square feet heating surface;

c. 5 cubic feet gross volume, exclusive of casing and insulation; or

d. 100 psig maximum allowable working pressure.

"National Board" means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the ASME Code.

"National Board Inspection Code" means ~~the manual for boiler and pressure vessel inspectors published by the National Board. Copies of this code may be obtained from the National Board~~ NB-23, the National Board Inspection Code, 2015 Edition, The National Board of Boiler Pressure Vessel Inspectors.

"National Fire Protection Association No. 85" means the NFPA® 85, Boiler and Combustion Systems Hazards Code, 2015 Edition, National Fire Protection Association.

"New boiler or pressure vessel installation" means all boilers or pressure vessels constructed, installed, placed in operation or contracted for after July 1, 1974.

"NFPA" means the National Fire Protection Association.

"Nonstandard boiler or pressure vessel" means a boiler or pressure vessel that does not bear the stamp of Commonwealth of Virginia, the ASME stamp or the National Board stamp when applicable.

"Owner or user" means any person, partnership, firm or corporation who is legally responsible for the safe operation of a boiler or pressure vessel within the Commonwealth.

"Owner-user inspection agency" means any person, partnership, firm or corporation registered with the chief inspector and approved by the board as being legally responsible for inspecting pressure vessels which they operate in this Commonwealth.

"Portable boiler" means an internally fired boiler which is primarily intended for temporary location and whose construction and usage permit it to be readily moved from one location to another.

"Power boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig.

"Pressure vessel" means a vessel in which the pressure is obtained from an external source, or by the application of heat from an indirect source, or from a direct source, other than those boilers defined in Part I (16VAC25-50-10 et seq.) of this chapter.

"PSIG" means pounds per square inch gauge.

"R Certificate of Authorization" means an authorization issued by the National Board for the repair and alteration of boilers and pressure vessels.

"Reinstalled boiler or pressure vessel" means a boiler or pressure vessel removed from its original setting and reinstalled at the same location or at a new location.

"Repair" means work necessary to return a boiler or pressure vessel to a safe and satisfactory operating condition, provided there is no deviation from the original design.

"Secondhand boiler or pressure vessel" means a boiler or pressure vessel which has changed both location and ownership since the last certificate inspection.

"Special inspector" means an inspector holding a Virginia Certificate of Competency, and who is regularly employed by an insurance company authorized (licensed) to write boiler and pressure vessel insurance in this Commonwealth, an inspector continuously employed by any company operating pressure vessels in this Commonwealth used or to be used by the company, or a contract fee inspector.

"Standard boiler or pressure vessel" means a boiler or pressure vessel which bears the stamp of the Commonwealth of Virginia, the ASME Code stamp and the National Board stamp when applicable.

"Underwriters' Laboratories" means Underwriters' Laboratories, Inc., 333 Pfingsten Road, Northbrook, Illinois 60062, which is a nonprofit, independent organization testing for public safety. It maintains and operates laboratories for the examination and testing of devices, systems, and materials to determine their relation to life, fire, casualty hazards and crime prevention.

"VR Certificate of Authorization" means an authorization issued by the National Board for the repair of pressure relief valves.

"Water heater" means a vessel used to supply: (i) potable hot water; or (ii) both space heat and potable water in combination which is directly heated by the combustion of fuels, electricity, or any other source and withdrawn for use external to the system at pressures not to exceed 160 psi or temperatures of 210°F. This term also includes fired storage water heaters defined by the Virginia Uniform Statewide Building Code as a "water heater."

Part II
Administration

16VAC25-50-20. Minimum construction standards for boilers and pressure vessels.

A. Boilers and pressure vessels to be installed for operation in this Commonwealth shall be designed, constructed, inspected, stamped and installed in accordance with the applicable ASME ~~Boiler and Pressure Vessel~~ Code including all addenda and applicable code ~~case(s)~~ cases, other international construction standards which are acceptable to the chief inspector, and this chapter.

B. Boilers and pressure vessels shall bear the National Board stamping, except cast iron boilers and UM vessels. A copy of the Manufacturers' Data Report, signed by the manufacturer's representative and the National Board commissioned inspector, shall be filed by the owner or user with the chief inspector prior to its operation in the Commonwealth.

C. Pressure piping -- (including welded piping) -- Piping external to power boilers extending from the boiler to the first stop valve of a single boiler [~~,~~] and to the second stop valve in a battery of two or more boilers is subject to the requirements of the current edition of the ASME ~~Power Boiler~~ Code, Section I and the design, fabrication, installation and testing of the valves and piping shall be in conformity with the applicable paragraphs of the current edition of the ASME Code, Section I. Applicable ASME data report forms for this piping shall be furnished by the owner to the chief inspector. Construction rules for materials, design, fabrication, installation and testing both for the boiler external piping and the power piping beyond the valve or valves required by the current edition of the ASME ~~Power Boiler~~ Code, Section I~~,~~ are referenced in ~~ANSI~~ ASME B31.1, Power piping, and the ~~code~~ ASME Code.

D. Boilers and pressure vessels brought into the Commonwealth and not meeting ~~code~~ ASME Code requirements shall not be operated unless the [~~owner/user~~ owner or user] is granted a variance in accordance with § 40.1-51.19 of the Act.

The request for variance shall include all documentation related to the boiler or pressure vessel that will provide evidence of equivalent fabrication standards, i.e., design specification, calculations, material specifications, detailed construction drawings, fabrication and inspection procedures and qualification records, examination, inspection and test records, and any available manufacturers' data report.

In order to facilitate such a variance approval, the submission of documentation, in the English language and in current U.S. standard units of measure would be helpful. The following list of documents, while not all inclusive, would be useful in providing evidence of safety equivalent to ASME Code construction:

1. List of materials used for each pressure part;

2. The design calculations to determine the maximum allowable working pressure in accordance with the ASME ~~Boiler and Pressure Vessel~~ Code, applicable section, edition and addenda;

3. The design code used and the source of stress values for the materials used in the design calculations;

4. The welding procedures used and the qualification records for each procedure;

5. The material identification for each type of welding material used;

6. The performance qualification records for each welder or welding operator used in the construction of the boiler or pressure vessel;

7. The extent of any nondestructive examination (NDE) performed and the qualification records of NDE operators;

8. Record of final pressure test signed by a third party inspector;

9. Name and organization of the third party inspection agency;

10. A certification from a licensed professional engineer stating that the boiler or pressure vessel has been constructed to a standard providing equivalent safety to that of the ASME ~~Boiler and Pressure Vessel~~ Code. A signature, date and seal of the certifying engineer ~~is~~ are required;

11. Where applicable, a matrix of differences between the actual construction of the boiler or pressure vessel for which a variance is requested and a similar boiler or pressure vessel that is ~~code~~ ASME Code stamped; and

12. Where applicable, a letter from an insurance company stating that it will insure the boiler or pressure vessel.

After notification of a violation of ~~these rules and regulations~~ this chapter, an [~~owner/user~~ owner or user] desiring a variance shall submit a request for variance within 30 days.

The chief inspector shall respond to any request for a variance within 30 days of receipt of all required documentation~~,~~ and shall submit a recommendation to the commissioner, who will make the decision on the variance.

E. Before secondhand equipment is installed, application for permission to install shall be filed by the owner or user with the chief inspector and approval obtained.

F. Electric boilers, subject to the requirements of the Act and this chapter, shall bear the Underwriters' Laboratories label on the completed unit or assembly by the manufacturer. This label shall be in addition to the code symbol stamping requirements of the ASME Code and the National Board.

16VAC25-50-30. Frequency of inspections of boilers and pressure vessels.

A. Power boilers and high-pressure, high-temperature water boilers shall receive an annual internal inspection for certification. Such boilers shall also receive, where possible, an annual external inspection, given while under representative operating conditions.

B. Heating boilers shall receive a certificate inspection biennially.

1. Steam boilers shall receive an internal inspection where construction permits.

2. Water boilers shall receive an external inspection with an internal inspection at the discretion of the inspector where construction permits.

C. Except as provided for in subsection E of this section, pressure vessels subject to internal corrosion shall receive a certificate inspection biennially. This inspection shall be an internal inspection conducted at the discretion of the inspector where construction permits.

D. Except as provided for in subsection E of this section, pressure vessels not subject to internal corrosion shall receive a certificate inspection biennially. This inspection shall be an external inspection, with an internal inspection conducted at the discretion of the inspector where construction permits.

E. Pressure vessels that are under the supervision of an authorized owner-user inspection agency shall be inspected at intervals in a manner as agreed upon between the [~~Commissioner~~ commissioner] and that agency.

F. Boiler and pressure vessel components of nuclear power plants~~,~~ that are included in the Act~~,~~ shall be inspected as provided by ~~Section XI of~~ the ASME ~~Boiler and Pressure Vessel~~ Code, Section XI.

G. Based upon documentation of such actual service conditions by the owner or user of the operating equipment,

the [~~Commissioner~~ commissioner] may permit variations in the inspection requirements as provided in the Act.

16VAC25-50-260. Removal of safety appliances.

A. No person shall attempt to remove or do any work on any safety appliance prescribed by this chapter while a boiler or pressure vessel is in operation, except as provided in applicable sections of the current edition of the ASME Code. Should any of these appliances be removed for repair during an outage of a boiler or pressure vessel, they must be reinstalled and in proper working order before the object is again placed in service.

B. No person shall load the safety valve or valves in any manner to maintain a working pressure in excess of that stated on the inspection certificate.

16VAC25-50-280. Requirements for new installations.

A. No boiler or pressure vessel shall be installed in this Commonwealth unless it has been constructed, inspected and stamped as provided in Part II, 16VAC25-50-20 except:

1. Those exempt by the Act;

2. Those outlined in Part II, 16VAC25-50-20 D; and

3. Those existing boilers and pressure vessels ~~which~~ that are to be reinstalled.

B. All new boiler and pressure vessel installations, including reinstalled and secondhand boilers and pressure vessels, shall be installed in accordance with the requirements of the current edition of the ASME Code and this chapter.

C. A boiler or pressure vessel constructed equivalent to ASME Code standards, or having the standard stamping of another state that has adopted a standard of construction equivalent to the standard of this Commonwealth, may be accepted by the chief inspector. The person desiring to install the boiler or pressure vessel shall make application for the installation prior to construction and shall file the Manufacturers' Data Report for the boiler or pressure vessel with the chief inspector following construction and prior to installation.

D. The stamping shall not be concealed by insulation or paint and shall be exposed at all times unless a suitable record is kept of the location of the stamping so that it may be readily uncovered at any time this may be desired.

16VAC25-50-300. Return loop connection.

The return water connections to all low-pressure, steam heating boilers supplying a gravity return heating system shall be arranged to form a loop so that the water cannot be forced out of the boiler below the safe water level. This connection, known as a "return pipe loop connection," is shown in ~~Section IV,~~ the current edition of the ASME ~~Heating Boiler~~ Code, Section IV.

16VAC25-50-330. Operation.

The current edition of the ASME Code, Section VII, Recommended Rules for Care of Power Boilers, ~~Section VII,~~ and the current edition of the ASME Code, Section VI, Recommended Rules for Care of Heating Boilers, ~~Section VI, of the ASME Code,~~ shall be used as a guide for proper and safe operating practices.

Part III
Existing Installations

16VAC25-50-360. Power and high-pressure, high-temperature water boilers.

A. Age limit of existing boilers.

1. The age limit of any boiler of nonstandard construction, installed before July 1, 1974, other than one having a riveted, longitudinal lap joint, shall be 30 years; however, any boiler passing a thorough internal and external inspection~~,~~ and not displaying any leakage or distress under a hydrostatic pressure test of 1-1/2 times the allowable working pressure held for at least 30 minutes~~,~~ may be continued in operation without reduction in working pressure. The age limit of any boiler having riveted, longitudinal~~,~~ lap joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstalled for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the chief inspector.

2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt or lap joints shall be permanently removed from service.

3. The age limit of boilers of standard construction, installed before July 1, 1974, shall be determined from the results of a thorough internal and external inspection by an authorized inspector and the application of an appropriate pressure test. Hydrostatic test pressure shall be 1-1/2 times the allowable working pressure and maintained for 30 minutes. The boiler may be continued in service at the same working pressure provided there is no evidence of leakage or distress under these test conditions.

4. The minimum temperature of the water used for the hydrostatic test of low-pressure boilers and pressure vessels shall be 60°F. The minimum temperature of the water used for the hydrostatic test of power boilers shall be 70°F or ambient whichever is greater.

B. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed and stamped.

C. 1. The maximum allowable working pressure on the shell of a nonstandard boiler shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this chapter.

$$\frac{TStE}{RFS} = \text{Maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plates, psi

t = minimum thickness of shell plate, in weakest course, inches

E = efficiency of longitudinal joint:

For tube ligaments, E shall be determined by the rules in the ASME Code, Section I ~~of the ASME Code for Power Boilers~~. For riveted joints, E shall be determined by the rules in the applicable edition of the ASME Code. For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell, in inches

FS = factor of safety permitted.

2. Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi.

3. Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psi of cross-sectional area.

4. Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch, of the cross-sectional area of the rivet shank shall be used.

	PSI
Iron rivets in single shear	38,000
Iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.

TABLE 1
SIZES OF RIVETS BASED ON PLATE THICKNESS
(in inches)

Plate of Thickness	Rivet Diameter after Driving
1/4	11/16
9/32	11/16
5/16	3/4
11/32	3/4
3/8	13/16
13/32	13/16
7/16	15/16
15/32	15/16
1/2	15/16
9/16	1-1/16
5/8	1-1/16

5. Factors of safety. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it:

a. The lowest factor of safety permissible on existing installations shall be 4.5 for vessels built prior to January 1, 1999. For vessels built on or after January 1, 1999, the factor of safety may be 4.0. Horizontal-return-tubular boilers having continuous longitudinal lap seams more than 12 feet in length~~,~~ shall have a factor of safety of eight. When this type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

b. Reinstalled or secondhand boilers shall have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-strap and double-strap construction.

D. Cast-iron headers and mud drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable-iron headers, or which have cast iron mud drums, shall not exceed 160 psig.

E. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

F. Safety valves.

1. The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, shall be prohibited. Valves of this type shall be replaced by direct,

spring-loaded, pop-type valves that conform to the requirements of the current edition of the ASME Code, Section I.

2. Each boiler shall have at least one safety valve, and, if it has more than 500 square feet of water-heating surface or an electric power input of more than 500 kilowatts, it shall have two or more safety valves.

3. The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler without unnecessary intervening pipe or fittings. Where alteration is required to conform to this requirement, the chief inspector shall allow the owner or user reasonable time in which to complete the work.

4. No valves of any description shall be placed between the safety valve and the boiler nor on the escape pipe, if used, between the safety valve and the atmosphere, except as provided by applicable sections of the current edition of the ASME Code. When an escape pipe is used, it shall be at least full size of the safety-valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety-valve outlet or the escape pipe shall be anchored and supported securely. All safety valve discharges shall be located or piped as not to endanger persons working in the area.

5. The safety-valve capacity of each boiler shall be so that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and in no case to more than 6.0% above the maximum allowable working pressure.

6. One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

7. When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

8. In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boiler.

9. The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods and, if found to be insufficient, additional valves shall be provided:

a. By making an accumulation test, which consists of shutting off all other steam-discharge outlets from the boiler and forcing the fires to the maximum. The safety-valve capacity shall be sufficient to prevent a rise of pressure in excess of 6.0% of the maximum allowable working pressure. This method shall not be used on a boiler with a superheater or reheater.

b. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam-generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the appendix of the current edition of the ASME Code, Section I.

c. By measuring the maximum amount of feedwater that can be evaporated.

When either of the methods (b or c) outlined in this subdivision is employed, the sum of the safety-valve capacities shall be equal to or greater than the maximum evaporative capacity (maximum steam-generating capacity) of the boiler.

10. The relieving capacity of safety valves for forced-flow steam generators shall be in accordance with the requirements of ~~Section I~~ the current edition of the ASME ~~Boiler~~ Code, Section I.

11. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative or the holder of a "VR" Stamp.

G. Boiler feeding.

1. Each boiler shall have a feed supply ~~which~~ that will permit it to be fed at any time while under pressure.

2. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump or injector. A source of feed directly from water mains at a pressure 6.0% greater than the set pressure of the safety valve with the highest setting may be considered one of the means. As provided in the current edition of the ASME ~~Power Boiler~~ Code, Section I, boilers fired by gaseous, liquid or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input if the water feed is interrupted.

3. The feedwater shall be introduced into the boiler in a manner so that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces

exposed to products of combustion, or to direct radiation from the fire.

4. The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

5. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable. No stop valves shall be placed in the supply and return pipe connections of a single boiler installation.

6. Where deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120°F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215°F so that dissolved gases may be thoroughly released.

H. Water level indicators.

1. Each boiler shall have at least one water gauge glass installed and located so that the lowest visible part of the water glass shall be at least two inches above the lowest permissible water level, at which level there will be no danger of overheating any part of the boiler when in operation at that level; except as provided by the current edition of the ASME Code.

2. No outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutout, drain, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water from it) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4 inch pipe size; the drain is to be piped to a safe location.

3. When the direct reading of gauge glass water level is not readily visible to the operator in his working area dependable indirect indications shall be provided utilizing remote level indicators or equipment to transmit the gauge glass image. When remote level indication is provided for the operator instead of the gauge glass, the minimum level reference shall be clearly marked.

I. Steam gauges.

1. Each steam boiler shall have a steam gauge, with dial range not less than 1-1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock with a tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. When a steam gauge connection longer than eight feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

3. Each boiler shall be provided with a test gauge connection and suitable valving for the exclusive purpose of attaching a test gauge so that the accuracy of the boiler steam gauge may be ascertained while the boiler is in operation.

J. Stop valves.

1. Except for a single-boiler, prime-mover installation, each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

2. In a single-boiler, prime-mover installation the steam stop valve may be omitted provided the prime-mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to withstand the required hydrostatic pressure test of the boiler.

3. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

4. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blow drain between them. The discharge of the drain shall be visible to the operator and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

K. Blowoff connection.

1. The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.

2. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material constructed so that the piping may be inspected.

3. Each boiler shall have a blowoff pipe, fitted with a valve or cock, in direct connection with the lowest water space.

Cocks shall be of the gland or guard type and suitable for the pressure allowed. The use of globe valves shall not be permitted. Where the maximum allowable working pressure exceeds 100 psig, each blowoff pipe shall be provided with two valves or a valve and cock; however only one valve need be provided for forced-flow steam generators with no fixed steam and waterline~~;~~, high-temperature water boilers, and those used for traction or portable purposes with less than 100 gallons normal water content.

4. Blowoff piping shall comply with the requirements of the current edition of the ASME Code, Section I~~,~~ and ~~ANSI~~ ASME B31.1, from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. All piping shall be steel. Galvanized steel pipe and fittings shall not be used for blowoff piping.

5. All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with this chapter for new installations.

L. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, such repairs or replacements shall comply with the requirements for new installations.

M. Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control device that will shut off the fuel supply to each boiler or system of commonly connected boilers when the steam pressure reaches a preset maximum operating pressure. In addition, each individual automatically fired steam boiler shall have a high steam pressure limit control that will prevent generation of steam pressure in excess of the maximum allowable working pressure.

N. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-370. Heating boilers.

A. Standard boilers. The maximum allowable working pressure of standard boilers shall in no case exceed the pressure indicated by the manufacturer's identification stamped or cast on the boiler or on a plate secured to it.

B. Nonstandard riveted boilers. The maximum allowable working pressure on the shell of a nonstandard riveted heating boiler shall be determined in accordance with 16VAC25-50-360 C covering existing installations, power boilers, except that in no case shall the maximum allowable working pressure of a steam heating boiler exceed 15 psig, or a hot water boiler exceed 160 psig or 250°F temperature.

C. Nonstandard welded boilers. The maximum allowable working pressure of a nonstandard steel or wrought iron heating boiler of welded construction shall not exceed 15 psig for steam. For other than steam service, the maximum allowable working pressure shall be calculated in accordance with ~~Section IV of~~ the ASME Code, Section IV.

D. Nonstandard cast iron boilers.

1. The maximum allowable working pressure of a nonstandard boiler composed principally of cast iron shall not exceed 15 psig for steam service or 30 psig for hot water service.

2. The maximum allowable working pressure of a nonstandard boiler having cast iron shell or heads and steel or wrought iron tubes shall not exceed 15 psig for steam service or 30 psig for hot water service.

E. Safety valves.

1. Each steam boiler must have one or more officially rated (ASME Code stamped and National Board rated) safety valves of the spring pop type adjusted to discharge at a pressure not to exceed 15 psig. Seals shall be attached in a manner to prevent the valve from being taken apart without breaking the seal. The safety valves shall be arranged so that they cannot be reset to relieve at a higher pressure than the maximum allowable working pressure of the boiler. A body drain connection below seat level shall be provided by the manufacturer, and this drain shall not be plugged during or after field installation. For valves exceeding two inch pipe size, the drain hole or holes shall be tapped not less than 3/8 inch pipe size. For valves less than two inches, the drain hole shall not be less than ~~¼~~ 1/4 inch in diameter.

2. No safety valve for a steam boiler shall be smaller than 3/4 inch unless the boiler and radiating surfaces consist of a self-contained unit. No safety valve shall be larger than 4-1/2 inches. The inlet opening shall have an inside diameter equal to, or greater than, the seat diameter.

3. The minimum relieving capacity of the valve or valves shall be governed by the capacity marking on the boiler.

4. The minimum valve capacity in pounds per hour shall be the greater of that determined by dividing the maximum BTU output at the boiler nozzle obtained by the firing of any fuel for which the unit is installed by 1,000~~;~~ or shall be determined on the basis of the pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. When operating conditions require it a greater relieving capacity shall be provided. In every case, the requirements of subdivision 5 of this subsection shall be met.

TABLE 2
Minimum Pounds of Steam Per Hour Per Square Foot of Heating Surface

	Fire Tube Boilers	Water Tube Boilers
Boiler Heating Surface:		
Hand fired	5	6
Stoker fired	7	8
Oil, gas, or pulverized fuel fired	8	10
Waterwall Heating Surface:		
Hand fired	8	8
Stoker fired	10	12
Oil, gas, or pulverized fuel fired	14	16

NOTES: When a boiler is fired only by a gas giving a heat value of not in excess of 200 BTU per cubic foot, the minimum safety valve or safety relief valve relieving capacity may be based on the value given for handfired boilers ~~above~~ in Table 2.

The minimum safety valve or safety relief valve relieving capacity for electric boilers shall be 3-1/2 pounds per hour per kilowatt input.

For heating surface determination, see the current edition of the ASME Code, Section IV.

5. The safety valve capacity for each steam boiler shall be such that with the fuel burning equipment operating at maximum capacity, the pressure cannot rise more than five psig above the maximum allowable working pressure.

6. When operating conditions are changed, or additional boiler surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and be in accordance with subdivisions 4 and 5 of this subsection. When additional valves are required, they may be installed on the outlet piping provided there is no intervening valve.

7. If there is any doubt as to the capacity of the safety valve, an accumulation test shall be run (see the current edition of the ASME Code, Section ~~VI, Care of Heating Boilers)~~ VI).

8. No valve of any description shall be placed between the safety valve and the boiler, nor on the discharge pipe between the safety valve and the atmosphere. The discharge pipe shall be at least full size and be fitted with an open drain to prevent water lodging in the upper part of the safety valve or in the discharge pipe. When an elbow is placed on the safety valve discharge pipe, it shall be located close to the safety valve outlet, or the discharge pipe shall be securely anchored and supported. All safety valve discharges shall be so located or piped as not to endanger persons working in the area.

F. Safety relief valve requirements for hot water boilers.

1. Each hot water boiler shall have one or more officially rated (ASME Code stamped and National Board rated) safety relief valves set to relieve at or below the maximum allowable working pressure of the boiler. Safety relief valves officially rated as to capacity shall have pop action when tested by steam. When more than one safety relief valve is used on hot water boilers, the additional valve or valves shall be officially rated and shall be set within a range not to exceed six psig above the maximum allowable working pressure of the boiler up to and including 60 psig and 5.0% for those having a maximum allowable working pressure exceeding 60 psig. Safety relief valves shall be spring loaded. Safety relief valves shall be so arranged that they cannot be reset at a higher pressure than the maximum permitted by this paragraph.

2. No materials liable to fail due to deterioration or vulcanization when subject to saturated steam temperature corresponding to capacity test pressure shall be used for any part.

3. No safety relief valve shall be smaller than 3/4 inch nor larger than 4-1/2 inches standard pipe size, except that boilers having a heat input not greater than 15,000 BTU per hour may be equipped with a safety relief valve of 1/2 inch standard pipe size. The inlet opening shall have an inside diameter approximately equal to, or greater than, the seat diameter. In no case shall the minimum opening through any part of the valve be less than 1/2 inch diameter or its equivalent area.

4. The required steam relieving capacity, in pounds per hour, of the pressure relieving device or devices on a boiler shall be the greater of that determined by dividing the maximum output in BTU at the boiler outlet obtained by the firing of any fuel for which the unit is installed by 1,000, or on the basis of pounds of steam generated per hour per square foot of boiler heating surface as given in Table 2. When necessary a greater relieving capacity of valves shall be provided. In every case, the requirements of ~~subsection~~ subdivision F 6 of this section shall be met.

5. When operating conditions are changed, or additional boiler heating surface is installed, the valve capacity shall be increased, if necessary, to meet the new conditions and shall be in accordance with subdivision F 6 of this section. The additional valves required, on account of changed conditions, may be installed on the outlet piping provided there is no intervening valve.

6. Safety relief valve capacity for each boiler shall be so that, with the fuel burning equipment installed and operated at maximum capacity the pressure cannot rise more than ~~6~~ six psig above the maximum allowable working pressure for pressure up to and including 60 psig and 5.0% of maximum allowable working pressures over 60 psig.

7. If there is any doubt as to the capacity of the safety relief valve, an accumulation test shall be run (see the current edition of the ASME Code, Section ~~VI, Care of Heating Boilers)~~ VI).

8. No valve of any description shall be placed between the safety relief valve and the boiler, nor on the discharge pipe between the safety relief valve and the atmosphere. The discharge pipe shall be at least full size and fitted with an open drain to prevent water lodging in the upper part of the safety relief valve or in the discharge pipe. When an elbow is placed on the safety relief valve discharge pipe, it shall be located close to the safety relief valve outlet or the discharge pipe shall be securely anchored and supported. All safety relief valve discharges shall be so located or piped as not to endanger persons working in the area.

