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 December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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
36:1	August 14, 2019	September 2, 2019
36:2	August 28, 2019	September 16, 2019
36:3	September 11, 2019	September 30, 2019
36:4	September 25, 2019	October 14, 2019
36:5	October 9, 2019	October 28, 2019
36:6	October 23, 2019	November 11, 2019
36:7	November 6, 2019	November 25, 2019
36:8	November 18, 2019 **(Monday)**	December 9, 2019
36:9	December 4, 2019	December 23, 2019

*Filing deadlines are Wednesdays unless otherwise specified.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Initial Agency Notice

Title of Regulation: **18VAC115-20. Regulations Governing the Practice of Professional Counseling.**

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

Name of Petitioner: Charles R. McAdams, III.

Nature of Petitioner's Request: To amend the requirements for licensure by endorsement to include the National Counselor Licensure for Endorsement Process (NCLEP) as a route for counselor licensure.

Agency Plan for Disposition of Request: The petition will be filed with the Registrar of Regulations and published on October 1, 2018, with comment requested until October 22, 2018. It will also be posted on the Virginia Regulatory Town Hall and available for comments to be posted electronically. At its first meeting following the close of comment, scheduled for November 2, 2018, the board will consider the request to amend regulations and all comments received in support or opposition and decide whether to initiate rulemaking.

Public Comment Deadline: October 22, 2018.

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

VA.R. Doc. No. R19-05; Filed September 7, 2018, 3:24 p.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Initial Agency Notice

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations.**

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: David Hites.

Nature of Petitioner's Request: Under § 2.2-4007 of the Code of Virginia, I David Hites, ask that the following change be made to Virginia Administrative Code 24VAC35-60-70, Section F, Paragraph 3 from: "The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures alcohol, minimizing positive results from other substances." to: "The ignition interlock device shall be alcohol specific, using any proven technology that reacts to and measures alcohol only, as defined in 24VAC35-60-20 "Definitions" meaning ethyl alcohol, also called ethanol (C_2H_5OH)." The law as currently written demands the use of fuel cell technology. It also demands that breath alcohol ignition interlock devices (BAIIDs) be ethanol specific. The two requirements cannot simultaneously be met. If the law requires BAIIDs to be specific to ethanol, then a fuel cell does not meet that requirement, as by its nature it will detect other alcohols. The law must be changed due to its inconsistency and impossibility to meet both standards. Thank you for your consideration.

Agency Plan for Disposition of Request: The Commission on VASAP will consider this petition at its March 2019 meeting (date to be determined).

Public Comment Deadline: December 14, 2018.

Agency Contact: Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R19-04; Filed September 11, 2018, 2:29 p.m.

Agency Decision

Title of Regulation: **24VAC35-60. Ignition Interlock Program Regulations.**

Statutory Authority: § 18.2-270.2 of the Code of Virginia.

Name of Petitioner: David Hites.

Nature of Petitioner's Request: On April 15, 2018, citing § 2.2-4007 of the Code of Virginia, David Hites submitted the below petition to the Commission on the Virginia Alcohol Safety Action Program (VASAP). The petition is in regard to the definition of "alcohol" in 24VAC35-60-20 as it relates to "alcohol specific" ignition interlock devices.

"Under § 2.2-4007 of the Code of Virginia, I David Hites submit the following petition to the Commission on VASAP: Suspend all future ignition interlock device installations in Virginia until a 100% ethanol specific device can be developed as is required by law. The current technology being used is NOT specific to ethanol as required by 24VAC35-60-70. The Commission on VASAP cannot allow electrochemical fuel cells to be used on breath alcohol ignition interlock devices as they are not specific to ethanol, but the problem is that the law requires only this technology which impedes development of newer (lawful) and better technology. I suggest that someone propose an amendment to the legislation allowing use of any technology that is specific to ethanol. Until then, all new installations must be suspended as they are ILLEGAL! The vendors cannot meet the terms of their contracts. They are subject to the paradox the law has created. At the March 2018 commission meeting, one

interlock vendor, Alcolock, was under scrutiny for using a non-ethanol-specific device to which Alcohol Countermeasure Systems CEO Felix Comeaux admitted, as evidenced in the March 2018 commission quarterly meeting minutes, that his devices do detect other alcohols. Since it is now known and acknowledged that breath alcohol ignition interlock devices, due to the nature of their technology being an electrochemical fuel cell, can and do detect other substances to a degree that would cause an interlock user to fail a breath test, the vendors are not following Virginia law, which means the vendors are all in breach of contract with the state. Virginia law states: 24VAC35-60-20 "Alcohol" means ethyl alcohol, also called ethanol (C_2H_5OH). 24VAC35-60-70 "F. Except where otherwise required in this chapter, all ignition interlock devices shall meet the model specifications for Breath Alcohol Ignition Interlock Devices as set forth in the most current model specifications published in the Federal Register by the National Highway Traffic Safety Administration and operate reliably over the range of motor vehicle environments or motor vehicle manufacturing standards. At a minimum, the following specifications shall be met:" Paragraph 3. "The ignition interlock device shall be alcohol specific, using an electrochemical fuel cell that reacts to and measures alcohol, minimizing positive results from other substances." Since alcohol is defined as ethanol and interlock devices must be ALCOHOL specific, that would mean that ignition interlocks must measure ethanol ONLY and no other substance, including other alcohols. Since vendors' contracts stipulate that they will obey all Virginia laws, they have all violated the above statutes and have therefore violated their contracts. I am requesting that all ignition interlock vendors be suspended from taking on new clients until an ethanol specific device is developed."

Agency Decision: Request denied.

Statement of Reason for Decision: In accordance with the requirement of § 2.2-4007 of the Code of Virginia, Petition #272 was filed with the Virginia Registrar of Regulations on April 16, 2018. At its meeting on June 8, 2018, the Commission on VASAP considered the petition. No public comments were submitted to the Virginia Regulatory Town Hall. The Commission on VASAP unanimously voted to deny, in its entirety, Petition #272. The reason for the denial is detailed as follows: § 2.2-4007 of the Code of Virginia states that "any person may petition an agency to request the agency to develop a new regulation or amend an existing regulation." Petition #272 stated the petitioner's interpretation of the existing ignition interlock regulations, specifically with regard to the definition of "alcohol," and his belief that ignition interlock vendors are not complying with the law; however, the petition does not "specifically" propose any new regulation or amendment to existing regulations. Mention is made in the petition to "propose an amendment to the legislation" and to "suspend all future ignition interlock device installations in Virginia." VASAP cannot suspend the installation of the device as Virginia code requires that the devices be installed. Any legislative changes would require action of the Virginia General Assembly.

Agency Contact: Richard Foy, Field Services Specialist, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, or email rfoy@vasap.virginia.gov.

VA.R. Doc. No. R18-31; Filed August 31, 2018, 1:26 p.m.

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Alcoholic Beverage Control Authority intends to consider amending **3VAC5-50, Retail Operations**. The purpose of the proposed action is to amend 3VAC5-50-160 to permit advertising of happy hour so long as the advertisement neither advertises pricing nor induces minors or other interdicted individuals to drink, nor encourages persons to drink in excess. Further amendments (i) delete provisions that appear in other authority regulations and (ii) add a provision regarding consistent adherence with other authority regulations.

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

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

Public Comment Deadline: 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.

VA.R. Doc. No. R19-5585; Filed August 30, 2018, 12:17 p.m.

TITLE 8. EDUCATION

STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Council of Higher Education for Virginia intends to consider amending **8VAC40-31, Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates**. The purpose of the proposed action is to amend the regulation governing postsecondary schools to include enrollment agreements between students and regulated institutions as mandated by Chapter 298 of the 2017 Acts of Assembly. Amendments include required elements, including disclosures, to be incorporated into enrollment agreements as prescribed by the council.

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

Statutory Authority: § 23-276.3 of the Code of Virginia.

Public Comment Deadline: October 31, 2018.

Agency Contact: Sylvia Rosa-Casanova, State Council of Higher Education for Virginia, James Monroe Building, 101 North 14 Street, Richmond, VA 23219, telephone (804) 225-3399, FAX (804) 225-2604, or email sylviarosacasanova@schev.edu.

VA.R. Doc. No. R19-5154; Filed August 30, 2018, 11:56 a.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-630, Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management**. The purpose of the proposed action is to reissue, and amend if necessary, the existing regulation and general permit in order to continue the general permit coverage of nearly 1,000 confined poultry feeding operations. The current Virginia pollution abatement (VPA) general permit expires on November 30, 2020. The VPA Regulation and General Permit for Poultry Waste Management governs the management of poultry feeding operations that confine 200 or more animal units (20,000 chickens or 11,000 turkeys) and establishes the utilization, storage, tracking, and accounting requirements related to poultry waste.

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

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

Public Comment Deadline: October 31, 2018.

Agency Contact: Betsy Bowles, Department of Environmental Quality, 1111 East Main Street, Suite 1400,

P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4032, or email betsy.bowles@deq.virginia.gov.

VA.R. Doc. No. R19-5666; Filed September 10, 2018, 2:34 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-412, Regulations for Licensure of Abortion Facilities**, which governs the licensure of facilities that perform five or more first trimester abortions per month. The purpose of the proposed action is to assess all current regulation content and determine whether it should be amended or retained in its current form. This action may address comments received during the public comment period for this Notice of Intended Regulatory Action and subsequent stages of this action as well as comments received during the public hearing.

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

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Public Comment Deadline: October 31, 2018.

Agency Contact: Ruthanne Risser, Acute Care Division Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2156, FAX (804) 527-4502, or email regulatorycomment@vdh.virginia.gov.

VA.R. Doc. No. R19-5664; Filed September 7, 2018, 11:21 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-630, Private Well Regulations**. The purpose of the proposed action is to amend the regulation based on current industry standards, comments received during the periodic review process, and comments received from the Private Well Regulations Workgroup to ensure the regulations (i) are protective of public health and the environment, (ii) address changes in current standards and practices, (iii) clarify regulatory language, and (iv) improve consistency with other regulations related to private wells and groundwater resources.

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

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

Statutory Authority: § 32.1-176.4 of the Code of Virginia.

Public Comment Deadline: October 31, 2018.

Agency Contact: Dwayne Roadcap, Director, Division of Onsite Sewage and Water Services, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7470, FAX (804) 864-7475, or email dwayne.roadcap@vdh.virginia.gov.

VA.R. Doc. No. R19-5654; Filed August 30, 2018, 2:32 p.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-70, Methods and Standards for Establishing Payment Rates-Inpatient Hospital Services**, and **12VAC30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care**, and promulgating **12VAC30-160, Hospital Assessment**. The purpose of the proposed action is to authorize the Department of Medical Assistance Services to levy assessments upon private acute care hospitals operating in Virginia to fund new Medicaid coverage for adults as well as new Medicaid hospital supplemental payments, establish new supplemental inpatient and outpatient payments for qualifying private acute care hospitals, and sunset supplemental payments made to certain private teaching hospitals to avoid overlapping supplemental payments. The proposed action implements §§ 3-5.15 and 3-5.16 and Item 303 XX 6 C of the Appropriation Act (Chapter 2 of the 2018 Acts of Assembly).

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

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Public Comment Deadline: October 31, 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. R19-5591; Filed September 11, 2018, 11:18 a.m.

TITLE 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Proposed Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 13 of the Code of Virginia, which excludes the board when promulgating regulations pursuant to § 3.2-5206 of the Code of Virginia.

Title of Regulation: **2VAC5-490. Regulations Governing Grade "A" Milk (amending 2VAC5-490-50).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 30, 2018.

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, FAX (804) 371-7792, TTY (800) 828-1120, or email ryan.davis@vdacs.virginia.gov.

Summary:

In response to a petition for rulemaking, the proposed amendments reduce the maximum bacteria count to 50,000 bacteria per milliliter of milk and reduce the maximum somatic cell count to 500,000 per milliliter of milk as standards that must be met for milk to be considered grade A in Virginia.

Part VI
Standards for Milk and Milk Products

2VAC5-490-50. Quality standards for milk and milk products.

A. No person may produce, provide, manufacture, sell, offer for sale, or store in the Commonwealth, or bring, send, or receive into the Commonwealth, any milk, milk product, condensed milk product, or dry milk product for use in the commercial preparation of grade A pasteurized, ultra-pasteurized, or aseptically processed milk or milk products that do not comply with the following:

1. Grade A raw milk for pasteurization or ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging and all grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall be produced, processed, manufactured and pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged to conform with the following chemical, physical, bacteriological, somatic cell, and temperature standards, and with the requirements of this chapter;

2. No process or manipulation other than (i) pasteurization; (ii) ultra-pasteurization; (iii) aseptic processing and packaging; (iv) retort processed after packaging; or (v) processing methods integral with pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging; and refrigeration may be applied to milk or milk products for the purpose of removing or deactivating microorganisms provided that filtration, bactofugation, or filtration and bactofugation may be performed in the plant in which the milk or milk product is pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged. Nothing in this chapter is deemed to prohibit any grade A permit holder who operates a milk plant from preparing bulk shipments of cream, skim milk, reduced fat or lowfat milk labeled as "heat treated"; if the raw milk, raw cream, skim milk, reduced fat or lowfat milk is heated, one time, to a temperature warmer than 125°F but cooler than 161°F for separation purposes. In the case of heat treated cream, the cream may be further heated to less than 166°F in a continuing heating process and immediately cooled to 45°F or less when necessary for enzyme deactivation (such as lipase reduction) for a functional reason;

3. Grade A raw milk and milk products for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall comply with the following standards:

a. The temperature of the raw milk shall be cooled to 40°F or cooler, but not frozen, within two hours after milking and the temperature after the first or any subsequent milking shall not be warmer than 50°F;

b. The bacteria count of the raw milk shall not exceed ~~100,000~~ 50,000 bacteria per milliliter prior to commingling with any other milk; and the bacteria count of the raw milk that is commingled shall not exceed 300,000 bacteria per milliliter prior to pasteurization;

c. Raw milk shall freeze at or below -0.530° Hortvet;

d. Raw milk shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

e. The somatic cell count of raw cow's milk, raw water buffalo's milk, or raw sheep's milk shall not exceed ~~750,000~~ 500,000 somatic cells per milliliter. The somatic cell count of raw goat's milk shall not exceed 1,500,000 somatic cells per milliliter;

f. Raw milk shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and

g. Raw milk shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method;

4. Grade A pasteurized or ultra-pasteurized milk and milk products shall comply with the following standards:

a. The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained at that temperature;

b. The bacteria count for any milk or milk products (except acidified or cultured milk or milk products, eggnog, cottage cheese, and other milk or milk products as identified in FDA M-a-98) shall not exceed 20,000 bacteria per milliliter;

c. Except for commingled milk shipped in a transport tank the coliform count for any milk or milk products shall not exceed 10 coliform organisms per milliliter. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per milliliter;

d. The phenol value of test samples of pasteurized finished product shall be no greater than the maximum specified for the particular product as determined and specified by (i) any phosphatase test method prescribed in the Official Methods of Analysis, 19th Edition, 2012, published by the Association of Official Analytical Chemists; (ii) the Fluorometer test method; (iii) the Charm ALP test method; or (iv) other equivalent method as determined by the Virginia Department of Agriculture and Consumer Services. A phenol value greater than the maximum specified for the particular product shall mean that the product was not properly pasteurized. A phenol value less than the maximum specified for the particular product shall not be deemed to mean that the product was properly pasteurized, unless there is evidence of proper pasteurization equipment in conformance with this chapter and records to determine an adequate pasteurization process has been completed for each separate batch or lot of milk, milk product, condensed milk, condensed milk product, dry milk, or dry milk product;

e. Milk or milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially designated laboratories, milk plants, receiving stations, or transfer stations;

f. Milk or milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and

g. Milk or milk products shall not contain aflatoxin residues equal to or greater than 0.50 parts per billion as determined by the Charm II aflatoxin test or other equivalent method;

5. Grade A pasteurized concentrated (condensed) milk or milk product shall comply with the following standards:

a. The temperature of milk products shall be cooled to 45°F or cooler (but not frozen) and maintained thereat unless drying is commenced immediately after condensing;

b. Except for commingled milk shipped in a transport tank, the coliform count for any milk or milk product shall not exceed 10 coliform organisms per gram. Commingled milk shipped in a transport tank shall not exceed 100 coliform organisms per gram;

6. Grade A aseptically processed and packaged milk and milk products shall comply with the following standards:

a. Aseptically processed and packaged milk and milk products shall be commercially sterile;

b. Aseptically processed and packaged milk and milk products shall have no positive results of tests for drug residues by detection methods reported to the State Regulatory Authority by official laboratories, officially

designated laboratories, milk plants, receiving stations, or transfer stations;

c. Aseptically processed and packaged milk and milk products shall not exceed the actionable level, tolerance level, or safe level for any chemical residue or pesticide residue specified in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589. In the event that no actionable level, tolerance level, or safe level for a chemical residue or pesticides residue has been established in 40 CFR Part 180 and 21 CFR Parts 70, 71, 73, 74, 80, 82, 130, 131, 133, 170, 172, 173, 174, 175, 176, 177, 178, 189, 556, 570, 573, and 589, the tolerance level shall be deemed to be zero; and

d. Aseptically processed and packaged milk and milk products milk shall not contain aflatoxin residues equal to or greater than 0.05 parts per billion;

7. Grade A nonfat dry milk and dry milk or milk products shall comply with the following standards:

a. The bacteria count shall not exceed 10,000 bacteria per gram, and

b. The coliform count shall not exceed 10 coliform organisms per gram;

8. Grade A whey for condensing or drying shall be maintained at a temperature of 45°F (7°C) or less, or 135°F (57°C) or greater; provided that, acid-type whey with a titratable acidity of 0.40% or above or a pH of 4.6 or below shall be exempt for the requirements of this subdivision;

9. Grade A pasteurized condensed whey and whey products shall be cooled to 50°F (10°C) or less during crystallization and within 72 hours of condensing. The coliform count of grade A pasteurized condensed whey and whey products shall not exceed 10 coliform organisms per gram; and

10. The coliform count of grade A dry whey, grade A dry whey products, grade A dry buttermilk, and grade A dry buttermilk products shall not exceed 10 coliform organisms per gram.

B. Sanitation requirements for grade A raw milk.

1. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall comply with:

a. The following administrative procedures contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Section 4; Section 7, Items 1r, 2r, 3r, 4r, 5r, 6r, 7r, 8r, 9r, 10r(1), 10r(2), 11r, 12r, 13r, 14r, 15r, 16r, 17r, 18r(2), 18r(3), and 19r; Section 8; Section 10; and Section 13;

b. The following appendices contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Appendices A, B, C, D, F, G, H, N, Q, and R;

c. Item 1r. Abnormal milk. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals that show evidence of the secretion of abnormal milk in one or more quarters (based upon bacteriological, chemical, or physical examination) and discard the milk obtained from cows, sheep, goats, water buffalo, or other mammals that show evidence of the secretion of abnormal milk in one or more quarters based upon bacteriological, chemical, or physical examination; and

(2) Milk last or with separate equipment cows, sheep, goats, water buffalo, or other mammals treated with, or that have consumed, chemical, medicinal, or radioactive agents that are capable of being secreted in the milk and that may be deleterious to human health; and dispose of in a manner that will not pollute the environment or any human food the milk obtained from cows, sheep, goats, water buffalo, or other mammals treated with, or that have consumed, chemical, medicinal, or radioactive agents that are capable of being secreted in the milk and that may be deleterious to human health;

d. Item 2r. Milking barn, stable, or parlor; construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide on the person's dairy farm a milking barn, stable, or parlor in which the milking herd shall be housed during milking time;

(2) Provide on the grade A permit holder's dairy farm a milking barn, stable, or parlor, which milking barn, stable, or parlor shall:

(a) Have floors constructed of concrete or equally impervious material;

(b) Have walls and ceiling that are smooth, painted, or finished in an approved manner, and in good repair and have a ceiling which is dust tight;

(c) Have separate stalls or pens for horses, calves, and bulls;

(d) Have natural or artificial light, well distributed for day or night milking;

(e) Have sufficient air space and air circulation to prevent condensation and excessive odors;

(f) Have dust-tight covered boxes or bins, or separate storage facilities for ground, chopped, or concentrated feed; and

(g) Not be overcrowded; and

(3) Provide and use only an "automatic milking installation" that complies with the requirements of Appendix Q of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" if the person milks any cows, goats, sheep, water buffalo, or other mammals (except humans) using robots or other automated means in the absence of any human;

e. Item 3r. Milking barn, stable, or parlor; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Keep the interior of the milking barn, stable, or parlor clean;

(2) Keep the floors, walls, ceilings, windows, pipelines, and equipment in the milking barn, stable, or parlor free of filth or litter and clean;

(3) Keep swine and fowl out of the milking barn, stable, and parlor;

(4) Keep surcingles, belly straps, milk stools, and antikickers clean and stored above the floor; and

(5) Store feed in a manner that will not increase the dust content of the air or interfere with the cleaning of the floor;

f. Item 4r. Cow yard, sheep yard, goat yard, water buffalo yard, or other milking mammal yard. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide and maintain the cow yard, sheep yard, goat yard, water buffalo yard or other milking mammal yard, to be graded and drained, and to have no standing pools of water or accumulations of organic wastes;

(2) In the cow loafing, goat loafing, sheep loafing, water buffalo loafing, or other milking mammal loafing, cattle-housing, sheep-housing, goat-housing, water buffalo-housing, or other milking mammal-housing areas remove cow droppings, sheep droppings, goat droppings, water buffalo droppings, and other milking mammal droppings and remove soiled bedding or add clean bedding at sufficiently frequent intervals to prevent the soiling of the cow's, sheep's, goat's, water buffalo's, or other milking mammal's udder and flanks;

(3) Assure that waste feed does not accumulate in the goat yard, cow yard, sheep yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle-housing, sheep-housing, goat-housing, water buffalo-housing, or other milking mammal-housing area;

(4) Maintain any manure packs so as to be properly drained and so as to provide a reasonably firm footing; and

(5) Keep swine and fowl out of the cow yard, sheep yard, goat yard, water buffalo yard, other milking mammal yard, cow loafing, sheep loafing, goat loafing, water buffalo loafing, other milking mammal loafing, cattle-housing, sheep-housing, goat-housing, water buffalo-housing, or other milking mammal-housing area;

g. Item 5r. Milkhouse or room; construction and facilities. Each who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide a milkhouse or milkroom of sufficient size in which the cooling, handling, and storing of milk and the washing, sanitizing, and storing of milk containers and utensils shall be conducted except as provided under subdivision 1 n of this subsection;

(2) Provide a milkhouse with a smooth floor, constructed of concrete or equally impervious material graded to drain, and maintained in good repair;

(3) Dispose of in a sanitary manner all liquid waste generated in the milkhouse;

(4) Provide one or more floor drains in the milkhouse, which floor drains shall be accessible, and if connected to a sanitary sewer system trapped;

(5) Provide in the milkhouse walls and ceilings constructed of a smooth material, in good repair, well painted, or finished in an equally suitable manner;

(6) Provide adequate natural or artificial light and ventilation in the milkhouse;

(7) Use the milkhouse for no other purpose than milkhouse operations;

(8) Provide no direct opening from the milkhouse into any barn, stable, or into any room used for domestic purposes, other than a direct opening between the milkhouse and milking barn, stable, or parlor provided with a tight-fitting, self-closing, solid door, which door has been hinged to be single or double acting. Screened vents in the wall between the milkhouse and a breezeway, which separates the milkhouse from the milking parlor, are permitted, provided animals are not housed within the milking facility;

(9) Provide in the milkhouse water under pressure which has been piped into the milkhouse;

(10) Provide in the milkhouse a two-compartment wash vat and adequate hot water heating facilities;

(11) Except as provided for under subdivision 1 g (12) of this subsection provide a suitable shelter for the receipt of milk when the grade A permit holder uses a transportation tank for the cooling or storage of milk on the grade A permit holder's dairy farm, which shelter adjacent to, but not a part of, the milkroom; and with the requirements of the milkroom shall comply with respect to construction, light, drainage, insect and rodent control, and general maintenance. In addition to providing a suitable shelter as required by this subsection, the grade A permit holder shall:

(a) Install an accurate, accessible temperature-recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank. Electronic records that comply with the applicable provisions as referred to in Sections IV and V of Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," with or without hard copy, may be used in place of temperature-recording records;

(b) Install an indicating thermometer as close as possible to the temperature-recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:

(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;

(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;

(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and

(iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;

(c) Provide an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample;

(12) If the State Regulatory Authority determines conditions exist whereby the milk transport tank may be adequately protected and sampled without contamination, a shelter need not be provided if the grade A permit holder:

(a) Provides a means to make all milk hose connections to the transport tank accessible from within the milkhouse;

(b) Provides a means to completely protect the milk hose connection to the transport tank from the outside environment. With approval of the State Regulatory Authority, the direct loading of milk from the milkhouse to the milk tank truck may be conducted through a properly designed hose port that adequately protects the milkhouse opening or by stubbing the milk transfer and associated CIP cleaned lines outside the milkhouse wall in accordance with Item 5r, Administrative Procedure #15, of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(c) Ensures only milk transport tanks the manholes of which have been sealed after cleaning and sanitizing are utilized;

(d) Ensures only milk transport tanks that have been washed and sanitized at permitted dairy plants or a permitted milk tank truck cleaning facilities acceptable to the State Regulatory Agency are utilized;

(e) Installs an accurate, accessible temperature-recording device in the milk line used to fill the transportation tank downstream from an effective cooling device capable of cooling the milk to 40°F or less before the milk enters the transportation tank. Electronic records that comply with the applicable provisions as referred to in Sections IV and V of Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," with or without hard copy, may be used in place of temperature-recording records;

(f) Installs an indicating thermometer as close as possible to the temperature-recording device in the milk line used to fill the transportation tank to be used for verification of recording temperatures, which indicating thermometer shall:

(i) Have a temperature span of not less than 50°F including normal storage temperatures plus or minus 5°F, with an extension of the scale on either side permitted and graduated in not more than 2°F divisions;

(ii) Have temperature scale divisions spaced not less than 0.0625 inches apart between 35°F and 55°F;

(iii) Have an accuracy within plus or minus 2°F throughout the scale range; and

(iv) Have the stem fitting installed in a pressure-tight seat or other sanitary fitting with no threads exposed;

(g) Provides an effective means to agitate the transport tank or an approved in-line sampling device in order to collect a representative milk sample; and

(h) Provides a self-draining concrete or equally impervious surface on which the transport tank can be parked during filling and storage;

h. Item 6r. Milkhouse or milkroom; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Keep clean the floors, walls, ceilings, windows, tables, shelves, cabinets, wash vats, nonproduct contact surfaces of milk containers, utensils, equipment, and other milkroom equipment in the milkroom;

(2) Place in the milkroom only those articles directly related to milkroom activities; and

(3) Keep the milkroom free of trash, animals, and fowl;

i. Item 7r. Toilets. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide on the person's grade A dairy farm one or more toilets, which shall be conveniently located and properly constructed, and operated, and maintained in a sanitary manner;

(2) Prevent the access of flies to the waste contained in or from the toilet;

(3) Prevent the waste contained in or from the toilet from polluting the soil surface or contaminating any water supply; and

(4) Assure that there is no direct opening from the toilet into any milkroom;

j. Item 8r. Water supply. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide water for milkhouse and milking operations from a water supply properly located, protected, and operated. The water supply shall be easily accessible, adequate, of a safe, sanitary quality, and meet the construction standards of Appendix D of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(2) Construct the water supply so that no cross connections between a safe water supply and any unsafe or questionable water supply or other source of pollution exists; and

(3) Construct the water supply so that no submerged inlets exist through which a safe water supply may be contaminated;

k. Item 9r. Utensils and equipment-construction. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Provide multiuse containers, equipment, and utensils for use in the handling, storage, or transportation of any milk, which multiuse containers, equipment, and utensils, shall be made of smooth, nonabsorbent, corrosion-resistant, and nontoxic materials; constructed as to be easily cleaned; and maintained in good repair;

(2) Provide milk pails that are constructed to be seamless and of the hooded type if the grade A permit holder does hand milking and stripping;

(3) Abstain from using multiple-use woven material for straining any milk;

(4) Use only single-service articles that have been manufactured, packaged, transported, stored, and handled in a sanitary manner and that comply with the requirements of subdivision C 1 of this section;

(5) Abstain from reusing any article intended for single-service use; and

(6) Provide farm holding or cooling tanks, welded sanitary piping, and transportation tanks that comply with the requirements of subdivisions C 1 l and C 1 m of this section on any grade A dairy farm;

l. Item 10r. Utensils and equipment; cleaning. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Clean after each use, or once every 24 hours in the case of continuous operations, the product-contact surfaces of all multiuse containers, multiuse equipment, and multiuse utensils used in the handling, storage, or transportation of any milk;

(2) Offer for sale or sell no milk that has passed through any equipment if the milk-contact surfaces of the equipment are no longer visible or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils. Any milk that passes through equipment, the milk-contact surfaces of which are no longer visible, or are covered or partially covered by an accumulation of milk solids, milk fat, cleaning compounds, or other soils shall be deemed adulterated; and

(3) Construct a separate wash manifold for all CIP cleaned milk pipelines in all new or extensively remodeled facilities;

m. Item 11r. Utensils and equipment; sanitization. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall sanitize before each use the product-contact surfaces of

all multiuse containers, equipment, and utensils used in the handling, storage, or transportation of any milk;

n. Item 12r. Utensils and equipment; storage. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall store containers, utensils, and equipment used in the handling, storage, or transportation of any milk in a sanitizing solution or store the containers, utensils, and equipment used in the handling, storage, or transportation of any milk to assure complete drainage, and protected from contamination prior to use. Nothing in this requirement shall be deemed to prohibit a grade A permit holder from storing in a milking barn or milking parlor a milk pipeline, or the following pipeline milking equipment: milker claw, inflation, weigh jar, meter, milk hose, milk receiver, tubular cooler, plate cooler, or milk pump; if the milk pipeline or pipeline milking equipment specified in this subdivision is designed for mechanical cleaning; and designed, installed, and operated to protect the milk product and solution-contact surfaces from contamination at all times;

o. Item 13r. Milking; flanks, udders, and teats. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Milk all cows, sheep, goats, water buffalo, and other mammals in a milking barn, stable, or parlor;

(2) Trim the hair from the udder and tail of all milking cows, sheep, goats, water buffalo, and other mammals to facilitate cleaning of the udder and tail;

(3) Keep the flanks, udders, bellies, and tails of all milking cows, sheep, goats, water buffalo, and other mammals free of visible dirt;

(4) Keep the hair on the udders of all milking cows, sheep, goats, water buffalo, and other mammals to a length that the hair on the udder of any cow, sheep, goat, water buffalo, or other mammal cannot be incorporated with the teat in the inflation during milking;

(5) Abstain from milking any cow, sheep, goat, water buffalo, or other mammal whose udder or teats is not clean and dry;

(6) Treat with a sanitizing solution, just prior to milking, the teats of each milking cow, sheep, goat, water buffalo, and other mammal and dry the teats of each milking cow, sheep, goat, water buffalo, and other mammal before milking; and

(7) Milk all cows, sheep, goats, water buffalo, and other mammal with dry hands;

p. Item 14r. Protection from contamination. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Locate and operate the milking and milk house operations, equipment, and facilities to prevent any contamination of the milk, equipment, containers, or utensils;

(2) Transfer immediately from the milking barn, stable, or parlor to the milkhouse each pail or container of milk;

(3) Strain, pour, transfer, or store any milk unless it is protected from contamination;

(4) Handle all containers, utensils and equipment that have been sanitized in such a manner as to prevent contamination of any product-contact surfaces;

(5) Transport from the grade A permit holder's dairy farm to a milk plant or receiving station all milk in cans, using vehicles that are constructed and operated to protect the milk from sun, freezing, and contamination;

(6) Keep clean the inside and outside of each vehicle used to transport from the grade A permit holder's dairy farm to a milk plant or receiving station any milk in cans; and

(7) Transport no substance capable of contaminating the milk when transporting milk;

q. Item 15r. Drug and chemical control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Store all drugs and medicinals in such a manner that neither the drugs nor the medicinals can contaminate any milk or the milk product-contact surface of any equipment, containers, or utensils;

(2) Abstain from using unapproved or improperly labeled medicinals or drugs to treat any dairy animals or store unapproved or improperly labeled medicinals or drugs in the milkhouse, milking barn, stable or parlor. Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, a drug or medicinal is properly labeled only if the drug or medicinal is labeled with the following:

(a) For over-the-counter medicinals or drugs, the name and address of the manufacturer or distributor, or for prescription and extra-label use medicinals or drugs, the name of the veterinary practitioner dispensing the product;

(b) Directions for use of the drug or medicinal and the prescribed holding time;

(c) Any cautionary statement for the drug or medicinal, if needed; and

(d) The active ingredient or ingredients in the drug or medicinal;

(3) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, segregate all medicinals and drugs used for lactating dairy animals from any medicinals and drugs used for nonlactating dairy animals to include dairy calves, dairy heifers, and dairy bulls;

(4) Except for topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage form vitamins and mineral products, provide separate shelves in a cabinet, refrigerator, or other storage facility for the storage of all medicinals and drugs for treatment of nonlactating dairy animals, to include dairy calves, dairy heifers, and dairy bulls, separate from those medicinals or drugs used for lactating dairy animals; and

(5) Store topical antiseptics, wound dressings (unless intended for direct injection into the teat), vaccines and other biologics, and dosage-form vitamins and mineral products in a manner that does not contaminate any milk or the milk-product surfaces of any containers or utensils;

r. Item 16r. Personnel; hand-washing facilities. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall provide hand-washing facilities that are convenient to the milkhouse, milking barn, stable, or parlor, and flush toilet and that include separate hot and cold running water; soap or detergent; and individual sanitary towels or other approved hand-drying devices. When individual sanitary towels are used, covered trash containers shall be provided;

s. Item 17r. Personnel; cleanliness. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Wash clean and dry with an individual sanitary towel or other approved hand drying device the person's hands immediately before milking, before performing any milkhouse function, and immediately after the interruption of milking or performing any milkhouse function; and

(2) Wear clean outer garments while milking or handling any milk, milk containers, utensils, or equipment. Bulk milk haulers shall wear clean outer garments while handling any milk, milk containers, utensils, or equipment;

t. Item 18r. Cooling. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Cool to 40°F or cooler (but not freeze) all raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging within two hours after the grade A permit holder completes milking and assure that the temperature of the grade A permit holder's raw milk is not warmer than 50°F after the first milking or any subsequent milking. Raw milk for pasteurization that is warmer than a temperature of 50°F after the first milking or any subsequent milking shall be deemed a public health hazard and shall not be offered for sale or sold;

(2) Assure that circular recording charts are operated continuously and maintained in a properly functioning manner. Circular charts shall not overlap; and

(3) Agitate all raw milk for pasteurization for not less than five minutes at least once every hour; assure that the milk in the farm's bulk milk cooling or holding tank covers the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking; and abstain from selling or offering for sale milk that does not cover the agitator paddle sufficiently to facilitate proper cooling and sampling after the completion of the first milking;

u. Item 19r. Insect and rodent control. Each person who holds a grade A permit to produce raw milk for pasteurization, ultra-pasteurization, aseptic processing and packaging, or retort processed after packaging shall:

(1) Take effective measures to prevent the contamination of any milk, containers, equipment, and utensils by insects, rodents, and other animals, and by chemicals used to control insects, rodents, and other animals;

(2) Maintain the milkroom free of insects, rodents and other animals;

(3) Keep the areas surrounding the milkhouse; milking barn; milking stable; milking parlor; cattle, sheep, water buffalo, other mammal, or goat housing; cattle, sheep, water buffalo, other mammal, or goat loafing area; water supply; or other facilities on the grade A permit holder's dairy farm neat, clean, and free of conditions that might harbor or be conducive to the breeding of insects and rodents; and

(4) Store all feed in such a manner that the feed will not attract birds, rodents, or insects.