G. Valve replacement and repair. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative, or the holder of a "VR" Stamp.

H. Pressure relieving devices. Boilers and fired storage water heaters except those exempted by the Act shall be equipped with pressure relieving devices in accordance with the requirements of ~~Section IV~~ the current edition of the of the ASME ~~Boiler and Pressure Vessel~~ Code, Section IV.

I. Instruments, fittings and control requirements. Instruments, fittings and controls for each boiler installation shall comply with the requirements of the current edition of the ASME ~~Heating Boiler~~ Code, Section IV.

J. Low water fuel cutoff.

1. Each automatically fired hot water heating boiler with heat input greater than 400,000 ~~BTU's~~ BTUs per hour shall have an automatic low water fuel cutoff ~~which~~ that has been designed for hot water service, located so as to stop the fuel supply automatically when the surface of the water falls to the level established in subdivision 2 of this subsection (also see ASME ~~Heating Boiler~~ Code, Section IV).

2. As there is no normal waterline to be maintained in a hot water heating boiler, any location of the low water fuel cutoff above the lowest safe permissible water level established by the boiler manufacturer is satisfactory.

3. A coil type boiler or a water tube boiler with heat input greater than 400,000 ~~BTU's~~ BTUs per hour requiring forced circulation, to prevent overheating of the coils or tubes, shall have a flow sensing device installed in the outlet piping, instead of the low water fuel cutoff required in subdivision 1 of this subsection to stop the fuel supply automatically when the circulating flow is interrupted.

K. Steam gauges.

1. Each steam boiler shall have a steam gauge connected to its steam space, its water column, or its steam connection, by means of a siphon or equivalent device exterior to the boiler. The siphon shall be of sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock.

2. The range of the scale on the dial of a steam boiler pressure gauge shall be not less than 30 psig nor more than 60 psig. The gauge shall be provided with effective stops for the indicating pointer at the zero point and at the maximum pressure point. The travel of the pointer from ~~0~~ zero to full scale 30 psig shall be at least three inches.

L. Pressure or altitude gauges.

1. Each hot water boiler shall have a pressure or altitude gauge connected to it or to its flow connection in a manner so that it cannot be shut off from the boiler except by a cock with tee or lever handle placed on the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. The range of the scale on the dial of the pressure or altitude gauge shall be not less than 1-1/2 times nor more than three times the maximum allowable working pressure. The gauge shall be provided with effective stops for the indicating pointer at the ~~0~~ zero point and at the maximum pressure point.

3. Piping or tubing for pressure or altitude gauge connections shall be of nonferrous metal when smaller than one inch pipe size.

M. Thermometers. Each hot water boiler shall have a thermometer located and connected so that it shall be easily readable when observing the water pressure or altitude gauge. The thermometer shall be located so that it will at all times indicate the temperature in degrees Fahrenheit of the water in the boiler at or near the outlet.

N. Water gauge glasses.

1. Each steam boiler shall have one or more water gauge glasses attached to the water column or boiler by means of valved fittings. The lower fitting shall be provided with a drain valve of the straightaway type with opening not less than 1/4 inch diameter to facilitate cleaning. Gauge glass replacement shall be possible while the boiler is under pressure.

2. Transparent material, other than glass, may be used for the water gauge provided that the material has proved

suitable for the pressure, temperature and corrosive conditions encountered in service.

O. Stop valves and check valves.

1. If a boiler can be closed off from the heating system by closing a steam stop valve, there shall be a check valve in the condensate return line between the boiler and the system.

2. If any part of a heating system can be closed off from the remainder of the system by closing a steam stop valve, there shall be a check valve in the condensate return pipe from that part of the system.

P. Feedwater connections.

1. Feedwater, make-up water, or water treatment shall be introduced into a boiler through the return piping system or through an independent feedwater connection ~~which~~ that does not discharge against parts of the boiler exposed to direct radiant heat from the fire. Feedwater, make-up water, or water treatment shall not be introduced through openings or connections provided for inspection or cleaning, safety valve, safety relief valve, surface blowoff, water column, water gauge glass, pressure gauge or temperature gauge.

2. Feedwater piping shall be provided with a check valve near the boiler and a stop valve or cock between the check valve and the boiler or return pipe system.

Q. Return pump. Each boiler equipped with a condensate return pump, where practicable, shall be provided with a water level control arranged to maintain the water level in the boiler automatically within the range of the gauge glass.

R. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with the requirements for new installations.

S. Conditions not covered by this chapter. Any case not specifically covered by this chapter shall be treated as a new boiler or pressure vessel installation pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-380. Pressure vessels.

A. Maximum allowable working pressure for standard pressure vessels. The maximum allowable working pressure for standard pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME Code or API-ASME code under which they were constructed and stamped. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturers nameplate stamping and data report.

B. Maximum allowable working pressure for nonstandard pressure vessels.

1. For internal pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the weakest course and the factor set by this chapter.

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plate, psi. When the tensile strength of the steel plate is not known, it shall be taken as 55,000 psi for temperatures not exceeding 700°F.

t = minimum thickness of shell plate of weakest course, inches

E = efficiency of longitudinal joint depending upon construction. Use the following values:

For riveted joints -- calculated riveted efficiency;

For fusion-welded joints:

Single lap weld	40%
Double lap weld	50%
Single butt weld	60%
Double butt weld	70%
Forge weld	70%
Brazed steel	80%

R = inside radius of weakest course of shell, inches, provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, the outer radius shall be used.

FS = factor of safety allowed by this chapter.

2. For external pressure. The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in the ASME Code, Section VIII, Division 1~~, of the ASME Code~~.

3. Factors of safety. The minimum factor of safety shall in no case be less than 3.5 for vessels built on or after January 1, 1999. For vessels built prior to January 1, 1999, the minimum factor of safety shall in no case be less than 4.0. The factor of safety may be increased when deemed necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and

the particular service of which it is subject will be the determining factors.

4. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from the ASME Code, Section VIII, Division 1~~, ASME Code~~ and the tensile strength and factors of safety given in subdivisions 1 and 3 of this subsection.

C. Inspection of inaccessible parts. Where in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove the materials to permit proper inspection and to establish construction details. Metal thickness shall be determined utilizing appropriate equipment including drilling if necessary.

D. Pressure relief devices. Pressure relief devices for each pressure vessel installation, not exempt by the Act, shall comply with the requirements of the ASME ~~Pressure Vessel~~ Code, Section VIII.

E. Safety appliances.

1. Each pressure vessel shall be protected by safety and relief valves and indicating and controlling devices which will insure its safe operation. These valves and devices shall be constructed, located and installed so that they cannot readily be rendered inoperative. The relieving capacity of the safety valves shall prevent a rise of pressure in the vessel of more than 10% above the maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be located or piped so as not to endanger persons working in the area.

2. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repairs shall be performed by the original manufacturer, its authorized representative, or the holder of a "VR" stamp.

F. Repairs and renewals of fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with requirements for new installations.

G. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations or may be referred to the chief inspector for instructions concerning the requirements.

16VAC25-50-430. Hydrostatic pressure tests.

A. A hydrostatic pressure test, when applied to boilers or pressure vessels, shall not exceed 1.25 times the maximum allowable working pressure, except as provided by the current edition of the ASME Code. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2.0%.

B. See 16VAC25-50-360 A 4 for temperature limitations on particular power boiler installations.

C. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the working pressure.

2. For all cases involving the question of safety, the test pressure shall not exceed 1.25 times the maximum allowable working pressure for temperature. During such test the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring.

16VAC25-50-460. Blowoff equipment.

A. The blowdown from a boiler or boilers that enters a sewer system or blowdown which is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature as required below.

B. The temperature of the water leaving the blowoff equipment shall not exceed 140°F.

C. The pressure of the blowdown leaving any type of blowoff equipment shall not exceed ~~5.0~~ five psig.

D. The blowoff piping and fittings between the boiler and the blowoff tank shall comply with ~~Section I of~~ the current edition of the ASME ~~code~~ Code, Section I and ~~ANSI~~ ASME B31.1.

E. All materials used in the fabrication of boiler blowoff equipment shall comply with ~~Section II of~~ the current edition of the ASME ~~code~~ Code, Section II.

F. All blowoff equipment shall be fitted with openings to facilitate cleaning and inspection.

G. Blowoff equipment which conforms to the provisions set forth in the National Board publication, "Boiler Blowoff Equipment", shall meet the requirements of this section.

16VAC25-50-540. Jacketed kettles and miniatures boilers.

Jacketed kettles and miniature boilers are acceptable for installation if constructed and stamped in accordance with Section I, IV, or VIII, Division 1, of the current edition of the ASME ~~code~~ Code and registered with the National Board.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (16VAC25-50)

R 1 Form, Report of Welded __ Repair or __ Alteration, CVR1 Rev 1.0~~.~~

~~Form R-1, Report of Repair, National Board Inspection Code, NB-66 (rev. 2012).~~

~~Form R-2, Report of Alteration, National Board Inspection Code (eff. 1/1/99).~~

~~Form R-3, Report of Parts Fabricated By Welding, National Board Inspection Code (eff. 1/1/99).~~

~~Form R-4, Report Supplementary Sheet, National Board Inspection Code (eff. 1/1/99).~~

Form R-1, Report of Repair, NB-66, Rev. 13 (rev. 6/25/2015)

Form R-2, Report of Alteration, NB-229, Rev. 7 (rev.11/12/2015)

Form R-3, Report of Parts Fabricated by Welding, NB-230, Rev. 3 (rev. 9/24/2015)

Form R-4, Report Supplement Sheet, NB-231, Rev. 2, (rev. 9/23/2015)

BPV-5, Boiler or Pressure Vessel Data Report- First Internal Inspection (eff. 1/1/99)~~.~~

BPV-6, Boiler - Fired Pressure Vessel - Report of Inspection (eff. 1/1/99)~~.~~

DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-50)

~~2007 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.~~

~~National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.~~

~~ANSI/NB 23, 2007 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.~~

~~ASME B31.1, ASME Code for Power Piping, American National Standards Institute, 2007.~~

~~NFPA 85 Boiler and Combustion Systems Hazards, 2001 Edition, National Fire Protection Association.~~

~~Part CG (General), Part CW (Steam and Waterside Control) and Part CF (Combustion Side Control) Flame Safeguard of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, 2009, American Society of Mechanical Engineers.~~

2015 Boiler and Pressure Vessel Code, ASME Code, The American Society of Mechanical Engineers, Two Park Avenue, New York, NY 10016-5990; www.asme.org

ANSI/NB 23, 2015 National Board Inspection Code, The National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, OH 43229-1183; www.nationalboard.org

ASME B31.1–2014, ASME Code for Power Piping, B-31, The American Society of Mechanical Engineers, International, Two Park Avenue, New York, NY 10016-5990; www.asme.org

NFPA 85 Boiler and Combustion Systems Hazards, 2015 Edition, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471; www.nfpa.org

ANSI/ASME CSD–1–2012, Controls and Safety Devices for Automatically Fired Boilers: Part CG (General), Part CW (Steam and Waterside Control), and Part CF (Combustion Side Control) Flame Safeguard, The American Society of Mechanical Engineers, Three Park Avenue, New York, NY 10016-5990; www.asme.org

API 510, Pressure Vessel Inspection Code: In-Service Inspection, Rating, Repair and Alteration, Tenth Edition, May 2014, American Petroleum Institute, 1220 L Street, NW, Washington, D.C. 20005-4070; www.api.org

"Boiler Blowoff Equipment," National Board ~~of Boiler and Pressure Vessel Inspectors,~~ Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991, The National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue , Columbus, OH 43229-1183; www.nationalboard.org

~~API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, Ninth Edition, June 2006, American Petroleum Institute.~~

VA.R. Doc. No. R16-4679; Filed August 22, 2018, 10:03 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Proposed Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-80, 18VAC110-20-105; adding 18VAC110-20-22).**

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

Public Hearing Information:

September 25, 2018 - 9:10 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: November 16, 2018.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system that are reasonable and necessary to administer effectively the regulatory system.

Purpose: The purpose of the proposed regulatory action is to streamline the licensure process and expedite National Association of Boards of Pharmacy (NABP) reporting of demographic information, examination scores, licensure status in all states, disciplinary history, and continuing education. By having real-time information, the board will have greater assurance that there are no grounds for denial of an initial or reinstatement application for a pharmacist, a pharmacy intern, or a pharmacy technician. The e-profile information available to the board will enhance its ability to protect the public health and safety.

Substance: Sections relating to initial application for licensure or registration as a pharmacist, pharmacy intern, or pharmacy technician or for renewal of any of such license or registration are amended to include a requirement for each such person to report an e-profile identification number obtained from NABP.

Issues: There are no advantages or disadvantages to the public. The advantage to the agency is the ability to expedite applications by accessing data in a centralized location with NABP. There are no disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Pharmacy (Board) proposes to require individuals applying for initial pharmacist licensure, pharmacist license renewal, pharmacist license reinstatement, pharmacy intern registration, initial pharmacy technician registration, pharmacy technician registration renewal, or pharmacy technician registration reinstatement, to provide their e-profile identification number (e-profile ID) from the National Association of Boards of Pharmacy (NABP) in their application.

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

Estimated Economic Impact.

Background. NABP is a 501(c)(3) nonprofit association that protects public health by assisting its member boards of pharmacy and offers programs that promote safe pharmacy practices for the benefit of consumers. The e-profile ID is provided through the CPE Monitor Service, a collaborative effort of NABP, the Accreditation Council for Pharmacy Education (ACPE), and ACPE-accredited providers. The CPE Monitor Service allows electronic tracking of continuing pharmacy education (CPE) credits from ACPE-accredited providers. The NABP assigns an e-profile ID through the CPE Monitor Service to applicants so they can track credits, apply to sit for an exam, monitor continuing education, verify licensure, etc.

Analysis. Most pharmacists, technicians, and interns already possess an e-profile ID since it is assigned anytime an NABP service is first used, e.g., examination, CPE monitoring, licensure by endorsement, etc.[1] There is no charge to acquire an e-profile ID, and it is already required to be approved to sit for the licensure examination or to receive NABP-approved CPE.

The Department of Health Professions (DHP) indicates that requiring the e-profile ID may decrease its administrative burden when communicating with the NABP, and may reduce the possible chance of error when using the applicant's name or a breach of confidentiality occurring as a result of using other methods of identifying applicants such as the social security number. The applicant's name is currently used to obtain exam scores, but the e-profile ID is used to verify CPE credits when it is available. According to DHP, there have been instances in other states where personal information, such as the social security number, has been released as the result of a data breach; this situation could have been avoided if the e-profile ID had been used in its place. Given the potential reduction in administrative costs, errors, or breach of confidentiality, and the lack of cost acquiring an e-profile ID, the proposed amendment should produce a net benefit.

Businesses and Entities Affected. The proposed amendments would apply to the 14,714 licensed pharmacists, 14,662 registered pharmacy technicians, and 1,848 registered pharmacy interns in the Commonwealth, as well as future applicants. In 2017, 854 pharmacists were newly licensed, 2,017 pharmacy technicians were newly registered, and 591 pharmacy interns were newly registered.[2]

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

Projected Impact on Employment. The proposed amendments would not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not significantly affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition. Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its

affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments would not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments would not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments would not adversely affect businesses.

Localities. The proposed amendments would not adversely affect localities.

Other Entities. The proposed amendments would not adversely affect other entities.

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[1]Source: Department of Health Professions

[2]Data source: Department of Health Professions

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

Summary:

The proposed amendments require a pharmacist, pharmacy intern, or pharmacy technician applicant to provide an e-profile identification number from the National Association of Boards of Pharmacy in an application for a license, registration, and renewal or reinstatement of license or registration.

18VAC110-20-22. Application to include e-profile number.

An application for licensure as a pharmacist by examination or endorsement or for registration as a pharmacy intern or pharmacy technician shall include an e-profile number issued by NABP.

18VAC110-20-80. Renewal and reinstatement of license.

A. Pharmacist licenses expire on December 31 and shall be renewed annually prior to that date by the submission of a renewal fee, renewal form, an e-profile number issued by NABP, and statement of compliance with continuing education requirements.

B. A pharmacist newly licensed on or after October 1 shall not be required to renew that license until December 31 of the following year.

C. A pharmacist who fails to renew his license by the expiration date may renew his license at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and statement of compliance with continuing education requirements.

D. A pharmacist who fails to renew his license for more than one year following expiration and who wishes to reinstate such license shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement.

E. A pharmacist who has been registered as inactive for more than one year must apply for reinstatement, submit documentation showing compliance with continuing education requirements, and pay the current year active renewal fee in order to resume active licensure.

F. In order to reactivate or reinstate a license to active status, a pharmacist who holds an inactive license, who has allowed his license to lapse, or who has had his license suspended or revoked must submit evidence of completion of CEU's or hours equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 60 hours of CE.

G. A pharmacist whose license has been lapsed, in inactive status, or suspended or revoked for more than five years shall, as a condition of reinstatement in addition to 60 hours CE, take and receive a passing score on the board-approved law examination and furnish acceptable documentation of one of the following:

1. Active pharmacy practice within the past five years as a properly licensed pharmacist in another state; or

2. Practical experience as a pharmacy intern registered with the board of at least 160 hours within six months immediately prior to being reinstated.

H. The practice of pharmacy without a current, active pharmacist license is unlawful and shall constitute grounds for disciplinary action by the board.

I. It shall be the duty and responsibility of each licensee to inform the board of his current address. A licensee shall notify the board within 14 days in writing or electronically of any change of an address of record. Properly updating address of record directly through the board's web-based application or other approved means shall constitute lawful notification. All notices required by law or by these rules and regulations are deemed to be legally given when mailed to the address of record and shall not relieve the licensee of the obligation to comply.

18VAC110-20-105. Renewal and reinstatement of registration.

A. Pharmacy technician registrations expire on December 31 and shall be renewed annually prior to that date by the

submission of a renewal fee, ~~and~~ renewal form, and an e-profile number issued by NABP. A pharmacy technician newly registered on or after July 1 shall not be required to renew that registration until December 31 of the following year. Failure to receive the application for renewal shall not relieve the pharmacy technician of the responsibility for renewing the registration by the expiration date.

B. A pharmacy technician who fails to renew his registration by the expiration date may renew his registration at any time within one year of its expiration by submission of the renewal fee and late fee, renewal form, and attestation of having obtained required continuing education.

C. A pharmacy technician who fails to renew his registration for more than one year following expiration and who wishes to reinstate such registration shall submit an application for reinstatement, pay the current renewal fee and a reinstatement fee, and submit documentation showing compliance with continuing education requirements. Reinstatement is at the discretion of the board and may be granted by the executive director of the board provided no grounds exist to deny said reinstatement. Conducting tasks associated with a pharmacy technician with a lapsed registration shall be illegal and may subject the registrant to disciplinary action by the board.

D. A person who fails to reinstate a pharmacy technician registration within five years of expiration, shall not be eligible for reinstatement and shall repeat an approved training program and repeat and pass the examination, or hold current PTCB certification, before applying to be reregistered.

VA.R. Doc. No. R18-5278; Filed August 15, 2018, 3:37 p.m.

TITLE 19. PUBLIC SAFETY

DEPARTMENT OF STATE POLICE

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

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

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

Effective Date: October 18, 2018.

Agency Contact: Kirk Marlowe, Regulatory Coordinator, Bureau of Administrative and Support Services, Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472, telephone (804) 674-4606, FAX (804) 674-2936, or email kirk.marlowe@vsp.virginia.gov.

Summary:

The amendment updates the effective date of the Federal Motor Carrier Safety Regulations promulgated by the U.S. Department of Transportation, Federal Motor Carrier Safety Administration that are incorporated for compliance and enforcement purposes.

19VAC30-20-80. Compliance.

Every person and commercial motor vehicle subject to the Motor Carrier Safety Regulations operating in interstate or intrastate commerce within or through the Commonwealth of Virginia shall comply with the Federal Motor Carrier Safety Regulations promulgated by the United States Department of Transportation, Federal Motor Carrier Safety Administration, with amendments promulgated and in effect as of ~~November 1, 2017~~ October 1, 2018, pursuant to the United States Motor Carrier Safety Act found in 49 CFR Parts 366, 370 through 376, 379, 380 Subpart E, 382, 385, 386 Subpart G, 387, 390 through 397, and 399, which are incorporated in these regulations by reference, with certain exceptions.

VA.R. Doc. No. R19-5613; Filed August 21, 2018, 9:06 a.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Titles of Regulations: **22VAC40-661. Child Care Program (repealing 22VAC40-661-10 through 22VAC40-661-100).**

22VAC40-665. Child Care Program (adding 22VAC40-665-10 through 22VAC40-665-830).

Statutory Authority: §§ 63.2-217, 63.2-319, and 63.2-611 of the Code of Virginia; 45 CFR 98.11.

Effective Date: October 17, 2018.

Agency Contact: Mary Ward, Subsidy Manager, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7638, FAX (804) 726-7655, or email mary.ward@dss.virginia.gov.

Summary:

This action repeals 22VAC40-661 and replaces it with new Child Care Program regulations at 22VAC40-665. The regulatory action is necessary to bring state Child Care Subsidy Program requirements into alignment with the federal Child Care and Development Block Grant Act of

2014. Amendments include new provisions for (i) 12 months of continuous authorization for services, (ii) a phase-out of services, (iii) a conditional eligibility period for children experiencing homelessness, (iv) a change to reporting requirements of recipients during an authorization period, (v) the transfer of eligibility from one locality to another, (vi) a limitation on the amount of assets that can be owned by a recipient, (vii) a change to how the effective date of eligibility is determined, (viii) verification of identity of applicants, (ix) a restriction that limits employees of local departments of social services from participating as program vendors, (x) repayment of overpayments made, (xi) training of local department staff who administer the program, and (xii) health and safety and inspection of program vendors. Changes since the proposed stage were made for consistency within the regulation and with statute and other programs, to clarify requirements, and to correct errors.

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.

CHAPTER 665
CHILD CARE PROGRAM

Part I
General Provisions

22VAC40-665-10. Definitions.

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

"Administrative disqualification hearing" or "ADH" means an impartial review by a state hearing officer of a recipient's actions involving an alleged intentional program violation for the purpose of determining if the individual did or did not commit an intentional program violation.

"Applicant" means a person who has applied for child care services and the disposition of the application has not yet been determined.

"Assets" means resources owned by a person or company regarded as having value and available to meet debts and commitments.

"Background checks" means the checks for barrier crimes and offenses required under Article 3 (§ 63.2-1719 et seq.) of Chapter 17 of Title 63.2 of the Code of Virginia, including the sworn statement or affirmation as is required by Article 3; the criminal history record check; and the Child Protective Services Central Registry check.

"Child care subsidy and services" or "Child Care Subsidy Program" means the department program that assists eligible low-income families with the cost of child care and those activities that assist eligible families in the arrangement for or purchase of child care for children for care that is less than a 24-hour day. It also includes activities that promote parental choice, consumer education to help parents make informed choices about child care, activities to enhance health and safety standards established by the state, and activities that increase and enhance child care and early childhood development resources in the community.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;

2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");

3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;

4. A child who is living in congregate, temporary, emergency, or transitional shelters;

5. A child who is abandoned in a hospital;

6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child protective services" means the identification, receipt, and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is younger than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health

surveillance or specialized programs, interventions, technologies, or facilities.

"Conditional eligibility" means that eligibility has been approved for a period not to exceed 90 days to allow families with a child experiencing homelessness additional time to obtain required documentation needed to complete a final eligibility determination.

"Copayment" means the amount paid to the provider by the parent to contribute toward the cost of child care. Such amount shall be established by the department in accordance with the current Child Care and Development Fund Plan for Virginia, approved by the U.S. Department of Health and Human Services. Copayments do not include charges above the maximum reimbursable rate, or charges for registration, activities, or transportation.

"DCSE" means the Division of Child Support Enforcement, the division of the Department of Social Services responsible for locating absent parents; establishing paternity; and establishing, modifying, enforcing, collecting, and disbursing child support or child and spousal support.

"Department" means the Virginia Department of Social Services.

"Exit eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible at redetermination. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Family" means any [~~individual,~~] adult [~~,~~] or [~~adults or~~ emancipated minor and] children related by blood, marriage, adoption, or an expression of kinship who function as a family unit.

"Federal poverty guidelines" means the income levels by family size, determined by the U.S. Department of Health and Human Services, used as guidelines in determining at what level families in the country are living in poverty.

"Fee" means a charge for a service and may include copayments, charges above the maximum reimbursable rate, or charges for registration, activities, or transportation.

"Fee Program" means a category in the child care subsidy program that assists low income, non-TANF families with child care services.

"Fiscal year" means the local department financial calendar that begins in June of each calendar year and runs through May of the following calendar year.

[~~"Good cause" means a valid reason as determined by the local department why (i) a parent in a two parent household cannot provide the needed child care or (ii) why a parent will not be required to register with the Division of Child Support Enforcement.~~]

"Graduated phase out" means the period of time for child care subsidy and services to continue as determined by the local department at redetermination for recipients whose income exceeds the initial eligibility limit but is below the exit eligibility limit.

"Head Start" means the comprehensive federal child development programs that serve children from birth through age five years, pregnant women, and their families (as established by the Head Start Act (42 USC § 9801)).

"Income eligible" means that eligibility for assistance under the Child Care Subsidy Program is based on income and family size.

"In-home" means child care provided in the home in which all of the children in care reside and in which the provider does not reside.

"Initial eligibility limit" means the maximum gross countable income amount that a family can receive to be considered income eligible. Such amount shall be established by the department in the current Child Care and Development Plan for Virginia approved by the U.S. Department of Health and Human Services.

"Intentional program violation" or "IPV" means any action by an individual for the purpose of establishing or maintaining the family's eligibility for assistance under the Child Care Subsidy Program or for increasing or preventing a reduction in the amount of the assistance by (i) intentionally giving a false or misleading statement or misrepresenting, concealing, or withholding facts or (ii) any act intended to mislead, to misrepresent, conceal, or withhold facts, or to propound a falsity.

"Level one provider" means a child care provider that is not licensed by the department or is not approved (i) by a licensed family day system, (ii) under a local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Level two provider" means a child care provider that is licensed by the department or is approved (i) by a licensed family day system, (ii) under local ordinance in accordance with §§ 15.2-741 and 15.2-914 of the Code of Virginia, or (iii) by the federal government.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Maximum reimbursable rate" means the maximum rate paid for child care services through the subsidy program that is established by the department and set out in the current Child Care and Development Fund Plan for Virginia filed with the U.S. Department of Health and Human Services.