C. Sanitation requirements for grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products.

1. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall comply with:

a. The following administrative procedures contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Section 7, Items 1p, 2p, 3p, 4p, 5p, 6p, 7p, 8p, 9p, 10p, 11p, 12p, 13p, 14p, 15p, 16p, 17p, 18p, 19p, 20p, 21p, and 22p (provided in the case of milk plants or portions of milk plants that are IMS Listed to produce aseptically processed and packaged milk or milk products, the APPS or RPPS, respectively, as defined in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision," shall be exempt from Items 7p, 10p, 11p, 12p, 13p, 15p, 16p, 17p, 18p, and 19p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" and shall comply with the applicable portions of 21 CFR Parts 108, 110, and 113); Section 13; and Section 14;

b. The following appendices contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision": Appendices D, F, G, H, I, J, K, L, N, O, R, and S;

c. Item 1p. Floors; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Except as specified in subdivision C 1 c (2) of this section, provide floors for all rooms in which milk or milk products are processed, handled, packaged, or stored, or in which milk containers, equipment, or utensils are washed, constructed of concrete or other equally impervious and easily cleaned material and that are smooth, properly sloped, provided with trapped drains, and kept in good repair;

(2) The floor in any cold-storage room used for storing milk and milk products need not be provided with floor drains if the floors are sloped to drain to one or more exits from the cold-storage room. The floor in any storage room used for storing dry ingredients or packaging materials need not be provided with drains, and the floor in any storage room used for storing dry ingredients or packaging materials may be constructed of tightly joined wood;

d. Item 2p. Walls and ceilings; construction. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide walls and ceilings of rooms in which milk or milk products are handled, processed, packaged, or stored, or in which milk containers, utensils, or equipment are washed, that have a smooth, washable, light-colored surface, and that are in good repair;

e. Item 3p. Doors and windows. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide:

(1) Effective means to prevent the access of insects and rodents to any part of a milk plant, receiving station, or transfer station; and

(2) Solid doors or glazed windows for all openings to the outside of any milk plant, receiving station, or transfer station and keep the doors and windows closed during dusty weather;

f. Item 4p. Lighting and ventilation. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide rooms in which any milk or milk products are handled, processed, packaged, or stored, or in which any milk containers, equipment, or utensils are washed, that are well lighted and well ventilated;

g. Item 5p. Separate rooms. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Provide separate rooms for: (i) pasteurizing, processing, cooling, reconstituting, condensing, drying, and packaging of milk, dry milk, and milk products; (ii) cleaning milk cans, containers, bottles, cases, and dry milk or dry milk product containers; (iii) the fabrication of containers and closures for milk and milk products, except for aseptically processed and packaged milk and milk products, or retort processed after packaging milk and milk products in which the containers and closures are fabricated within the APPS or RPPS, respectively; (iv) cleaning and sanitizing facilities for bulk milk transport tanks if the grade A permit holder receives any milk or milk product in bulk milk transport tanks; and (v) receiving cans of milk and milk products separate from clauses (i), (ii) and (iii) of this subdivision, unless all of the grade A permit holder's milk or milk products are received in bulk milk transport tanks;

(2) Not use any room with a direct opening into any stable or room used for domestic purposes to handle, process, or store any milk or milk products or to wash or store any milk containers, utensils, or equipment;

(3) Use rooms of sufficient size so as not to be crowded to handle, process, or store any milk or milk products or to wash or store any milk containers, utensils, or equipment; and

(4) Provide designated areas or rooms for the receiving, handling, and storage of returned packaged milk and

milk products if the permit holder receives any returned packaged milk or milk products;

h. Item 6p. Toilet-sewage disposal facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall provide each milk plant with toilet facilities conforming with the regulations of the Commonwealth and the following requirements: no toilet room may open directly into any room in which milk or milk products are processed; the toilet room shall be completely enclosed and shall have tight-fitting, self-closing doors; the dressing room, toilet room, and fixtures shall be kept in a clean condition, in good repair, and shall be well ventilated and well lighted; and sewage and other liquid wastes from the toilet room shall be disposed of in a sanitary manner;

i. Item 7p. Water supply. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Provide water for each milk plant from a supply that is properly located, protected, and operated; and

(2) Provide water from a supply that is easily accessible for inspection by the State Regulatory Authority, adequate, and of a safe, sanitary quality;

j. Item 8p. Hand-washing facilities. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Provide hand-washing facilities, including separate hot and cold running water, mix valve, soap, and individual sanitary towels or other approved hand-drying devices, convenient in any area where milk or milk products are handled, processed, or stored, and any area where containers, utensils, or equipment, are washed or stored; and

(2) Keep the hand-washing facilities clean and in good repair;

k. Item 9p. Milk plant cleanliness. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Keep clean, neat, and free of any evidence of animals, insects, or rodents all rooms in which milk or milk products are handled, processed, or stored or in which containers, utensils, or equipment are washed or stored; and

(2) Permit only equipment directly related to processing operations or to the handling of containers, utensils, and equipment, in pasteurizing, processing, cooling, condensing, drying, packaging, bulk milk, or milk product storage rooms;

l. Item 10p. Sanitary piping. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Use only sanitary piping, fittings, and connections consisting of smooth, impervious corrosion-resistant, nontoxic, easily cleanable materials that are exposed to any milk or milk products, or from which liquids may drip, drain, or be drawn into any milk or milk products;

(2) Keep all piping in good repair;

(3) Except as specified in subdivision 1 l of this subsection, use only sanitary piping to transfer any pasteurized or ultra-pasteurized milk or milk products from one piece of equipment to another piece of equipment; and

(4) Transport cottage cheese, cheese dressings, or cheese ingredients by methods that protect the product from contamination;

m. Item 11p. Construction and repair of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Use only multiuse containers and equipment, that may come in contact with any milk or milk products constructed of smooth, impervious, corrosion-resistant, and nontoxic materials; constructed for ease of cleaning; and kept in good repair;

(2) Use only single-service containers, closures, gaskets, and other articles that may come in contact with any milk or milk products that are nontoxic and have been manufactured, packaged, transported, and handled in a sanitary manner;

(3) Abstain from using more than once any articles intended for single-service use; and

(4) Use only single-service containers, closures, caps, gaskets, and similar articles manufactured, packed, transported, and handled in a manner that complies with the requirements of Appendix J, "Standards for the Fabrication of Single-Service Containers and Closures for Milk and Milk Products" contained in the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

n. Item 12p. Cleaning and sanitizing of containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized,

aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Effectively clean and sanitize before each use the product-contact surfaces of all multiuse containers and equipment, utensils, and equipment used in the transportation, processing, handling, and storage of any milk or milk products;

(2) Use only multiuse containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count on multiuse containers may not exceed one per milliliter of capacity when the rinse test is used, or the residual bacteria count on multiuse containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product-contact surface when the swab test is used; in three-out-of-four samples taken at random on a given day; and (ii) all multiuse containers shall be free of coliform organisms; and

(3) Use only single-service containers for packaging pasteurized milk and milk products that comply with the following: (i) the residual bacteria count of single-service containers shall not exceed 50 per container when the rinse test is used, except that in containers less than 100 milliliters, the count shall not exceed 10, or the residual bacteria count of single-service containers shall not exceed 50 colonies per eight square inches (one per square centimeter) of product contact surface when the swab test is used; in three-out-of-four samples taken at random on a given day; and (ii) all single-service containers shall be free of coliform organisms;

o. Item 13p. Storage of cleaned containers and equipment. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products, shall after cleaning any multiuse milk or milk product containers, utensils, or equipment, transport or store the multiuse milk or milk product containers, utensils, or equipment in a manner that assures complete drainage and in a manner that protects the multiuse milk or milk product containers, utensils, or equipment from contamination before use;

p. Item 14p. Storage of single-service containers, utensils, and materials. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Purchase all single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons;

(2) Store in a clean dry place until used, single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products;

(3) Store single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in sanitary tubes, wrappings, or cartons; and

(4) Handle single-service caps, cap stock, parchment paper, containers, gaskets, and other single-service articles for use in contact with milk or milk products in a sanitary manner;

q. Item 15p. Protection from contamination. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Locate the person's equipment and facilities and conduct milk plant operations to prevent any contamination of any milk or milk products, ingredients, equipment, containers, or utensils;

(2) Discard all milk, milk products, or ingredients that have been spilled, overflowed, or leaked;

(3) Perform the processing and handling of products other than grade A milk and milk products in the person's milk plant to preclude the contamination of any grade A milk or milk products;

(4) Store, handle, or use any poisonous or toxic material to preclude the contamination of any milk, milk product, or ingredient and the milk product contact surfaces of all equipment, containers, or utensils; and

(5) Clean, prior to use, all multiuse cases used to encase packaged milk or milk product containers;

r. Item 16p. Pasteurization and ultra-pasteurization. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Perform pasteurization or ultra-pasteurization as defined in 2VAC5-490-10, and Item 16p of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision"; and

(2) Perform aseptic processing and packaging and retort processed after packaging in accordance with the applicable requirements of 21 CFR Parts 108, 110, and 113;

s. Item 17p. Cooling of milk. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Maintain all raw milk and milk products at a temperature of 45°F or cooler, but not frozen, until processed;

(2) Maintain all whey and whey products for condensing, drying, or condensing and drying at a temperature of 45°F (7°C) or cooler; or 135°F (57°C) or greater until processed, except that acid-type whey with a titratable acidity of 0.40% or above, or a pH of 4.6 or below, is exempted from these temperature requirements;

(3) Completely empty and clean the tanks and vessels used to blend and hold all milk or milk product flavoring slurries that contain milk and milk products after each four hours of operation or less if such tanks are not intended to be injected within a HTST pasteurization system as part of a liquid ingredient injection system as outlined in Appendix H of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision" or unless the slurry is stored at a temperature of 45°F (7°C) or cooler, or at a temperature of 150°F (66°C) or greater and maintained thereat;

(4) Immediately cool, except for the following milk or milk products, all pasteurized or ultra-pasteurized milk or milk products prior to filling or packaging in approved cooling equipment to a temperature of 45°F or cooler, but not frozen, unless drying is commenced immediately after condensing:

(a) Those milk or milk products to be cultured;

(b) Cultured sour cream at all milkfat levels with a pH of 4.70 or below;

(c) Acidified sour cream at all milkfat levels with a pH of 4.60 or below;

(d) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling;

(e) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below;

(f) All condensed whey and whey products shall be cooled during the crystallization process to 50°F (10°C) or less within 72 hours of condensing, including the filling and emptying time, unless filling occurs above 135°F (57°C), in which case, the 72-hour time period begins when cooling started; and

(g) All cultured cottage cheese at all milkfat levels with a pH of 5.2 or below shall be cooled as per specifications of Item 17p (6a-6e) of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(5) Store, transport, and deliver at a temperature of 45°F or cooler, but not frozen, all pasteurized or ultra-pasteurized milk or milk products with the following exceptions:

(a) Cultured sour cream at all milkfat levels with a pH of 4.70 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(b) Acidified sour cream at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 168 hours of filling;

(c) All yogurt products at all milkfat levels with an initial pH of 4.80 or below at filling and with a subsequent pH of 4.60 or below within 24 hours after filling shall be cooled to 45°F (7°C) or cooler within 96 hours after filling;

(d) Cultured buttermilk at all milkfat levels with a pH of 4.60 or below shall be cooled to 45°F (7°C) or cooler within 24 hours after filling; and

(e) Cultured cottage cheese at all milkfat levels with a pH of 5.2 or below shall be stored as per specifications of item 17p (5a-5d) of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

(6) Store all pasteurized milk and milk products to be condensed, dried, or condensed and dried at a temperature of 50°F (10°C) or cooler until further processed;

(7) Equip with an accurate indicating thermometer each of the rooms or tanks in which any milk, milk products, whey, or whey products are stored;

(8) Maintain the temperature on delivery vehicles of milk and milk products at 45°F (7°C) or cooler. Aseptically processed and packaged milk and milk products and retort processed after packaged milk and milk products to be packaged in hermetically sealed containers shall be exempt from the cooling requirements of this item; and

(9) Provide ready access at the plant to cleaning records and product storage temperature records stored electronically for review by the State Regulatory Authority. Electronic records of cleaning shall comply with the applicable provisions of Appendix H, Sections IV and V of the "Grade "A" Pasteurized Milk Ordinance, 2013 Revision";

t. Item 18p. Bottling and packaging. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Bottle or package all milk or milk products at the place of pasteurization in the grade A permit holder's milk plant and in approved mechanical equipment;

(2) Package and store in a sanitary manner all dry milk products in new containers, which protect the contents from contamination; and

(3) Transport and store in a sanitary manner all condensed and dry milk products in sealed containers from one milk plant to another milk plant for further processing or packaging;

u. Item 19p. Capping. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Cap or close all milk or milk product containers in a sanitary manner by use of approved mechanical capping or closing and sealing equipment; and

(2) Use only caps or closures for all milk or milk products that protect the pouring lip of a milk or milk product container to at least its largest diameter and, use with respect to fluid product containers, only caps or closures that the removal of the cap or closure cannot be made without detection;

v. Item 20p. Personnel; cleanliness. No person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall:

(1) Permit any person in a milk plant to commence any plant function before the person has thoroughly washed the person's hands to remove soil and contamination or to permit any person in a milk plant to continue any plant function if the person's hands are not clean;

(2) Permit any person in a milk plant to resume work after the person has visited the toilet room before the person has thoroughly washed the person's hands;

(3) Permit any person in a milk plant to engage in the processing, pasteurization, handling, storage, or transportation of any milk, milk products, containers, equipment or utensils, unless the person is wearing clean outer garments;

(4) Permit any person in a milk plant to engage in the processing of any milk or milk products unless the person wears adequate hair covering; or

(5) Permit any person in a milk plant to engage in the processing of any milk or milk products if the person is using tobacco;

w. Item 21p. Vehicles. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall use vehicles to transport pasteurized and ultra-pasteurized milk and milk products that are constructed and operated so that the milk or milk products are maintained at a temperature of 45°F or cooler, but not frozen, and protected from sunlight, from freezing, and from contamination;

x. Item 22p. Surroundings. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaged milk or milk products shall keep neat, clean, and free from conditions that might attract or harbor flies, other insects, rodents, or other pests that otherwise constitute a nuisance, the area surrounding any milk plant;

y. Each grade A permit holder's receiving station shall comply with subdivisions C 1 a through q of this section, inclusive, and subdivisions C 1 s, v, and x of this section, except that the partitioning requirement of subdivision C 1 g of this section shall not be deemed to apply;

z. Each grade A permit holder's transfer station shall comply with subdivisions C 1 c, f, h through n, p, q, s, v, and x of this section, and as climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section; except that each person shall provide overhead protection for a transfer station; and

a1. Each grade A permit holder's facilities for the cleaning and sanitizing of bulk tanks that transport milk and milk products shall comply with subdivisions C 1 a, f, h through n, p, q, v, and x of this section, and as climatic and operating conditions require, the provisions of subdivisions C 1 d and e of this section except that each grade A permit holder shall provide overhead protection for facilities for the cleaning and sanitizing of bulk tanks which transport milk and milk products in the grade A permit holder's milk plant, receiving station, or transfer station.

D. Minimum facilities requirements for milk processing plant. Each person who holds a grade A permit to produce grade A pasteurized, ultra-pasteurized, aseptically processed and packaged, or retort processed after packaging milk or milk products shall:

1. Provide a separate receiving room meeting the requirements of subdivision C 1 y of this section from any other area of the plant for the receipt of milk or milk products in bulk if the plant receives any milk or milk products in bulk;

2. Provide cleaning and sanitizing facilities for milk tank trucks as part of the plant's receiving room facilities if the plant receives any milk or milk products in bulk;

3. Provide a separate receiving room from any other area of the plant for the receipt of milk or milk product in cans or other containers if the plant receives any milk or milk product in cans or other containers;

4. Provide a separate room from any other area of the plant for the cleaning of milk cans or containers, bottles, milk cases, and dry milk or milk product containers if the plant

receives any milk in cans or containers or washes any bottles, milk cases, or dry milk or milk product containers;

5. Provide a separate room for the fabrication of containers and closures for milk and milk products if the plant fabricates any containers or closures;

6. Provide a separate room for the packaging of dry milk or milk products if the plant packages any dry milk or milk product; and

7. Provide separate rooms from any other area of the plant for each of the following operations performed on any milk, milk product, or condensed and dry milk product: (i) pasteurization; (ii) processing; (iii) cooling; (iv) reconstitution; (v) condensing; (vi) drying; and (vii) packaging, if the operation is performed in the plant.

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TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-428).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20).

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 31, 2018.

Effective Date: November 15, 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 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 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.

Purpose: The purpose of this action is to sunset these supplemental payments so that broader-based inpatient and outpatient hospital supplemental payments can be established. The new payments will apply to a larger number of hospitals. This regulation is necessary to protect the health, safety, and welfare of the public by assuring the efficient use of Medicaid funds so that the program can continue to operate as intended.

Rationale for Using Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking process because it is expected to be noncontroversial. DMAS has consulted with the affected hospitals, and they agree to the termination of these supplemental payments.

Substance: In order to avoid overlapping inpatient and outpatient supplemental payments, supplemental payments made to a limited group of private hospitals are being terminated on the date that new supplemental payments become effective. The three hospitals will be eligible to receive the new supplemental payments. This regulatory action sunsets the following supplemental payments: supplemental inpatient and outpatient payments for private hospital partners of Type One hospitals (i.e., Culpeper, Haymarket, and Prince William). The University of Virginia Medical Center is a minority owner in these hospitals and has been making an intergovernmental transfer to fund the nonfederal share of the supplemental payments. The intergovernmental transfer will no longer be needed after this regulatory action.

Issues: The primary advantages to the Commonwealth and the public from these regulatory changes are that they prevent overlapping supplemental payments so that funds are appropriately allocated. There are no disadvantages to the Commonwealth or the public as a result of this regulatory action.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Medical Assistance Services (Board) proposes to tie sunsetting of Medicaid inpatient and outpatient supplemental payments made to private hospital partners of teaching hospitals to another regulatory action currently underway.

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

Estimated Economic Impact. Private hospital partners of teaching hospitals, Prince William, Culpeper, and Haymarket hospitals, currently receive approximately $14 million annually in inpatient and outpatient supplemental payments from Medicaid under these regulations. As a part of the Medicaid expansion in Virginia, an emergency regulatory

action is currently underway to impose assessments on private acute care hospitals to fund new Medicaid coverage for adults.[1] The emergency action would also establish new supplemental inpatient and outpatient payments at a broader scale, for about 69 qualifying private acute care hospitals in Virginia, thereby revising the current supplemental payment methodology for the three hospitals. The proposed regulation states that the current supplemental payments will cease when the new payment methodology becomes effective.

The financial impact of the methodology change on the three affected hospitals would be the difference between what they would receive after the effective date of state plan amendments as reflected in the emergency regulation and what they would receive under the current regulation.[2] However, even though the new methodology is already established in the emergency regulation, the Department of Medical Assistance Services (DMAS) has not yet calculated the amounts of supplemental payments that will be due to the qualifying hospitals. Therefore, the differences in payments are not known at this time. In addition, the proposed regulation is not by itself sufficient to end the current supplemental payments as it ties the effective date of such change to another regulatory action. In essence, any difference in supplemental payments to the affected three hospitals would be the result of the new regulation currently being promulgated rather than this one. The proposed regulation is mainly beneficial in that it clarifies how and when existing payments will be replaced eliminating the possibility of asymmetric information and asymmetric expectations between DMAS and the hospitals.

Businesses and Entities Affected. The proposed amendments apply to three private hospital partners of the University of Virginia Health System: Prince William, Culpeper, and Haymarket hospitals.

Localities Particularly Affected. Prince William, Culpeper, and Haymarket hospitals are located in Manassas, Culpeper, and Haymarket respectively.

Projected Impact on Employment. No impact on employment is expected upon promulgation of this proposed regulation.

Effects on the Use and Value of Private Property. No effects on the use and value of private property is expected upon promulgation of this proposed regulation.

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 affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed regulation does not adversely affect 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.

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[1] http://townhall.virginia.gov/L/ViewAction.cfm?actionid=5100.

[2] DMAS expects the emergency regulation to be effective on September 30, 2018.

Agency's Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and takes no issue with this analysis.

Summary:

The amendments sunset inpatient and outpatient supplemental payments made to private hospital partners of Type One hospitals to avoid overlap with new, broader-based inpatient and outpatient supplemental payments that are being established and for which the three affected hospitals, Prince William, Culpeper, and Haymarket, will qualify.

12VAC30-70-428. Supplemental payments for private hospital partners of Type One hospitals.

A. Effective for dates of service on or after October 25, 2011, quarterly supplemental payments will be issued to qualifying private hospitals for inpatient services rendered during the quarter. These quarterly supplemental payments will cease for dates of service on or after the effective date of State Plan amendments authorizing increased payments to qualifying hospitals from the Health Care Provider Rate Assessment Fund established pursuant to § 32.1-331.02 of the Code of Virginia and approved by the Centers for Medicare and Medicaid Services.

B. Qualifying criteria. In order to qualify for the supplemental payment, the hospital must be enrolled currently as a Virginia Medicaid provider and must be owned or operated by a private entity in which a Type One hospital has a nonmajority interest.