"Need for child care" means the parents [~~meets~~ meet] the income eligibility and employment or education requirements

set forth in this chapter and [~~requires~~ require] child care services for part of the day.

"Nonfraud overpayment" means an overpayment that is the result of a local department error or an inadvertent household or provider error.

"Parent" means the adult or emancipated minor, as defined in § 16.1-334 of the Code of Virginia, who acts as the primary caretaker or guardian of a child, including an individual acting in loco parentis. A parent may be by blood, marriage, or adoption and also means a legal guardian, person cohabiting with the natural or adoptive parent of a minor child, or other person standing in loco parentis.

"Provider" or "child care provider" means a person, entity, or organization providing child care services.

[~~"Register with the Division of Child Support Enforcement" means that an applicant or recipient of child care subsidy services provides the information required by the Division of Child Support Enforcement to locate an absent parent, establish paternity, or establish a support order, unless good cause for noncooperation is determined by the program.~~]

"Resource and referral" means services that provide information to parents to assist them in choosing a child care provider and may include assessment of the family's child care needs, collection and maintenance of information about child care needs in the community, and efforts to improve the quality and increase the supply of child care.

"Service plan" means the written, mutually agreed upon activities and responsibilities between the local department and the parent in the provision of assistance for child care services under the Child Care Subsidy Program.

"Supplemental Nutrition Assistance Program" or "SNAP" means the program administered by the U.S. Department of Agriculture to reduce hunger and increase food security.

"Supplemental Nutrition Assistance Program Employment and Training" or "SNAPET" means the program that provides job search, job search training, education, training, and work experience to nonpublic assistance SNAP recipients.

"TANF assistance unit" means a household composed of an individual or individuals who meet all categorical requirements and conditions of eligibility for TANF.

"TANF capped child" means a child who the TANF worker has determined ineligible for inclusion in the TANF assistance unit because the child was born more than 10 full months after the mother's initial TANF payment was issued.

"Temporary [~~assistance~~ Assistance] for [~~needy families" Needy Families"~~] or "TANF" means the program authorized in § 406 of the Social Security Act (42 USC § 606) and administered by the department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Transitional child care" means the program that provides child care subsidy assistance to eligible former TANF recipients after the TANF case closes.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a child care vendor that must be entered into and signed before child care payments under the Child Care Subsidy Program can be authorized.

"Virginia Initiative for Employment not Welfare" or "VIEW" means the program of employment opportunities to assist individuals receiving Temporary Assistance for Needy Families in attaining the goal of self-sufficiency as implemented in the Commonwealth of Virginia.

22VAC40-665-20. Families and children to be served.

A. For an applicant to be eligible for child care subsidy and services, the applicant must have a child who, at the time of eligibility determination or redetermination:

1. Is younger than 13 years of age or is younger than the age of 18 years and physically or mentally unable to care for himself, or under court supervision;

2. Is a citizen or legal resident of the United States;

3. Is immunized according to requirements of the State Board of Health; however, families of a child experiencing homelessness that cannot provide documentation of their child's immunizations may be conditionally approved for services for a period not to exceed 90 days;

4. Is not eligible to attend public school during the part of the day when public education is available unless there is a documented reason for the child to be out of school;

5. Resides with the applicant or recipient for services;

6. Resides in the locality where application or redetermination for services is made;

7. Resides with a family whose income does not exceed the income limits established by the department in the current Child Care and Development Fund Plan for Virginia approved by the U.S. Department of Health and Human Services;

8. Resides with a family whose family assets do not exceed $1 million in value, as certified by the applicant; and

9. Resides with a family in which there is a need for child care services, arising from one of the following situations:

a. In a two-parent household, there must be a documented reason why one of the parents cannot provide the needed child care.

b. Parents who need child care to support the following approved activities:

(1) Employment;

(2) Education or training leading to employment;

(3) Child protective services; or

(4) Assigned VIEW or SNAPET activity.

B. At the option of the local department, a child born to a family 10 months or more after the initial date of approval for the Fee Program may receive child care services or be placed on the local department waiting list.

C. A child of an owner or operator of a family day home shall not be eligible to receive a child care subsidy if that child will be cared for in the home of the owner or operator.

22VAC40-665-30. Child care subsidy program categories.

Assistance under the Child Care Subsidy Program is provided through the following program categories, to the extent that funding is available:

1. TANF. Child care subsidy and services are made available to recipients of TANF. TANF child care includes needed child care for:

a. A TANF-capped child;

b. A child who receives Supplemental Security Income (SSI) if the parent is on the TANF grant and if the child would have been in the public assistance unit were it not for the receipt of SSI; and

c. Children who are not in the TANF assistance unit but who are financially dependent upon the parent who is in the TANF assistance unit.

2. Income eligible programs.

a. Transitional child care. Child care subsidy and services are made available to eligible children of former TANF recipients for up to the 12 months [~~immediately~~] following TANF case closure to support parental employment if the family is found income eligible, and there is a need for child care.

b. Head Start wrap-around child care. Head Start wrap-around child care subsidy and services are made available to eligible Head Start enrolled children. The program is for extended day and extended year child care beyond times covered by federally funded Head Start programs.

c. SNAP child care. Child care subsidy and services are made available to children of parents in Virginia's SNAP Education and Training (SNAPET) program to allow participation in an approved activity.

d. Fee Program child care. Fee child care subsidy and services are made available to children in eligible low-income families who are not receiving TANF or SNAPET and who meet the eligibility criteria for child care.

22VAC40-665-40. Case management.

A. Applicants for child care subsidy and services must be at least 18 years of age unless they are an emancipated minor or a minor who was receiving services as head of household prior to April 2016.

B. Applicants are required to sign an application, to provide verification of identity, and to cooperate with an assessment by the local department of social services.

C. [~~Applicants and recipients must register with DCSE unless the local department determines that good cause exists for their failure to do so.~~ In cases where the local department has approved the application of an applicant for the Child Care Subsidy Program and determines that (i) the child has been abandoned by a noncustodial parent, or (ii) a person who has a responsibility for the care, support, or maintenance of the child has failed or neglected to give proper care or support to the child, the local department shall refer the matter to DCSE for the application for child support services.] Failure [by the applicant or recipient] to [~~register will~~ cooperate with DCSE shall] result in [denial of the application or] case closure at redetermination. ["Cooperate with DCSE" means that an applicant or recipient must apply for child support services and participate and provide information, as requested by DCSE, to locate a noncustodial parent, establish paternity, establish or modify a child support order, or enforce a child support order.]

D. At initial eligibility determination, a family with a child experiencing homelessness that cannot provide the required documentation may be conditionally approved for services for a period not to exceed 90 days. The final eligibility determination shall be completed once the 90 days has expired or full documentation is provided. Any payments made prior to the final eligibility determination shall not be considered an error or improper payment. Families with a child experiencing homelessness shall receive priority placement on the waiting list, if applicable.

E. Consumer education, including education on the selection and monitoring of quality child care [,] and [~~a consumer statement~~ how to access information] regarding their selected vendor [as to the (i) health and safety requirements met by the vendor; (ii) licensing or regulatory requirements met by the vendor; (iii) date the vendor was last inspected and any history of violations; and (iv) any voluntary quality standards met by the vendor,] must be provided to parents to assist them in gaining needed information about the availability of child care services and providers. Parents must also be provided information on how to obtain a developmental screening for their child.

F. The department shall establish scales for determining financial eligibility for the income eligible child care subsidy program categories in subdivision 2 of 22VAC40-665-30.

1. Recipients in the TANF child care program category shall be considered income eligible based on their receipt of TANF; the local department shall not be required to verify their income.

2. At initial eligibility determination, income eligibility shall be determined by measuring the family's countable income and size against the percentage of the federal poverty guidelines for their locality. The family's income cannot exceed 85% of the state median income.

3. At redetermination, if a recipient family's countable income exceeds the initial eligibility limit, they shall be considered income eligible until their countable income meets or exceeds the exit eligibility limit established by the department. The family's income cannot exceed 85% of the state median income.

G. Families receiving child care subsidy and services shall be required to pay a copayment unless their gross monthly income is at or below the federal poverty guidelines and they are recipients of TANF, participants in the SNAPET program, or families where all children participate in the Head Start program. The copayment amount will be based on a scale set out in the current Child Care and Development Fund Plan for Virginia. Copayments may be increased at redetermination and during graduated phase out if the family's countable income exceeds the initial eligibility limit but is below the exit eligibility limit. Local departments shall be required to act on changes reported by the family that would reduce the family's copayment during the 12-month eligibility period.

H. Income to be counted in determining income eligibility includes all earned and unearned income received by the family except the following:

1. Supplemental Security Income;

2. TANF benefits [~~, including TANF match payments~~];

3. Transitional payments of $50 per month to former VIEW participants;

4. Diversionary assistance payments;

5. General relief;

6. SNAP benefits;

7. Value of U.S. Department of Agriculture donated food;

8. Benefits received under Title VII, Nutrition Program for the Elderly of the Older Americans Act of 1965;

9. Value of supplemental food assistance under the Child Nutrition Act of 1996 and lunches provided under National School Lunch Act;

10. Earnings of a child younger than the age of 18 years;

11. Earned income tax credit;

12. Lump sum child support [arrears] payments;

13. Scholarships, loans, or grants for education except any portion specified for child care;

14. Basic allowance for housing for military personnel living on base;

15. Clothing maintenance allowance for military personnel;

16. Payments received by AmeriCorps volunteers;

17. Tax refunds;

18. Lump sum insurance payments;

19. Monetary gifts for one-time occasions or normal annual occasions;

20. Payments made by non-financially responsible third parties for household obligations, unless payment is made in lieu of wages;

21. Loans or money borrowed;

22. Money received from sale of property;

23. Earnings less than $25 a month;

24. Capital gains;

25. Withdrawals of bank deposits;

26. GI Bill benefits;

27. Reimbursements, such as for mileage;

28. Foreign government restitution payments to Holocaust survivors;

29. Payments from the Agent Orange Settlement Fund or any other fund established for settlement of Agent Orange product liability litigation; and

30. Monetary benefits provided to the children of Vietnam Veterans as described in 38 USC § 1823(c).

The amount of wages subject to garnishment and the amount of child support paid to another household shall be deducted from the family's income.

I. The eligibility period for TANF (nonVIEW), transitional child care, Fee Program, and Head Start begins with the effective date of the approval of the child care subsidy and services application. The eligibility period for VIEW and SNAPET participants begins with the date of referral from the VIEW or SNAPET program.

J. Recipients will be eligible for child care subsidy and services for a minimum of 12-months before eligibility is redetermined unless:

1. Their countable income exceeds 85% of state median income. Temporary increases in income will not affect

eligibility or family copayments, including monthly income fluctuations, which when taken in isolation, may incorrectly indicate that a recipient's income exceeds 85% of state median income.

2. There is a finding that the recipient committed an intentional program violation.

3. The recipient is no longer a resident of Virginia.

4. [The recipient requests that their child care subsidy and services case be closed.

5.] The recipient is a family of a child experiencing homelessness that was [~~conditionally~~] approved [~~because they could not provide required documentation. If the documentation is provided to the local department within 90 days, the recipient may remain eligible for the remainder of the 12-month eligibility period. If documentation is not provided~~ as conditionally eligible and failed to provide necessary documentation] to the local department within 90 days, or the recipient is determined ineligible after full documentation is provided [~~, the child care case will be closed~~].

K. Recipients will retain eligibility despite any change in residency within the state.

L. Recipients will retain eligibility despite any eligible child turning 13 years of age during the 12-month eligibility period.

M. The beginning date of service payment for TANF (nonVIEW), transitional child care, Fee Program, and Head Start participants may begin with the date the applicant is determined eligible and a vendor approved by the department is selected. The beginning date of service payment for VIEW or SNAPET participants may begin with the date of referral from the VIEW or SNAPET program if the applicant is determined eligible and a vendor approved by the department is selected.

1. Eligibility must be determined within 30 days of receipt of a signed application or referral from VIEW or SNAPET by the local department.

2. Payment cannot be made to any provider prior to the effective date of their approval by the department as a vendor.

N. Eligibility will be redetermined in the final month of the 12-month eligibility period described in subsection I of this section, at which time the recipient will be contacted in order to have all eligibility criteria be reevaluated. The local department's contact with the recipient should not unduly disrupt a parent's work schedule. Recipients shall not be required to appear in person for eligibility redetermination.

O. Child care case managers shall prepare a written service plan for each child care case with the applicant or recipient. The service plan shall state the activities and responsibilities of the local department and the parent in the provision of child care services. The VIEW Activity and Service Plan will serve as the service plan for parents active in VIEW. If the parents are SNAPET participants, the SNAPET Plan of Participation will serve as the service plan.

P. Recipients shall be required to:

1. Report to the local department the following changes within 10 calendar days of the change:

a. Countable income that exceeds 85% of the state median income.

b. Recipient is no longer a resident of Virginia or the county in which they are receiving services.

2. Pay all fees owed to the vendor not paid for under the Child Care Subsidy Program [or reimbursements owed to the local department; failure to do so may result in case closure at redetermination].

3. Reimburse the local department for any overpayment made as a result of fraud, intentional program violation, or an inadvertent household error.

[~~4. Pay fees owed to the vendor or reimbursements owed to the local department; failure to do so may result in case closure at redetermination.~~]

The local department shall inform recipients of child care subsidy and services of these responsibilities.

Q. Adequate documentation supporting the reasons for termination must be filed in the case record. Eligibility in the Fee Program is limited to a total of 72 months per family. Receipt of assistance in any other program category does not count toward the 72-month limitation.

R. When sufficient funds are not available, local departments of social services must screen applicants for potential eligibility and place them on the department's waiting list unless the family declines placement.

S. Applicants and recipients will be afforded due process through timely written notices of any action determining or affecting their eligibility for services or copayment amount. Such written notice shall include the reason for the action and the notice of appeal rights and procedures, including the right to a fair hearing if the applicant or recipient is aggrieved by the local department's action or failure to act on an application. If a recipient requests an appeal prior to the effective date of any proposed action and if the continuation of services is requested by the parent, child care services will continue until a decision is rendered by a hearing officer. If the decision of the local department is upheld by the hearing officer, the recipient must repay the amount of services paid during the appeal process.

22VAC40-665-50. Parental choice.

Families who receive child care subsidy and services shall have the right to choose a provider from among child care

providers operating legally and that are approved by the department to participate in the Child Care Subsidy Program as a vendor. Local departments shall not establish any policies that limit parental choice of providers.

22VAC40-665-60. Access to children.

A. Vendors shall allow parents unlimited access to their children when they are in care.

B. Vendors shall allow state and local department staff unlimited access to children in care.

22VAC40-665-70. Vendor requirements.

A. Vendors who participate in the subsidy program must be at least 18 years of age.

B. Vendors shall permit and cooperate with inspections by staff from the department and local departments of social services.

C. Vendors shall comply with the regulations applicable to the vendor's type of child care, including all requirements to conduct background checks.

D. Vendors shall comply with the subsidy program vendor requirements as outlined in Parts II (22VAC40-665-120 et seq.) and III (22VAC40-665-470 et seq.) of this chapter applicable to the vendor's type of care.

E. All vendors who participate in the Child Care Subsidy Program shall enter into a vendor agreement with the department. The vendor's signature or electronic submission confirms its agreement to comply with the applicable sections of this chapter and the terms of the agreement, including payment processes, electronic submission and tracking of attendance, absences, and vendor requirements. Vendors shall be subject to monitoring inspections to ensure compliance with this chapter and with the vendor agreement.

F. Employees of any division within the department or a local department of social services cannot participate in the subsidy program as a vendor.

G. Vendors shall provide notice to individuals required under this chapter to undergo background checks of the opportunity to challenge the results of the background checks in accordance with the procedures described in this subsection in the case of criminal checks, or by contacting the local department of social services that reported such individual to be named on the Child Protective Services Central Registry.

1. Federal Bureau of Investigation (FBI): If an individual is denied employment or the opportunity to provide volunteer or contractual services because of information appearing on the individual's FBI record and it comes to the individual's attention that he is not the person of the record, the individual may initiate a challenge of the information contained in the record. The facility is required by state and federal laws to provide the individual with a copy of the challenge procedures. The challenge procedures can be found at https://www.fbi.gov/services/cjis/identity-history-summary-checks.

2. Virginia State Police: In instances where it comes to an individual's attention that his name or other descriptive information is a matter of record in the Central Criminal Records Exchange, and he is not the person of the record, then the individual may initiate a challenge of the information contained in the record as provided at http://www.vsp.state.va.us/CJIS_CCRE.shtm. The individual must report this information to a local sheriff, police, or State Police Headquarters and request to be fingerprinted for the purpose of challenging a criminal record. The individual to be fingerprinted must show personal identification. The official taking the fingerprints must document on letterhead paper that he has reviewed the individual's personal identification and obtained the fingerprints. This letter and the fingerprints are to be mailed to the following address: Manager Central Criminal Records Exchange Virginia Department of State Police, P.O. Box 27472, Richmond, VA 23261-7472. Within five workdays, the individual who initiated the challenge will receive written confirmation of the fingerprint search results, whether he is or is not the person of the record, and record modifications taken, if applicable.

3. If an individual successfully challenges information on a background check in accordance with these procedures, the vendor may submit a request for a new background investigation in order to obtain an accurate record.

H. Disputes between the vendor and the department regarding the payment for services rendered, enforcement or termination of the vendor agreement, or disqualification from participating in the Child Care Subsidy Program may be appealed by the vendor pursuant to the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), as provided in this subsection. This shall be the sole remedy for such disputes.

1. Within 30 days of the date of a written notice of department action against a vendor, the vendor may request an appeal in writing with the department.

2. Upon receiving the vendor's notice of appeal, the department shall schedule an informal conference at which the vendor may provide such further information or present any additional facts for the department to reconsider its action. The department shall issue a written decision within 15 business days from the conclusion of the informal conference. The vendor may waive the holding of the informal conference and request the formal hearing described in subdivision 3 of this subsection in its initial request for an appeal to the department.

3. The vendor may appeal the decision from the informal conference by requesting an administrative hearing within 30 days of the date of the decision from the informal conference. The administrative hearing shall be held in accordance with § 2.2-4020 of the Code of Virginia and shall be presided over by a hearing officer designated by the Supreme Court of Virginia pursuant to subsection A of § 2.2-4024 of the Code of Virginia. Within 30 days of the administrative hearing, the hearing officer shall recommend a decision to the Commissioner of the Virginia Department of Social Services. The commissioner shall issue a final decision within 30 days of receipt of the hearing officer's recommended decision in accordance with subsection C of § 2.2-4021 of the Code of Virginia.

4. The vendor may seek court review of the commissioner's decision in accordance with Article 3 (§ 2.2-4018 et. seq.) of the Virginia Administrative Process Act.

22VAC40-665-80. Determining payment amount.

A. Maximum reimbursable rates.

1. The department will establish maximum reimbursable rates for child care subsidies for all localities in the state by type of care, level of regulatory oversight, age of child, and unit of service. Such rates shall be available in [~~Appendix~~ Appendices] F [and G] of the Child Care Subsidy Program Guidance Manual on the department's website at http://www.dss.virginia.gov/files/division/cc/assistance/parents_guardians/guidance_procedures/Child_Care_Subsidy_Guidance_Manual.pdf.

2. For children with special needs or disability, payment over the maximum reimbursable rate is allowed when this is appropriate as determined and documented by the local department. The maximum reimbursable rate for children with special needs may not exceed twice the rate for care of children who do not have special needs.

3. Vendors will be paid for the amount of care approved up to the maximum reimbursable rate of the locality in which the vendor is located. The department will pay the rates [~~and fees~~] providers charge the general public, up to the maximum reimbursable rate. Level two vendors will be paid a higher maximum reimbursable rate established by the department.

4. Parents who choose a vendor that charges a rate higher than the maximum reimbursable rate set by the department shall be responsible for payment of the additional amount, if charged by the vendor, unless the local department elects to pay the additional amount out of local funds.

B. For in-home child care, the payment rate must be at least minimum wage, but not more than the maximum reimbursable rate for the number of children in care.

C. A single annual registration fee, if charged, will be paid to level two vendors only. The registration fee must not exceed $100 nor be higher than the fee the vendor charges the general public. If the requirement for payment of another registration fee is beyond the control of the recipient or due to extenuating circumstances, an additional registration fee may be paid. The cost of transportation services provided by the vendor, if any, shall be included in the total cost of care. The total cost of care, excluding the single annual registration fee but including other fees and transportation, must not exceed the maximum reimbursable rate.

D. Level two providers may be paid up to 10 holidays on which no child care services are provided as identified in the vendor agreement. Certified preschools, religious exempt centers, and voluntary registered family day homes that are classified as level one providers may be paid for holidays on which no child care services are provided in accordance with the provisions of the vendor agreement. All other level one providers will not receive payment for any holiday unless services are provided on such day.

E. Level two providers may be paid for up to [~~24~~ 36] days the child is absent per fiscal year.

22VAC40-665-90. Complaints in the child care setting.

All complaints regarding possible child abuse or neglect occurring in a child care setting must be referred to the child protective services unit at the local department serving the area where the vendor is located. All other complaints must be referred to the department's hotline, which will be provided to parents during intake at initial eligibility determination and will be available on the department's website (www.dss.virginia.gov).

22VAC40-665-100. Recipient intentional program violation and disqualification.

A. When it is suspected that there has been a deliberate misrepresentation of facts by a recipient in order to receive benefits, services, or payments, the local department shall investigate whether or not an intentional program violation was committed. If the local department finds clear and convincing evidence that an intentional program violation has occurred, the case will be referred for an administrative disqualification hearing. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

B. Recipients found to have committed an intentional program violation either through an administrative disqualification hearing or by a court of competent jurisdiction shall be ineligible to participate in the Child Care Subsidy Program for a period of three months upon the first finding, 12 months upon the second finding, and permanently upon the third finding.

C. In cases where a nonfraud overpayment occurred due to an inadvertent household error, the parent will not be disqualified from participating in the subsidy program as long as a repayment schedule is entered into with the local department and payments are made according to that schedule.

D. Administrative disqualification hearings shall be held in accordance with the following:

1. Prior to submitting the request for an ADH to the state hearing authority, the local department shall provide written notification to the individual suspected of an intentional program violation that the individual can waive his right to an ADH by signing a waiver request and returning it to the local department within 10 days from the date notification is sent to the individual in order to avoid submission of the request for an ADH.

2. If a signed waiver is received, no ADH is conducted and the disqualification period is imposed.

3. The local department shall request an ADH be scheduled by submitting a written request to the state hearing authority. The form must include the following information:

a. Identifying information;

b. Summary of the allegations;

c. Summary of the evidence; and

d. Copies of documents supporting the allegations.

The referral is to be signed and dated by the supervisor or local department director.

4. The hearing officer will schedule a date for the ADH and provide written notice to the individual suspected of committing an IPV at least 30 days in advance of the date the ADH has been scheduled. The notice shall contain at a minimum:

a. The date, time, and place of the hearing;

b. The charges against the individual;

c. A summary of the evidence, and how and where the evidence can be examined;

d. A statement that the decision will be based solely on information provided by the local department of social services if the individual fails to appear at the hearing;

e. A statement that the individual or representative will, upon receipt of the notice, have 10 days from the date of the scheduled hearing to present good cause for failure to appear in order to receive a new hearing;

f. A statement that a determination of intentional program violation will result in a disqualification period, and a statement of which penalty is applicable to the case scheduled for a hearing;

g. A listing of the individual's rights, including the right to:

(1) Examine the contents of his case file and all documents and records to be used by the agency at the hearing at a reasonable time before the date of the hearing as well as during the hearing;

(2) At his option, present his case himself or with the aid of an authorized representative;

(3) Bring witnesses;

(4) Establish all pertinent facts and circumstances;

(5) Advance any arguments without undue interference; and

(6) Question or refute any testimony or evidence, including opportunity to confront and cross-examine adverse witnesses; and

h. If there is an individual or organization available that provides free legal representation, the notice shall advise the affected individual of the availability of the service.

5. The time and place of the ADH shall be arranged so that the hearing is accessible to the individual suspected of committing an IPV. The individual may request a postponement of the ADH if the request for postponement is made at least 10 days in advance of the date of the scheduled hearing. The ADH shall not be postponed for more than a total of 30 days and the state hearing authority may limit the number of postponements.

6. The ADH can be held even if the individual fails to appear. The individual has 10 days after the date of the scheduled ADH to present reasons indicating a good cause failure to appear.

7. Even though the individual is not present, the hearing officer shall carefully consider the evidence and determine if an IPV was committed, based on clear and convincing evidence.

8. If the recipient is found to have committed an IPV, but a hearing officer later determines there was good cause for not appearing, the previous decision will no longer be valid and a new ADH shall be conducted. The hearing officer who conducted the original hearing may conduct the new hearing. The good cause decision shall be entered into the hearing record by the hearing officer.

9. The hearing officer shall:

a. Identify those present for the record;

b. Advise the individual that he may refuse to answer questions during the hearing and that anything said or

signed by the individual concerning the charges may be used against him in a court of law;

c. Explain the purpose of the ADH, the procedure, and how and by whom a decision will be reached and communicated;

d. Consider all relevant issues and determine if an IPV was committed, based on clear and convincing evidence;

e. Request, receive, and make part of the record all evidence determined necessary to render a decision;

f. Regulate the conduct and course of the hearing consistent with due process to ensure an orderly hearing; and

g. Advise the local department to obtain a medical assessment at the local department's expense if the hearing officer considers it necessary.

10. The individual alleged to have committed an IPV shall be given adequate opportunity to:

a. Examine all documents and records to be used at the ADH at a reasonable time prior to the ADH as well as during the ADH. The contents of the case file, including the application form and documents of verification used by the local department to establish the alleged IPV, shall be made available;

b. Present his case himself or with the aid of an authorized representative;

c. Bring witnesses;

d. Establish all pertinent facts and circumstances;

e. Question or refute any testimony or evidence, including the opportunity to confront and cross-examine witnesses; and

f. Advance arguments without any undue influence.

11. The hearing officer shall prepare a written report of the hearing, which shall include findings, conclusions, decisions, and appropriate recommendations. The decision shall specify the reasons for the decision, identify the supporting evidence, identify pertinent regulations, and respond to reasoned arguments made by the individual or representative.

12. If the individual is found to have committed an IPV, the written decision shall advise the individual that disqualification shall occur.

Upon receipt of the notice of a decision from the hearing officer finding that the individual committed an IPV, the local department shall inform the individual of the reason for the disqualification and the date the disqualification will take effect.

22VAC40-665-105. Vendor agreement termination and vendor disqualification.

A. A vendor agreement may be terminated for the following:

1. The vendor's license to operate a child care facility is revoked, suspended, or denied.

2. The vendor's business location changes; ownership of the vendor's business is assigned, sold, or otherwise transferred; the vendor's business structure changes; the vendor's employer identification number changes; or the vendor's legal operating status becomes invalid for any reason.

3. A deliberate misrepresentation of facts to the department or a local department of social services by a vendor in order to receive payments it was not entitled to receive or acceptance by the vendor of payments that the vendor knows, or should reasonably have known, the vendor was not entitled to receive.

4. The vendor fails to notify the department of a change in circumstances that affects payments received by the vendor.

5. The vendor's violation of any term of the vendor agreement, of any requirement under this chapter, or of any state laws and regulations related to the vendor's license or its exemption from licensure, including the requirements for background checks of the vendor's employees, volunteers, and other individuals who come into contact with children.

B. When it is suspected that there has been a deliberate misrepresentation of facts by a vendor in order to receive payments it was not entitled to receive, the local department shall investigate. If there is clear and convincing evidence that such an act has occurred, the case will be referred to the Division of Child Care and Early Childhood Development for termination of the vendor agreement and possible disqualification from participation in the Child Care Subsidy Program. The local department may also refer the case to the attorney for the Commonwealth for criminal prosecution.

C. Vendors will be permanently disqualified from participating in the Child Care Subsidy Program upon the first criminal conviction of fraud or upon a finding by the department or local department that the vendor deliberately misrepresented facts in order to receive payments it was not entitled to receive.

D. Vendors found to be repeatedly in violation of their vendor agreement or of the requirements of this chapter for reasons other than acts by the vendor described in subsection B of this section may be disqualified to participate in the Child Care Subsidy Program for a minimum period of one year.

E. Individuals affiliated with vendors as owners, partners, directors, officers, shareholders, [limited liability company] members, and managers shall be subject to disqualification under this section.

22VAC40-665-110. Repayment.

A. In addition to any criminal punishment, anyone who causes the local department to make an overpayment to a vendor shall be required to repay the amount of the overpayment.

B. Any overpayment must be refunded to the department by the locality. If an overpayment was made as a result of an error by the local department, the local department will not seek to recoup those funds from the parent or the vendor.

22VAC40-665-115. Required training for local department staff.

Local department staff with responsibilities for implementing the Child Care Subsidy Program shall complete guidance training and other training as required by the department.

Part II
Subsidy Program Vendor Requirements for Family Day Homes

22VAC40-665-120. Definitions; subsidy program requirements for family day home vendors.

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Assistant" means an individual who helps the provider in the care, protection, supervision, and guidance to children in the home.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Caregiver" means an individual who provides care, protection, supervision, and guidance to children in the home and includes the provider and assistant.

"Child" means any individual less than 18 years of age.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;

2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");

3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;

4. A child who is living in congregate, temporary, emergency, or transitional shelters;

5. A child who is abandoned in a hospital;

6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the

authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children less than 13 years of age, exclusive of the provider's own children and any children who reside in the home, when at least one child receives care for compensation.

"Inaccessible" means not capable of being entered, reached, or used.

"Infant" means a child from birth to 16 months of age.

"Lockdown" means a situation where children are isolated from a security threat, and access within and to the home is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Preschool" means a child from two years up to the age of eligibility to attend public school, age five years by September 30 of that same year.

"Provider" means a person, entity, or organization providing child care services.

"Residence" means the principal legal dwelling that is occupied for living purposes by the provider or a child in care and contains the facilities necessary for sleeping, eating, cooking, and family living.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"School age" means eligible to attend public school, age five years or older by September 30 of that same year.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Toddler" means a child from 16 months of age up to 24 months of age.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the family day home and:

1. Is not paid for services provided in the family day home;

2. Is not counted in the caregiver-to-children ratios; and

3. Is in sight and sound supervision of a caregiver when working with a child.

Any unpaid person not meeting this definition shall be considered a "caregiver" and shall meet caregiver requirements.

22VAC40-665-130. (Reserved.)

22VAC40-665-140. Purpose and applicability.

The standards in this part apply to family day homes that participate in the Child Care Subsidy Program as a vendor. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and physically or mentally unable to care for themselves, or under court supervision, and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of family day homes participating in the Child Care Subsidy Program are conducive to the well-being of children; and

2. Reducing risks to the health and safety of such children in the child care environment.

22VAC40-665-150. Operational responsibilities.

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. The vendor shall ensure compliance with any of its own policies that have been disclosed to the parents of an enrolled child.

C. The vendor shall ensure that the applicant, household member, and any caregiver who is or will be involved in the day-to-day operations of the family day home or is or will be alone with, in control of, or supervising one or more of the children shall [(i)] undergo a background check in accordance with § 63.2-1725 of the Code of Virginia [~~and~~; (ii)] shall not have [~~an offense~~ been convicted of a barrier crime] as defined in § [~~63.2-1719~~ 19.2-392.02] of the Code of Virginia [; and (iii) is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth].

D. The vendor shall ensure that the family day home does not exceed the capacity of children cared for as allowed by law or regulation.

E. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care and the vendor shall comply with the standards in this part for these children.

F. The vendor shall inform all caregivers of children's allergies, sensitivities, and dietary restrictions.

G. The vendor shall maintain, in a way that is accessible to all caregivers, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential.

22VAC40-665-160. General recordkeeping; reports.

A. Caregiver records and children's information shall be kept confidential.

B. The vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Children's records shall be made available to a child's parent upon request, unless otherwise ordered by the court.

D. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained in the home and made accessible to department's representative for five years after termination of services or separation from employment unless specified otherwise.

22VAC40-665-170. Children's records.

A. Vendors shall maintain, and keep at the family day home, written or electronic information for each enrolled child, which shall be made available to the department's representative upon request.

B. The child's information shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;

2. Proof of the child's identity;

3. Name, home address, and telephone number for each parent who has custody;

4. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;

5. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency if the parent cannot be reached;

6. If applicable, information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed;

7. Names of persons other than the custodial parent who are authorized to pick up the child;

8. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;

9. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;

10. Written authorization to administer prescription or nonprescription medications if the vendor agrees to administer medication;

11. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

12. A written care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and the steps to be taken in the event of a suspected or confirmed allergic reaction;

13. Record of any accidents or injuries sustained by the child while in care;

14. Permission to transport child if the vendor provides transportation;

15. Permission for field trips;

16. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

17. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

18. Any written agreements between the parent and the vendor; and

19. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-210 A 2.

22VAC40-665-180. Caregiver records.

The following records shall be kept for each caregiver:

1. Name, address, verification of age, and date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the [~~Virginia State Police name search for criminal history~~ fingerprint-based national criminal background check]; and

(2) Satisfactory results of the [Virginia] Child Protective Services Central Registry check.

b. [Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.

c.] The individual's sworn statement or affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges with the Commonwealth or any equivalent offense outside the Commonwealth.

c. The vendor shall have such documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service. [~~However, the vendor shall not be deemed to be in violation of this section if documentation is maintained that the checks were submitted within the first seven days of employment or service and the results are not available due to an administrative delay beyond the vendor's control.~~]

d. Documentation of subsequent background checks conducted every [~~three~~ five] years.

3. Tuberculosis screening results.

4. Certifications for first aid, cardiopulmonary resuscitation, and other certifications as required by the responsibilities held by the caregiver.

5. Documentation that training required by 22VAC40-665-230 has been completed that includes the name and topic of the training, the date completed, the total hours of the session, and the names of the organization that sponsored the training and of the trainer.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-190.

22VAC40-665-190. Health requirements for caregivers.

A. Each caregiver must be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). [~~Such statement shall be submitted no later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering~~ Documentation of the screening shall be submitted at the time of employment and prior to coming into contact with children. The documentation shall have been completed within the last 30 calendar days of the date of employment and be signed by a physician, physician's designee, or an official of the local health department].

B. Caregivers shall undergo TB screenings at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional when there are indications that a caregiver's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A caregiver who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22VAC40-665-200. Reports.

A. The vendor shall inform the department's inspector as soon as practicable, but not to exceed one business day, of the following:

1. The death of a child while under the vendor's supervision;

2. A missing child when local authorities have been contacted for help; and

3. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

B. The vendor shall inform the department's representative as soon as practicable, but no more than two business days, of any [~~serious~~] injury to a child while under the vendor's supervision [when a referral is made for treatment from a medical professional].

C. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

22VAC40-665-210. Immunizations for children.

A. Before a child may attend the family day home, the vendor shall obtain documentation that the child has been immunized according to the requirements of subsection A of § 32.1-46 of the Code of Virginia and applicable State Board of Health regulations.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record. A conditional enrollment means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than the age of two years.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor on the current form approved by the Virginia Department of Health stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices; or

2. Physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

22VAC40-665-220. General qualifications.

A. The vendor and any caregivers who are left alone with children shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

B. Caregivers must be at least 16 years of age; however no caregiver less than the age of 18 years may [~~be alone with children or~~] administer medication. Caregivers less than the age of 18 years shall be under [~~sight and sound~~] supervision of an adult caregiver [who is present in the home].

22VAC40-665-230. Caregiver training and development.

A. Prior to approval as a subsidy vendor, the perspective vendor shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or service all caregivers shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

C. All caregivers hired prior to [~~(insert the effective date of this regulation)~~ October 17, 2018,] shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics described in subsection B of this section, within [~~(insert date 90 days from the effective date of this regulation)~~ January 16, 2019]. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for caregivers shall be completed on the following specific topics prior to the caregiver working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;

2. Responsibilities for reporting suspected child abuse or neglect;

3. Confidentiality;

4. Supervision of children, including arrival and dismissal procedures;

5. Procedures for action in the case of lost or missing children, ill or injured children, medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 22VAC40-665-400 B;

8. Procedures for response to natural and man-made disasters;

9. Prevention of shaken baby syndrome or abusive head trauma including coping with crying babies and fussy or distraught children;

10. Prevention of sudden infant death syndrome and use of safe sleeping practices;

11. Caregivers who work with children who have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination and recognizing and responding to any allergic reactions; and

12. Transportation.

E. All caregivers shall have within [~~30~~ 90] days of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid. However, a caregiver who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the [~~30-day or~~] 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

F. Caregivers employed prior to [~~(insert the effective date of this regulation)~~ October 17, 2018,] must complete CPR and first aid training as required by this section within [~~(insert date 90 days from the effective date of this regulation)~~ January 16, 2019]. During this 90-day period, there must always be at least one caregiver with current cardiopulmonary and first aid training present during operating hours of the family day home.

G. CPR and first aid training may count toward the annual training hours required in subsection H of this section if documentation for training as required in subdivision 5 of 22VAC40-665-180 is maintained.

H. Caregivers who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at

least 16 hours of training, [~~including~~ to include] the department's health and safety update course. This training shall be related to child safety, child development, health and safety in the family day home environment, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a caregiver who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist or (ii) administration shall be performed by a caregiver who is licensed by the Commonwealth of Virginia to administer medications.

The vendor may determine by policy what medications, if any, will be administered at its family day home, including prescription medications or over-the-counter or nonprescription medications.

J. Caregivers required to have the training required in subsection I of this section shall be retrained at three-year intervals.

22VAC40-665-240. Building or home maintenance.

A. Areas and equipment of the family day home, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked, or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; the presence of poisonous plants; tripping hazards; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 65°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children, and cords shall be secured so as not to create a hazard.

2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Sharp kitchen utensils and other sharp objects shall be inaccessible to children unless being used by the caregiver or with children under close supervision.

E. The home shall have an in-service, nonpay telephone.

F. No equipment, materials, or furnishings shall be used if recalled or identified by the U.S. Consumer Product Safety Commission as being hazardous.

G. Radiators, oil and wood burning stoves, floor furnaces, fireplaces, portable electric heaters, and similar heating devices located in areas accessible to children shall have barriers or screens and be located at least three feet from combustible materials.

H. Unvented fuel burning heaters, such as portable oil-burning (kerosene) heaters; portable, unvented liquid or gas fueled heaters; and unvented fireplaces, shall not be used when children are in care.

I. Wood burning stoves and fireplaces and associated chimneys, if used, shall be inspected annually by a knowledgeable inspector to verify that the devices are properly installed, maintained, and cleaned as needed. Documentation of the inspection and cleaning shall be maintained by the vendor.

J. All flammable and combustible materials, including matches, lighters, lighter fluid, kerosene, turpentine, oil and grease products, aerosol cans, and alcohol, shall be stored in an area inaccessible to children.

K. Stairs shall not be accessible to children less than two years of age and children older than two years of age who are not developmentally ready to climb or descend stairs without supervision.

L. Stairs with three or more risers that do not have protective barriers or guardrails on each side shall not be accessible to children over the age of two years.

M. Decks, porches, lofts, or balconies that do not have protective barriers or guardrails shall not be accessible to children.

N. Windows and doors used for ventilation shall be securely screened.

O. Machinery in operation, such as lawnmowers and power tools shall be inaccessible to the children in care.

22VAC40-665-250. Hazardous substances and other harmful agents.

A. Potentially poisonous substances, materials, and supplies such as, but not limited to, cleaning agents, disinfectants, deodorizers, plant care chemicals, pesticides, and petroleum distillates shall be stored away from food in areas inaccessible to children.

B. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils or single-service articles and stored separately from food.

C. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate their contents.

D. The vendor shall ensure that:

1. No person smokes or uses an electronic smoking device:

a. Indoors while children are in care,

b. In a vehicle when children are transported, or

c. Outdoors in an area occupied by children.

2. No caregiver is under the effects of medication that impairs functioning, alcohol, or illegal drugs.

22VAC40-665-260. Bathroom area and furnishings.

A. Each bathroom area provided for children shall:

1. Be within a contained area, readily available, and within the home used by the children;

2. Have toilets that are flushable;

3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F; and

4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children.

B. There shall be a toilet chair or an adult-sized toilet with a platform or steps and adapter seat available to a child being toilet trained.

[~~C. School age children of the opposite sex shall not use the same bathroom at the same time.~~]

22VAC40-665-270. Play areas.

A. The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards.

B. A nonclimbable barrier at least four feet high, such as a fence or impenetrable hedge, shall surround outdoor play areas located within 30 feet of hazards including lakes, ponds, railroad tracks, and streets with speed limits in excess of 25 miles per hour or with heavy traffic.

C. Stationary outdoor playground equipment shall not be installed over concrete, asphalt, or any other hard surface.

D. Trampolines shall not be used during the hours children are in care.

22VAC40-665-280. Supervision and ratio requirements.

A. A caregiver shall be physically present on site and provide direct care and supervision of each child at all times. Direct care and supervision of each child includes:

1. Awareness of and responsibility for each child in care, including being near enough to intervene if needed; and

2. Monitoring of each sleeping infant in one of the following ways:

a. By placing each infant for sleep in a location where the infant is within sight and hearing of a caregiver;

b. By in-person observation of each sleeping infant at least once every 15 minutes; or

c. By using a baby monitor.

B. Caregivers shall actively supervise each child during outdoor play to minimize the risk of injury to a child.

C. A caregiver may allow only school age children to play outdoors while the caregiver is indoors if the caregiver can hear the children playing outdoors.

D. No child less than five years of age or a child older than five years who lacks the motor skills and strength to avoid accidental drowning, scalding, or falling while bathing shall be left unattended while in the bathtub.

E. An additional caregiver will be needed to supervise the number of children at a given time when, using the following point system, 16 points is [~~reached~~ exceeded]:

1. Children from birth through 15 months of age count as four points each;

2. Children from 16 months through 23 months of age count as three points each;

3. Children from two years through four years of age count as two points each;

4. Children from five years through nine years of age count as one point each; and

5. Children who are 10 years of age and older count as zero points.

F. A vendor's own children and resident children under eight years of age shall count in point calculations.

G. In accordance with § 63.2-100 of the Code of Virginia, no family day home shall care for more than four children less than the age of two years, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.

22VAC40-665-290. Supervision near water.

A. Access to the water in aboveground swimming pools shall be prevented by locking and securing the ladder in place or storing the ladder in a place inaccessible to children.

B. A nonclimbable barrier at least four feet high such as, but not limited to, a fence or impenetrable hedge shall surround outdoor play areas located within 30 feet of drowning hazards such as, but not limited to, inground swimming or wading pools, ponds, or fountains not enclosed by safety fences.

C. Portable wading pools without integral filter systems shall:

1. Be emptied after use by each group of children, rinsed, and filled with clean water, or more frequently as necessary; and

2. When not in use during the vendor's hours of operation, be emptied, sanitized, and stored in a position to keep them clean and dry.

D. Portable wading pools shall not be used by children who are not toilet trained.

E. Hot tubs, spas, and whirlpools shall:

1. Not be used by children in care, and

2. Covered with safety covers while children are in care.

F. The level of supervision by caregivers required and the point system as outlined in 22VAC40-665-280 shall be maintained while the children are participating in swimming or wading activities.

G. Caregivers shall have a system for accounting for all children in the water.

H. Outdoor swimming activities shall occur only during daylight hours.

I. When one or more children are in water that is more than two feet deep in a pool, lake, or other swimming area on or off the premises of the family day home:

1. A minimum of least two caregivers shall be present and able to supervise the children; and

2. An individual currently certified in basic water rescue, community water safety, water safety instruction, or lifeguarding shall be on duty supervising the children participating in swimming or wading activities at all times.

22VAC40-665-300. Daily activities.

A. Infants and toddlers shall be provided with opportunities to:

1. Interact with caregivers and other children in the home in order to stimulate language development;

2. Play with a wide variety of safe, age-appropriate toys;

3. Receive individual attention from caregivers including holding, cuddling, talking, and reading; and

4. Reach, grasp, pull up, creep, crawl, and walk to develop motor skills.

B. Infants and toddlers shall spend no more than 30 continuous minutes during waking hours, with the exception of mealtimes, confined in a crib, play pen, high chair, or other confining piece of equipment. The intervening time period between such confinements shall be at least one hour.

C. Infants shall be placed on their backs when sleeping or napping unless otherwise ordered by a written statement signed by the child's physician.

D. An infant, toddler, or preschool child who falls asleep in a play space other than his own crib, cot, mat, or bed shall be moved promptly to his designated sleeping space if the safety or comfort of the infant, toddler, or preschool child is in question.

E. School age children shall be allowed to nap if needed, but not forced to do so.

F. Infants shall be protected from older children.

22VAC40-665-310. Behavioral guidance.

A. Behavioral guidance shall be constructive in nature, age and stage appropriate, and intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, caregivers shall model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, and support and:

1. Respect personal privacy;

2. Respect differences in cultural, ethnic, and family background;

3. Encourage decision-making abilities;

4. Promote ways of getting along;

5. Encourage independence and self-direction; and

6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;

2. It shall not be used with infants or toddlers;

3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of a caregiver; and

4. The child shall not be left alone inside or outside the home while separated from the group.

22VAC40-665-320. Forbidden actions.

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment [~~,~~ ;]

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used for their intended purpose with children preschool age or younger [~~,~~ ;]

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

22VAC40-665-330. Parental involvement and notifications.

A. The caregiver shall notify the parent immediately if a child is lost, requires emergency medical treatment, sustains a serious injury, or dies.

B. The caregiver shall notify the parent by the end of the day of any known minor injuries.

C. The caregiver shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Caregiver present and treatment;

5. Date and time when parents were notified; and

6. Caregiver and parent signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion of [~~the prohibited~~ any] food [identified in the written care plan required in 22VAC40-665-170 B 12] even if a reaction did not occur.

E. Parents shall be informed of the vendor's emergency preparedness plan.

F. Caregivers shall promptly inform parents when persistent behavioral problems are observed and identified.

G. Caregivers shall provide information weekly to parents about the child's health, development, behavior, adjustment, or needs.

H. Parents shall be informed of the reason for a child's termination from care.

I. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the care of the vendor, pursuant to § 63.2-1813 of the Code of Virginia.

J. When children at the family day home have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor's having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

22VAC40-665-340. Furnishings, equipment, and materials.

A. Furnishings, materials, and equipment used for child care shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. If play yards, portable cribs, or mesh-sided cribs are used for sleeping or napping, they shall meet the requirements of subsections H through L of this section.

F. Cribs shall be provided for children from birth through 12 months of age and for children 12 months of age or older who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods and shall not be occupied by more than one child at a time.

G. Cots, rest mats, or beds shall be provided for children 12 months of age or older and shall not be occupied by more than one child at a time.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR [~~Parts~~ Part] 1219 [~~, 1220 and 1500~~]).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than two years of age while sleeping or resting, including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

M. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants older than five months of age or infants who are able to push up on their hands and knees.

N. Crib sides shall always be up and the fastenings secured when a child is in the crib.

O. Use of double-deck cribs is prohibited.

22VAC40-665-350. Bedding and linens for use while sleeping or resting.

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material that can be cleaned and sanitized.

22VAC40-665-360. Preventing the spread of disease.

A. A child shall not be allowed to attend the family day home for the day if he has:

1. A temperature over 101°F;

2. Recurrent vomiting or diarrhea; or

3. Symptoms of a communicable disease.

B. If all children in care are from a single family unit, the caregiver may choose not to exclude a child who is ill.

C. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the family day home as soon as possible after the signs or symptoms are observed; and

2. The child shall remain in a designated quiet area until leaving the family day home.

D. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

22VAC40-665-370. Hand washing and toileting procedures.

A. When hand washing, the following shall apply:

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.

2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.

3. Caregivers shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the caregiver uses the toilet, after any contact with body fluids, before feeding or helping children with feeding, and before preparing or serving food or beverages.

4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. A child shall not be left unattended on a changing table during diapering.

C. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

D. During each diaper change or after toileting accidents, the child's genital area shall be thoroughly cleaned with a moist disposable wipe or a moist, clean individually assigned cloth if the child is allergic to disposable wipes.

E. The diapering surface shall be:

1. Separate from the kitchen, food preparation areas, or surfaces used for children's activities;

2. Nonabsorbent and washable; and

3. Cleaned and sanitized after each use.

F. Soiled disposable diapers and wipes shall be disposed of in a leak-proof or plastic-lined storage system that is either foot operated or used in such a way that neither the caregiver's hand nor the soiled diaper or wipe touches the exterior surface of the storage system during disposal.

G. When cloth diapers are used, a separate leak-proof storage system as specified in subsection F of this section shall be used.

H. Children five years of age and older shall be permitted privacy when toileting.

I. Caregivers shall respond promptly to a child's request for toileting assistance.

J. Toilet chairs, when used, shall be emptied promptly, cleaned, and sanitized after each use.

22VAC40-665-380. General requirements for medication administration.

A. Prescription and nonprescription medications shall be given to a child:

1. According to the home's written medication policies, and

2. Only with written authorization from the parent.

B. The vendor may administer prescription medication that would normally be administered by a parent or guardian to a child provided:

1. The medication is administered by a caregiver who meets the requirements of 22VAC40-665-230 I and J;

2. The caregiver administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The caregiver administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

C. The vendor may administer nonprescription medication provided the medication is:

1. Administered by a caregiver 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

D. Nonprescription medication shall not be used beyond the expiration date of the product.

E. Medications for children in care shall be stored separately from medications for household members and caregivers.

F. When needed, medication shall be refrigerated.

G. When medication is stored in a refrigerator used for food, the medications shall be stored together in a container or in a clearly defined area away from food.

H. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and medications for caregivers and household members, shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall be inaccessible to the children.

I. The vendor shall keep a record of prescription and nonprescription medication given children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and type of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of the caregiver administering the medication;

5. Any adverse reactions; and

6. Any medication error.

22VAC40-665-390. First aid and emergency supplies.

A. The following emergency supplies shall be in the family day home, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:

a. Scissors;

b. Tweezers;

c. Gauze pads;

d. Adhesive tape;

e. Bandages, assorted types and sizes;

f. An antiseptic cleansing solution and pads;

g. Digital thermometer; and

h. Single-use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and

2. One working, battery-operated radio.

22VAC40-665-400. Procedures for emergencies.

A. The vendor shall have a written emergency preparedness plan that addresses caregiver responsibility and home readiness with respect to emergency evacuation, relocation, lockdown, and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including fire, severe storms, flooding, tornadoes, loss of utilities, earthquakes, intruders, violence on or near the premises, chemical spills, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Sounding of alarms (evacuation, intruder, shelter-in-place such as for tornado or chemical hazard);

2. Emergency communication to include:

a. Notification of local authorities (fire and rescue, law enforcement, emergency medical services, poison control, health department, etc.), parents, and local media; and

b. Availability and primary use of communication equipment;

3. Evacuation and relocation procedures, including:

a. Assembly points, designated relocation site, head counts, primary and secondary means of egress, and complete evacuation of the buildings;

b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

c. Securing of essential documents (attendance record, parent contact information, etc.) and special health care supplies to be carried off site on immediate notice;

d. Method of communication after the evacuation; and

e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child [~~.~~ ;]

4. Shelter-in-place, including:

a. Scenario applicability, inside assembly points, head counts, and primary and secondary means of access and egress;

b. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

c. Securing essential documents (attendance record, parent contact information, etc.) and special health supplies to be carried into the designated assembly points;

d. Method of communication after the shelter-in-place; and

e. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child [~~.~~ ;]

5. Lockdown procedures, including:

a. Methods to alert caregivers and emergency responders;

b. Methods to secure the family day home and designated lockdown locations;

c. Methods to account for all children in the lockdown locations;

d. Methods of communication with parents and emergency responders;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and

f. Procedure to reunite children with a parent or authorized person designated by the parent to pick up the child [~~.~~ ;]

6. Caregiver training requirements, drill frequency, and plan review and update; and

7. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

C. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

22VAC40-665-410. Emergency response drills.

A. The emergency response drills shall be practiced as follows:

1. Evacuation procedures shall be practiced at least monthly;

2. Shelter-in-place procedures shall be practiced twice a year; and

3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

22VAC40-665-420. Nutrition and food services.

A. Vendors shall schedule appropriate times for snacks or meals, or both, depending on the hours of operation and time of the day.

B. Drinking water shall be accessible to all children.

C. When meals or snacks are provided by the vendor, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and in sufficient portions.