C. Reimbursement methodology.

1. Hospitals not participating in the Medicaid disproportionate share hospital (DSH) program shall

receive quarterly supplemental payments for the inpatient services rendered during the quarter. Each quarterly payment distribution shall occur not more than two years after the year in which the qualifying hospital's entitlement arises. The annual supplemental payments in any fiscal year shall be the lesser of:

a. The difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for services processed for fee-for-service Medicaid recipients during the fiscal year; or

b. $14,620 per Medicaid discharge for state plan rate year 2012. For future state plan rate years, this number shall be adjusted by inflation based on the Virginia moving average values as compiled and published by Global Insight (or its successor) under contract with the department.

2. Hospitals participating in the Medicaid DSH program shall receive quarterly supplemental payments for the inpatient services rendered during the quarter. Each quarterly payment distribution shall occur not more than two years after the year in which the qualifying hospital's entitlement arises. The annual supplemental payments in any fiscal year shall be the lesser of:

a. The difference between each qualifying hospital's inpatient Medicaid billed charges and Medicaid payments the hospital receives for services processed for fee-for-service Medicaid recipients during the fiscal year;

b. $14,620 per Medicaid discharge for state plan rate year 2012. For future state plan rate years, this number shall be adjusted by inflation based on the Virginia moving average values as compiled and published by Global Insight (or its successor) under contract with the department; or

c. The difference between the limit calculated under § 1923(g) of the Social Security Act and the hospital's DSH payments for the applicable payment period.

D. Limit. Maximum aggregate payments to all qualifying hospitals shall not exceed the available upper payment limit per state fiscal year.

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed in this section shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 1 e of this section. The upper limit for reimbursement shall be no higher than payments for Medicare patients in accordance with 42 CFR 447.321. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform Centers for Medicare and Medicaid Services-approved cost report by participating providers. The cost reports are due not later than 150 days after the provider's fiscal year end. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, DMAS or its designee shall take action in accordance with its policies to assure that an overpayment is not being made. All cost reports shall be reviewed and reconciled to final costs within 180 days of the receipt of a completed cost report. The cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form provided by DMAS, with signed certification;

2. The provider's trial balance showing ~~adjusting~~ adjusted journal entries;

3. The provider's financial statements including~~, but not limited to,~~ a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. For dates of service prior to January 1, 2014, outpatient hospital services, including rehabilitation hospital outpatient services and excluding laboratory services.

a. Definitions. The following words and terms when used in this section shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

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

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 1 b (1) of this subsection. Such criteria shall include~~, but not be limited to~~:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD diagnosis codes and necessary supporting documentation. As used here, the term "ICD" is defined in 12VAC30-95-5.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD code designations, and the impact on recipients and providers. As used here, the term "ICD" is defined in 12VAC30-95-5.

c. Limitation of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at various percentages as noted in subdivisions 1 c (1) and 1 c (2) of this subsection of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date.

(1) Type One hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating reimbursement shall be at 91.2% of allowable cost and capital reimbursement shall be at 87% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating reimbursement shall be at 90.2% of allowable cost and capital reimbursement shall be at 86% of allowable cost.

(2) Type Two hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating and capital reimbursement shall be 77% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating and capital reimbursement shall be 76% of allowable cost.

d. The last cost report with a fiscal year end on or after December 31, 2013, shall be used for reimbursement for dates of service through December 31, 2013, based on this section. Reimbursement shall be based on charges reported for dates of service prior to January 1, 2014. Settlement will be based on four months of runout from the end of the provider's fiscal year. Claims for services paid after the cost report runout period will not be settled.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

2. Rehabilitation agencies or comprehensive outpatient rehabilitation.

a. Effective July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities that are operated by community services boards or state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

b. Effective October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities operated by state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

3. Supplement payments to Type One hospitals for outpatient services.

a. In addition to payments for services set forth elsewhere in the State Plan, DMAS makes supplemental payments to qualifying state government owned or operated hospitals for outpatient services furnished to Medicare members on or after July 1, 2010. To qualify for a supplement payment, the hospital must be part of the state academic health system or part of an academic health system that operates under a state authority.

b. The amount of the supplemental payment made to each qualifying hospital shall be equal to the difference between the total allowable cost and the amount otherwise actually paid for the services by the Medicaid program based on cost settlement.

c. Payment for furnished services under this section shall be paid at settlement of the cost report.

4. Supplemental payments for private hospital partners of Type One hospitals. Effective for dates of service on or after October 25, 2011, quarterly supplemental payments shall be issued to qualifying private hospitals for outpatient services rendered during the quarter. These quarterly supplemental payments will cease for dates of service on or after the effective date of State Plan amendments authorizing increased payments to qualifying hospitals from the Health Care Provider Rate Assessment Fund established pursuant to § 32.1-331.02 of the Code of Virginia and approved by the Centers for Medicare and Medicaid Services.

a. In order to qualify for the supplemental payment, the hospital shall be enrolled currently as a Virginia Medicaid provider and shall be owned or operated by a private entity in which a Type One hospital has a nonmajority interest.

b. Reimbursement methodology.

(1) Hospitals not participating in the Medicaid disproportionate share hospital (DSH) program shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Each quarterly payment distribution shall occur not more than two years after the year in which the qualifying hospital's entitlement arises. The annual supplemental payments in a fiscal year shall be the lesser of:

(a) The difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for services processed for fee-for-service Medicaid individuals during the fiscal year; or

(b) $1,894 per Medicaid outpatient visit for state plan rate year 2012. For future state plan rate years, this number shall be adjusted by inflation based on the Virginia moving average values as compiled and published by Global Insight (or its successor) under contract with the department.

(2) Hospitals participating in the DSH program shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Each quarterly payment distribution shall occur not more than two years after the year in which the qualifying hospital's entitlement arises. The annual supplemental payments in a fiscal year shall be the lesser of:

(a) The difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for services processed for

fee-for-service Medicaid individuals during the fiscal year;

(b) $1,894 per Medicaid outpatient visit for state plan rate year 2012. For future state plan rate years, this number shall be adjusted by inflation based on the Virginia moving average values as compiled and published by Global Insight (or its successor) under contract with the department; or

(c) The difference between the limit calculated under § 1923(g) of the Social Security Act and the hospital's DSH payments for the applicable payment period.

c. Limit. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

VA.R. Doc. No. R19-5596; Filed September 11, 2018, 11:19 a.m.

Emergency Regulation

Titles of Regulations: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (adding 12VAC30-70-411, 12VAC30-70-429).**

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20).

12VAC30-160. Hospital Assessment (adding 12VAC30-160-10).

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

Effective Dates: October 1, 2018, through March 31, 2020.

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.

Preamble:

Section 2.2-4011 B of the Code of Virginia states that agencies may adopt emergency regulations in situations in which Virginia statutory law or the appropriation act requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

The amendments (i) authorize the Department of Medical Assistance Services to levy assessments upon private acute care hospitals operating in Virginia to fund new Medicaid coverage for adults as well as new Medicaid hospital supplemental payments, (ii) establish new supplemental inpatient and outpatient payments for qualifying private acute care hospitals in Virginia, and (iii) sunset supplemental payments made to certain private teaching hospitals to avoid overlapping supplemental payments. The amendments are required by §§ 3-5.15 and 3-5.16 and Item 303 XX 6 c of the 2018 Appropriation Act (Chapter 2 of the 2018 Acts of Assembly, Special Session I).

12VAC30-70-411. Supplemental payments for certain teaching hospitals.

A. Effective for dates of service on or after July 1, 2017, quarterly supplemental payments will be issued to qualifying private hospitals for inpatient services rendered during the quarter. These quarterly supplemental payments will cease for dates of service on or after the effective date of State Plan amendments authorizing increased payments to qualifying hospitals from the Health Care Provider Rate Assessment Fund established pursuant to § 32.1-331.02 of the Code of Virginia and approved by the Centers for Medicare and Medicaid Services.

B. Qualifying criteria. Qualifying hospitals are the primary teaching hospitals affiliated with a Liaison Committee on Medical Education (LCME) accredited medical school located in Planning District 23 that is a political subdivision of the Commonwealth and an LCME accredited medical school located in Planning District 5 that has a partnership with a public university.

C. Reimbursement methodology. Each qualifying hospital shall receive quarterly supplemental payments for the inpatient services rendered during the quarter equal to the difference between the hospital's Medicaid payments and the hospital's disproportionate share limit (Omnibus Budget Reconciliation Act 93 disproportionate share hospital limit) for the most recent year for which the disproportionate share limit has been calculated divided by four. The supplemental payment amount will be determined prior to the beginning of the fiscal year.

D. Limit. Maximum aggregate payments to all qualifying hospitals shall not exceed the available upper payment limit per state fiscal year (SFY). In SFY 2019, the upper payment limit shall be prorated for the time period these supplemental payments are in effect.

12VAC30-70-429. Supplemental payments for private acute care hospitals.

A. On the effective date of the State Plan amendments approved by the Centers for Medicare and Medicaid Services (CMS) that authorize increased payments to qualifying hospitals from the Health Care Provider Rate Assessment Fund established pursuant to § 32.1-331.02 of the Code of Virginia, supplemental payments will be issued to qualifying hospitals for inpatient services provided to Medicaid patients.

B. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Acute care hospital" means any hospital that provides emergency medical services on a 24-hour basis.

"Children's hospital" means a hospital (i) whose inpatients are predominantly younger than 18 years of age and (ii) that is excluded from the Medicare prospective payment system pursuant to the Social Security Act.

"Critical access hospital" means a facility that meets the requirements of the State Medicare Rural Hospital Flexibility Program, 42 USC § 1395i-4, for such designation.

"Freestanding psychiatric and rehabilitation hospital" means a freestanding psychiatric hospital, which means a hospital that provides services consistent with 42 CFR 482.60, or a freestanding rehabilitation hospital, which means a hospital that provides services consistent with 42 CFR 482.56.

"Hospital" means a medical care facility licensed as an inpatient hospital or outpatient surgical center by the Department of Health or as a psychiatric hospital by the Department of Behavioral Health and Developmental Services.

"Long-stay hospital" means specialty facilities that serve individuals receiving medical assistance who require a higher intensity of nursing care than that which is normally provided in a nursing facility and who do not require the degree of care and treatment that an acute care hospital is designed to provide.

"Long-term acute care hospital" or "LTACH" means an inpatient hospital that provides care for patients who require a length of stay greater than 25 days and is, or proposes to be, certified by CMS as a long-term care inpatient hospital pursuant to 42 CFR Part 412. A LTACH may be either a freestanding facility or located within an existing or host hospital.

"Public hospital" means a hospital that is solely owned by a government or governmental entity.

"Supplemental payment" means an increased payment to a qualifying hospital up to the upper payment limit gap from the Health Care Provider Rate Assessment Fund as authorized in the 2018 Appropriation Act (Chapter 2 of the 2018 Acts of Assembly, Special Session I).

"Upper payment limit" means the limit on payment for inpatient services for recipients of medical assistance established in accordance with 42 CFR 447.272 and on payment for outpatient services for recipients of medical assistance pursuant to 42 CFR 447.321 for private hospitals. The limit applies only to fee-for-service claims.

"Upper payment limit gap" or "UPL gap" means the difference between the amount of the private acute care hospital upper payment limits estimated for the State Plan rate year using the latest available cost report data and the amount estimated that would otherwise be paid for the same State Plan rate year pursuant to the State Plan reimbursement methodology for inpatient and outpatient services. The upper payment limit gap shall be updated annually for each rate year.

C. Qualifying criteria. Qualifying hospitals are all in-state private acute care hospitals, excluding public hospitals, freestanding psychiatric and rehabilitation hospitals, children's hospitals, long-stay hospitals, long-term acute care hospitals, and critical access hospitals.

D. Reimbursement methodology. The supplemental payment shall equal inpatient hospital claim payments times the UPL gap percentage.

1. The annual UPL gap percentage is the percentage calculated when the numerator is the upper payment limit gap for inpatient services for private hospitals and the denominator is Medicaid claim payments to all qualifying hospitals for inpatient hospital services provided to Medicaid patients in the same year used in the numerator.

2. The UPL gap percentage will be calculated annually.

E. Quarterly payments. After the close of each quarter, beginning with the quarter including the CMS effective date of all necessary State Plan amendments authorizing increased payments to qualifying hospitals, each qualifying hospital shall receive supplemental payments for the inpatient services paid during that quarter. The supplemental payments for each qualifying hospital for each quarter shall be calculated based on the Medicaid inpatient hospital payments paid in that quarter multiplied by the annual UPL gap percentage.

12VAC30-80-20. Services that are reimbursed on a cost basis.

A. Payments for services listed in this section shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 1 e of this section. The upper limit for reimbursement shall be no higher than payments for Medicare patients in accordance with 42 CFR 447.321. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform Centers for Medicare and Medicaid Services-approved cost report by participating providers. The cost reports are due not later than 150 days after the provider's fiscal year end. If a complete cost report is not received within 150 days after the end of the provider's fiscal year, DMAS or its designee shall take action in accordance with its policies to assure that an overpayment is not being made. All cost reports shall be reviewed and reconciled to final costs within 180 days of the receipt of a completed cost report. The

cost report will be judged complete when DMAS has all of the following:

1. Completed cost reporting form provided by DMAS, with signed certification;

2. The provider's trial balance showing ~~adjusting~~ adjusted journal entries;

3. The provider's financial statements including~~, but not limited to,~~ a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;

4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;

5. Depreciation schedule or summary;

6. Home office cost report, if applicable; and

7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

C. Item 398 D of the 1987 Appropriation Act (as amended), effective April 8, 1987, eliminated reimbursement of return on equity capital to proprietary providers.

D. The services that are cost reimbursed are:

1. For dates of service prior to January 1, 2014, outpatient hospital services, including rehabilitation hospital outpatient services and excluding laboratory services.

a. Definitions. The following words and terms when used in this section shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

"All-inclusive" means all emergency department and ancillary service charges claimed in association with the emergency room visit, with the exception of laboratory services.

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

"Emergency hospital services" means services that are necessary to prevent the death or serious impairment of the health of the recipient. The threat to the life or health of the recipient necessitates the use of the most accessible hospital available that is equipped to furnish the services.

"Recent injury" means an injury that has occurred less than 72 hours prior to the emergency department visit.

b. Scope. DMAS shall differentiate, as determined by the attending physician's diagnosis, the kinds of care routinely rendered in emergency departments and reimburse for nonemergency care rendered in emergency departments at a reduced rate.

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services rendered in emergency departments that DMAS determines were nonemergency care.

(2) Services determined by the attending physician to be emergencies shall be reimbursed under the existing methodologies and at the existing rates.

(3) Services performed by the attending physician that may be emergencies shall be manually reviewed. If such services meet certain criteria, they shall be paid under the methodology for subdivision 1 b (2) of this subsection. Services not meeting certain criteria shall be paid under the methodology of subdivision 1 b (1) of this subsection. Such criteria shall include~~, but not be limited to~~:

(a) The initial treatment following a recent obvious injury.

(b) Treatment related to an injury sustained more than 72 hours prior to the visit with the deterioration of the symptoms to the point of requiring medical treatment for stabilization.

(c) The initial treatment for medical emergencies including indications of severe chest pain, dyspnea, gastrointestinal hemorrhage, spontaneous abortion, loss of consciousness, status epilepticus, or other conditions considered life threatening.

(d) A visit in which the recipient's condition requires immediate hospital admission or the transfer to another facility for further treatment or a visit in which the recipient dies.

(e) Services provided for acute vital sign changes as specified in the provider manual.

(f) Services provided for severe pain when combined with one or more of the other guidelines.

(4) Payment shall be determined based on ICD diagnosis codes and necessary supporting documentation. As used here, the term "ICD" is defined in 12VAC30-95-5.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD code designations, and the impact on recipients and providers. As used here, the term "ICD" is defined in 12VAC30-95-5.

c. Limitation of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two

hospitals for outpatient services shall be at various percentages as noted in subdivisions 1 c (1) and 1 c (2) of this subsection of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after that date, based on the number of calendar months in the cost reporting period, falling before and after that date.

(1) Type One hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating reimbursement shall be at 91.2% of allowable cost and capital reimbursement shall be at 87% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating reimbursement shall be at 94.2% of allowable cost and capital reimbursement shall be at 90% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating reimbursement shall be at 90.2% of allowable cost and capital reimbursement shall be at 86% of allowable cost.

(2) Type Two hospitals.

(a) Effective July 1, 2003, through June 30, 2010, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(b) Effective July 1, 2010, through September 30, 2010, hospital outpatient operating and capital reimbursement shall be 77% of allowable cost.

(c) Effective October 1, 2010, through June 30, 2011, hospital outpatient operating and capital reimbursement shall be 80% of allowable cost.

(d) Effective July 1, 2011, hospital outpatient operating and capital reimbursement shall be 76% of allowable cost.

d. The last cost report with a fiscal year end on or after December 31, 2013, shall be used for reimbursement for dates of service through December 31, 2013, based on this section. Reimbursement shall be based on charges reported for dates of service prior to January 1, 2014. Settlement will be based on four months of runout from the end of the provider's fiscal year. Claims for services paid after the cost report runout period will not be settled.

e. Payment for direct medical education costs of nursing schools, paramedical programs and graduate medical education for interns and residents.

(1) Direct medical education costs of nursing schools and paramedical programs shall continue to be paid on an allowable cost basis.

(2) Effective with cost reporting periods beginning on or after July 1, 2002, direct graduate medical education (GME) costs for interns and residents shall be reimbursed on a per-resident prospective basis. See 12VAC30-70-281 for prospective payment methodology for graduate medical education for interns and residents.

2. Rehabilitation agencies or comprehensive outpatient rehabilitation.

a. Effective July 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities that are operated by community services boards or state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

b. Effective October 1, 2009, rehabilitation agencies or comprehensive outpatient rehabilitation facilities operated by state agencies shall be reimbursed their costs. For reimbursement methodology applicable to all other rehabilitation agencies, see 12VAC30-80-200.

3. Supplement payments to Type One hospitals for outpatient services.

a. In addition to payments for services set forth elsewhere in the State Plan, DMAS makes supplemental payments to qualifying state government owned or operated hospitals for outpatient services furnished to Medicare members on or after July 1, 2010. To qualify for a supplement payment, the hospital must be part of the state academic health system or part of an academic health system that operates under a state authority.

b. The amount of the supplemental payment made to each qualifying hospital shall be equal to the difference between the total allowable cost and the amount otherwise actually paid for the services by the Medicaid program based on cost settlement.

c. Payment for furnished services under this section shall be paid at settlement of the cost report.

4. Supplemental payments for private hospital partners of Type One hospitals. Effective for dates of service on or after October 25, 2011, quarterly supplemental payments shall be issued to qualifying private hospitals for outpatient services rendered during the quarter.

a. In order to qualify for the supplemental payment, the hospital shall be enrolled currently as a Virginia Medicaid provider and shall be owned or operated by a

private entity in which a Type One hospital has a nonmajority interest.

b. Reimbursement methodology.

(1) Hospitals not participating in the Medicaid disproportionate share hospital (DSH) program shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Each quarterly payment distribution shall occur not more than two years after the year in which the qualifying hospital's entitlement arises. The annual supplemental payments in a fiscal year shall be the lesser of:

(a) The difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for services processed for fee-for-service Medicaid individuals during the fiscal year; or

(b) $1,894 per Medicaid outpatient visit for state plan rate year 2012. For future state plan rate years, this number shall be adjusted by inflation based on the Virginia moving average values as compiled and published by Global Insight (or its successor) under contract with the department.

(2) Hospitals participating in the DSH program shall receive quarterly supplemental payments for the outpatient services rendered during the quarter. Each quarterly payment distribution shall occur not more than two years after the year in which the qualifying hospital's entitlement arises. The annual supplemental payments in a fiscal year shall be the lesser of:

(a) The difference between each qualifying hospital's outpatient Medicaid billed charges and Medicaid payments the hospital receives for services processed for fee-for-service Medicaid individuals during the fiscal year;

(b) $1,894 per Medicaid outpatient visit for state plan rate year 2012. For future state plan rate years, this number shall be adjusted by inflation based on the Virginia moving average values as compiled and published by Global Insight (or its successor) under contract with the department; or

(c) The difference between the limit calculated under § 1923(g) of the Social Security Act and the hospital's DSH payments for the applicable payment period.

c. Limit. Maximum aggregate payments to all qualifying hospitals in this group shall not exceed the available upper payment limit per state fiscal year.

5. Supplemental outpatient payments for private acute care hospitals. On the effective date of the State Plan amendments approved by the Centers for Medicare and Medicaid Services (CMS) that authorize increased payments to qualifying hospitals from the Health Care Provider Rate Assessment Fund established pursuant to § 32.1-331.02 of the Code of Virginia, supplemental payments will be issued to qualifying private hospitals for outpatient services provided to Medicaid patients.

a. Definitions. See definitions in 12VAC30-70-429.

b. Qualifying criteria. Qualifying hospitals are all in-state private acute care hospitals, excluding public hospitals, freestanding psychiatric and rehabilitation hospitals, children's hospitals, long-stay hospitals, long-term acute care hospitals, and critical access hospitals. A qualifying hospital is the same as a "covered hospital" in § 32.1-331.02 of the Code of Virginia.

c. Reimbursement methodology. The supplemental payment shall equal outpatient hospital claim payments times the UPL gap percentage.

(1) The annual UPL gap percentage is the percentage calculated where the numerator is the UPL gap for outpatient services for private hospitals and the denominator is Medicaid claim payments to all qualifying hospitals for outpatient hospital services provided to Medicaid patients in the same year used in the numerator.

(2) The annual UPL gap percentage will be calculated annually.

d. Quarterly payments. After the close of each quarter, beginning with the quarter including the CMS effective date of all necessary State Plan amendments authorizing increased payments to qualifying hospitals, each qualifying hospital shall receive supplemental payments for the outpatient services paid during that quarter. The supplemental payments for each qualifying hospital for each quarter shall be calculated based on the Medicaid outpatient hospital payments paid in that quarter multiplied by the annual UPL gap percentage.

CHAPTER 160
HOSPITAL ASSESSMENT

12VAC30-160-10. Hospital assessment.

A. Authority. The Department of Medical Assistance Services (DMAS) is authorized to levy a Health Care Coverage Assessment and a Health Care Provider Payment Rate Assessment upon private acute care hospitals operating in Virginia in accordance with §§ 32.1-331.01 and 32.1-331.02 of the Code of Virginia and §§ 3-5.15, 3-5.16, and 4-14 of the 2018 Appropriation Act. Any provision of this regulation is contingent upon approvals, where necessary, by the Centers for Medicare and Medicaid Services (CMS).

B. Definitions. The following words and terms when used in this section shall have the following meanings unless the context clearly indicates otherwise:

"Covered hospital" means any in-state private acute care hospital other than a hospital classified as a public hospital, freestanding psychiatric and rehabilitation hospital, children's hospital, long-stay hospital, long-term acute care hospital, or critical access hospital.

"Full cost of expanded Medicaid coverage" means the amount estimated in the official Medicaid forecast due by November 1 of each year, which is filed by the Department of Planning and Budget in cooperation with the Department of Medical Assistance Services and upon which the Governor's budget recommendations are based, that estimates the nonfederal cost for expanded Medicaid coverage for newly eligible individuals.

"Managed care organization," "MCO," or "Medicaid MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under a mandatory managed care program.

"Managed care organization hospital payment gap" means the difference between the amount included in the capitation rates for inpatient and outpatient services for the contract year based on historical paid claims and the amount that would be included when the projected hospital services furnished by private acute care hospitals operating in Virginia are priced for the contract year according to the existing State Plan methodology but using 100% for the adjustment factors (including the capital reimbursement percentage) and full inflation subject to CMS approval under 42 CFR 438.6(c). The managed care organization hospital payment gap shall be updated annually for each contract year.

"Managed care organization supplemental hospital capitation payment" means the additional amount added to Medicaid MCO capitation rates to pay the Medicaid managed care organization hospital payment gap to qualifying individuals for services to Medicaid recipients. The methodology for the Medicaid managed care organization supplemental hospital capitation payment is described in the DMAS application to CMS and will be incorporated in the Medicaid MCO contracts.

"Net patient service revenue" means the amount each hospital reported in the most recent Virginia Health Information Hospital Detail Report as of December 15 of each year.

"Newly eligible individual" means an individual described in 42 USC § 1396a(a)(10)(A)(i)(VIII).

"Private acute care hospital" means acute care hospitals, excluding public hospitals, freestanding psychiatric and rehabilitation hospitals, children's hospitals, long-stay hospitals, long-term acute care hospitals, and critical access hospitals.

"Provider payment rate costs" means the upper payment limit gap and the managed care organization hospital payment gap.

"Upper payment limit" means the limit on payment for inpatient services for recipients of medical assistance established in accordance with 42 CFR 447.272 and on payment for outpatient services for recipients of medical assistance pursuant to 42 CFR 447.321 for private hospitals. This limit applies only to fee-for-service claims.

"Upper payment limit payment gap" means the difference between the amount of the private acute care hospital upper payment limits estimated for the State Plan rate year using the latest available cost report data and the amount estimated that would otherwise be paid for that same State Plan rate year pursuant to the State Plan for inpatient and outpatient services. The supplemental payment methodology from the Health Care Provider Payment Rate Fund to qualifying hospitals for inpatient services is described in 12VAC30-70-429 and for outpatient services is described in 12VAC30-80-20. The upper payment limit payment gap shall be updated annually for each State Plan rate year.

C. With respect to references to net patient service revenue in subsections D and E of this section, hospitals shall have until April 1 of each year to report any nonhospital revenue that should be excluded from net patient service revenue as reported to the Virginia Health Information (VHI) Hospital Detail Report. The hospital's chief financial officer must certify any changes to the data reported to VHI. In the first year, hospitals must report within 30 days of the effective date of this regulation.

D. Health care coverage assessment. Private acute care hospitals operating in Virginia shall pay a provider coverage assessment beginning on or after the effective date of all necessary State Plan amendments establishing inpatient and outpatient supplemental payments associated with Medicaid coverage for newly eligible individuals.

1. DMAS will calculate each hospital's coverage assessment annually by multiplying the coverage assessment percentage times net patient service revenue.

2. The coverage assessment percentage is calculated as (i) 1.08 times the nonfederal share of the full cost of expanded Medicaid coverage for newly eligible individuals under 42 USC § 1396d(y)(1) (as inserted by § 2001 of the Patient Protection and Affordable Care Act (P.L. 111-148 as amended by P.L. 111-152)) divided by (ii) the total net patient service revenue for hospitals subject to the assessment. Any estimated excess or shortfall of the coverage assessment from the previous year will be deducted from or added to the full cost of expanded Medicaid coverage for the next year prior to the calculation of the coverage assessment percentage.

3. The full cost of expanded Medicaid coverage equals the amount estimated in the official Medicaid forecast due by November 1 of each year as required by the appropriation act.

4. By May 1 of each year, DMAS shall report the estimated coverage assessment payments by hospital and all assessment percentage calculations for the upcoming fiscal year to the Director of the Department of Planning and Budget and the Chairmen of the House Appropriations and Senate Finance Committees.

5. The coverage assessment shall be used only to cover the nonfederal share of the full cost of expanded Medicaid coverage for newly eligible individuals pursuant to 42 USC § 1396d(y)(1) as inserted by § 2001 of the Patient Protection and Affordable Care Act, including the nonfederal share of administrative costs of collecting the coverage assessment and the administrative costs associated with implementing and operating the coverage for newly eligible individuals.

6. Hospitals subject to the coverage assessment shall make quarterly payments to DMAS equal to 25% of the annual coverage assessment amount. In the first year, quarterly amounts for the remainder of the state fiscal year shall equal one-third of the coverage assessment. The assessment payments are due not later than the first day of each quarter. In the first year, the first coverage assessment payment shall be due on or after October 1, 2018. Hospitals that fail to make the coverage assessment payments within 30 days of the due date shall incur a 5.0% penalty. Any unpaid coverage assessment or penalty will be considered a debt to the Commonwealth, and DMAS is authorized to recover it as such.

E. Health care provider payment rate assessment. Private acute care hospitals operating in Virginia shall pay a provider payment rate assessment beginning on or after the effective date of all necessary State Plan amendments establishing the provider payment rate assessment and the associated inpatient and outpatient supplemental payments.

Proceeds from the provider payment rate assessment shall be disbursed to fund an increase in inpatient and outpatient payment rates paid to private acute care hospitals operating in Virginia up to the upper payment limit and the managed care organization hospital payment gap for care provided to recipients of medical assistance services.

1. DMAS will calculate each hospital's payment rate assessment annually by multiplying the payment rate assessment percentage times net patient service revenue.

2. The payment rate assessment percentage for covered hospitals will be calculated as (i) 1.00 times the nonfederal share of funding the upper payment limit gap and the managed care organization hospital payment gap divided by (ii) the total net patient service revenue for covered hospitals. Prior to calculating the payment rate assessment percentage, DMAS shall estimate the cost of the upper payment limit gap and the managed care organization hospital payment gap. Any estimated excess or shortfall of the provider payment rate assessment from the previous year will be deducted from or added to the calculation of the provider payment rate costs.

3. Within 14 days after the appropriation act for the upcoming fiscal year is signed, DMAS shall report the estimated payment rate assessment by hospital and all assessment percentage calculations for the upcoming fiscal year to the Director of the Department of Planning and Budget and the Chairmen of the House Appropriations and Senate Finance Committees.

4. As part of the development of the managed care capitation rates, DMAS shall calculate a managed care organization supplemental hospital capitation payment adjustment. This is a distinct additional amount added to Medicaid MCO capitation rates to pay the managed care organization hospital payment gap as supplemental payments to covered private acute care hospitals operating in Virginia for services to Medicaid recipients.

5. Hospitals subject to the assessment shall make quarterly payments to DMAS equal to 25% of the annual provider payment rate assessment amount. In the first year, quarterly amounts for the remainder of the state fiscal year shall equal the hospital's total provider payment rate assessment for the fiscal year divided by the number of quarters in the remainder of the fiscal year after the effective date of the payment rates. The assessment payments are due not later than the first day of each quarter. In the first year, the first assessment payment shall be due on or after October 1, 2018. Hospitals that fail to make the assessment payments within 30 days of the due date shall incur a 5.0% penalty. Any unpaid assessment or penalty will be considered a debt to the Commonwealth, and DMAS is authorized to recover it as such.

F. Collection of the assessments. DMAS is responsible for collecting the assessments.

1. All revenue from the coverage assessment, including penalties, shall be deposited into a special nonreverting fund to be known as the Health Care Coverage Assessment Fund pursuant to § 32.1-331.01 of the Code of Virginia. Proceeds from the Health Care Coverage Assessment Fund, including penalties, shall not be used for any other purpose than to cover the nonfederal share of the full cost of enhanced Medicaid coverage for newly eligible individuals, including the administrative costs of collecting the assessment and of implementing and operating the coverage for newly eligible adults.

2. All revenue from the provider payment rate assessment, including penalties, shall be deposited into a special nonreverting fund to be known as the Health Care Provider Payment Rate Assessment Fund pursuant to § 32.1-331.02 of the Code of Virginia. Proceeds from the Health Care

Provider Payment Rate Assessment Fund, including penalties, shall not be used for any other purpose than to fund an increase in inpatient and outpatient payment rates paid to private acute care hospitals operating in Virginia up to the private hospital upper payment limit or managed care organization hospital payment gap for care provided to recipients of medical assistance services and the administrative costs of collecting the assessment and of implementing and operating the associated payment rate actions.

3. DMAS will submit a report by September 1 of each year to the Director of the Department of Planning and Budget and the Chairmen of the House Appropriations and Senate Finance Committees. The report will include, for the most recently completed state fiscal year, the revenue collected from each assessment by hospital, expenditures for purposes covered by each assessment, and the year-end assessment balances in each special nonreverting fund.

G. Appeal. A covered hospital may appeal a DMAS action that falls within the definition of agency action under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia), including DMAS's interpretation and application of assessment methodologies. The assessment methodologies cannot be appealed.

1. Appeals will be conducted in accordance with the provider appeal regulations (12VAC30-20-500 et seq.).

2. A covered hospital shall be considered a "provider" for purposes of the appeal procedures set forth in the provider appeal regulations.

VA.R. Doc. No. R19-5591; Filed September 11, 2018, 11:18 a.m.

Withdrawal of Fast-Track Regulatory Action

Title of Regulation: **12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (adding 12VAC30-70-411).**

Statutory Authority: § 32.1-325 of the Code of Virginia; 42 USC § 1396 et seq.

The Department of Medical Assistance Services has WITHDRAWN the fast-track regulatory action for 12VAC30-70, Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services, which was published in 35:1 VA.R. 37-39 September 3, 2018. The agency has determined that this action is duplicative of another regulatory action and no longer necessary.

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. R19-5393; Filed September 12, 2018, 11:43 a.m.

TITLE 13. HOUSING

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Final Regulation

REGISTRAR'S NOTICE: The following regulations of the Board of Housing and Community Development are exempt from Article 2 of the Administrative Act pursuant to § 2.2-4006 A 12 of the Code of Virginia; however, the regulations are subject to the provisions of § 2.2-4007.06 of the Code of Virginia concerning public petitions. The regulations were (i) published as final regulations in 34:18 VA.R. 1617-1744 April 30, 2018, (ii) suspended pursuant to § 2.2-4007.06 in 34:25 VA.R. 2519 August 6, 2018, and (iii) readopted as final regulations with the changes shown in brackets below.

Title of Regulation: **13VAC5-51. Virginia Statewide Fire Prevention Code (amending 13VAC5-51-131, 13VAC5-51-133.5, 13VAC5-51-134, 13VAC5-51-135, 13VAC5-51-135.5).**

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

Effective Date: October 16, 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 Statewide Fire Prevention Code (SFPC) is a regulation governing the maintenance of the fire protection aspects of existing structures and operational functions relating to fire safety wherever located, including the regulation of the use of explosives, blasting, and fireworks displays. The SFPC uses a nationally recognized model code produced by the International Code Council as the basis for the technical provisions of the regulation. Every three years, a new edition of the model code becomes available. At that time, the Board of Housing and Community Development initiates a regulatory action to incorporate the newest edition of the model code into the regulation.

Final regulations for the SFPC, including the subdivisions published in this action, were published in Volume 34, Issue 18 of the Virginia Register on April 30, 2018 (34:18 VA.R. 1617-1744 April 30, 2018), initiating a 30-day final adoption period. During that period, a number of petitions were received concerning substantive changes made between the proposed and final regulations. The board suspended the regulatory process for the regulation (refer to 34:25 VA.R. 2519 August 6, 2018) and established an additional 30-day comment period on the changes made

between publication of the proposed regulation and publication of the final regulation.

On September 7, 2018, the Board of Housing and Community Development considered the public comment on the provisions and readopted final regulations with the following changes from the final regulations shown in brackets below.

13VAC5-51-131. IFC Chapter 3~~.~~ General Requirements.

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L. The following changes shall be made to Section 317, Rooftop Gardens and Landscaped Roofs:

***

3. Change Section 317.3 to read:

(N)317.3 Rooftop structure and equipment clearance. [~~For all vegetated roofing systems abutting combustible vertical surfaces, a Class A rated roof system complying with ASTM E 108 or UL 790 for required~~ Required] structure and equipment clearances shall be [~~achieved for a minimum 6 foot wide (1829mm) continuous border placed around rooftop structures and all rooftop equipment including mechanical and machine rooms, penthouses, skylights, roof vents, solar panels, antenna supports, and building service equipment. Rooftop structure and equipment clearance shall be~~] maintained as provided by the applicable building code.

***

13VAC5-51-133.5. IFC Chapter 6~~.~~ Building Services and Systems.

***

E. The following changes shall be made to Section 606, Mechanical Refrigeration:

***

28. Change Section 606.13 to read:

(N)606.13 Discharge location for refrigeration machinery room ventilation. Treatment systems for [exhaust from] mechanical ventilation systems serving refrigeration machinery rooms containing flammable, toxic or highly toxic refrigerants, other than ammonia, capable of exceeding 25% of the LFL or 50% of the IDLH shall be maintained in accordance with the applicable building code.

***

13VAC5-51-134. IFC Chapter 8~~.~~ Interior Finish, Decorative Materials and Furnishings.

***

B. Change [Section title of 803 and] Section 803.1 to read:

[Section 803 Interior Wall and Ceiling Finish and Trim in Buildings]

***

L. Change [~~Sections~~ Section] 803.10 [, the title of Section 804,] and [Section] 804.1 to read:

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[Section 804 Interior Wall and Ceiling Trim and Interior Floor Finish in Buildings]

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Q. Change [the title of Section 805 and] Sections 805.1.1.2, 805.1.2.2, 805.2.1.2, 805.2.2.2, 805.4.1.2 and 805.4.2.2 to read:

[Section 805 Upholstered Furniture and Mattresses in Buildings]

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R. [~~Add~~ Change the title of Section 806 and add] exception 3 ~~to~~ in Section 806.1.1 to read:

[Section 806 Decorative Vegetation in Buildings]

3. Trees shall be permitted in places of worship in Group A occupancies.

~~B.~~ S. Change [the title of Section 807 and] exception 1 in Section 807.3 to read:

[Section 807 Decorative Materials Other Than Decorative Vegetation in Buildings]

***

Y. Change [~~Section~~ the title of Section 808 and Sections] 808.1 and 808.2 to read:

[Section 808 Furnishings Other Than Upholstered Furniture and Mattresses or Decorative Materials in Buildings]

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13VAC5-51-135. IFC Chapter 9~~.~~ Fire Protection Systems.

***

H. The following changes shall be made to Section 909, Smoke Control Systems:

***

17. Change [~~Section~~ Sections] 909.17 and 909.18 to read:

***

(N)909.18 Acceptance testing. [~~Devices, equipment, components and sequences shall be individually tested. These tests, in addition to those required by other provisions of this code, shall consist of determination of function, sequence, and, where applicable, capacity of their installed condition.~~]

18. Delete sections 909.18.1 through 909.18.8.3.

19. Change [~~Section~~ Sections] 909.18.8.3.1 and 909.18.9 to read:

***

13VAC5-51-135.5. IFC Chapter 10. Means of Egress.