2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

D. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;

2. The vendor shall have extra food or provisions to obtain food to serve to children so they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

E. Tables and high chair trays shall be cleaned and sanitized daily and before and after each use for feeding.

F. Food shall be prepared, stored, served, and transported in a clean and sanitary manner.

G. When food is prepared to which a child is allergic, the caregiver shall take steps to avoid cross contamination in order to prevent an allergic reaction.

H. [~~Caregivers shall not serve prohibited food to a child.~~ A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in 22VAC40-665-170 B 12.]

22VAC40-665-430. Special feeding needs.

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby food jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Caregivers shall feed semisolid food with a spoon unless written instructions from a physician or physician's designee state differently.

22VAC40-665-440. Transportation and field trips.

A. If the vendor provides transportation, the vendor shall be responsible for the care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;

2. The vehicle's seats shall be attached to the floor;

3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;

4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and

5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;

2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one caregiver or the driver always remains in the vehicle when children are present;

5. The caregiver has a list of the names of the children being transported;

6. The caregiver has a copy of each child's emergency contact information; and

7. An allergy care plan and information as specified in 22VAC40-665-170 B 12 shall be carried.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Caregivers shall verify that all children have been removed from the vehicle at the conclusion of any trip.

22VAC40-665-450. Animals and pets.

A. Animals shall not be allowed on any surfaces where food is prepared or served.

B. A pet or animal present at the home, indoors or outdoors, shall be in good health and show no evidence of carrying any disease.

C. Dogs or cats, where allowed, shall be vaccinated for rabies and shall be treated for fleas, ticks, or worms as needed.

D. The vendor shall maintain documentation of the current rabies vaccination for dogs and cats.

E. Caregiver shall closely supervise children when children are exposed to animals.

F. Children shall be instructed on safe procedures to follow when in close proximity to animals, for example, not to provoke or startle them or remove their food.

G. Monkeys, ferrets, reptiles, psittacine birds (birds of the parrot family), or wild or dangerous animals shall not be in areas accessible to children during the hours children are in care.

H. Animal litter boxes, toys, food dishes, and water dishes shall be inaccessible to children.

22VAC40-665-460. Evening and overnight care.

A. Caregivers shall remain awake until all children are asleep and shall sleep on the same floor level as the children in care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to requirements in 22VAC40-665-350 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are six years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. Quiet activities shall be available immediately before bedtime.

Part III
Subsidy Program Vendor Requirements for Child Day Centers

22VAC40-665-470. Definitions; subsidy program requirements for child day center vendors.

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

"Accessible" means capable of being entered, reached, or used.

"Adult" means any individual 18 years of age or older.

"Age and stage appropriate" means the curriculum, environment, equipment, and adult-child interactions are suitable for the ages of the children within a group and the individual needs of any child.

"Age groups":

1. "Infant" means a child from birth to 16 months.

2. "Toddler" means a child from 16 months up to two years.

3. "Preschool" means a child from two years up to the age of eligibility to attend public school, five years by September 30.

4. "School age" means a child eligible to attend public school, age five or older by September 30 of that same year. Four-year-old or five-year-old children included in a group of school children may be considered school age during the summer months if the children will be entering kindergarten that year.

"Attendance" means the actual presence of an enrolled child.

"Body fluids" means urine, feces, vomit, saliva, blood, nasal discharge, eye discharge, and injury or tissue discharge.

"Center" means a child day center.

"Child" means any individual less than 18 years of age.

"Child day center" means a child day program offered to (i) two or more children less than 13 years of age in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child experiencing homelessness" means a child who lacks a fixed, regular, and adequate nighttime residence and includes:

1. A child who is living in a car, park, public space, abandoned building, substandard housing, bus or train station, or similar settings;

2. A child who is sharing the housing of other persons due to loss of housing, economic hardship, or a similar reason (sometimes referred to as "doubled-up");

3. A child who is living in a motel, hotel, trailer park, or camping grounds due to lack of alternative adequate accommodations;

4. A child who is living in congregate, temporary, emergency, or transitional shelters;

5. A child who is abandoned in a hospital;

6. A child who is living in a primary nighttime residence that is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; and

7. A child who is a migratory child as defined in § 1309 of the Elementary and Secondary Education Act of 1965, P.L. No. 89-10 (20 USC § 6399) who qualifies as homeless because he is living in circumstances described in subdivisions 1 through 6 of this definition.

"Child with special needs or disability" means (i) a child with a disability as defined in § 602 of the Individuals with Disabilities Education Act (20 USC § 1401); (ii) a child who is eligible for early intervention services under Part C of the Individuals with Disabilities Education Act (20 USC § 1431 et seq.); (iii) a child who is less than 13 years of age and who is eligible for services under § 504 of the Rehabilitation Act of 1973 (29 USC § 794); and (iv) a child with a documented developmental disability, intellectual disability, emotional disturbance, sensory or motor impairment, or significant chronic illness who requires special health surveillance or

specialized programs, interventions, technologies, or facilities.

"Cleaned" means treated in such a way as to remove dirt and debris by scrubbing and washing with soap and water or detergent solution and rinsing with water or the use of an abrasive cleaner on inanimate surfaces.

"Communicable disease" means a disease caused by a microorganism (bacterium, virus, fungus, or parasite) that can be transmitted from person to person via an infected body fluid or respiratory spray, with or without an intermediary agent (such as a louse or mosquito) or environmental object (such as a table surface). Some communicable diseases are reportable to the local health authority.

"Department" means the Virginia Department of Social Services.

"Department representative" means an employee or designee of the Virginia Department of Social Services, acting as the authorized agent of the Commissioner of the Virginia Department of Social Services.

"Evacuation" means movement of occupants out of the building to a safe area near the building.

"Evening care" means care provided after 7 p.m. but not through the night.

"Group size" means the number of children assigned to a staff member or team of staff members occupying an individual room or area.

"Inaccessible" means not capable of being entered, reached, or used.

"Lockdown" means a situation where children are isolated from a security threat and access within and to the center is restricted.

"Overnight care" means care provided after 7 p.m. and through the night.

"Over-the-counter or nonprescription medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamins and mineral supplements.

"Parent" means a parent by blood, marriage, or adoption and also means a legal guardian or other person standing in loco parentis.

"Sanitized" means treated in such a way as to remove bacteria and viruses from inanimate surfaces through first cleaning and secondly using a solution of one tablespoon of bleach mixed with one gallon of water and prepared fresh daily or using a sanitizing solution approved by the U.S. Environmental Protection Agency. The surface of the item is sprayed or dipped into the sanitizing solution and then allowed to air dry for a minimum of two minutes or according to the sanitizing solution instructions.

"Serious injury" means a wound or other specific damage to the body, such as unconsciousness; broken bones; dislocation; a deep cut requiring stitches; poisoning; concussion; or a foreign object lodged in eye, nose, ear, or other body orifice.

"Shaken baby syndrome" or "abusive head trauma" means a traumatic injury that has been inflicted upon the brain of an infant or young child. The injury can occur during violent shaking causing the child's head to whip back and forth, the brain to move about, and blood vessels in the skull to stretch and tear.

"Shelter-in-place" means movement of occupants of the building to designated protected spaces within the building.

"Staff" means administrative, activity, and service personnel, including the vendor when the vendor is an individual who works in the center, any persons counted in the staff-to-children ratios, or any persons working with a child without sight and sound supervision of a staff member.

"Vendor" means a legally operating child care provider who is approved by the department to participate in the Child Care Subsidy Program. Multiple facilities or sites operated by the same person, entity, or organization are considered separate vendors.

"Vendor agreement" means the agreement between the department and a vendor that must be entered into and signed by all vendors before child care payments paid to the vendor under the Child Care Subsidy Program can be authorized.

"Volunteer" means a person who works at the center and:

1. Is not paid for services provided to the center;

2. Is not counted in the staff-to-children ratios; and

3. Is in sight and sound supervision of a staff member when working with a child.

Any unpaid person not meeting this definition shall be considered "staff" and shall meet staff requirements.

22VAC40-665-480. (Reserved.)

22VAC40-665-490. Purpose and applicability.

The standards in this part apply to child day centers that are applying to participate in the Child Care Subsidy Program. The purpose of these standards is to protect children who are less than the age of 13 years, less than the age of 18 years and physically or mentally unable to care for themselves, or are under court supervision and who are separated from their parents during part of the day by:

1. Ensuring that the activities, services, and facilities of centers participating in the Child Care Subsidy Program are conducive to the well-being of children; and

2. Reducing risks to the health and safety of such children in the child care environment.

22VAC40-665-500. Operational responsibilities.

A. The vendor shall ensure compliance with the standards in this part, the terms of the vendor agreement, and all relevant federal, state, or local laws and regulations.

B. Pursuant to § 63.2-1725 of the Code of Virginia, the vendor shall ensure that the applicant and any staff who is or will be involved in the day-to-day operations of the center or is or will be alone with, in control of, or supervising one or more of the children [~~shall not be guilty of an offense, as defined in § 63.2-1719~~ (i) has not been convicted of any barrier crime as defined in § 19.2-392.02] of the Code of Virginia [and (ii) is not the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth].

C. The vendor shall ensure that the center does not exceed the capacity of children cared for as allowed by law or regulation.

D. When at least one child receives care for compensation, all children who are in care and supervision count in the capacity of children being cared for. When children 13 years or older are enrolled in the program and receive supervision in the program, they shall be counted in the number of children receiving care, and the vendor shall comply with the standards in this part for these children.

E. The vendor shall inform all staff who work with children of children's allergies, sensitivities, and dietary restrictions.

F. The vendor shall maintain, in a way that is accessible to all staff who work with children, a current written list of all children's allergies, sensitivities, and dietary restrictions. This list shall be dated and kept confidential in each room or area where children are present.

G. Religious exempt child day centers that are exempt from licensure in accordance with § 63.2-1716 of the Code of Virginia shall be in compliance with all requirements of § 63.2-1716.

22VAC40-665-510. General recordkeeping; reports.

A. Staff records and children's information shall be treated confidentially.

B. For each group of children, the vendor shall maintain a written hard copy record of daily attendance that documents the arrival and departure of each child in care as it occurs.

C. Records, reports, and information required by this part may be kept as hard copy or electronically, except attendance records must be maintained pursuant to subsection B of this section, and shall be maintained and made accessible to department representatives for five years after termination of services or separation from employment unless specified otherwise.

22VAC40-665-520. Children's records.

A. The vendor shall maintain and keep at the center a record for each enrolled child, which shall be made accessible to the department's representative upon request.

B. The child's record shall include the following:

1. Child's full name, nickname (if any), sex, address, and birthdate;

2. Name, home address, and telephone number for each parent who has custody;

3. Name, address, and telephone number for each custodial parent's place of employment or school attendance, if applicable;

4. Name, address, and telephone number of at least one person designated by the parent to contact in case of an emergency and the parent cannot be reached;

5. Information on allergies, including food allergies, intolerances to food, medication, or other substances, and actions to be taken in an emergency situation; information on other physical problems; pertinent developmental information; and any special accommodations needed, if applicable;

6. Names of persons other than the custodial parent who are authorized to pick up the child;

7. Immunization records for the child received on or before the child's first day of attendance, except that children experiencing homelessness may provide such records within 90 days of enrollment;

8. Written authorization for emergency medical care should an emergency occur and the parent cannot be located immediately unless the parent presents a written objection for the provision of medical treatment on religious or other grounds;

9. Written authorization to administer prescription or nonprescription medications if the vendor administers medication;

10. Special care instructions, including recommendations for the care and activities of a child with special needs, exception to infant being fed on demand, etc.;

11. A written allergy care plan for each child with a diagnosed food allergy, to include instructions from a physician regarding the food to which the child is allergic and steps to be taken in the event of a suspected or confirmed allergic reaction;

12. Proof of a child's identity and age as stated in § 63.2-1809 of the Code of Virginia;

13. Permission to transport child if the vendor provides transportation;

14. Permission for field trips;

15. Permission for swimming or wading activities to include a parent's statement of the child's swimming ability, if applicable;

16. A written statement that the vendor will notify the parent when the child becomes ill and that the parent will arrange to have the child picked up as soon as possible if so requested by the vendor;

17. Any written agreements between the parent and the vendor; and

18. Documentation of the enrollment of a child experiencing homelessness enrolled under provisions of 22VAC40-665-560 A 2.

22VAC40-665-530. Staff records.

The following records shall be kept for each staff person:

1. Name, address, verification of age, and date of employment or volunteering.

2. Documentation that background checks were completed, including:

a. The department's letter indicating eligibility to be hired provided by the department or the department's contractor indicating:

(1) Satisfactory results of the [~~Virginia State Police name search for criminal history~~ fingerprint-based national criminal background check]; and

(2) Satisfactory results of the [Virginia] Child Protective Services Central Registry check.

b. [Satisfactory results of the child abuse and neglect registry from any other state in which the individual has resided in the preceding five years.

c.] The individual's sworn statement or affirmation as to whether the individual has ever been:

(1) The subject of a founded complaint of child abuse or neglect within or outside the Commonwealth; or

(2) Convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth.

c. The vendor shall have documentation for any individual who begins employment or service after the vendor agreement has been signed in the file within 30 days of the individual's beginning date of employment or service. [~~However, the vendor shall not be deemed to be in violation of this section if documentation is maintained that the checks were submitted within the first seven days of employment or service and the results are not available due to an administrative delay beyond the vendor's control.~~]

d. Documentation of subsequent background checks conducted every [~~three~~ five] years.

3. Tuberculosis screening results.

4. Certifications of first aid and cardiopulmonary resuscitation and other certifications as required by the responsibilities held by the staff member.

5. Documentation that training required in 22VAC-665-580 has been completed, including the date completed, the total hours of the session, and the names of the trainer and of any sponsoring organization.

6. Date of separation from employment where applicable.

7. Documentation of the health requirements under 22VAC40-665-540.

22VAC40-665-540. Health requirements for staff.

A. Staff shall be evaluated by a health professional and be issued a statement that the individual is determined to be free of communicable tuberculosis (TB). [~~Such statement shall be submitted not later than 21 days after employment or volunteering and shall have been completed within 12 months prior to or 21 days after employment or volunteering~~ Documentation of the screening shall be submitted at the time of employment and prior to coming into contact with children. The documentation shall have been completed within the last 30 calendar days of the date of employment and be signed by a physician, physician's designee, or an official of the local health department].

B. Subsequent TB screenings are required at least every two years from the date of the initial screening, or more frequently if recommended by a physician.

C. The vendor or the department's representative may require a report of examination by a licensed physician or mental health professional if there are indications that a staff member's physical or mental health may endanger the health, safety, or well-being of children in care.

D. A staff who is determined by a licensed physician or mental health professional to show an indication of a physical or mental condition that may endanger the health, safety, or well-being of children in care or that would prevent the performance of duties shall be removed immediately from contact with children and food served to children until the condition is cleared as evidenced by a signed statement from the physician or mental health professional.

22VAC40-665-550. Reports.

Reports shall be filed and maintained as follows:

1. The vendor shall inform the department's inspector as soon as practicable, but not more than one business day, of the following:

a. The death of a child while under the vendor's supervision;

b. A missing child when local authorities have been contacted for help; and

c. The suspension or termination of all child care services for more than 24 hours as a result of an emergency situation and any plans to resume child care.

2. The vendor shall inform the department's representative as soon as practicable, but not more than two business days, of any [~~serious~~] injury to a child while under the vendor's supervision [when a referral is made for treatment from a medical professional].

3. Any suspected incident of child abuse or neglect shall be reported in accordance with § 63.2-1509 of the Code of Virginia.

22VAC40-665-560. Immunizations for children.

A. The vendor shall obtain documentation that each child has received the immunizations required by the State Board of Health before the child can attend the center.

1. The vendor may allow a child to attend contingent upon a conditional enrollment. Documentation related to the child's conditional enrollment shall be maintained in the child's record.

"Conditional enrollment" means the enrollment of a child for a period of 90 days contingent upon the child having received at least one dose of each of the required vaccines and the child possessing a plan from a physician or local health department for completing his immunization requirements within the ensuing 90 calendar days. If the child requires more than two doses of the hepatitis B vaccine, the conditional enrollment period, for hepatitis B vaccine only, shall be 180 calendar days.

2. If a child is experiencing homelessness and does not have documentation of the required immunizations, the vendor may allow the child to attend during a grace period of no more than 90 days to allow the parent or guardian time to obtain documentation of the required immunizations.

B. The vendor shall obtain documentation of additional immunizations once every six months for children less than two years of age.

C. Pursuant to subsection C of § 22.1-271.2 of the Code of Virginia and 12VAC5-110-110, documentation of immunizations is not required for any child whose:

1. Parent submits an affidavit to the vendor, on the form entitled "Certification of Religious Exemption," stating that the administration of immunizing agents conflicts with the parent's or child's religious tenets or practices, or

2. A physician or a local health department states on a Department of Health-approved form that one or more of the required immunizations may be detrimental to the child's health, indicating the specific nature and probable duration of the medical condition or circumstance that contraindicates immunization.

22VAC40-665-570. General qualifications.

A. The vendor must be at least 18 years of age.

B. The vendor, and any staff who are left alone with children, shall be capable of communicating effectively both orally and in writing as applicable to the job responsibility and be capable of communicating with emergency personnel.

C. Staff must be at least 16 years of age; however no staff person less than 18 years of age may [~~be alone with children or~~] administer medication.

1. Staff members less than 18 years of age shall be under [~~direct sight and sound~~] supervision of an adult staff member [who is present in the facility].

2. Adult staff members shall supervise no more than two volunteers or staff members less than 18 years of age at any given time.

22VAC40-665-580. Staff training and development.

A. Prior to approval as a subsidy vendor, the vendor or designee shall complete the Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and the mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

B. Within the first 90 days of employment or subsidy vendor approval all staff who work directly with children shall complete Virginia Preservice Training for Child Care Staff, which shall include training on the following topics and training modules:

1. Building and physical premises safety;

2. Emergency preparedness and response planning;

3. Prevention of sudden infant death syndrome (SIDS) and safe sleep practices;

4. Administration of medication, consistent with standards of parental consent;

5. Prevention of shaken baby syndrome and abusive head trauma (AHT);

6. Prevention of and response to emergencies due to food and allergic reactions;

7. Recognizing child abuse and neglect and reporting responsibilities;

8. Preventing the spread of disease, including immunization requirements;

9. Handling and storage of hazardous materials and appropriate disposal of diapers and other items contaminated by body fluids;

10. Transportation;

11. Foundations of child development;

12. Inclusion: Exploring the meaning and mindset;

13. Oral health; and

14. Introduction to the Child Care Subsidy Program.

C. All staff who work directly with children and who are employed prior to [~~(insert the effective date of this regulation)~~ October 17, 2018,] shall complete Virginia Preservice Training for Child Care Staff sponsored by the Department of Social Services, to include all of the topics applicable to new staff, within [~~(insert a date 90 days from the effective date of this regulation)~~ January 16, 2019]. This training may count for staff annual training requirements in subsection H of this section.

D. Orientation training for staff shall be completed on the following facility specific topics prior to the staff member working alone with children and within seven days of the date of employment or the date of subsidy vendor approval:

1. Playground safety procedures;

2. Responsibilities for reporting suspected child abuse or neglect;

3. Confidentiality;

4. Supervision of children, including arrival and dismissal procedures;

5. Procedures for action in the case of lost or missing children, ill or injured children, and medical and general emergencies;

6. Medication administration procedures, if applicable;

7. Emergency preparedness plan as required in 22VAC40-665-770 B;

8. Prevention of shaken baby syndrome and abusive head trauma including coping with crying babies and fussy or distraught children;

9. Prevention of sudden infant death syndrome and use of safe sleeping practices;

10. Staff who work with children that have food allergies shall receive training in preventing exposure to foods to which the child is allergic, preventing cross contamination, and recognizing and responding to any allergic reactions; and

11. Transportation.

E. All staff who work directly with children shall have within [~~30~~ 90] days of the date of employment or 90 days from subsidy vendor approval:

1. Current certification in cardiopulmonary resuscitation (CPR) appropriate to the age of children in care. The training shall include an in-person competency demonstration; and

2. Current certification in first aid. However, staff who is a registered nurse or licensed practical nurse with a current license from the Board of Nursing shall not be required to obtain first aid certification.

During the [~~30 day or~~] 90-day period, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

F. All staff who work directly with children and who are employed by an approved vendor prior to [~~(insert the effective date of this regulation)~~ October 17, 2018,] must complete CPR and first aid training as required by this section within [~~(insert a date 90 days from the effective date of this regulation)~~ January 16, 2019] . During this 90 days, there must always be at least one staff with current CPR and first aid training present during operating hours of the center.

G. CPR and First Aid training may count toward the annual training hours required in subsection H of this section if

documentation for training as required in subdivision 5 of 22VAC40-665-530 is maintained.

H. Staff who work directly with children shall, in addition to preservice and orientation training required in subsections A through D of this section, annually attend at least 16 hours of training and staff development activities, [~~including~~ to include] the department's health and safety update course. Training shall be related to child safety, child development, the function of the center, and any required department sponsored training.

I. To safely perform medication administration practices, whenever a vendor agrees to administer prescribed medications, the (i) administration shall be performed by a staff member who has satisfactorily completed a training program for this purpose developed by the Board of Nursing and taught by a registered nurse, licensed practical nurse, nurse practitioner, physician assistant, doctor of medicine or osteopathic medicine, or pharmacist; or (ii) administration shall be performed by a staff member who is licensed by the Commonwealth of Virginia to administer medications.

The administration of medicines by a vendor may be limited by policy to:

1. Prescription medications;

2. Over-the-counter or nonprescription medications; or

3. No medications.

J. Staff required to have the training specified in subsection I of this section shall be retrained at three-year intervals.

K. There shall be at least one staff on duty who has obtained within the last three years instruction in performing a daily health observation of children. Daily health observation training shall include:

1. Components of daily health check for children;

2. Inclusion and exclusion of a child when the child is exhibiting symptoms that indicate possible illness;

3. Description of how diseases are spread and procedures and methods for reducing the spread of disease;

4. Information concerning the Virginia Department of Health Notification of Reportable Diseases pursuant to 12VAC5-90-80 and 12VAC5-90-90, also available from the local health department and the website of the Virginia Department of Health; and

5. Staff occupational health and safety practices in accordance with Occupational Safety and Health Administration's bloodborne pathogens regulation (29 CFR 1910.1030).

22VAC40-665-590. Certifications by other agencies; requirements prior to initial approval.

Before approval of a vendor agreement and before use of newly constructed, renovated, remodeled, or altered buildings or sections or buildings, written documentation of the following shall be provided by the vendor to the department representative:

1. Certification by the authority having jurisdiction that each building meets building and fire codes or that a plan of correction has been approved; and

2. Certification from the local health department, or approval of a plan of correction, for meeting requirements for:

a. Water supply;

b. Sewage disposal system; and

c. Food service, if applicable.

3. Any building that is currently zoned or certified for school occupancy and houses a public or private school during the school year shall be considered to have met the requirements of subdivision 1 of this section when housing a center serving only children two and a half years of age or older.

22VAC40-665-600. Certification by other agencies; requirements subsequent to initial approval.

A. The vendor shall provide the department representative an annual fire inspection report from the appropriate fire official having jurisdiction. If a center is located in a building currently housing a public or private school, the school's annual fire inspection report shall be accepted.

B. The vendor shall provide the department representative an annual certification from the Health Department, or approvals of a plan of correction, for meeting requirements for:

1. Water supply;

2. Sewage disposal system; and

3. Food service, if applicable.

22VAC40-665-610. Building or facility maintenance.

A. Areas and equipment of the center, inside and outside, shall be maintained in a clean, safe, and operable condition. Unsafe conditions shall include splintered, cracked or otherwise deteriorating wood; chipped or peeling paint; visible cracks, bending or warping, rusting, or breakage of any equipment; head entrapment hazards; protruding nails, bolts, or other components that entangle clothing or skin; and unstable heavy equipment, furniture, or other items that a child could pull down on himself.

B. Inside areas occupied by children shall be maintained no lower than 68°F and shall not exceed 80°F unless fans or other cooling systems are in use.

C. In areas used by children of preschool age or younger, the following shall apply:

1. Fans, when used shall be out of reach of children and cords shall be secured so as not to create a hazard.

2. Electrical outlets shall have protective covers that are of a size that cannot be swallowed by children.

D. Building equipment shall include an in-service, nonpay telephone.

22VAC40-665-620. Hazardous substances and other harmful agents.

A. Hazardous substances such as cleaning materials, insecticides, and pesticides shall be kept in a locked place using a safe locking method that prevents access by children. If a key is used, the key shall not be accessible to children. Cleaning supplies to clean and sanitize the diapering area or toilet chairs do not need to be kept locked during diapering or toilet training time as long as they are inaccessible to children.

B. Pesticides or insecticides shall not be stored in areas used by children or in areas used for food preparation or storage.

C. Cleaning and sanitizing materials shall not be located above food, food equipment, utensils, or single-use articles and shall be stored separate from food.

D. If hazardous substances are not kept in original containers, the substitute container shall clearly indicate its contents.

E. Smoking and the use of electronic smoking devices shall be prohibited in the interior of a center, in vehicles when children are being transported, and if permitted outside, shall be prohibited in the presence of children.

22VAC40-665-630. Restroom area and furnishings.

A. The facility shall have at least two toilets and two sinks.

B. The facility shall have at least one toilet and one sink for every 30 children.

C. Each restroom area provided for children shall:

1. Be within a contained area, readily available, and within the building used by the children;

2. Have toilets that are flushable;

3. Have sinks located near the toilets and that are supplied with running warm water that does not exceed 120°F;

4. Be equipped with soap, toilet paper, and disposable towels or an air dryer within reach of the children; and

5. A restroom for school age children that contains more than one toilet shall have at least one toilet enclosed.

22VAC40-665-640. Play areas.

The vendor shall ensure that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment. The requirements of this section shall not prohibit child day center programs providing care to school age children at a location that is currently approved by the Department of Education or recognized as a private school by the State Board of Education for school occupancy and that houses a public or private school during the school years from permitting school age children to use outdoor play equipment and areas approved for use by students of the school during school hours.

22VAC40-665-650. Supervision, ratio, and group size requirements.

A. The vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following ratio requirements are maintained:

1. For children from birth to the age of 16 months: one staff member for every four children;

2. For children 16 months to two years: one staff member for every five children;

3. For two-year-old children: one staff member for every eight children;

4. For children from three years to the age of eligibility to attend public school, five years by September 30: one staff member for every 10 children;

5. For children from age of eligibility to attend public school through eight years: one staff member for every 18 children; and

6. For children from nine years through 12 years: one staff member for every 20 children.

B. Except during meals or snacks, the designated rest period, [evening and overnight sleep time,] outdoor play, [~~transportation and~~] field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, the vendor, except those exempt from licensure operated by or under the auspices of a religious institution, shall ensure that the following group size requirements are maintained at all times:

1. For children from birth to the age of 16 months: the maximum group size is 12 children;

2. For children 16 months to two years: the maximum group size is 15 children;

3. For two-year-old children: the maximum group size is 24 children; and

4. For children from three years to the age of eligibility to attend public school, five years by September 30: the maximum group size is 30 children.

Group size requirements in this section do not apply to children school age eligible through 12 years of age [or when a variance has been granted by the Division of Licensing Programs].

C. Facilities operated by, or under the auspices of, a religious institution and exempt from licensure shall employ supervisory personnel as set forth in § 63.2-1716 of the Code of Virginia and shall ensure the following ratio requirements are maintained:

1. For children from birth to two years: one staff member for every four children;

2. For children from two years to six years: one staff member for every 10 children; and

3. For children from six years up to 12 years: one staff member for every 25 children.

D. With the exception of when meals or snacks are served, the designated rest period, [evening and overnight sleep time,] outdoor play, [~~transportation~~] and field trips, special group activities, or during the first and last hour of operation when the vendor operates more than six hours per day, facilities operated by, or under the auspices, of a religious institution and are exempt from licensure shall ensure the following group size requirements are maintained at all times:

1. For children from birth to two years: the maximum group size is 12 children;

2. For children from two years to six years: the maximum group size is 30 children; and

3. For children who are six years up to 12 years of age: group size requirements in this section do not apply.

Vendors operated by, or under the auspices, of a religious institution must have a staff member present for each age group of children as defined in § 63.2-1716 of the Code of Virginia. Example: one staff must be present for any of the children age birth to 24 months, an additional staff member must be present if any of the children are ages two to six years, and a third staff member must be present if any children are ages six to 12 years.

E. The vendor shall develop and implement a written policy and procedure that describes how the vendor will ensure that each group of children receives care by consistent staff or team of staff members.

F. Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children.

G. When children are in ongoing mixed age groups, the staff-to-children ratio and group size applicable to the youngest child in the group shall apply to the entire group.

H. Children less than 10 years of age shall always be within actual sight and sound supervision of staff, except that staff need only be able to hear a child who is using the restroom provided that:

1. There is a system to ensure that individuals who are not staff members or persons allowed to pick up a child in care do not enter the restroom area while in use by children; and

2. Staff checks on a child who has not returned from the restroom after five minutes. Depending on the location and layout of the restroom, staff may need to provide intermittent sight supervision of the children in the restroom area during this five-minute period to assure the safety of children and to provide assistance to children as needed.

I. Children 10 years of age and older shall be within actual sight and sound supervision of staff except when the following requirements are met:

1. Staff can hear or see the children (video equipment, intercom systems, or other technological devices shall not substitute for staff being able to directly see or hear children);

2. Staff are nearby so that they can provide immediate intervention if needed;

3. There is a system to ensure that staff know where the children are and what they are doing;

4. There is a system to ensure that individuals who are not staff members or persons allowed to pick up children in care do not enter the areas where children are not under sight supervision; and

5. Staff provides sight and sound supervision of the children at variable and unpredictable intervals not to exceed 15 minutes.

J. When the outdoor activity area is not adjacent to the center, there shall be at least two staff members in the outdoor activity area whenever one or more children are present.

K. Staff shall not allow a child to leave the center unsupervised.

L. For vendors operated by, or under the auspices of, a religious institution and exempt from licensure, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 24 months of age may be double the number of children to each staff required by subsection C of this section if:

1. The staff person [~~is within sight and sound of~~ shall be present in the same space as] sleeping children;

2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and

3. An additional person is present to help.

[Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-child ratio shall meet the ratios as required in subsection C of this section.]

M. For vendors not operated by, or under the auspices of, a religious institution, during designated rest periods and the designated sleep period of evening and overnight care programs, the ratio of staff to children over 16 months of age may be double the number of children to each staff required by subsection A of this section if:

1. The staff person [~~is within sight and sound~~ shall be present in the same space as] sleeping children;

2. Staff counted in the overall rest period ratio are on the same floor as the sleeping or resting children and available in case of emergency; and

3. An additional person is present to help.

[Once at least half of the children in the resting room or area are awake and off their mats or cots, the staff-to-child ratio shall meet the ratios as required in subsection A of this section.]

22VAC40-665-660. Supervision near water.

A. Indoor swimming pools on the center premises shall be kept locked when the pool is not in use. Outdoor swimming pools located on the center premises shall be enclosed by safety fences and gates that are in compliance with the applicable edition of the Virginia Uniform Statewide Building Code (13VAC5-63) and shall be kept locked when the pool is not in use.

B. The staff-to-children ratios required by 22VAC40-665-650 shall be maintained while children are participating in swimming or wading activities.

1. Notwithstanding the staff-to-children ratios already indicated, at no time shall there be fewer than two staff members supervising the activity.

2. The designated certified lifeguard shall not be counted in the staff-to-children ratios.

C. If a pool, lake, or other swimming area has a water depth of more than two feet, a certified lifeguard holding a current certificate shall be on duty supervising the children participating in swimming or wading activities at all times when one or more children are in the water.

D. The vendor shall have emergency procedures and written safety rules for swimming or wading or follow the posted rules of public pools that are:

1. Posted in the swimming area when the pool is located on the premises of the center; and

2. Explained to children participating in swimming or wading activities.

E. Staff shall have a system for accounting for all children in the water.

22VAC40-665-670. Daily activities.

A. The variety of daily activities for all age groups shall be age and stage appropriate and provide opportunities for teacher-directed, self-directed, and self-chosen tasks and activities, a balance of active and quiet activities, indoor and outdoor activities, individual and group activities, and curiosity and exploration.

B. For a child who cannot move without help, staff shall offer to change the place and position of the child at least every 30 minutes or more frequently depending on the child's individual needs. For an awake infant not playing on the floor or ground a change in play space shall be provided by staff at least every 30 minutes or more often as determined by the individual infant's needs.

C. There shall be a flexible daily schedule for infants based on their individual needs.

D. Infants shall be allowed to sleep when needed.

1. When an infant is placed in his crib, he shall be placed on his back (supine).

2. When an infant is able to easily turn over from the back (supine) to the belly (prone) position and is placed in his crib, he shall still be put on his back but allowed to adopt whatever position he prefers. This applies unless otherwise directed by the infant's physician or health care provider in writing.

3. Resting or sleeping infants shall be individually checked every 15 to 20 minutes.

E. Infants shall be provided comfort when needed.

F. Staff shall provide frequent opportunities for infants to creep, crawl, toddle, and walk.

G. Infants who cannot turn themselves over and are awake shall be placed on their stomachs for at least 30 minutes each day to facilitate upper body strength and to address misshapen head concerns.

H. Infants shall be protected from older children.

22VAC40-665-680. Behavioral guidance.

A. Behavioral guidance shall be constructive in nature and age and stage appropriate and shall be intended to redirect children to appropriate behavior and resolve conflicts.

B. In order to promote the child's physical, intellectual, emotional, and social well-being and growth, staff shall

model desired, appropriate behavior and interact with the child and one another to provide needed help, comfort, support and:

1. Respect personal privacy;

2. Respect differences in cultural, ethnic, and family background;

3. Encourage decision-making abilities;

4. Promote ways of getting along;

5. Encourage independence and self-direction; and

6. Use consistency in applying expectations.

C. If time-out is used as a discipline technique:

1. It shall be used sparingly and shall not exceed one minute for each year of the child's age;

2. It shall not be used with infants or toddlers;

3. The child shall be in a safe, lighted, well-ventilated place and within sight and sound of staff; and

4. The child shall not be left alone inside or outside the center while separated from the group.

22VAC40-665-690. Forbidden actions.

The following actions or threats thereof are forbidden:

1. Physical punishment, including striking a child, roughly handling or shaking a child, restricting movement through binding or tying, forcing a child to assume an uncomfortable position, or using exercise as a punishment;

2. Enclosure in a small, confined space or any space that the child cannot freely exit himself; however this does not apply to the use of equipment such as cribs, play yards, high chairs, and safety gates when used for their intended purpose with children preschool age or younger;

3. Punishment by another child;

4. Withholding or forcing of food, water, or rest;

5. Verbal remarks that are demeaning to the child;

6. Punishment for toileting accidents; and

7. Punishment by applying unpleasant or harmful substances.

22VAC40-665-700. Parental involvement and notifications.

A. The vendor shall notify the parent immediately if a child is lost, requires emergency medical treatment or sustains a serious injury, or dies.

B. The vendor shall notify the parent by the end of the day of any known minor injuries.

C. The vendor shall maintain a written record of children's serious and minor injuries in which entries are made the day of occurrence. The record shall include the following:

1. Date and time of injury;

2. Name of injured child;

3. Type and circumstance of the injury;

4. Staff present and treatment;

5. Date and time when parents were notified; and

6. Staff and parent signatures or two staff signatures.

D. Parents shall be notified immediately of any confirmed or suspected allergic reactions and the ingestion [of] or contact with [~~prohibited~~ any] food [identified in the written care plan required in 22VAC40-665-520 B 11] even if a reaction did not occur.

E. Staff shall promptly inform parents when persistent behavioral problems are observed and identified.

F. Parents shall be provided at least semiannually in writing information on their child's behavior, development, adjustment, and needs. This requirement does not apply to programs that operate 12 weeks or less a year.

G. Parents shall be informed of the reason for a child's termination from care.

H. A custodial parent shall be admitted to any child day program. Such right of admission shall apply only while the child is in the child day program, in accordance with § 63.2-1813 of the Code of Virginia.

I. When children at the center have been exposed to a communicable disease listed in the Department of Health's current communicable disease chart, the parents shall be notified within 24 hours or the next business day of the vendor having been informed unless forbidden by law. Children's exposure to life threatening diseases shall be reported to parents immediately.

J. Parents shall be informed of the vendor's emergency preparedness plan.

22VAC40-665-710. Furnishings, equipment, and materials.

A. Furnishings, materials, and equipment shall be age and stage appropriate for the children.

B. Children shall be protected from materials that could be swallowed or present a choking hazard. Toys or objects less than 1-1/4 inches in diameter and less than two inches in length shall be kept out of reach of children less than three years of age.

C. If combs, toothbrushes, or other personal articles are used, they shall be individually assigned.

D. Disposable products shall be used once and discarded.

E. Play yards and portable cribs where used shall meet the Juvenile Products Manufacturers Association (JPMA) and the American Society for Testing and Materials (ASTM) requirements and shall not be used after recalled.

F. Cribs, cots, rest mats, or beds shall be provided for children during the designated rest periods and shall not be occupied by more than one child at a time.

1. Cribs shall be provided for children from birth through 12 months of age and for children older than 12 months of age who are not developmentally ready to sleep on a cot, rest mat, or bed during the designated rest periods.

2. Cots, rest mats, or beds shall be provided for children older than 12 months of age.

G. There shall be at least 12 inches of space between occupied cribs, cots, beds, and rest mats.

H. Full-size cribs shall:

1. Meet the current Consumer Product Safety Commission Standards (16 CFR [~~Parts~~ Part] 1219 [~~, 1220, and 1500~~]).

2. Have mattresses that fit snugly next to the crib so that no more than two fingers can be inserted between the mattress and the crib.

I. Pillows and filled comforters shall not be used by children less than 12 months of age while sleeping or resting including quilts, sheepskins, or stuffed toys.

J. Cribs shall be placed where objects outside the crib such as electrical cords or cords from blinds, curtains, etc. are not within reach of infants or toddlers.

K. Use of bumper pads shall be prohibited.

L. Toys or objects hung over an infant in a crib and crib gyms that are strung across the crib may not be used for infants older than five months of age or infants who are able to push up on their hands and knees.

M. Crib sides shall always be up, and the fastenings secured when a child is in the crib.

N. Double decker cribs shall not be used.

22VAC40-665-720. Bedding and linens for use while sleeping or resting.

A. Linens shall be assigned for individual use.

B. Pillows when used shall be assigned for individual use and covered with pillow cases.

C. Mattresses when used shall be covered with a waterproof material which can be cleaned and sanitized.

22VAC40-665-730. Preventing the spread of disease.

A. A child shall not be allowed to attend the center for the day if he has:

1. A temperature over 101°F;

2. Recurrent vomiting or diarrhea; or

3. Symptoms of a communicable disease.

B. If a child needs to be excluded according to subsection A of this section, the following shall apply:

1. Arrangements shall be made for the child to leave the center as soon as possible after the signs or symptoms are observed; and

2. The child shall remain in a designated quiet area until leaving the center.

C. When any surface has been contaminated with body fluids, it shall be cleaned and sanitized.

22VAC40-665-740. Hand washing and toileting procedures.

A. When hand washing, the following shall apply.

1. Children's hands shall be washed with soap and running water or disposable wipes before and after eating meals or snacks.

2. Children's hands shall be washed with soap and running water after toileting and any contact with blood, feces, or urine.

3. Staff shall wash their hands with soap and running water before and after helping a child use the toilet or changing a diaper, after the staff member uses the toilet, after any contact with body fluids, and before feeding or helping children with feeding, and before preparing or serving food or beverages.

4. If running water is not available, a germicidal cleansing agent administered per manufacturer's instruction may be used.

B. Diapering requirements are as follows:

1. The diapering area shall be accessible and within the building used by children.

2. There shall be sight and sound supervision for all children when a child is being diapered.

3. The diapering area shall have:

a. Access to a sink with running warm water not to exceed 120°F;

b. Soap, disposable towels, and single-use gloves such as surgical or examination gloves;

c. A nonabsorbent surface for diapering or changing shall be used. For children younger than three years, this

surface shall be a changing table or countertop designated for changing;

d. The appropriate disposal container as required by subdivision 6 of this subsection; and

e. A leak-proof covered receptacle for soiled linens.

4. When a child's clothing or diaper becomes wet or soiled, the child shall be cleaned and changed immediately upon discovery.

5. Disposable diapers shall be used unless the child's skin reacts adversely to disposable diapers.

6. Disposable diapers shall be disposed in a leak-proof or plastic-lined storage system that is either foot-operated or used in such a way that neither the staff member's hand nor the soiled diaper touches an exterior surface of the storage system during disposal.

7. When cloth diapers are used, a separate leak-proof storage system as specified in subdivision 6 of this subsection shall be used.

8. The diapering surface shall be used only for diapering or cleaning children, and it shall be cleaned with soap and at least room temperature water and sanitized after each use. Tables used for children's activities or meals shall not be used for changing diapers. Individual disposable barriers may be used between each diaper change. If the changing surface becomes soiled, the surface shall be cleaned and sanitized before another child is diapered.

9. Staff shall ensure the immediate safety of a child during diapering.

C. For every 10 children in the process of being toilet trained, there shall be at least one toilet chair or one child-sized toilet, or at least one adult sized toilet with a platform or steps and adapter seat.

1. The location of these items shall allow for sight and sound supervision of children in the classroom if necessary for the required staff-to-children ratios to be maintained.

2. Toilet chairs shall be emptied promptly and cleaned and sanitized after each use.

22VAC40-665-750. General requirements for medication administration.

A. The vendor may administer prescription medication to a child with written permission of the parent, provided:

1. The medication is administered by a staff who meets the requirements of 22VAC40-665-580 I and J;

2. The staff administers only those drugs that were dispensed from a pharmacy and maintained in the original, labeled container; and

3. The staff administers drugs only to the child identified on the prescription label in accordance with the prescriber's instructions pertaining to dosage, frequency, and manner of administration.

B. The vendor may administer over-the-counter or nonprescription medication to a child with written permission from the parent, provided the medication is:

1. Administered by a staff 18 years of age or older;

2. Labeled with the child's name;

3. In the original container with the manufacturer's direction label attached; and

4. Given only at the dose, duration, and method of administration specified on the manufacturer's label for the age or weight of the child needing the medication.

C. When needed, medication shall be refrigerated.

D. Medication, except for those prescriptions designated otherwise by written physician's order, including refrigerated medication and staff's personal medication, shall be kept in a locked place using a safe locking method that prevents access by children.

E. The vendor shall keep a record of prescription and nonprescription medication given to children, which shall include the following:

1. Name of the child to whom medication was administered;

2. Amount and name of medication administered to the child;

3. The day and time the medication was administered to the child;

4. Name of staff administering the medication;

5. Any adverse reaction; and

6. Any medication error.

22VAC40-665-760. First aid and emergency supplies.

A. The following emergency supplies shall be on each floor of each building used by children, accessible to outdoor play areas, on field trips, in vehicles used for transportation, and wherever children are in care:

1. A first aid kit that contains at a minimum:

a. Scissors;

b. Tweezers;

c. Gauze pads;

d. Adhesive tape;

e. Bandages, assorted types and sizes;

f. An antiseptic cleansing solution and pads;

g. Digital thermometer; and

h. Single-use gloves such as surgical or examination gloves.

2. An ice pack or cooling agent.

B. Each first aid kit shall be easily accessible to staff but not to children.

C. The following nonmedical emergency supplies shall be required:

1. One working, battery-operated flashlight; and

2. One working, battery-operated radio.

22VAC40-665-770. Procedures for emergencies.

A. The vendor shall have a written emergency preparedness plan that addresses staff responsibility and facility readiness with respect to emergency evacuation, relocation, lockdown and shelter-in-place procedures. The plan shall address the most likely to occur emergency scenarios, including severe storms, loss of utilities, natural disaster, chemical spills, intruder, and violence on or near the facility, and facility damage or other situations that may require evacuation, lockdown, or shelter-in-place.

B. The emergency preparedness plan shall contain procedural components for:

1. Evacuation procedures, including:

a. Scenario applicability;

b. Methods to alert staff and emergency responders;

c. Designated primary and secondary routes out of the building;

d. Designated assembly points away from the building;

e. Designated relocation site;

f. Methods to ensure all children are evacuated from the building, and if necessary, moved to a relocation site;

g. Methods to account for all children at the assembly point and relocation site;

h. Method of communication with parents after the evacuation or relocation;

i. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during evacuation or relocation;

j. Method to ensure essential documents, including emergency contact information, attendance records, medications, and supplies are taken to the assembly point and relocation site; and

k. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

2. Shelter-in-place procedures, including:

a. Scenario applicability, inside assembly points, primary and secondary means of access and egress;

b. Method to account for all children at the safe locations;

c. Method to ensure essential documents (attendance records, emergency contact information, etc.) and special health supplies are carried into the designated assembly points;

d. Method of communication after the shelter-in-place;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during shelter-in-place; and

f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

3. Lockdown procedures, to include facility containment, including:

a. Methods to alert staff and emergency responders;

b. Methods to secure the facility and designated lockdown locations;

c. Methods to account for all children in the lockdown locations;

d. Methods of communication with parents and emergency responders;

e. Accommodations or special requirements for infants, toddlers, and children with special needs to ensure their safety during lockdown; and

f. Procedures to address reuniting children with a parent or an authorized person designated by the parent to pick up the child.

4. Staff training requirements, drill frequency, and plan review and update.

5. Continuity of operations procedures to ensure that essential functions are maintained during an emergency.

6. Other special procedures developed with local authorities.

C. Emergency evacuation and shelter-in-place procedures or maps shall be posted in a location conspicuous to staff and children on each floor of each building.

D. A 911 or local dial number for police, fire, and emergency medical services and the number of the regional poison control center shall be posted in a visible and conspicuous place.

E. The vendor shall ensure that all staff receives training regarding emergency evacuation, relocation, shelter-in-place,

and lockdown procedures on an annual basis and at the end of each plan update.

F. The vendor shall ensure that the emergency plans are reviewed with any volunteers who work more than six hours per week prior to volunteering and on an annual basis.

22VAC40-665-780. Emergency response drills.

A. The emergency response drills shall be practiced, at a minimum:

1. Evacuation procedures shall be practiced at least monthly;

2. Shelter-in-place procedures shall be practiced twice a year; and

3. Lockdown procedures shall be practiced at least annually.

B. The vendor shall maintain a record of the dates of the practice drills for one year. For vendors offering multiple shifts, the simulated drills shall be divided evenly among the various shifts.

22VAC40-665-790. Nutrition and food services.

A. Drinking water shall be accessible to all children.

B. When vendors provide meals or snacks, the following shall apply:

1. Vendors offering both meals and snacks shall serve a variety of nutritious foods and sufficient portions.

2. Children three years of age or younger shall not be offered foods that are considered to be potential choking hazards.

C. When food is brought from home, the following shall apply:

1. The food container shall be clearly labeled in a way that identifies the owner;

2. The vendor shall have extra food or shall have provisions to obtain food to serve to children so that they can have an appropriate snack or meal if they forget to bring food from home, bring an inadequate meal or snack, or bring perishable food; and

3. Unused portions of opened food shall be discarded by the end of the day or returned to the parent.

D. Food shall be prepared, stored, transported, and served in a clean and sanitary manner.

E. When food is prepared to which a child in care is allergic, staff shall take steps to avoid cross contamination in order to prevent an allergic reaction.

F. [~~Staff shall not serve prohibited food to a child~~ A child with a diagnosed food allergy shall not be served any food identified in the written care plan required in 22VAC40-665-520 B 11].

G. Tables and high chair trays shall be sanitized before and after each use for feeding and cleaned at least daily.

22VAC40-665-800. Special feeding needs.

A. High chairs, infant carrier seats, or feeding tables shall be used for children less than 12 months who are not held while being fed.

B. When a child is placed in an infant seat, high chair, or feeding table, the protective belt shall be fastened securely.

C. Bottle fed infants who cannot hold their own bottles shall be held when fed. Bottles shall not be propped or used while the child is in his designated sleeping location.

D. Infants shall be fed on demand or in accordance with parental instructions.

E. Prepared infant formula shall be refrigerated, dated, and labeled with the child's name if more than one infant is in care.

F. Heated formula and baby food shall be stirred or shaken and tested for temperature before serving to children.

G. Milk, formula, or breast milk shall not be heated or warmed directly in a microwave. Water for warming milk, formula, or breast milk may be heated in a microwave.

H. Formula or breast milk shall not remain unrefrigerated for more than two hours and may not be reheated.

I. Prepared baby food not consumed during that feeding by an infant may be used by that same infant later in the same day, provided that the food is not served out of the baby jar and is labeled with the child's name, dated, and stored in the refrigerator; otherwise, it shall be discarded or returned to the parent at the end of the day.

22VAC40-665-810. Transportation and field trips.

A. If the vendor provides transportation, the vendor shall be responsible for care of the child from the time the child boards the vehicle until returned to the parent or person designated by the parent.

B. Drivers must be 18 years of age or older and possess a valid driver's license to operate the vehicle being driven.

C. Any vehicle used by the vendor for the transportation of children shall meet the following requirements:

1. The vehicle shall be manufactured for the purpose of transporting people seated in an enclosed area;

2. The vehicle's seats shall be attached to the floor;

3. The vehicle shall be insured with at least the minimum limits established by Virginia state statutes as required by § 46.2-472 of the Code of Virginia;

4. The vehicle shall meet the safety standards set by the Department of Motor Vehicles and shall be kept in satisfactory condition to assure the safety of children; and

5. If volunteers supply personal vehicles, the vendor is responsible for ensuring that the requirements of this subsection are met.

D. The vendor shall ensure that during transportation of children:

1. Virginia state statutes about safety belts and child restraints are followed as required by §§ 46.2-1095 through 46.2-1100 of the Code of Virginia, and the stated maximum number of passengers in a given vehicle is not exceeded;

2. The children remain seated and each child's arms, legs, and head remain inside the vehicle;

3. Doors are closed properly and locked unless locks were not installed by the manufacturer of the vehicle;

4. At least one staff member or the driver always remains in the vehicle when children are present; and

5. Staff has a list of the names of the children being transported and allergy care plans, if necessary.

E. When entering and leaving vehicles, children shall enter and leave the vehicle from the curb side of the vehicle or in a protected parking area or driveway.

F. Children shall cross streets at corners or crosswalks or other designated safe crossing points if no corner or crosswalk is available.

G. Staff shall verify that all children have been removed from the vehicle at the conclusion of any trip.

22VAC40-665-820. Animals and pets.

Animals that are kept on the premises of the center shall be vaccinated, if applicable, against diseases that present a hazard to the health or safety of children.

22VAC40-665-830. Evening and overnight care.

A. All supervision requirements apply during evening and overnight care.

B. For evening care, beds with mattresses or cots with at least one inch of dense padding shall be used by children who sleep longer than two hours and are not required to sleep in cribs.

C. For overnight care, beds with mattresses or cots with at least two inches of dense padding shall be used by children who are not required to sleep in cribs.

D. In addition to 22VAC40-665-720 about linens, bedding appropriate to the temperature and other conditions of the rest area shall be provided.

E. When children are eight years of age or older, boys and girls shall have separate sleeping areas.

F. For vendors providing overnight care, an operational tub or shower with heated and cold water shall be provided.

G. When bath towels are used, they shall be assigned for individual use.

H. For children in evening and overnight care, quiet activities and experiences shall be available immediately before bedtime.

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, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (22VAC40-665)

[~~Child Care Subsidy Program Child Care Center Vendor Agreement, 032-12-0047-01 (rev. 12/2017)~~

~~Child Care Subsidy Program Family Day Home Vendor Agreement, 032-12-0046-00 (rev. 12/2017)~~]

Commonwealth of Virginia Certificate of Religious Exemption, Form CRE-1 (rev. 1992)

Commonwealth of Virginia School Entrance Health Form, MCH 213G (rev. 3/2014)

DOCUMENTS INCORPORATED BY REFERENCE (22VAC40-665)

Child Care and Development Fund (CCDF) Plan for Virginia FFY 2016-2018, effective October 1, 2015

VA.R. Doc. No. R16-4602; Filed August 29, 2018, 9:38 a.m.

Fast-Track Regulation

Title of Regulation: **22VAC40-910. General Provisions for Maintaining and Disclosing Confidential Information of Public Assistance, Child Support Enforcement, and Social Services Record (amending 22VAC40-910-20, 22VAC40-910-90, 22VAC40-910-100).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: October 17, 2018.

Effective Date: November 1, 2018.

Agency Contact: Eleanor Brown, Senior Research Associate, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7076, FAX (804) 726-7946, or email eleanor.brown@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia gives the State Board of Social Services the responsibility to make rules and regulations to carry out the purposes of social services programs. Sections 63.2-102 through 63.2-105 of the Code of Virginia pertain to confidentiality of public assistance and social services records and information.