***

D. The following changes shall be made to Section 1005, Means of Egress Sizing:

1. Change Section 1005.1 to read:

(N)1005.1 General. All portions of the means of egress system shall be sized in accordance with the applicable [building] code.

***

VA.R. Doc. No. R16-4665; Filed September 12, 2018, 9:51 a.m.

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 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. 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: **13VAC5-63. Virginia Uniform Statewide Building Code (amending 13VAC5-63-210, 13VAC5-63-245, 13VAC5-63-310, 13VAC5-63-431, 13VAC5-63-432.5, 13VAC5-63-433, 13VAC5-63-433.3, 13VAC5-63-433.5, 13VAC5-63-434, 13VAC5-63-434.5, 13VAC5-63-435.5, 13VAC5-63-440, 13VAC5-63-450, 13VAC5-63-500, 13VAC5-63-510).**

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

Effective Date: November 1, 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 technical amendments to the Uniform Statewide Building Code (USBC) (i) correct errors in numbering and punctuation, inadvertent omissions, and typos; (ii) remove sections and table rows erroneously included in the final version of the USBC; and (iii) clarify instances where sections of the incorporated code have been amended or added.

13VAC5-63-210. Chapter 3 Use and occupancy classification.

A. Change Sections 303.1.1 and 303.1.2 of the IBC to read:

303.1.1 Small buildings and tenant spaces. A building or tenant space used for assembly purposes with an occupant load of less than 50 persons shall be permitted to be classified as a Group B occupancy.

303.1.2 Small assembly spaces. The following rooms and spaces shall be permitted to be classified as Group B occupancies or as part of the assembly occupancy:

1. A room or space used for assembly purposes with an occupant load of less than 50 persons and ancillary to another occupancy.

2. A room or space used for assembly purposes that is less than 750 square feet (70 m^2) in area and ancillary to another occupancy.

B. Change Section 303.6 of the IBC to read:

303.6 Assembly Group A-5. Assembly uses intended for participation in or viewing outdoor activities including, but not limited to:

Amusement park structures

Bleachers

Grandstands

Stadiums

Swimming pools

C. Add Section 304.1.1 to the IBC to read:

304.1.1 Day support and day treatment facilities. Day support and day treatment facilities licensed by the Virginia Department of Behavioral Health and Developmental Services shall be permitted to be classified as Group B occupancies provided all of the following conditions are met:

1. Participants who may require physical assistance from staff to respond to an emergency situation shall be located on the level of exit discharge.

2. Any change in elevation within the exit access on the level of exit discharge shall be made by means of a ramp or sloped walkway.

3. Where the facilities are located more than two stories above grade, an automatic sprinkler system shall be provided throughout the building in accordance with Section 903.3.1.1.

D. Change exception 14 of Section 307.1.1 of the IBC and add exception 15 to Section 307.1.1 of the IBC to read:

14. The storage of black powder, smokeless propellant and small arms primers in Groups M, R-3 and R-5 and special

industrial explosive devices in Groups B, F, M and S, provided such storage conforms to the quantity limits and requirements prescribed in the IFC, as amended in Section 307.9.

15. The storage of distilled spirits and wines in wooden barrels and casks. Distillation, blending, bottling, and other hazardous materials storage or processing shall be in separate control areas complying with Section 414.2.

E. Change the "Flammable liquid, combination (IA, IB, IC)" row in Table 307.1(1), add a new "Permissible fireworks" row to Table 307.1(1) of the IBC, and add footnote "r" to Table 307.1(1) of the IBC to read:

Flammable liquid, combination (IA, IB, IC)	NA	H-2 or H-3	NA	120[d,e,h]	NA	NA	120[d,h]	NA	NA	30[d,h,r]
Permissible fireworks	1.4G	H-3	125[d,e,l]	NA	NA	NA	NA	NA	NA	NA
r. The tabular value for distilled spirit distillation and blending rooms is 120 gallons.										

F. Add Section 307.9 to the IBC to read:

307.9 Amendments. The following changes shall be made to the IFC for the use of Exception 14 in Section 307.1.1:

1. Change the following definition in Section 202 of the IFC to read:

Smokeless propellants. Solid propellants, commonly referred to as smokeless powders, or any propellants classified by DOTn as smokeless propellants in accordance with NA3178 (Smokeless Powder for Small Arms), used in small arms ammunition, firearms, cannons, rockets, propellant-actuated devices, and similar articles.

2. Change Section 314.1 of the IFC to read as follows:

314.1 General. Indoor displays constructed within any building or structure shall comply with Sections 314.2 through 314.5.

3. Add new Section 314.5 to the IFC to read as follows:

314.5 Smokeless powder and small arms primers. Vendors shall not store, display or sell smokeless powder or small arms primers during trade shows inside exhibition halls except as follows:

1. The amount of smokeless powder each vender may store is limited to the storage arrangements and storage amounts established in Section 5606.5.2.1.

2. Smokeless powder shall remain in the manufacturer's original sealed container and the container shall remain sealed while inside the building. The repackaging of smokeless powder shall not be performed inside the building. Damaged containers shall not be repackaged inside the building and shall be immediately removed from the building in such manner to avoid spilling any powder.

3. There shall be at least 50 feet separation between vendors and 20 feet from any exit.

4. Small arms primers shall be displayed and stored in the manufacturer's original packaging and in accordance with the requirements of Section 5606.5.2.3.

4. Change Exception 4 and add Exceptions 10 and 11 to Section 5601.1 of the IFC as follows:

4. The possession, storage and use of not more than 15 pounds (6.75 kg) of commercially manufactured sporting black powder, 20 pounds (9 kg) of smokeless powder and any amount of small arms primers for hand loading of small arms ammunition for personal consumption.

10. The display of small arms primers in Group M when in the original manufacturer's packaging.

11. The possession, storage and use of not more than 50 pounds (23 kg) of commercially manufactured sporting black powder, 100 pounds (45 kg) of smokeless powder, and small arms primers for hand loading of small arms ammunition for personal consumption in Group R-3 or R-5, or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U structures at least 10 feet (3048 mm) from inhabited buildings and are accessory to Group R-3 or R-5.

5. Change Section 5606.4 of the IFC to read as follows:

5606.4 Storage in residences. Propellants for personal use in quantities not exceeding 50 pounds (23 kg) of black powder or 100 pounds (45 kg) of smokeless powder shall be stored in original containers in occupancies limited to Group R-3 and R-5 or 200 pounds (91 kg) of smokeless powder when stored in the manufacturer's original containers in detached Group U structures at least 10 feet (3048 mm) from inhabited

buildings and are accessory to Group R-3 or R-5. In other than Group R-3 or R-5, smokeless powder in quantities exceeding 20 pounds (9 kg) but not exceeding 50 pounds (23 kg) shall be kept in a wooden box or cabinet having walls of at least one inch (25 mm) nominal thickness or equivalent.

6. Delete Sections 5606.4.1 and 5606.4.2 of the IFC.

7. Change Section 5606.5.1.1 of the IFC to read as follows:

5606.5.1.1 Smokeless propellant. No more than 100 pounds (45 kg) of smokeless propellants in containers of eight pounds (3.6 kg) or less capacity shall be displayed in Group M occupancies.

8. Delete Section 5606.5.1.3 of the IFC.

9. Change Section 5606.5.2.1 of the IFC as follows:

5606.5.2.1 Smokeless propellant. Commercial stocks of smokeless propellants shall be stored as follows:

1. Quantities exceeding 20 pounds (9 kg), but not exceeding 100 pounds (45 kg) shall be stored in portable wooden boxes having walls of at least one inch (25 mm) nominal thickness or equivalent.

2. Quantities exceeding 100 pounds (45 kg), but not exceeding 800 pounds (363 kg), shall be stored in storage cabinets having walls at least one inch (25 mm) nominal thickness or equivalent. Not more than 400 pounds (182 kg) shall be stored in any one cabinet, and cabinets shall be separated by a distance of at least 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of at least one hour.

3. Storage of quantities exceeding 800 pounds (363 kg), but not exceeding 5,000 pounds (2270 kg) in a building shall comply with all of the following:

3.1. The storage is inaccessible to unauthorized personnel.

3.2. Smokeless propellant shall be stored in nonportable storage cabinets having wood walls at least one inch (25 mm) nominal thickness or equivalent and having shelves with no more than 3 feet (914 mm) of vertical separation between shelves.

3.3. No more than 400 pounds (182 kg) is stored in any one cabinet.

3.4. Cabinets shall be located against walls with at least 40 feet (12 192 mm) between cabinets. The minimum required separation between cabinets may be reduced to 20 feet (6096 mm) provided that barricades twice the height of the cabinets are attached to the wall, midway between each cabinet. The barricades must extend a minimum of 10 feet (3048 mm) outward, be firmly attached to the wall, and be constructed of steel not less than 0.25 inch thick (6.4 mm), 2-inch (51 mm) nominal thickness wood, brick, or concrete block.

3.5. Smokeless propellant shall be separated from materials classified as combustible liquids, flammable liquids, flammable solids, or oxidizing materials by a distance of 25 feet (7620 mm) or by a fire partition having a fire-resistance rating of 1 hour.

3.6. The building shall be equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1.

4. Smokeless propellants not stored according to Item 1, 2, or 3 above shall be stored in a Type 2 or 4 magazine in accordance with Section 5604 and NFPA 495.

G. Add the following to the list of terms in Section 308.2 of the IBC:

Hospice facility

H. Change Section 308.3 of the IBC to read:

308.3 Institutional Group I-1. This occupancy shall include buildings, structures or portions thereof for more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group I-1, other than assisted living facilities licensed by the Virginia Department of Social Services, shall be classified as the occupancy condition indicated in Section 308.3.1. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of the occupancy conditions indicated in Section 308.3.1 or 308.3.2. This group shall include, but not be limited to, the following:

Alcohol and drug centers

Assisted living facilities

Congregate care facilities

Group homes

Halfway houses

Residential board and care facilities

Social rehabilitation facilities

I. Change Sections 308.3.1 and 308.3.2 of the IBC to read:

308.3.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation. Not more than five of the residents may require physical assistance from staff to respond to an emergency situation when all residents who may require the physical assistance reside on a single level of exit discharge.

308.3.2 Condition 2. This occupancy condition shall include buildings in which there are persons receiving

custodial care who require assistance by not more than one staff member while responding to an emergency situation to complete building evacuation. Five of the residents may require physical assistance from more than one staff member to respond to an emergency.

J. Change Section 308.4 of the IBC to read:

308.4 Group I-2. This occupancy shall include buildings and structures used for medical care on a 24-hour basis for more than five persons who are incapable of self-preservation. This group shall include, but not be limited to, the following:

Convalescent facilities

Detoxification facilities

Foster care facilities

Hospice facilities

Hospitals

Nursing homes

Psychiatric hospitals

Exception: Hospice facilities occupied by 16 or less occupants, excluding staff, are permitted to be classified as Group R-4.

K. Add an exception to Section 308.6 of the IBC to read:

Exception: Family day homes under Section 310.9.

L. Change Section 310.3 of the IBC to read:

310.3 Residential Group R-1. Residential occupancies containing sleeping units where the occupants are primarily transient in nature, including:

Boarding houses (transient) with more than 10 occupants

Congregate living facilities (transient) with more than 10 occupants

Hotels (transient)

Motels (transient)

Exceptions:

1. Nonproprietor occupied bed and breakfast and other transient boarding facilities not more than three stories above grade plane in height with a maximum of 10 occupants total are permitted to be classified as either Group R-3 or R-5 provided that smoke alarms are installed in compliance with Section 907.2.11.2 for Group R-3 or Section R314 of the IRC for Group R-5.

2. Proprietor occupied bed and breakfast and other transient boarding facilities not more than three stories above grade plane in height, that are also occupied as the residence of the proprietor, with a maximum of five guest room sleeping units provided for the transient occupants are permitted to be classified as either Group R-3 or R-5 provided that smoke alarms are installed in compliance with Section 907.2.11.2 for Group R-3 or Section R314 of the IRC for Group R-5.

M. Change Section 310.6 of the IBC to read:

310.6 Residential Group R-4. This occupancy shall include buildings, structures or portions thereof for more than five but not more than 16 persons, excluding staff, who reside on a 24-hour basis in a supervised environment and receive custodial care. Buildings of Group R-4, other than assisted living facilities licensed by the Virginia Department of Social Services, shall be classified as the occupancy condition indicated in Section 310.6.1. Assisted living facilities licensed by the Virginia Department of Social Services shall be classified as one of the occupancy conditions indicated in Section 310.6.1 or 310.6.2. This group shall include, but not be limited to the following:

Alcohol and drug centers

Assisted living facilities

Congregate care facilities

Group homes

Halfway houses

Residential board and care facilities

Social rehabilitation facilities

This occupancy shall also include hospice facilities with not more than 16 occupants, excluding staff.

Group R-4 occupancies shall meet the requirements for construction as defined for Group R-3, except as otherwise provided for in this code.

Exceptions:

1. Group homes licensed by the Virginia Department of Behavioral Health and Developmental Services that house no more than eight persons with one or more resident counselors shall be classified as Group R-2, R-3, R-4 or R-5. Not more than five of the persons may require physical assistance from staff to respond to an emergency situation.

2. In Group R-4 occupancies classified as the occupancy condition indicated in Section 310.6.1, other than in hospice facilities, not more than five of the residents may require physical assistance from staff to respond to an emergency situation when all residents who may require the physical assistance from staff reside on a single level of exit discharge and other than using a ramp, a change of elevation using steps or stairs is not within the path of egress to an exit door.

3. Assisted living facilities licensed by the Virginia Department of Social Services that house no more than

eight persons, with one or more resident counselors, and all of the residents are capable of responding to an emergency situation without physical assistance from staff, may be classified as Group R-2, R-3 or R-5.

4. Assisted living facilities licensed by the Virginia Department of Social Services that house no more than eight persons, with one or more resident counselors, may be classified as Group R-5 when in compliance with all of the following:

4.1. The building is protected by an automatic sprinkler system installed in accordance with Section 903.3 or Section P2904 of the IRC.

4.2. Not more than five of the residents may require physical assistance from staff to respond to an emergency situation.

4.3. All residents who may require physical assistance from staff to respond to an emergency situation reside on a single level of exit discharge and other than using a ramp, a change in elevation using steps or stairs is not within the path of egress to an exit door.

5. Hospice facilities with five or fewer occupants are permitted to comply with the IRC provided the building is protected by an automatic sprinkler system in accordance with IRC Section P2904 or IBC Section 903.3.

N. Change Sections 310.6.1 and 310.6.2 to the IBC to read:

310.6.1 Condition 1. This occupancy condition shall include buildings in which all persons receiving custodial care who, without any assistance, are capable of responding to an emergency situation to complete building evacuation and hospice facilities.

310.6.2 Condition 2. This occupancy condition shall include buildings in which there are persons receiving custodial care who require assistance by not more than one staff member while responding to an emergency situation to complete building evacuation.

O. Add Section 310.7 to the IBC to read:

310.7 Residential Group R-5. Residential occupancies in detached single-family and two-family dwellings, townhouses and accessory structures within the scope of the IRC.

P. Add Section 310.8 to the IBC to read:

310.8 Group R-5. The construction of Group R-5 structures shall comply with the IRC. The amendments to the IRC set out in Section 310.11 shall be made to the IRC for its use as part of this code. In addition, all references to the IRC in the IBC shall be considered to be references to this section.

Q. Add Section 310.8.1 to the IBC to read:

310.8.1 Additional requirements. Methods of construction, materials, systems, equipment or components for Group R-5 structures not addressed by prescriptive or performance provisions of the IRC shall comply with applicable IBC requirements.

R. Add Section 310.9 to the IBC to read:

310.9 Family day homes. Family day homes where program oversight is provided by the Virginia Department of Social Services shall be classified as Group R-2, R-3 or R-5.

Note: Family day homes may generally care for up to 12 children. See the DHCD Related Laws Package for additional information.

S. Add Section 310.10 to the IBC to read:

310.10 Radon-resistant construction in Groups R-3 and R-4 structures. Groups R-3 and R-4 structures shall be subject to the radon-resistant construction requirements in Appendix F of the IRC in localities enforcing such requirements pursuant to Section R324 of the IRC.

T. Add Section 310.11 to the IBC to read:

310.11 Amendments to the IRC. The following changes shall be made to the IRC for its use as part of this code:

1. Add the following definitions to read:

Living area. Space within a dwelling unit utilized for living and entertainment, including family rooms, great rooms, living rooms, dens, media rooms, and similar spaces.

Nonpotable fixtures and outlets. Fixtures and outlets that are not dependent on potable water for the safe operation to perform their intended use. Such fixtures and outlets may include, but are not limited to water closets, urinals, irrigation, mechanical equipment, and hose connections to perform operations, such as vehicle washing and lawn maintenance.

Nonpotable water systems. Water systems for the collection, treatment, storage, distribution, and use or reuse of nonpotable water. Nonpotable systems include reclaimed water, rainwater, and gray water systems.

Rainwater. Natural precipitation, including snow melt, from roof surfaces only.

Stormwater. Precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage.

2. Change the following definitions to read:

Attic, habitable. A finished or unfinished area, not considered a story, complying with all of the following requirements:

1. The occupiable floor area is at least 70 square feet (17 m^2), in accordance with Section R304,

2. The occupiable floor area has a ceiling height in accordance with Section R305, and

3. The occupiable space is enclosed by the roof assembly above, knee walls (if applicable) on the sides and the floor-ceiling assembly below.

Habitable attics greater than two-thirds of the area of the story below or over 400 square feet (37.16 m^2) shall not be permitted in dwellings or townhouses that are three stories above grade plane in height.

Gray water. Water discharged from lavatories, bathtubs, showers, clothes washers, and laundry trays.

3. Change Section R301.2.1 to read:

R301.2.1 Wind design criteria. Buildings and portions thereof shall be constructed in accordance with the wind provisions of this code using the ultimate design wind speed in Table R301.2(1) as determined from Figure R301.2(4)A. The structural provisions of this code for wind loads are not permitted where wind design is required as specified in Section R301.2.1.1. Where different construction methods and structural materials are used for various portions of a building, the applicable requirements of this section for each portion shall apply. Where not otherwise specified, the wind loads listed in Table R301.2(2) adjusted for height and exposure using Table R301.2(3) shall be used to determine design load performance requirements for wall coverings, curtain walls, roof coverings, exterior windows, skylights, garage doors, and exterior doors. Asphalt shingles shall be designed for wind speeds in accordance with Section R905.2.4. A continuous load path shall be provided to transmit the applicable uplift forces in Section R802.11.1 from the roof assembly to the foundation. Wind speeds for localities in special wind regions, near mountainous terrain, and near gorges shall be based on elevation. Areas at 4,000 feet in elevation or higher shall use the nominal design wind speed of 110 mph (48.4 m/s) and areas under 4,000 feet in elevation shall use nominal design wind speed of 90 mph (39.6 m/s). Gorge areas shall be based on the highest recorded speed per locality or in accordance with local jurisdiction requirements determined in accordance with Section 26.5.1 of ASCE 7.