Purpose: The language has been amended to delete or update references to regulations that have been repealed or renumbered. The goal of amending the regulation is to update and clarify it for the agency and the welfare of the public.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action merely cleans up and streamlines the existing regulation. These are minor changes that will not alter the intent or requirements of the regulation. Therefore, it is not anticipated to be controversial.

Substance: Amendments include (i) removing a condition under which client information can be disclosed that is redundant and found elsewhere in the same regulation; (ii) clarifying when nonidentifying statistical information about clients can be released; (iii) deleting regulatory provisions under 22VAC40-910-90 that refer to repealed regulations; and (iv) updating a reference to a regulation.

Issues: These changes pose no disadvantage to the public, agency, or Commonwealth. The advantage to all parties of the proposed changes to the wording is making the regulation easier to comprehend.

Small Business Impact Review Report of Findings: This fast-track rulemaking action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to: 1) add clarifying language, 2) delete redundant text and provisions that refer to repealed regulations, and 3) update a reference to a regulation that was renumbered.

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

Estimated Economic Impact. None of the proposed amendments affect rules or requirements. The changes may be beneficial nonetheless in that the rules and requirements may become clearer to the reader.

Businesses and Entities Affected. The proposed amendment potentially affects all individuals who comment on pending regulatory changes.

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

Projected Impact on Employment. The proposed amendments do not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendments do not affect the use and value of private property.

Real Estate Development Costs. The proposed amendments do not affect real estate development costs.

Small Businesses:

Definition.

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as "a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than $6 million."

Costs and Other Effects. The proposed amendments do not significantly affect costs for small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendments do not adversely affect small businesses.

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed amendments do not adversely affect other entities.

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 amendments (i) clarify existing language, (ii) delete a citation to repealed regulations, and (iii) update a citation to a regulation.

22VAC40-910-20. General provisions.

A. Except as otherwise provided in these regulations or consistent with other federal and state laws or regulations, no person shall disclose or use, or authorize, permit, or acquiesce to the use of any client information that is directly or indirectly derived from the client records of the department, agency, provider, or the State Board of Social Services. Exceptions to this provision are provided in 22VAC40-910-80, 22VAC40-910-90, and 22VAC40-910-100.

B. Protecting confidential information. All client records, which could disclose the client's identity, are confidential and must be protected in accordance with federal and state laws

and regulations. Such client information includes~~, but is not limited to~~:

1. Name, address, and any types of identification numbers assigned to the client and all individuals for whom the client receives assistance on behalf of, including ~~but not limited to~~ social security number;

2. Public assistance, child support enforcement services, or social services provided to the client;

3. Information received for verifying income and eligibility;

4. Evaluation of the client's confidential information;

5. Social and medical data about the client and all individuals for whom the client receives assistance on behalf of, including diagnoses and past histories of disease or disabilities;

6. Information received from third parties such as an employer; and

7. Information associated with processing and rendering appeals.

C. Ownership of client records.

1. Client records are the property of the department or agency. Employees and agents of the department or agency must protect and preserve such records from dissemination except as provided ~~herein~~ in this chapter.

2. Only authorized employees and agents may remove client records from the department or agency's premises.

3. The department and agency shall destroy client records pursuant to records retention schedules consistent with federal and state regulations.

D. Disclosure of client information.

1. Consent. As part of the application process for public assistance or social services, the client or legally responsible person must be informed of the need to consent to a third-party release of client information necessary for verifying his eligibility or information provided. Whenever a person or organization that is not performing one or more of the functions delineated in 22VAC40-910-80 C or does not have a legitimate interest pursuant to 22VAC40-910-100 requests client information, the person or organization must obtain written permission from the client or the legally responsible person for the release of the client information unless one of the conditions delineated in this subsection exists. A client's authorization for release of client information obtained by the department, agency, or provider also satisfies this requirement.

Client records may be released without the client's written permission ~~under the following conditions: a. A court of competent jurisdiction has ordered the production of client records and the department, agency or provider does not have sufficient time to notify the client or legally responsible person before responding to the order. b. For research purposes as provided in 22VAC40-910-50~~ if a court of competent jurisdiction has ordered the production of client records and the department, agency, or provider does not have sufficient time to notify the client or legally responsible person before responding to the order.

2. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services, and their agents shall have the discretion to release nonidentifying statistical information. A client's written permission is not required in order to release nonidentifying statistical information when such release is permissible in accordance with state and federal law and regulations.

3. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services, and their agents do not have to obtain consent from the client to obtain or review client records.

22VAC40-910-90. Confidential client information pertaining to child support enforcement.

A. Confidentiality of child support enforcement client information is assured by §§ 63.2-102 and 63.2-103 of the Code of Virginia.

B. Information may be released only for a purpose directly connected with the administration of the child support enforcement program, except as ~~herein~~ provided in this chapter or pursuant to §§ 63.2-102, 63.2-103, 63.2-1906 and 63.2-1940 of the Code of Virginia.

C. Purposes directly related to the administration of the child support enforcement program include ~~but are not limited to~~:

1. Determining the amount of child support;

2. Providing child support enforcement services; and

3. Conducting or assisting in an investigation or prosecution of a civil or criminal proceeding related to the administration of the child support enforcement program.

D. ~~The following regulatory provisions provide guidance on the release of child support enforcement client information:~~

~~1. Entities to whom the Division of Child Support Enforcement can release client information is governed by 22VAC40-880-520;~~

~~2. The release of client information to and from the Internal Revenue Service is governed by 22VAC40-880-530;~~

~~3. Request for client information from the general public is governed by 22VAC40-880-540;~~

~~4. Requests for client information from parents is governed by 22VAC40-880-550;~~

~~5. Release of health insurance information is governed by 22VAC40-880-560; and~~

~~6. Release of client records to law enforcement agencies and Commonwealth's and county or city attorneys is governed by 22VAC40-880-520 B~~

Release of health insurance information is governed by 22VAC40-880-560.

22VAC40-910-100. Confidential client information pertaining to social services programs.

A. Confidentiality of client information of social services programs is assured by §§ 63.2-104 and 63.2-105 of the Code of Virginia.

B. Releasing confidential social services information.

1. The Commissioner of the Virginia Department of Social Services, the State Board of Social Services, and their agents shall have access to all social services client records pursuant to § 63.2-104 of the Code of Virginia.

2. Social services client records must be confidential and can only be released to persons having a legitimate interest in accordance with federal and state laws and regulations pursuant to § 63.2-104 of the Code of Virginia. Section 63.2-104 of the Code of Virginia does not apply to the disclosure of adoption records, reports, and information. The disclosure of adoption records, reports, and information is governed by § 63.2-1246 of the Code of Virginia.

3. The following statutory and regulatory provisions provide guidance on the definition of legitimate interest as applied to specific social services programs:

a. Adult Protective Services client records can be released to persons having a legitimate interest pursuant to ~~22VAC40-740-50 B~~ 22VAC30-100-50.

b. Child Protective Services Client Records and Information Disclosure:

(1) Child protective services client records can be released to persons having a legitimate interest pursuant to § 63.2-105 A of the Code of Virginia.

(2) The public has a legitimate interest to limited information about child abuse or neglect cases that resulted in a child fatality or near fatality. Pursuant to the Child Abuse and Prevention Treatment Act (CAPTA), as amended (P.L. 108-36 (42 USC § 5106a)) states must have provisions that allow for public disclosure of the findings or information about the case of child abuse or neglect that has resulted in a child fatality or near fatality. Accordingly, agencies must release the following information to the public, providing that nothing disclosed would be likely to endanger the life, safety, or physical or emotional well-being of a child or the life or safety of any other person; or that may compromise the integrity of a Child Protective Services investigation, or a civil or criminal investigation, or judicial proceeding:

(a) The fact that a report has been made concerning the alleged victim child or other children living in the same household;

(b) Whether an investigation has been initiated;

(c) The result of the completed investigation;

(d) Whether previous reports have been made concerning the alleged victim child or other children living in the same household and the dates thereof, a summary of those previous reports, and the dates and outcome of any investigations or actions taken by the agency in response to those previous reports of child abuse or neglect; and

(e) The agency's activities in handling the case.

(3) Information regarding child protective services reports, complaints, investigation and related services and follow-up may be shared with the appropriate Family Advocacy Program representative of the United States Armed Forces as provided in ~~22VAC40-720~~ 22VAC40-705-140 E, Child Protective Services Release of Information to Family Advocacy Program Representatives of the United States Armed Forces.

(4) The agency must release child protective services client records in the instances of mandatory disclosure as provided in 22VAC40-705-160. The local department may release the information without written consent.

4. Foster care client records about children in foster care or their parents can be released upon order of the court. For instance, client records may be released to the guardian ad litem and the court appointed special advocate who are appointed for a child as a result of a court order or to attorneys representing the child or the child's parents.

VA.R. Doc. No. R19-5164; Filed August 23, 2018, 10:33 a.m.

STATE CORPORATION COMMISSION

AT RICHMOND, AUGUST 28, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00059

Ex Parte: In the matter
concerning the implementation by
Appalachian Power Company d/b/a
American Electric Power-Virginia
of a pilot program for the deployment of
electric power storage batteries pursuant to
Enactment Clause Nos. 9 and 10 of
Senate Bill 966

and

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00060

Ex Parte: In the matter
concerning the implementation by
Virginia Electric and Power
Company d/b/a Dominion Energy Virginia
of a pilot program for the deployment of
electric power storage batteries pursuant to
Enactment Clause Nos. 9 and 10 of
Senate Bill 966

ORDER FOR COMMENTS ON DRAFT GUIDELINES

On April 20, 2018, the State Corporation Commission ("Commission") established these dockets in its Order Directing Comments ("Order Directing Comments") herein for the purpose of receiving comments from Appalachian Power Company ("APCo"), Dominion Energy Virginia ("DEV") and any other interested party regarding pilot programs for the deployment of electric power storage batteries. These pilot programs were established pursuant to provisions within the Chapter 296 of the 2018 Acts of Assembly ("Act").[1] The Order Directing Comments further directed DEV and APCo to submit comments (and permitted interested parties to submit comments) concerning any rules or guidelines such utilities or interested parties believe necessary for the general administration of the pilot programs.

On June 19, 2018, DEV and APCo jointly filed comments in both dockets herein suggesting that the Commission adopt guidelines for the administration of these pilot programs in lieu of a formal rulemaking. Attached to their joint comments, the utilities provided a set of proposed draft guidelines ("draft guidelines") to serve as the basis for the Commission's guidelines. The draft guidelines, inter alia, define the scope of "battery energy storage systems" ("BESS"); outline information to be furnished to the Commission regarding each proposal to deploy such storage systems in conjunction with these pilot programs; and contain utility reporting requirements including (i) written notice by these electric utilities to the Commission prior to placing a BESS into service as part of a pilot program, and (ii) annual reports by these electric utilities to the Commission concerning the status of each pilot program. Comments were also received from Cliona Mary Robb, in her capacity as Chair of the Virginia Solar Energy Development and Energy Storage Authority. No additional comments were received in response to the Order Directing Comments.

The Commission Staff's ("Staff") Action Brief filed in these dockets states that the guidelines jointly proposed by DEV and APCo are generally compliant with the requirements outlined in Enactment Clauses 9 and 10 of the Act. However, as outlined in its Action Brief, the Staff has made a number of revisions to the draft guidelines as submitted by APCo and DEV. The Staff recommends that the Commission issue an Order providing notice of these draft guidelines, as revised by the Staff, and allow an opportunity for DEV and APCo, and other interested parties to submit comments thereon.

NOW THE COMMISSION, upon consideration of the foregoing, will receive comments on the draft guidelines, as revised by the Staff and attached hereto, from interested persons before formally establishing Commission guidelines pursuant to the Act. Comments on the draft guidelines may be filed in this docket on or before October 1, 2018. We will also direct the Commission's Division of Public Utility Regulation to provide copies of this Order and the draft guidelines by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) Comments on the draft guidelines attached hereto shall be filed on or before October 1, 2018. Interested persons wishing to comment or propose modifications or supplements to the draft guidelines shall file an original and fifteen (15) copies of such comments or proposals with Joel H. Peck, Clerk, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to file comments electronically may do so on or before October 1, 2018, by following the instructions on the Commission's website: http://www.scc.virginia.gov/case. Compact disks or any other form of electronic storage medium may not be filed with the comments. All such comments shall refer to Case Nos. PUR-2018-00059 and PUR-2018-00060.

(2) Copies of the draft guidelines and other documents filed in this docket are also available for interested persons to review in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main

Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: http://www.scc.virginia.gov/case.

(3) The Commission's Division of Public Utility Regulation shall transmit electronically or by mail a copy of this Order and draft guidelines to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

(4) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: Joseph K. Reid, III, Esquire, McGuireWoods LLP, Gateway Plaza, 800 East Canal Street, 14th Floor, Richmond, Virginia 23219; Mark O. Webb, General Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219; Noelle J. Coates, Senior Counsel, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215; Cliona Mary Robb, Esquire, 3006 Seminary Avenue, Richmond, Virginia 23227; and C. Meade Browder, Jr., Senior Assistant Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]The Act, signed into law by the Governor of Virginia on March 9, 2018, became effective July 1, 2018. At the direction of the Virginia Code Commission, Enactment Clauses 9 and 10 of the Act establishing this pilot program were codified as § 56-585.1:6 of the Code of Virginia.

GUIDELINES REGARDING ELECTRIC POWER STORAGE BATTERY PILOT PROGRAMS

A. Purpose

The Commission is establishing these guidelines pursuant to Enactment Clause Nos. 9 and 10 of the Grid Transformation and Security Act of 2018, Chapter 296 of the 2018 Virginia Acts of Assembly, regarding pilot programs for electric power storage batteries (the "Pilot Programs").[1] Specifically, Enactment Clause No. 10 provides that the Commission shall establish such general guidelines as may be necessary for its administration of the Pilot Program by December 1, 2018.

B. Applicability

These guidelines ("Guidelines") are applicable to each Phase I Utility and Phase II Utility, as such terms are defined in subdivision A 1 of § 56-585.1 of the Code of Virginia. In other words, these guidelines are applicable to Appalachian Power Company, the Phase I Utility and Virginia Electric and Power Company, currently doing business as Dominion Energy Virginia, the Phase II Utility.

C. Definition

"Battery energy storage systems" (the "BESS") A system that includes the battery (or batteries) and all the equipment necessary to interconnect the battery (or batteries) to the utility's electric system. This includes but is not limited to switchgear, transformers, inverters, switches, cables, wires, conductors, bus work, protection devices and systems, control devices and systems, fire protection systems, and environmental protection systems.

D. Filing

Each utility may file one or more applications to participate in the Pilot Program at different times, up to the maximum allowable capacity cap of 10 megawatts ("MW") for the Phase I Utility and 30 MW for the Phase II Utility. The utility will note and explain any information requested in these Guidelines that is not available or applicable at the time of each filing.

Any information considered to be confidential may be designated as such, filed separately, and include a request that it be treated in accordance with the Commission's Rules of Practice and Procedure, 5 VAC 5-20-10, et seq.

E. Contents of Filing

Each proposal to deploy a BESS submitted as part of the Pilot Program shall include the following information:

• Location. The location where the utility proposes to install the BESS. If the utility proposes to install a BESS at a customer premise, the utility shall provide the name and address of the customer, a description of the arrangement with the customer allowing collocation on the customer's property, and a description of the proposed ownership of the BESS.

• Capacity. The utility shall provide the capacity of the proposed BESS and the aggregate capacity of all proposals approved by the Commission under the Pilot Program for the utility.

• Technology. The utility shall specify the proposed BESS technology and the manner in which the BESS will be or has been procured.

• In-Service Date. The utility shall provide the expected date on which the proposed BESS will be placed into service. The in-service date shall serve as the start date for the BESS as part of the Pilot Program. The proposed BESS will be in service for five years unless the utility has provided notice to retire the BESS. Each proposal shall include an explanation by the utility for any proposed use of the BESS beyond the five-year duration of the Pilot Program.

• Useful Life and Decommissioning. The utility shall provide the projected useful life of the proposed BESS, including known or projected performance degradation and proposed plan for decommissioning at the end of its useful life.

• Cost. The utility shall provide the projected installation cost of the proposed BESS and a detailed analysis of the projected operation and maintenance ("O&M") cost associated with the proposed BESS. This shall include an appropriate cost metric for evaluation based on the proposed objective(s) of the BESS.

• Asset Classification. The utility shall indicate its preferred classification of the proposed BESS as a generation, transmission, or distribution asset.

• Objective. The utility shall specify the objective(s) that the specific proposal will seek to accomplish, including a description of how the specific proposal will accomplish the stated objective(s). Permissible objectives, as listed in Enactment Clause No. 9, include: (i) improved reliability of electrical transmission or distribution systems; (ii) improved integration of different types of renewable resources; (iii) deferred investment in generation, transmission, or distribution of electricity; (iv) reduced need for additional generation of electricity during times of peak demand; or (v) connection to the facilities of a customer receiving generation, transmission, and distribution service from the utility.

Metrics and Performance Data. The utility shall provide the initial metrics that will be used to determine if the proposed BESS is meeting the objective(s) that the proposal seeks to accomplish. Initial metrics may include performance and operational safety metrics.

F. Reporting

The utility shall provide written notice to the Commission within fifteen (15) business days of placing a BESS into service as part of the Pilot Program. The written notice shall include the actual capacity of the BESS placed into service and the capacity remaining available to the utility for future proposals under the Pilot Program.

Each utility shall submit to the Commission an annual consolidated report on the status of the Pilot Program by March 31 of the following year. The report shall include the aggregate capacity of Commission-approved proposals under the Pilot Program. For each approved proposal, the report shall include (i) an update on the progress of the specific proposal in meeting its objective(s), using metrics identified in the initial filing for the proposal as approved by the Commission; (ii) an update on installation cost, as well as actual and projected O&M costs; and, (iii) performance data and metrics over time, including any additional metrics developed during the course of the deployment. The report shall also discuss (i) transmission and distribution system benefits; (ii) line-loss savings; (iii) enhanced electric generation capacity; (iv) fuel cost savings; (v) ancillary services benefits; and, (vi) any readily quantifiable economic development and job creation benefits across the Commonwealth.

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[1]Enactment Clause Nos. 9 and 10 of Chapter 296 of the 2018 Virginia Acts of Assembly were codified as § 56-585.1:6 of the Code of Virginia at the direction of the Virginia Code Commission.

AT RICHMOND, AUGUST 28, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. PUR-2018-00061

Ex Parte: In the matter
concerning the implementation by
Virginia Electric and Power
Company d/b/a Dominion Energy Virginia
of a pilot aggregation program pursuant
to House Bill 1451

ORDER FOR COMMENTS ON DRAFT GUIDELINES

On April 20, 2018, the State Corporation Commission ("Commission") established this docket in its Order Directing Comments ("Order Directing Comments") herein for the purpose of receiving comments from Dominion Energy Virginia ("DEV" or "Company") and any other interested party regarding a pilot program established pursuant to the Chapter 415 of the 2018 Acts of Assembly ("Act").[1] The Act directs DEV to submit a proposal to the State Corporation Commission ("Commission") to establish a pilot program that would allow "any school in a public school division . . . that generates electricity from a wind-powered or solar powered renewable energy facility located at the school" certain enumerated options with regard to any amounts of generated electricity that exceed the school's consumption. The Act also directed the Commission, by December 1, 2018, to adopt rules or establish guidelines "as may be necessary for the general administration of the pilot program . . . ."

On June 19, 2018, DEV submitted comments and draft guidelines in response to the Order Directing Comments. The draft guidelines address, inter alia, the applicability of the Commission's net metering rules to this pilot, various charges that participating schools will continue to pay, as well as metering requirements, the treatment of renewable energy certificates, and liability insurance requirements. Comments in this docket were also filed on June 19, 2018, by WGL Energy Systems, Inc. ("WGL Energy"). WGL Energy offered comments in support of the pilot and advocated that the pilot program operate in the form of a feed-in tariff that would enable third party suppliers to participate in the development and operation of solar facilities utilized in the pilot program. No other comments were received.

The Commission Staff's ("Staff") Action Brief filed in this docket, states that the Staff is in general agreement with the draft guidelines submitted by DEV. The Action Brief also summarized (i) the Act establishing this pilot program, (ii) comments received from DEV and WGL Energy, and (iii) DEV's draft guidelines as well as further revisions made by the Company addressing questions raised by the Staff. The Staff has recommended that the Commission issue an order providing notice of the draft guidelines as now revised, and allow an opportunity for interested parties to submit comments thereon.

NOW THE COMMISSION, upon consideration of the foregoing, will receive comments on the draft guidelines attached hereto from interested persons before formally establishing Commission guidelines pursuant to the Act. Comments on the draft guidelines may be filed in this docket on or before October 1, 2018. We also direct the Commission's Division of Public Utility Regulation to provide copies of this Order and the draft guidelines by electronic transmission, or when electronic transmission is not possible, by mail, to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

Accordingly, IT IS ORDERED THAT:

(1) Comments on the draft guidelines attached hereto shall be filed on or before October 1, 2018. Interested persons wishing to comment or propose modifications or supplements to the draft guidelines shall file an original and fifteen (15) copies of such comments or proposals with Joel H. Peck, Clerk, State Corporation Commission, P.O. Box 2118, Richmond, Virginia 23218-2118. Any interested person desiring to file comments electronically may do so on or before October 1, 2018, by following the instructions on the Commission's website: http://www.scc.virginia.gov/case. Compact disks or any other form of electronic storage medium may not be filed with the comments. All such comments shall refer to Case No. PUR-2018-00061.

(2) Copies of the draft guidelines and other documents filed in this docket are also available for interested persons to review in the Commission's Document Control Center located on the first floor of the Tyler Building, 1300 East Main Street, Richmond, Virginia 23219, between the hours of 8:15 a.m. and 5 p.m., Monday through Friday, excluding holidays. Interested persons may also download unofficial copies from the Commission's website: http://www.scc.virginia.gov/case.

(3) The Commission's Division of Public Utility Regulation shall transmit electronically or by mail a copy of this Order and draft guidelines to individuals, organizations, and companies identified by Staff as potentially having an interest in this proceeding.

(4) This matter is continued for further orders of the Commission.

AN ATTESTED COPY HEREOF shall be sent by the Clerk of the Commission to: Joseph K. Reid, III, Esquire, McGuire Woods LLP, Gateway Plaza, 800 East Canal Street, 14th Floor, Richmond, Virginia 23219; Mark O. Webb, General Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, Richmond, Virginia 23219; Noelle J. Coates, Senior Counsel, American Electric Power Service Corporation, 3 James Center, 1051 East Cary Street, Suite 1100, Richmond, Virginia 23219; James R. Bacha, Esquire, American Electric Power Service Corporation, 1 Riverside Plaza, 29th Floor, Columbus, Ohio 43215; Telemac N. Chryssikos, Esquire., WGL Energy Systems, Inc., 101 Constitution Avenue, N.W., Washington, D.C. 20080; and C. Meade Browder, Jr., Senior Assistant Attorney General, 202 N. 9th Street, 8th Floor, Richmond, Virginia 23219-3424. A copy shall be delivered to the Commission's Office of General Counsel and Divisions of Public Utility Regulation and Utility Accounting and Finance.

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[1]The Act, signed into law by the Governor of Virginia on March 23, 2018, became effective July 1, 2018. At the direction of the Virginia Code Commission, the Act was codified as § 56-585.1:7 of the Code of Virginia.

PROPOSED GUIDELINES FOR PUBLIC SCHOOL EXCESS WIND OR SOLAR RENEWABLE GENERATION PILOT PROGRAM

I. Introduction

The defined terms in these proposed Pilot Program guidelines shall have the meanings provided in Paragraph III, below.

Pursuant to Ordering Paragraph (2) of the Commission's Order Directing Comments in Case No. PUR-2018-00061 and pursuant to House Bill 1451, enacted as Chapter 415 of the 2018 Acts of Assembly,[1] Virginia Electric and Power Company, d/b/a Dominion Energy Virginia, respectfully submits proposed guidelines, which, upon Commission approval, would govern the Company's Pilot Program not to exceed an aggregate of ten megawatts ("10 MW") of installed capacity, for the treatment of any Host School's excess wind or solar renewable fuel generation, as envisioned by House Bill 1451 and as described below.

The Pilot Program will allow any Host School in a public school division in the Company's Virginia service territory that generates electricity from a wind-powered or solar-powered renewable fuel generator, which is located on such Host School's premises, in an amount that exceeds the electricity consumed by such Host School to have the Company either (i) credit one or more Metered Account(s) of Target School(s) or (ii) provide a payment for such Excess Generation to the Host School.

The School Board overseeing the Host School shall have the option to direct the Company to provide compensation for the Host School's Excess Generation on an annual basis, in a manner to be determined by the School Board, as follows:

A. As the first option, the School Board could direct the Company to apportion the Host School's Excess Generation to the Metered Account(s) of Target School(s) in the same public school division, such that the generation energy charges on the electric bills of such Metered Accounts of the Target Schools would be reduced by the amount of the Excess Generation kWh apportioned to the Metered Accounts multiplied by the applicable VEPGA generation energy rate of the Target Schools;

B. Alternatively, the School Board could direct the Company to pay the Host School for its Excess Generation through a power purchase agreement at a rate pursuant to the Amended and Restated Agreement for the Provision of Electric Service to Municipalities and Counties of the Commonwealth of Virginia From Virginia Electric and Power Company entered into by the Company and VEPGA on August 1, 2014, as amended.

II. Term

The Term of the Pilot Program shall be for six (6) years. Such term shall begin on the Commencement Date and end on the 6th anniversary of the Commencement Date, which shall be the Termination Date.

III. Terms and Definitions

The terms below shall have the following definitions for the purposes of these Pilot Program guidelines:

A. "Act" – House Bill 1451 or Chapter 415 of the 2018 Acts of Assembly.

B. "Agreement" – the Amended and Restated Agreement for the Provision of Electric Service to Municipalities and Counties of the Commonwealth of Virginia From Virginia Electric and Power Company entered into by the Company and VEPGA on August 1, 2014, as amended, and any superseding agreement reached between the Company and VEPGA for Electric Service to become effective subsequent to the August 1, 2014 agreement.

C. "Commencement Date" – the commencement date for the Pilot Program, which shall be the first of the month that (i) is no less than fifteen (15) calendar days after entry of a Commission order adopting guidelines, rules, or regulations governing the Pilot Program and (ii) no more than sixty (60) calendar days after the date of such order of the Commission.

D. "Commission" – the State Corporation Commission of Virginia.

E. "Company" – Virginia Electric and Power Company, d/b/a Dominion Energy Virginia.

F. "Customer" – Any person, group of persons, association, partnership, firm or corporation purchasing Electric Service from the Company.

G. "Delivery Point" – the point where the Company's conductors for delivering Electric Service are connected to the Customer's conductors for receiving Electric Service.

H. "Distribution Service" – The delivery of electricity through the distribution facilities of the Company to the Delivery Point of a Customer.

I. "Electric Delivery Service" – Distribution Service, and the delivery of electricity under this tariff to Customers served at transmission level voltage, and related utility services, to the extent each is provided under this tariff by the Company.

J. "Electric Service" – The provision, by the Company to the Customer, of Electric Delivery Service and, to the extent provided by the Company, Electricity Supply Service and utility services. Electric Service also means, where applicable, the interconnection of electric generators with the Company.

K. "Electricity Supply Service" – The generation of electricity, or when provided together, the generation of electricity and its transmission to the distribution facilities of the Company on behalf of a Customer.

L. "Excess Generation" – the amount of electricity generated by the Host School's Renewable Generation Facility during the Host School's Net Metering Period that is in excess of the number of kilowatt-hours consumed by the Host School during the same Net Metering Period.

M. "Host School" – a public elementary, middle, or high school that (i) is a Customer of the Company, (ii) is billed under an applicable VEPGA Rate Schedule, (iii) is situated in the Company's Virginia service territory, and (iv) has a Renewable Generation Facility, located on its premises, and generates more electricity than the Host School consumes in any Net Metering Period.

N. "Metered Account" – the Company-assigned account number, (and any superseding account number(s) that the Company may assign for this same account) for a Delivery Point metered by the Company for a Target School, which was identified by the School Board to receive a portion of the Host School's Excess Generation.

O. "Person" – means any individual, sole proprietorship, corporation, limited liability company, partnership, association, company, business, trust, joint venture, or other private legal entity, the Commonwealth, or any city, town, authority or other political subdivision of the Commonwealth.

P. "Pilot Program" – the pilot program conducted by the Company pursuant to the Act.

Q. "Rate Schedule" – any of the Company's rate schedules that are included in Attachment B of the Agreement.

R. "REC" or "RECs" – one or more renewable energy certificates owned by the Host School and created by the renewable energy output of the Host School's Renewable Generation Facility.

S. "Renewable Fuel Generator" – one or more electrical generators that meet the following criteria:

1. Wind or solar power is the exclusive renewable fuel source;

2. The Host School owns and operates or has contracted with other Persons to own or operate, or both, the electrical generator(s), pursuant to the 20 VAC 5-315 Rules;

3. The electrical generator(s) is located on the Host School's premises and is connected to the Host School's wiring on the Host School's side of the interconnection with the Company;

4. The electrical generator(s) operates in parallel with the Company's distribution facilities.

T. "Renewable Generation Facility" – one or more Renewable Fuel Generators that has an aggregate installed capacity not to exceed the limitations of the 20 VAC 5-315 Rules.

U. "School Board" – the local recognized elected or appointed board or group that is responsible for public education in the same public school division in which the Host School and Target School(s) are located.

V. "Target School" – a public elementary, middle, or high school (including any public school technical center located in and only available to the public school students of the same public school division in which the Host School is located) that (i) is a Customer of the Company, (ii) is billed under an applicable VEPGA Rate Schedule, (iii) is located in the same public school division as the Host School, and (iv) has one or more Metered Accounts identified by the School Board to receive a bill credit amount based on an apportionment of the Host School's Excess Generation.

W. "Term" – the six (6)-year period during which the Pilot Program is effective, beginning with the Commencement Date and ending on the Termination Date.

X. "Termination Date" – the termination date of the Pilot Program, which will be the sixth anniversary of the Commencement Date.

Y. "VEPGA" – the Virginia Energy Purchasing Governmental Association.

Z. "20 VAC 5-315 Rules" – the Commission's Regulations Governing Net Energy Metering.

IV. Applicability and Availability

A. Pursuant to the Act and the 20 VAC 5-315 Rules[2] and pursuant to Attachment A of the Agreement, the Company's Pilot Program is applicable to any Host School which meets the following criteria:

1. The Host School must be a Net Metering Customer as defined in the 20 VAC 5-315 Rules;

2. The Host School's Renewable Generation Facility is accepted by the Company into the Pilot Program, along with any Metered Account(s) of one or more Target Schools, which have been identified by the School Board to receive an apportionment of the Excess Generation, as described in Paragraph VI, below;

3. The following provisions of the 20 VAC 5-315 Rules are not applicable to the Host School or to any Target School:

a. Agricultural Net Metering;

b. Small Agricultural Generators provisions;

c. The standby charge for residential Net Metering Customers; and

d. Option for the Host School to sign a power purchase agreement with the Company under the 20 VAC 5-315 Rules if the School Board directs the Company to apportion the Host School's Excess Generation to Metered Account(s) of Target School(s) in accordance with Paragraph I.A., above.

4. The Host School and the School Board-designated Metered Accounts of each Target School accepted into the Company's Pilot Program must purchase Electricity Supply Service from the Company during the Term of the Pilot Program.

5. Once the aggregate 10 MW alternating current installed capacity limit is reached, this Pilot Program shall be closed and no longer available to other host schools.

B. Once a Host School is accepted into the Pilot Program, in accordance with Paragraph IV.A., above, the provisions of the applicable of Paragraph I.A., or Paragraph I.B., above – but not both – will be available at the conclusion of the Host School's Net Metering Period that is in progress as of the Commencement Date of the Pilot Program.

C. The Pilot Program shall end on the Termination Date. As such, the provisions of the applicable of Paragraph I.A., or Paragraph I.B., above – but not both – shall no longer be available for the Host School's excess generation determined by the Company, in accordance with Paragraph V., below, for the Net Metering Period that is in progress as of the Termination Date of the Pilot Program. After the Termination Date, the 20 VAC 5-315 Rules shall apply to the Host School's excess generation.

V. Excess Generation

A. The Company will determine the Host School's Excess Generation pursuant to these Pilot Program guidelines.

B. The Company will calculate the Host School's Excess Generation for the most recently completed Net Metering Period during the Term of the Pilot Program. Unless the School Board directs the Company to provide compensation for the Host School's Excess Generation in accordance with either Paragraph I.A. or Paragraph I.B., above – but not both – the Company will follow the 20 VAC 5-315 Rules regarding the Host School's Excess Generation.

C. Within sixty (60) days of the effective date of the Pilot Program to the Host School, the School Board will provide the Company with the following information:

1. A list of the Metered Account(s) for one or more Target School(s) to which the Host School's Excess Generation will be apportioned;

2. The percentage of the Host School's Excess Generation to be apportioned to each Metered Account, where the sum of the percentages provided by the School Board for the Metered Accounts cannot exceed 100 percent or the total amount of the Host School's Excess Generation.

VI. Billing and Payment

A. Within sixty (60) days after the end of the Host School's most recently completed Net Metering Period and continuing annually, thereafter, for each successive Host School Net Metering Period during the Term of the Pilot Program until the Termination Date, the Company will do the following:

1. If the School Board directs the Company to apportion the Host School's Excess Generation to one or more Metered Accounts, the Company will calculate and apply a bill credit dollar amount to each Metered Account, which will receive a School-Board-designated portion of the Host School's Excess Generation, using the following formula:

TSMA_BCDA = EG * TSMA% * VEPGA_RATE

Where:

TSMA_BCDA =Target School Metered Account's Bill Credit Dollar Amount which is the amount that the Company will apply to one or more Metered Accounts designated by the School Board;

EG = Excess Generation at the end of Host School's most recently completed Net Metering Period;

TSMA% =Specified Target School Metered Account's percentage of the Host School's Excess Generation that is designated by the School Board, for the Metered Account; and

VEPGA_RATE =VEPGA Rate which is the applicable generation-related energy rate under the Electricity Supply Service Charges paragraph of the applicable, selected VEPGA Rate Schedule used to bill the Metered Account. If such generation-related energy rate has two or more blocks or is time-differentiated, the generation-related energy rate will be equal to average annual generation-related energy rate for each Metered Account for the consecutive 12-month billing period that most closely matches the Host School's Net Metering Period.

There shall be no assessment of any new service charges or fees in connection with or arising out of such crediting during the Term of the Pilot Program.

If the School Board identifies one or more Metered Accounts but does not provide the Company with the corresponding percentage(s) to apportion the Host School's Excess Generation to the Metered Account(s), or otherwise does not follow the Pilot Program guidelines, the Company will provide compensation for the Host School's Excess Generation in accordance with the 20 VAC 5-315 Rules.

2. If, alternatively, the School Board directs the Company to provide a payment to the Host School for the Excess Generation, the Company will compensate the Host School for the Excess Generation in accordance with the VEPGA Agreement.

B. For each billing month, the Host School will pay to the Company the sum of the applicable Distribution Service Charges, Electricity Supply Service Charges, standby charges mutually agreed to by the Company and VEPGA in the Agreement, and all riders applicable to the VEPGA Rate Schedule under which the Host School receives Electric Service from the Company.

C. For each billing month, the Target School will pay to the Company the sum of the applicable Distribution Service Charges, Electricity Supply Service Charges, standby charges mutually agreed to by the Company and VEPGA in the Agreement, and all riders applicable to the VEPGA Rate Schedule under which the Target School receives Electric Service from the Company.

VII. Metering Requirements

A. The Company will require the installation of an interval data recorder ("IDR") meter or an advanced metering infrastructure ("AMI") meter at the Host School's service location to measure (i) the Host School's average 30-minute interval capacity and energy consumption by half-hour during the billing month and (ii) the average 30-minute interval capacity and energy delivered to the Host School by the Host School's Renewable Generation Facility.

If the Host School's applicable selected VEPGA Rate Schedule does not otherwise require interval data metering or if the Host School is not located in the Company's "AMI footprint," the Host School agrees to pay to the Company the Company's incremental cost for the interval data metering equipment, subject to an Excess Facilities Charge mutually agreed to by the Company and VEPGA in the Agreement, during the period that the Host School participates in the Company's Pilot Program.

B. The Company will require the installation of an IDR or an AMI meter to measure the total output by half-hour of the Host School's Renewable Generation Facility for the billing month. The Host School agrees to pay to the Company the Company's incremental cost for the interval data metering equipment, subject to an Excess Facilities Charge mutually agreed to by the Company and VEPGA in the Agreement, during the period that the Host School participates in the Company's Pilot Program.

VIII. Renewable Energy Certificates

A. The Host School owns any RECs associated with the Renewable Generation Facility during the Term of the Pilot Program.

B. During the Term of the Pilot Program and continuing after the Termination Date of the Pilot Program, the Host School agrees to waive any right (i) to sell to the Company or to any other party or (ii) to offer to market all Renewable Generation Facility RECs which are created and accumulated during the Term of the Pilot Program.

IX. Liability insurance

A. A Host School with a Renewable Generation Facility having an alternating current capacity not exceeding 10 kilowatts shall maintain commercial or other insurance providing coverage of at least $1,000,000 for the liability of the insured against loss arising out of the use of a Renewable Generation Facility, and for a Renewable Generation Facility having an alternating current capacity exceeding 10 kilowatts the coverage shall be in the amount of at least $2,000,000. The Host School shall name the Company as an additional insured party under such policy.

B. The Host School is not required to purchase additional liability insurance where the Host School's existing insurance policy provides coverage against loss arising out of the use of a Renewable Generation Facility by virtue of not explicitly excluding coverage for such loss.

X. Additional Controls and Tests

A Host School's Renewable Generation Facility shall meet all applicable safety and performance standards established by the National Electrical Code, the Institute of Electrical and Electronics Engineers, and accredited testing laboratories such as Underwriters Laboratories. Beyond the requirements set forth in these Pilot Program guidelines, and to insure public safety, power quality, and reliability of the Company's electric distribution system, the Host School whose Renewable Generation Facility meets those standards shall bear all reasonable costs of equipment required for the interconnection to the Company's electric distribution system, including costs, if any, to (i) install additional controls and (ii) perform additional tests. To the extent permissible under the Virginia Tort Claims Act,[3] the participating schools and school districts shall be responsible for any negligent acts or omissions of their board members, employees, contractors, agents, students, or other representatives associated with the Pilot Program.

XI. Reports to the General Assembly

The Company shall submit a report to the General Assembly by December 1 of each year the Pilot Program is in effect, commencing in 2020, regarding the status of the Pilot Program's enrollment and any other information the Company deems appropriate.

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[1]HB 1451 was codified as § 56-585.1:7 of the Code of Virginia at the direction of the Virginia Code Commission.

[2]All 20 VAC 5-315 Rules definitions, which are applicable to the Host School, shall have the same meaning in these Pilot Program guidelines.

[3]Article 18.1 (§ 8.01 - 195.1, et. seq.) of Chapter 3 of Title 8.01 of the Code of Virginia.

STATE BOARD OF HEALTH

Drinking Water State Revolving Fund Program Intended Use Plan for 2019

Under the Safe Drinking Water Act, Congress authorizes capitalization grants to the states through the Drinking Water State Revolving Fund (DWSRF) Program. As part of the annual DWSRF grant application process Virginia seeks meaningful public involvement through input, review, and comments. The VDH's Office of Drinking Water (ODW) prepared a draft Intended Use Plan (IUP) that explains the goals of the program, funding priorities, how the Virginia Department of Health (VDH) intends to use the grant funds, and other important information submitted from the funding requests and set-aside suggestions.

VDH received several funding requests and set-aside suggestions following the January DWSRF funding solicitation announcement. The draft IUP and draft project lists are open for review and comment by the public for a period of 60 days. The document entitled "Virginia Drinking Water State Revolving Fund Program Design Manual" (dated January, 2018) is a part of the IUP, was announced in the Virginia Register of Regulations, and is posted on the ODW website. The Program Design Manual provides information on VDH's project prioritization criteria and methodologies.

VDH will hold a public meeting to solicit comments and recommendations regarding the IUP on Wednesday, October 17, 2018, from 9 a.m. to 11 a.m. at the VDH Office of Drinking Water, 6th Floor Library, 109 Governor Street, VA 23219. Those individuals planning to attend the public meeting should contact Theresa Hewlett at telephone (804) 864-7501 by the close of business on October 10, 2018.

Any written comments from the public must be submitted by November 16, 2018, the close of the public comment period. VDH considers all meaningful public input and comments

and will make revisions to the IUP and project priority list if necessary. Please direct your requests for information and forward written comments to Steve Pellei, FCAP Division Director, Office of Drinking Water, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7500, FAX (804) 864-7521, or email steve.pellei@vdh.virginia.gov.

The following information is provided under Financial and Construction Assistance Programs at http://www.vdh.virginia.gov/drinking-water/financial-construction-assistance-programs/drinking-water-state-revolving-fund-program/.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on August 29, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred One (18)

Virginia Lottery "Fas Rewards October Double Points Retailer Incentive Promotion" (effective October 2, 2018)

Director's Order Number One Hundred Thirteen (18)

Virginia Lottery's Scratch Game 1889 "Super Bonus Crossword" Final Rules for Game Operation (effective August 28, 2018)

Director's Order Number One Hundred Twenty-Two (18)

"Retailer Recruitment Incentive Promotion - All-Product Retailers" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order is effective nunc pro tunc to July 1, 2018, replaces all prior versions of the requirements and Director's Order for this promotion, and shall remain in full force and effect through the end of the promotion period unless otherwise extended by the Director)

Director's Order Number One Hundred Twenty-Three (18)

Retailer Recruitment Incentive Promotion - Mobile-Only Retailers" Virginia Lottery Retailer Incentive Program Requirements (effective August 27, 2018)

Director's Order Number One Hundred Twenty-Four (18)

"Player Awareness Program-Debit-at-Vending" Virginia Lottery Program Requirements (effective August 28, 2018)

Director's Order Number One Hundred Twenty-Five (18)

Virginia Lottery's "7-Eleven Spend $10 Promotion" (effective August 28, 2018)

Director's Order Number One Hundred Twenty-Eight (18)

Virginia Lottery's "Ultimate Fan Cave Promotion" Final Rules for Operation (effective September 1, 2018)

Director's Order Number One Hundred Twenty-Nine (18)

Virginia Lottery's "Wawa Win Gas For A Year Promotion" Final Rules for Operation (effective October 1, 2018)

Director's Order Number One Hundred Thirty (18)

Virginia Lottery "Multi-Chain Redskins Ticket Contest" Retailer Incentive Promotion" (effective September 1, 2018)

DEPARTMENT OF MINES, MINERALS AND ENERGY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Mines, Minerals and Energy is conducting a periodic review and small business impact review of **4VAC25-31, Reclamation Regulations for Mineral Mining**. The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including 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.

The comment period begins September 17, 2018, and ends October 8, 2018.

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 Michael Skiffington, Director of Policy and Planning, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219, telephone (804) 692-3212, FAX (804) 692-3237, or email mike.skiffington@dmme.virginia.gov.

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.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy (DMME) conducted a small business impact review of **4VAC25-125, Regulations Governing Coal Stockpiles and Bulk Storage and Handling Facilities**, and determined that this regulation should be retained in its current form. The Department of Mines, Minerals and Energy is publishing its report of findings dated August 16, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation is required by statute. It is necessary to protect the health and safety of miners working at underground and surface mines in the Commonwealth. The Department of Mines, Minerals and Energy has reviewed the regulation and determined that it does not adversely impact small businesses.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, Division of Administration, 1100 Bank Street, 8th Floor, Richmond, VA 23219, or email mike.skiffington@dmme.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Mines, Minerals and Energy conducted a small business impact review of **4VAC25-165, Regulations Governing the Use of Arbitration to Resolve Coalbed Methane Gas Ownership Disputes**, and determined that this regulation should be retained in its current form. The Department of Mines, Minerals and Energy is publishing its report of findings dated August 16, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

The Department of Mines, Minerals and Energy has reviewed the regulation and determined that it does not adversely impact small businesses.

Contact Information: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, Division of Administration, 1100 Bank Street, 8th Floor, Richmond, VA 23219, or email mike.skiffington@dmme.virginia.gov.

VIRGINIA DEPARTMENT OF PLANNING AND BUDGET

Commercial Activities List – Public Comments and Recommendations

Pursuant to § 2.2-1501.1 of the Code of Virginia, the Virginia Department of Planning and Budget (DPB) published the Commercial Activities List (CAL) on September 4, 2017. The CAL is posted on the DPB website under Documents, Instructions and Publications as "Commercial Activities List – 2017" and is included in this notice.

DPB is seeking written comments on the CAL and invites recommendations from the public regarding activities being performed by state agencies that might better be performed by the private sector. The public comment period will begin September 17, 2018, and ends October 1, 2018. Please include "CAL" in the subject of the email.

Contact Information: Cari Corr, Commercial Activities List, Virginia Department of Planning and Budget, 1111 East Broad Street, Richmond, VA 23219, telephone (804) 225-4549, or email cari.corr@dpb.virginia.gov.

Virginia Commercial Activities List for FY 2016 and FY 2017

NIGP	NIGP title
90608	Automation; Controls; Instrumentation - Architectural Services
90648	Historical Preservation
91013	Elevator Installation, Maintenance and Repair
91223	Construction, General (Backfill Services, Digging, Ditching, Road Grading, Rock Stabilization, etc.)
91265	Maintenance and Repair, Tennis/Sport Court
91316	Construction, Communication Equipment (Includes Antenna Towers)
91359	Construction and Upgrades, Wastewater Treatment Plant
91360	Construction, Water System/Plants, Main and Service Line
91427	Carpentry
91464	Plastering
91504	Advertising, Outdoor Billboard, etc.
91806	Administrative Consulting
91807	Advertising Consulting
91815	Architectural Consulting
91819	Buildings, Structures and Components Consulting
91831	Construction Consulting
91875	Management Consulting
91878	Medical Consulting
91885	Personnel/Employment Consulting (Human Resources)
91891	Roofing Consultant
92000	DATA PROCESSING, COMPUTER, PROGRAMMING, AND SOFTWARE SERVICES
92022	Data Preparation and Processing Services (Including Bates Coding)

92032	Intelligent Transportation System Software (To Include Design, Development, and Maintenance Services)
92037	Networking Services (Including Installation, Security, and Maintenance)
92039	Processing System Services, Data (Not Otherwise Classified)
92040	Programming Services, Computer
92416	Course Development Services, Instructional/Training
92418	Educational Services, Alternative
92474	Special Education
92480	Tutoring
92500	ENGINEERING SERVICES, PROFESSIONAL
92597	Water Supply, Treatment, and Distribution/Engineering
92694	Water Pollution Services
92824	Buses, School and Mass Transit, Maintenance and Repair
93881	Scientific Equipment Maintenance and Repair
94155	HVAC Systems Maintenance and Repair, Power Plant
94620	Auditing
94649	Financial Services (Not Otherwise Classified)
94650	Fund Raising Services
94752	Harvesting Services, Forest
94807	Administration Services, Health
94828	Dental Services
94844	Health Physics Services
94876	Psychologists/Psychological and Psychiatric Services (Including Behavioral Management Services)
95226	Day Care (Adult)
95245	Food Stamps/Coupons
95256	Housekeeping Services
95277	Research and Evaluation, Human Services (Including Productivity Audits)
95285	Support Services
95605	Business Research Services
95638	Library Services (Not Otherwise Classified)
95826	Construction Management Services
95839	Financial Management Services
95859	Industrial Management Services
95874	Personnel Management Services
95939	Dam and Levee Construction, Maintenance, Management and Repair
95973	Ship Maintenance and Repair
95984	Towing Services, Marine
96110	Business Plan Development Services
96114	Commissioning of Facilities Services (Functional and Prefunctional)
96116	Claims Processing Services
96129	Economic Impact Studies
96130	Employment Agency and Search Firm Services (Including Background Investigations and Drug Testing for Employment)
96173	Theatrical Services (Including Production, Scenery Design, Stage, etc.)
96196	Non-Professional Services (Not Otherwise Classified)
96248	Interior Design/Decorator Services
96252	Mapping Services (Including Cartography and Surveying Services, Not Aerial)(See 920-33 for Digitized Mapping Services) and 905-10 for Aerial Mapping and Survey Services)
96269	Personnel Services, Temporary
96343	Intergovernmental/Inter-Agency Contracts
96728	Computer Hardware and Software Manufacturing Services
96847	Inspection Services, Construction Type
96881	Traffic Sign Maintenance and Repair
98854	Lighting Services for Parks, Athletic Fields, Parking Lots, etc.
99029	Disaster Preparedness/Emergency Planning Services
99050	Installation of Security and Alarm Equipment
99067	Patrol Services
99079	Sanitizing and Disinfecting Services, Security, Fire, Safety and Emergency

STATE WATER CONTROL BOARD

Proposed Enforcement Action for F.V. Jones and Sons LLC

An enforcement action has been proposed for F.V. Jones and Sons LLC for violations at the F.V. Jones and Sons facility located in Mecklenburg County. The proposed enforcement action contains a schedule of compliance that details the

corrective action required. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. G. Marvin Booth, III will accept comments by email at marvin.booth@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from September 17, 2018, to October 18, 2018.

Public Meeting for Total Maximum Daily Loads for Big Reed Island Creek, Greasy Creek, Little Reed Island Creek, East Fork Little Reed Island Creek, and Island Creek

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the development of total maximum daily loads (TMDLs) for Big Reed Island Creek, Greasy Creek, Little Reed Island Creek, East Fork Little Reed Island Creek, and Island Creek. These streams are listed on the 2016 § 303(d) TMDL Priority List and Report as impaired due to exceedances of the state's water quality standards for bacteria in Carroll, Floyd, Pulaski, and Wythe Counties and the town of Hillsville, Virginia. In addition, Big Reed Island Creek, Island Creek, and Little Reed Island Creek are listed as impaired for failure to support the aquatic life use.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the State Water Control Law requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) Priority List and Report.

The impaired segments include 19.85 miles of Big Reed Island Creek from its headwaters on Hurricane Knob downstream to the Pine Creek confluence; 13.81 miles of Big Reed Island Creek from the Bobbitt Creek confluence to the Greasy Creek confluence; 9.85 miles of Big Reed Island Creek from the Greasy Creek confluence to the confluence with the New River; 13.63 miles of Greasy Creek from the Carroll-Floyd county line downstream to the Big Reed Island Creek confluence; 11 miles of Little Reed Island Creek from the confluence with Big Reed Island Creek upstream to the Rock Creek confluence; 19.7 miles of Little Reed Island Creek from the Rock Creek confluence upstream to the Hillsville Public Water Supply intake; 5.28 miles of East Fork Little Reed Island Creek from the Hillsville Public Water Supply intake upstream five miles; and 13.35 miles of Island Creek and tributaries northeast of Hillsville near Huffman Knob.

The first public meeting on the development of the TMDL to address the bacteria and aquatic life impairments for these segments will be held on September 17 from 6 p.m. to 8 p.m. at the Crossroads Institute, 1117 East Stuart Drive, Galax, VA 24333.

The public comment period will begin on September 17, 2018, and end on October 17, 2018. An advisory committee to assist in development of this TMDL will be established. Persons interested in assisting should notify the DEQ contact person by the end of the comment period and provide their name, address, phone number, email address, and the organization they are representing (if any). Notification of the composition of the panel will be sent to all applicants.

A component of a TMDL is the wasteload allocations (WLAs); therefore, this notice is provided pursuant to § 2.2-4006 A 14 of the Administrative Process Act for any future adoption of the TMDLs associated WLAs. Information on the development of the TMDLs for these impairments is available upon request. Questions, information requests, and all written comments should be addressed to Martha Chapman, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, or email martha.chapman@deq.virginia.gov. All written comments should include the name, address, and telephone number of the person submitting the comments.

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, Pocahontas Building, 900 East Main Street, 8th Floor, Richmond, VA 23219; *Telephone:* (804) 698-1810; *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 https://commonwealthcalendar.virginia.gov.

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

DEPARTMENT FOR AGING AND REHABILITATIVE SERVICES

Title of Regulation: **22VAC30-20. Provision of Vocational Rehabilitation Services.**

Publication: 35:1 VA.R. 94-120 September 3, 2018

Correction to Final Regulation:

Page 101, 22VAC30-20-30, second column, subdivision 3, delete "~~, or the applicant's employment history or current employment status, or the applicant's educational status or current educational credential; and~~"

VA.R. Doc. No. R19-5227; Filed September 6, 2018