4. Add Exceptions 6 and 7 to Section R302.1 to read:

6. Decks and open porches.

7. Walls of dwellings and accessory structures located on lots in subdivisions or zoning districts where building setbacks established by local ordinance prohibit the walls of the structures on adjacent lots from being closer than 10 feet (3048 mm) to each other at any point along the exterior walls.

5. Add the following sentence to the end of Section R302.3 to read:

Dwelling unit separation wall assemblies that are constructed on a lot line shall be constructed as required in Section R302.2 for townhouses.

6. Change Section R302.5.1 to read and delete Section R302.13 in its entirety:

R302.5.1 Opening protection. Openings from a private garage directly into a room used for sleeping purposes shall not be permitted. Other openings between the garage and residence shall be equipped with solid wood doors not less than 1-3/8 inches (35 mm) thickness, solid or honeycomb-core steel doors not less than 1-3/8 inches (35 mm) thick, or 20-minute fire-rated doors.

7. Change Section R303.4 to read:

R303.4 Mechanical ventilation. Dwelling units shall be provided with mechanical ventilation in accordance with Section M1507.

8. Add an exception to Section ~~R303.9~~ R303.10 to read:

Exception: Seasonal structures not used as a primary residence for more than 90 days per year, unless rented, leased or let on terms expressed or implied to furnish heat, shall not be required to comply with this section.

9. Add Section ~~R303.9.1~~ R303.10.1 to read:

~~R303.9.1~~ R303.10.1 Nonowner occupied required heating. Every dwelling unit or portion thereof which is to be rented, leased or let on terms either expressed or implied to furnish heat to the occupants thereof shall be provided with facilities in accordance with Section R303.9 during the period from October 15 to May 1.

10. Add Section ~~R303.10~~ R303.11 to read:

~~R303.10~~ R303.11 Insect screens. Every door, window and other outside opening required for ventilation purposes shall be supplied with approved tightly fitted screens of not less than 16 mesh per inch (16 mesh per 25 mm) and every screen door used for insect control shall have a self-closing device.

EDITOR'S NOTE: Subdivisions T 11 through T 105 and subsection U are not amended; therefore the text is not set out.

13VAC5-63-245. Chapter 10 Means of egress.

A. Delete Section 1001.4 of the IBC.

B. Change Section 1004.3 of the IBC to read:

1004.3 Posting of occupant load. Every room or space that is an assembly occupancy and where the occupant load of that room or space is 50 or more shall have the occupant load of the room or space posted in a conspicuous place, near the main exit or exit access doorway from the room or space. Posted signs shall be of an approved legible permanent design and shall be maintained by the owner or the owner's authorized agent.

C. Change Exception 1 of Section 1005.3.1 of the IBC to read:

1. For other than Groups H and I-2 occupancies, the capacity, in inches (mm), of means of egress stairways shall be calculated by multiplying the occupant load served by such stairway by a means of egress capacity factor of 0.2 inch (5.1 mm) per occupant in buildings equipped with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

D. Change Exception 1 of Section 1005.3.2 of the IBC to read:

1. For other than Groups H and I-2 occupancies, the capacity, in inches (mm), of means of egress components other than stairways shall be calculated by multiplying the occupant load served by such component by a means of egress capacity factor of 0.15 inch (3.8 mm) per occupant in buildings equipped with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

E. Change Exception 1 of Section 1006.2.1 of the IBC to read:

1. In Group R-2 and R-3 occupancies, one means of egress is permitted within and from individual dwelling units with a maximum occupant load of 20 where the dwelling unit is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 and the common path of egress travel does not exceed 125 feet (38 100 mm). This exception shall also apply to Group R-2 occupancies where Section 903.2.8, Exception 1 or 2 is applicable.

F. Change the number "49" to "50" in the "Maximum Occupant Load of Space" column in the "A[c], E, M," "B," "F," and "U" rows of Table 1006.2.1 of the IBC.

G. Change the number "49" to "50" in the "Maximum Occupant Load per Story" column of the "A, B[b], E, F, M, U" row of Table 1006.3.2(2).

H. Change Exception 2 of Section 1007.1.1 of the IBC to read:

2. Where a building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2, the separation distance of the exit doors or exit access doorways shall not be less than one-fourth of the length of the maximum overall diagonal dimension of the area served.

I. Change Section 1009.6.4 of the IBC to read:

1009.6.4 Separation. Each area of refuge shall be separated from the remainder of the story by a smoke barrier complying with Section 709 or a horizontal exit complying with Section 1026. Each area of refuge shall be designed to minimize the intrusion of smoke.

Exceptions:

1. Areas of refuge located within an enclosure for interior exit stairways complying with Section 1023.

2. Areas of refuge in outdoor facilities where exit access is essentially open to the outside.

3. Areas of refuge where the area of refuge and areas served by the area of refuge are equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2.

~~I.~~ J. Change Item 2 of Section 1010.1.9.3 of the IBC to read:

2. In buildings in occupancy Groups B, F, M and S, the main exterior door or doors are permitted to be equipped with key-operated locking devices from the egress side provided:

2.1. The locking device is readily distinguishable as locked.

2.2. A readily visible durable sign is posted on the egress side on or adjacent to the door stating: THIS DOOR TO REMAIN UNLOCKED WHEN THIS SPACE IS OCCUPIED. The sign shall be in letters one inch (25 mm) high on a contrasting background.

2.3. The use of the key-operated locking device is revokable by the building official for due cause.

~~J.~~ K. Delete Section 1010.1.9.6 of the IBC.

~~K.~~ L. Add an exception to Section 1010.1.9.7 of the IBC to read:

Exception: Approved, listed, delayed egress locks shall be permitted to be installed on doors serving Group A-3 airport facilities, provided they are installed in accordance with this section.

~~L.~~ M. Change Section 1010.1.6 of the IBC to read:

1010.1.6 Landings at doors. Landings shall have a width not less than the width of the stairway or the door, whichever is greater. Doors in the fully open position shall not reduce a required dimension by more than 7 inches (178 mm). Where a landing serves an occupant load of 50 or more, other doors, gates, or turnstiles in any position shall not reduce the landing to less than one-half its required width nor prevent a door, gate, or turnstile from

opening to less than one-half of the required landing width. Landings shall have a length measured in the direction of travel of not less than 44 inches (1118 mm).

Exception: Landing length in the direction of travel in Groups R-3 and U and within individual units of Group R-2 need not exceed 36 inches (914 mm).

~~M.~~ N. Change Section 1010.1.10 of the IBC to read:

1010.1.10 Panic and fire exit hardware. Doors serving a Group H occupancy and doors serving rooms or spaces with an occupant load of 50 or more in a Group A or E occupancy shall not be provided with a latch or lock other than panic hardware or fire exit hardware.

Exception: Doors serving a Group A or E occupancy shall be permitted to be electromagnetically locked in accordance with Section 1010.1.9.9.

~~N.~~ O. Add Section 1010.1.11 to the IBC to read:

1010.1.11 Locking certain residential sliding doors. In dwelling units of Group R-2 buildings, exterior sliding doors which are one story or less above grade, or shared by two dwelling units, or are otherwise accessible from the outside, shall be equipped with locks. The mounting screws for the lock case shall be inaccessible from the outside. The lock bolt shall engage the strike in a manner that will prevent it from being disengaged by movement of the door.

Exception: Exterior sliding doors which are equipped with removable metal pins or charlie bars.

~~O.~~ P. Add Section 1010.1.12 to the IBC to read:

1010.1.12 Door viewers in certain residential buildings. Entrance doors to dwelling units of Group R-2 buildings shall be equipped with door viewers with a field of vision of not less than 180 degrees.

Exception: Entrance doors having a vision panel or side vision panels.

~~P.~~ Q. Change Exception 3 of Section 1011.5.2 of the IBC to read:

3. In Group R-3 occupancies; within dwelling units in Group R-2 occupancies; and in Group U occupancies that are accessory to a Group R-3 occupancy or accessory to individual dwelling units in Group R-2 occupancies; the maximum riser height shall be 8.25 inches (210 mm); the minimum tread depth shall be 9 inches (229 mm); the minimum winder tread depth at the walk line shall be 10 inches (254 mm); and the minimum winder tread depth shall be 6 inches (152 mm). A nosing not less than 0.75 inch (19.1 mm) but not more than 1.25 inches (32 mm) shall be provided on stairways with solid risers where the tread depth is less than 11 inches (279 mm).

~~Q.~~ R. Change Section 1011.6 of the IBC to read:

1011.6 Stairway landings. There shall be a floor or landing at the top and bottom of each stairway. The width of landings shall be not less than the width of stairways served. Every landing shall have a minimum width measured perpendicular to the direction of travel equal to the width of the stairway. Where the stairway has a straight run the depth need not exceed 48 inches (1219 mm). Doors opening onto a landing shall not reduce the landing to less than one-half the required width. When fully open, the door shall not project more than 7 inches (178 mm) into a landing. Where wheelchair spaces are required on the stairway landing in accordance with Section 1009.6.3, the wheelchair space shall not be located in the required width of the landing and doors shall not swing over the wheelchair spaces.

Exceptions:

1. Where stairways connect stepped aisles to cross aisles or concourses, stairway landings are not required at the transition between stairways and stepped aisles constructed in accordance with Section 1029.

2. A floor or landing is not required at the top of an interior flight of exit access stairs within individual dwelling units and sleeping units of Group R-2 occupancies and dwelling units of Group R-3 occupancies, including stairs in an enclosed private garage serving only an individual dwelling unit, provided that a door does not swing over the stairs.

~~R.~~ S. Change Section 1011.16 of the IBC to read:

1011.16 Ladders. Permanent ladders shall not serve as a part of the means of egress from occupied spaces within a building. Permanent ladders shall be permitted to provide access to the following areas:

1. Spaces frequented only by personnel for maintenance, repair, or monitoring of equipment.

2. Nonoccupiable spaces accessed only by catwalks, crawl spaces, freight elevators, or very narrow passageways.

3. Raised areas used primarily for purposes of security, life safety, or fire safety including observation galleries, prison guard towers, fire towers, or lifeguard stands.

4. Elevated levels in Group U not open to the general public.

5. Nonoccupied roofs that are not required to have stairway access in accordance with Section 1011.12.1.

~~S.~~ T. Change Section 1015.8 of the IBC to read:

1015.8 Window openings. Windows in Group R-2 and R-3 buildings including dwelling units where the top of the sill of an operable window opening is located less than 18 inches (457 mm) above the finished floor and more than 72

inches (1829 mm) above the finished grade or other surface below on the exterior of the building shall comply with one of the following:

1. Operable windows where the top of the sill of the opening is located more than 75 feet (22 860 mm) above the finished grade or other surface below and that are provided with window fall prevention devices that comply with ASTM F 2006.

2. Operable windows where the openings will not allow a 4-inch diameter (102 mm) sphere to pass through the opening when the window is in its largest opened position.

3. Operable windows where the openings are provided with window fall prevention devices that comply with ASTM F 2090.

4. Operable windows that are provided with window opening control devices that comply with Section 1015.8.1.

~~T.~~ U. Add Exception 3 to Item 5 of Section 1016.2 of the IBC to read:

3. A maximum of one exit access is permitted to pass through kitchens, store rooms, closets or spaces used for similar purposes provided such a space is not the only means of exit access.

~~U.~~ V. Change Table 1020.1 of the IBC to read:

Table 1020.1
Corridor Fire-Resistance Rating

Occupancy	Occupant Load Served By Corridor	Required Fire-Resistance Rating (hours)	
		Without sprinkler system	With sprinkler system[b]
H-1, H-2, H-3	All	Not Permitted	1
H-4, H-5	Greater than 30	Not Permitted	1
A, B, E, F, M, S, U	Greater than 30	1	0
R	Greater than 10	1	0.5
I-2[a], I-4	All	Not Permitted	0
I-1, I-3	All	Not Permitted	0

a. For requirements for occupancies in Group I-2, see Sections 407.2 and 407.3.

b. Buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 or 903.3.1.2 where allowed.

~~V.~~ W. Add an additional row to Table 1020.2 of the IBC to read:

Occupancy	Width (minimum)
In corridors of Group I-2 assisted living facilities licensed by the Virginia Department of Social Services serving areas with wheelchair, walker, and gurney traffic where residents are capable of self-preservation or where resident rooms have a means of egress door leading directly to the outside.	44 inches

~~W.~~ X. Change Section 1023.5 of the IBC to read:

1023.5 Penetrations. Penetrations into or through interior exit stairways and ramps are prohibited except for equipment and ductwork necessary for independent ventilation or pressurization, sprinkler piping, standpipes, electrical raceway for fire department communication systems, and electrical raceway serving the interior exit stairway and ramp and terminating at a steel box not exceeding 16 square inches (0.010 m^2). Such penetrations shall be protected in accordance with Section 714. There shall not be penetrations or communication openings, whether protected or not, between adjacent interior exit stairways and ramps.

Exceptions:

1. Membrane penetrations shall be permitted on the outside of the interior exit stairway and ramp. Such penetrations shall be protected in accordance with Section 714.3.2.

2. For buildings in other than Group H, with no more than two stories above grade plane and are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, structural members, other than columns, that are part of the primary structural frame supporting the roof sheathing, roof slab or roof deck only and structural members that are secondary members supporting the roof sheathing, roof slab or roof deck only, shall be permitted to penetrate an interior exit stairway enclosure or a ramp enclosure. Such penetrations shall be protected in accordance with Section 714.

~~X.~~ Y. Change Section 1023.9 of the IBC to read:

1023.9 Floor identification signs. A sign shall be provided at each floor landing in exit enclosures connecting more than three stories designating the floor level, the terminus of the top and bottom of the exit enclosure and the identification of the stair or ramp by designation with a letter of the alphabet. The signage shall also state the story

of, and the direction to, the exit discharge and the availability of roof access from the enclosure for the fire department. The sign shall be located five feet (1524 mm) above the floor landing in a position that is readily visible when the doors are in the open and closed positions. Floor level identification signs in tactile characters complying with ICC A117.1 shall be located at each floor level landing adjacent to the door leading from the enclosure into the corridor to identify the floor level.

~~Y.~~ Z. Change Section 1024.6 of the IBC to read:

1024.6 Penetrations. Penetrations into or through an exit passageway are prohibited except for equipment and ductwork necessary for independent pressurization, sprinkler piping, standpipes, electrical raceway for fire department communication and electrical raceway serving the exit passageway and terminating at a steel box not exceeding 16 square inches (0.010 m^2). Such penetrations shall be protected in accordance with Section 714. There shall not be penetrations or communicating openings, whether protected or not, between adjacent exit passageways.

Exceptions:

1. Membrane penetrations shall be permitted on the outside of the exit passageway. Such penetrations shall be protected in accordance with Section 714.3.2.

2. For buildings in other than Group H, with no more than two stories above grade plane and are equipped throughout with an approved automatic sprinkler system in accordance with Section 903.3.1.1, structural members, other than columns, which are part of the primary structural frame supporting the roof sheathing, roof slab or roof deck only and structural members which are secondary members supporting the roof sheathing, roof slab or roof deck only, shall be permitted to penetrate an interior exit stairway enclosure or a ramp enclosure. Such penetrations shall be protected in accordance with Section 714.

~~Z.~~ AA. Change Section 1025.1 of the IBC to read:

1025.1 General. Approved luminous egress path markings delineating the exit path shall be provided in buildings of Groups A, B, E, I, M and R-1 having occupied floors located more than 420 feet (128 016 mm) above the lowest level of fire department vehicle access in accordance with Sections 1025.1 through 1025.5.

Exception: Luminous egress path markings shall not be required on the level of exit discharge in lobbies that serve as part of the exit path in accordance with Section 1028.1, Exception 1.

~~AA.~~ BB. Change Section 1030.1 of the IBC to read:

1030.1 General. In addition to the means of egress required by this chapter, provisions shall be made for emergency escape and rescue openings in Group R-2 occupancies in accordance with Tables 1006.3.2(1) and 1006.3.2(2) and in Group R-3 and R-4 occupancies. Basements and sleeping rooms below the fourth story above grade plane shall have at least one exterior emergency escape and rescue opening in accordance with this section. Where basements contain one or more sleeping rooms, emergency escape and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Such openings shall open directly into a public way or to a yard or court that opens to a public way.

Exceptions:

1. Basements with a ceiling height of less than 80 inches (2032 mm) shall not be required to have emergency escape and rescue openings.

2. Emergency escape and rescue openings are not required from basements or sleeping rooms that have an exit door or exit access door that opens directly into a public way or to a yard, court or exterior exit balcony that opens to a public way.

3. Basements without habitable spaces and having not more than 200 square feet (18.6 m^2) in floor area shall not be required to have emergency escape and rescue openings.

13VAC5-63-310. Chapter 28 Mechanical systems.

A. Change Section 2801.1 of the IBC to read:

2801.1 Scope. Mechanical appliances, equipment and systems shall be constructed and installed in accordance with this chapter, the IMC and the IFGC. Masonry chimneys, fireplaces and barbecues shall comply with the IMC and Chapter 21 of this code.

Exception: This code shall not govern the construction of water heaters, boilers and pressure vessels to the extent which they are regulated by the Virginia Boiler and Pressure Vessel Regulations (16VAC25-50). However, the building official may require the owner of a structure to submit documentation to substantiate compliance with those regulations.

B. Add Section 2801.1.1 to the IBC to read:

2801.1.1 Required heating in dwelling units. Heating facilities shall be required in every dwelling unit or portion thereof which is to be rented, leased or let on terms, either expressed or implied, to furnish heat to the occupants thereof. The heating facilities shall be capable of maintaining the room temperature at 65°F (18°C) during the period from October 15 to May 1 during the hours between 6:30 a.m. and 10:30 p.m. of each day and not less

than 60°F (16°C) during other hours when measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls. The capability of the heating system shall be based on the outside design temperature required for the locality by this code.

C. Add Section 2801.1.2 to the IBC to read:

2801.1.2 Required heating in nonresidential structures. Heating facilities shall be required in every enclosed occupied space in nonresidential structures. The heating facilities shall be capable of producing sufficient heat during the period from October 1 to May 15 to maintain a temperature of not less than 65°F (18°C) during all working hours. The required room temperature shall be measured at a point three feet (914 mm) above the floor and three feet (914 mm) from the exterior walls.

Processing, storage and operation areas that require cooling or special temperature conditions and areas in which persons are primarily engaged in vigorous physical activities are exempt from these requirements.

D. Add Section 2801.1.3 to the IBC to read:

2801.1.3 Changes to the IMC. The following changes shall be made to the IMC:

1. Add the following definition to Section 202 of the IMC to read:

Pollution control unit. Manufactured equipment that is installed in a grease exhaust duct system for the purpose of extracting smoke, grease particles, and odors from the exhaust flow by means of a series of filters.

2. Change Section 401.2 of the IMC to read:

401.2 Ventilation required. Every occupied space shall be ventilated by natural means in accordance with Section 402 or by mechanical means in accordance with Section 403. Group R dwelling unit units shall be ventilated by mechanical means in accordance with Section 403. Ambulatory care facilities and Group I-2 occupancies shall be ventilated by mechanical means in accordance with Section 407.

3. Change Section 403.3.1.1 of the IMC to read:

403.3.1.1 Outdoor airflow rate. Ventilation systems shall be designed to have the capacity to supply the minimum outdoor airflow rate determined in accordance with this section. In each occupiable space, the ventilation system shall be designed to deliver the required rate of outdoor airflow to the breathing zone. The occupant load utilized for design of the ventilation system shall not be less than the number determined from the estimated maximum occupant load rate indicated in Table 403.3.1.1. Ventilation rates for occupancies not represented in Table 403.3.1.1 shall be those for a listed occupancy classification that is most similar in terms of occupant density, activities and building construction; or shall be determined by an approved engineering analysis. The ventilation system shall be designed to supply the required rate of ventilation air continuously during the period the building is occupied, except as otherwise stated in other provisions of the code.

With the exception of smoking lounges and other designated areas where smoking is permitted, the ventilation rates in Table 403.3.1.1 are based on the absence of smoking in occupiable spaces.

Exception: The occupant load is not required to be determined based on the estimated maximum occupant load rate indicated in Table 403.3.1.1 where approved statistical data document the accuracy of an alternate anticipated occupant density.

4. Add and change the following areas in Table 403.3.1.1 of the IMC to read:

OCCUPANCY CLASSIFI-CATION	Occupant Density #/1000 ft^2 [a]	People Outdoor Airflow Rate in Breathing Zone, R_p cfm/person	Area Outdoor Airflow Rate in Breathing Zone, R_a cfm/ft^{2a}	Exhaust Airflow Rate Cfm/ft^{2a}
Food and beverage service				
Bars or cocktail lounges designated as an area where smoking is permitted[b]	100	30	--	--
Cafeteria or fast food designated as an area where smoking is permitted[b]	100	20	--	--
Dining rooms designated as an area where smoking is permitted[b]	70	20	--	--
Public spaces				
Lounges designated as an area where smoking is permitted[b]	100	30	--	--

5. Change Section 504.8.2 of the IMC to read:

504.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct.

6. Change Section 505.1 of the IMC to read:

505.1 Domestic systems. Where domestic range hoods and domestic appliances equipped with downdraft exhaust are provided, such hoods and appliances shall discharge to the outdoors through sheet metal ducts constructed of galvanized steel, stainless steel, aluminum, or copper. Such ducts shall have smooth inner walls, shall be air tight, shall be equipped with a backdraft damper, and shall be independent of all other exhaust systems.

Exceptions:

1. In Group R buildings, where installed in accordance with the manufacturer's installation instructions and where mechanical or natural ventilation is otherwise provided in accordance with Chapter 4, listed and labeled ductless range hoods shall not be required to discharge to the outdoors.

2. Ducts for domestic kitchen cooking appliances equipped with downdraft exhaust systems shall be permitted to be constructed of Schedule 40 PVC pipe and fittings provided that the installation complies with all of the following:

2.1. The PVC duct shall be installed under a concrete slab poured on grade.

2.2. The underfloor trench in which the PVC duct is installed shall be completely backfilled with sand or gravel.

2.3. The PVC duct shall extend not more than 1 inch (25 mm) above the indoor concrete floor surface.

2.4. The PVC duct shall extend not more than 1 inch (25 mm) above grade outside of the building.

2.5. The PVC duct shall be solvent cemented.

7. Change Section 505.4 to the IMC to read:

505.4 Other than Group R. In other than Group R occupancies, where electric domestic cooking appliances are utilized for domestic purposes, such appliances shall be provided with domestic range hoods. Hoods and exhaust systems for such electric domestic cooking appliances shall be in accordance with Sections 505.1 and 505.2. In other than Group R occupancies, where fuel-fired domestic cooking appliances are utilized for domestic purposes, a Type I or Type II hood shall be provided as required for the type of appliances and processes in accordance with Section 507.1.

8. Change Section 506.5 of the IMC to read:

506.5 Exhaust equipment. Exhaust equipment, including fans and grease reservoirs, shall comply with Sections 506.5.1 through 506.5.6 and shall be of an approved design or shall be listed for the application.

9. Add Section 506.5.6 to the IMC to read:

~~505.5.6~~ 506.5.6 Pollution control units. The installation of pollution control units shall be in accordance with the manufacturer's installation instructions and all of the following:

1. Pollution control units shall be listed and labeled in accordance with UL 1978.

2. Fans serving pollution control units shall be listed and labeled in accordance with UL 762.

3. Pollution control units shall be mounted and secured in accordance with the manufacturer's installation instructions and the International Building Code.

4. Pollution control units located indoors shall be listed and labeled for such use. Where enclosed duct systems, as required by Section 506.3.11, are connected to a pollution control unit, such unit shall be located in a room or space having the same fire-resistance rating as the duct enclosure. Access shall be provided for serving and cleaning of the unit. The space or enclosure shall be ventilated in accordance with the manufacturer's installation instructions.

5. A clearance of not less than 18 inches (457 mm) shall be maintained between the pollution control unit and combustible material.

6. Roof mounted pollution control units shall be listed for exterior installation and shall be mounted not less than 18 inches (457 mm) above the roof.

7. Exhaust outlets for pollution control units shall be in accordance with Section 506.3.13.

8. An airflow differential pressure control shall be provided to monitor the pressure drop across the filter sections of a pollution control unit. When the airflow is reduced below the design velocity, the airflow differential pressure control shall activate a visual alarm located in the area where cooking operations occur.

9. Pollution control units shall be provided with a factory installed fire suppression system.

10. Service space shall be provided in accordance with the manufacturer's instructions for the pollution control unit and the requirements of Section 306.

11. Wash down drains shall discharge through a grease interceptor and shall be sized for the flow. Drains shall be sealed with a trap or other approved means to prevent air bypass. Where a trap is utilized it shall have a seal depth that accounts for the system pressurization and evaporation between cleanings.

12. Protection from freezing shall be provided for the water supply and fire suppression systems where such systems are subject to freezing.

13. Duct connections to pollution control units shall be in accordance with Section 506.3.2.3. Where water splash or carryover can occur in the transition duct as a result of a washing operation, the transition duct shall slope downward toward the cabinet drain pan for a length not less than 18 inches (457 mm). Ducts shall transition to the full size of the unit inlet and outlet openings.

14. Extra heavy duty appliance exhaust systems shall not be connected to pollution control units except where such units are specifically designed and listed for use with solid fuels.

15. Pollution control units shall be maintained in accordance with the manufacturer's instructions.

10. Change Section 607.5.5 of the IMC to read:

607.5.5 Shaft enclosures. Shaft enclosures that are permitted to be penetrated by ducts and air transfer openings shall be protected with approved fire and smoke dampers installed in accordance with their listing.

Exceptions:

1. Fire and smoke dampers are not required where steel exhaust subducts extend at least 22 inches (559 mm) vertically in exhaust shafts, provided there is a continuous airflow upward to the outside.

2. Fire dampers are not required where penetrations are tested in accordance with ASTM E119 as part of the fire-resistance-rated assembly.

3. Fire and smoke dampers are not required where ducts are used as part of an approved smoke control system in accordance with Section 909 of the International Building Code.

4. Fire and smoke dampers are not required where the penetrations are in parking garage exhaust or supply shafts that are separated from other building shafts by not less than two-hour fire-resistance-rated construction.

5. Smoke dampers are not required where the building is equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the International Building Code.

11. Add Section 607.6.2.2 to the IMC to read:

607.6.2.2 Equipment shutdown. Where ceiling radiation dampers are listed as static dampers, the HVAC equipment shall be effectively shut down to stop the airflow prior to the damper closing using one of the following methods:

1. A duct detector installed in the return duct.

2. An area smoke detector interlocked with the HVAC equipment.

3. A listed heat sensor installed in the return duct.

E. Add Section 2801.1.4 to the IBC to read:

2801.1.4 Changes to the IFGC. The following changes shall be made to the IFGC:

1. Change Section 301.1 of the IFGC to read:

301.1 Scope. This code shall apply to the installation of fuel gas piping systems, fuel gas utilization equipment, and related accessories as follows:

1. Coverage of piping systems shall extend from the point of delivery to the connections with gas utilization equipment. (See "point of delivery.")

2. Systems with an operating pressure of 125 psig (862 kPa gauge) or less.

Piping systems for gas-air mixtures within the flammable range with an operating pressure of 10 psig (69 kPa gauge) or less.

LP-Gas piping systems with an operating pressure of 20 psig (140 kPa gauge) or less.

3. Piping systems requirements shall include design, materials, components, fabrication, assembly, installation, testing and inspection.

4. Requirements for gas utilization equipment and related accessories shall include installation, combustion and ventilation air and venting.

This code shall not apply to the following:

1. Portable LP-Gas equipment of all types that are not connected to a fixed fuel piping system.

2. Installation of farm equipment such as brooders, dehydrators, dryers, and irrigation equipment.

3. Raw material (feedstock) applications except for piping to special atmosphere generators.

4. Oxygen-fuel gas cutting and welding systems.

5. Industrial gas applications using gases such as acetylene and acetylenic compounds, hydrogen, ammonia, carbon monoxide, oxygen, and nitrogen.

6. Petroleum refineries, pipeline compressor or pumping stations, loading terminals, compounding plants, refinery tank farms, and natural gas processing plants.

7. Integrated chemical plants or portions of such plants where flammable or combustible liquids or gases are produced by chemical reactions or used in chemical reactions.

8. LP-Gas installations at utility gas plants.

9. Liquefied natural gas (LNG) installations.

10. Fuel gas piping in power and atomic energy plants.

11. Proprietary items of equipment, apparatus, or instruments such as gas generating sets, compressors, and calorimeters.

12. LP-Gas equipment for vaporization, gas mixing, and gas manufacturing.

13. Temporary LP-Gas piping for buildings under construction or renovation that is not to become part of the permanent piping system.

14. Installation of LP-Gas systems for railroad switch heating.

15. Installation of LP-Gas and compressed natural gas (CNG) systems on vehicles.

16. Except as provided in Section 401.1.1, gas piping, meters, gas pressure regulators, and other appurtenances used by the serving gas supplier in the distribution of gas, other than undiluted LP-Gas.

17. Building design and construction, except as specified herein.

2. Change Sections 310.1 and 310.1.1 of the IFGC to read:

310.1 Pipe and tubing. Each above-group portion of a gas piping system that is likely to become energized shall be electrically continuous and bonded to an effective ground-fault current path. Gas piping shall be considered to be bonded where it is connected to appliances that are connected to the equipment grounding conductor of the circuit supplying that appliance. Corrugated stainless steel tubing (CSST) piping systems listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall comply with this section. Where any CSST segments of a piping system are not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26, Section 310.1.1 shall apply.

310.1.1 CSST without arc resistant jacket or coating system. CSST gas piping systems and piping systems containing one or more segments of CSST not listed with an arc resistant jacket or coating system in accordance with ANSI LC 1/CSA 6.26 shall be bonded to the electrical service grounding electrode system or, where provided, the lightning protection electrode system and shall comply with Sections 310.1.1.1 through 310.1.1.5.

3. Add Section 404.11.3 to the IFGC to read:

404.11.3 Coating application. Joints in gas piping systems shall not be coated prior to testing and approval.

4. Change Section 614.8.2 of the IFGC to read:

614.8.2 Duct installation. Exhaust ducts shall be supported at 4-foot (1219 mm) intervals and secured in place. The insert end of the duct shall extend into the adjoining duct or fitting in the direction of airflow. Ducts shall not be joined with screws or similar fasteners that protrude into the inside of the duct.

5. Change the following referenced standard in Chapter 8 of the IFGC:

Standard Reference Number	Title	Referenced in Code Section Number
ANSI LC1/CSA 6.26-14	Fuel Gas Piping Systems Using Corrugated Stainless Steel Tubing (CSST)	310.1, 310.1.1, 403.5.4

13VAC5-63-431. Chapter 3 General provisions and special detailed requirements.

A. Change IEBC Section 301 to General.

B. Change Section 301.1 and delete Sections 301.1.1 through 301.1.4.2, including tables, of the IEBC ~~to read:~~.

301.1 Applicability. The applicable provisions of this chapter shall be used in conjunction with the requirements in this code, and shall apply to all construction and rehabilitation.

C. Add Section 301.2 to the IEBC to read:

301.2 Occupancy and use. When determining the appropriate application of the referenced sections of this code, the ~~ccupancy~~ occupancy and use of a building shall be determined in accordance with Chapter 3 of the VCC.

D. Change IEBC Section 302 to Building Materials and Systems.

E. Change Sections 302.1 through 302.3 of the IEBC to read:

302.1 Existing materials. Materials already in use in a building in compliance with requirements or approvals in effect at the time of their erection or installation shall be permitted to remain in use unless the VCC would not permit their use in buildings or structures of similar occupancy, purpose, and location.

302.2 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs and alterations, provided no hazard to life, health or property is created. Hazardous materials shall not be used where the VCC would not permit their use in buildings or structures of similar occupancy, purpose, and location.

302.3 Existing seismic force-resisting systems. Where the existing seismic force-resisting system is a type that can be designated ordinary, values of R, Ω_0, and C_d for the existing seismic force-resisting system shall be those specified by the VCC for an ordinary system unless it is demonstrated that the existing system will provide

performance equivalent to that of a detailed, intermediate, or special system.

F. Delete Sections 302.4 and 302.5 of the IEBC.

G. Add IEBC Section 303 Fire escapes.

H. Add Sections 303.1 through 303.6, including subsections, to the IEBC to read:

303.1 Where permitted. Fire escapes shall be permitted only as provided for in Sections 303.1.1 through 303.1.4.

303.1.1 Existing fire escapes. Existing fire escapes shall continue to be accepted as a component in the means of egress in existing buildings only.

303.1.2 New fire escapes. Newly constructed fire escapes for existing buildings shall be permitted only where exterior stairs cannot be utilized due to lot lines limiting stair size or due to the sidewalks, alleys, or roads at grade level. New fire escapes shall not incorporate ladders or access by windows.

Exception: Fire escapes that are replaced or repaired shall only be required to comply with Sections 303.3 and 303.4 if feasible, and if not feasible, such that the replaced or repaired fire escape is not less safe than its existing condition.

303.1.3 Limitations. Fire escapes shall comply with this section and shall not constitute more than 50% of the required number of exits nor more than 50% of the required exit capacity.

303.1.4 Fire escapes required. For other than Group I-2, where more than one exit is required, newly constructed fire escapes complying with Section 303.6 shall be accepted as providing one of the required means of egress. Replacement fire escapes or existing fire escapes undergoing repairs shall comply with Sections 303.3 and 303.4 if feasible, and if not feasible, to the greatest extent possible.

303.2 Location. Where located on the front of the building and where projecting beyond the building line, the lowest landing shall not be less than 7 feet (2134 mm) or more than 12 feet (3658 mm) above grade, and shall be equipped with a counterbalanced stairway to the street. In alleyways and thoroughfares less than 30 feet (9144 mm) wide, the clearance under the lowest landing shall not be less than 12 feet (3658 mm).

303.3 Construction. The fire escape shall be designed to support a live load of 100 pounds per square foot (4788 Pa) and shall be constructed of steel or other approved noncombustible materials. Fire escapes constructed of wood not less than nominal 2 inches (51 mm) thick are permitted on buildings of Type V construction. Walkways and railings located over or supported by combustible roofs in buildings of Types III and IV construction are permitted to be of wood not less than nominal 2 inches (51 mm) thick.

303.4 Dimensions. Stairs shall be at least 22 inches (559 mm) wide with risers not more than, and treads not less than, 8 inches (203 mm) and landings at the foot of stairs not less than 40 inches (1016 mm) wide by 36 inches (914 mm) long, located not more than 9 inches (203 mm) below the door.

303.5 Opening protectives. Openings within 10 feet (3048 mm) of newly constructed fire escape stairways shall be protected by fire assemblies having minimum 3/4-hour-fire-resistance ratings.

Exception: Opening protection shall not be required in buildings equipped throughout with an approved automatic sprinkler system.

303.6 Fire escape access and details. Newly constructed fire escapes shall comply with all of the following requirements:

1. Occupants shall have unobstructed access to the fire escape without having to pass through a room subject to locking.

2. Access to a new fire escape shall be through a door, except that windows shall be permitted to provide access from single dwelling units or sleeping units in Group R-1, R-2 and I-1 occupancies or to provide access from spaces having a maximum occupant load of 10 in other occupancy classifications.

2.1. The window shall have a minimum net clear opening of 5.7 square feet (0.53 m^2) or 5 square feet (0.46 m^2) where located at grade.

2.2. The minimum net clear opening height shall be 24 inches (610 mm) and net clear opening width shall be 20 inches (508 mm).

2.3. The bottom of the clear opening shall not be greater than 44 inches (1118 mm) above the floor.

2.4. The operation of the window shall comply with the operational constraints of the VCC.

3. In all buildings of Group E occupancy, up to and including the 12th grade, buildings of Group I occupancy, rooming houses and child care centers, ladders of any type are prohibited on fire escapes used as a required means of egress.

I. Add IEBC Section 304 Glass replacement and replacement windows.

J. Add Sections 304.1 through 304.3, including subsections, to the IEBC to read:

304.1 Conformance. In accordance with § 36-99.2 of the Code of Virginia, any replacement glass installed in

buildings constructed prior to the first edition of the USBC shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation. In addition, as a requirement of this code, the installation or replacement of glass in buildings constructed under any edition of the USBC shall be as required for new installations.

304.2 Replacement window opening devices. In Group R-2 or R-3 buildings containing dwelling units, window opening control devices complying with ASTM F 2090 shall be installed where an existing window is replaced and where all of the following apply to the replacement window:

1. The window is operable;

2. The window replacement includes replacement of the sash and the frame;

3. The top of the sill of the window opening is at a height less than 36 inches (915 mm) above the finished floor;

4. The window will permit openings that will allow passage of a 4-inch diameter (102 mm) sphere when the window is in its largest opened position; and

5. The vertical distance from the top of the sill of the window opening to the finished grade or other surface below, on the exterior of the building, is greater than 72 inches (1829 mm).

The window opening control device, after operation to release the control device allowing the window to fully open, shall not reduce the minimum net clear opening area of the window unit to less than the area required by Section 1029.2 of the VCC.

Exceptions:

1. Operable windows where the top of the sill of the window opening is located more than 75 feet (22 860 mm) above the finished grade or other surface below, on the exterior of the room, space or building, and that are provided with window fall prevention devices that comply with ASTM F 2006.

2. Operable windows with openings that are provided with window fall prevention devices that comply with ASTM F 2090.

304.3 Replacement window emergency escape and rescue openings. Where windows are required to provide emergency escape and rescue openings in Groups R-2 and R-3 occupancies, replacement windows shall be exempt from the requirements of Sections 1030.2, 1030.3, and 1030.5 provided the replacement window meets the following conditions:

1. The replacement window is the manufacturer's largest standard size window that will fit within the existing frame or existing rough opening. The replacement window shall be permitted to be of the same operating style as the existing window or a style that provides for an equal or greater window opening area than the existing window.

2. The replacement of the window is not part of a change of occupancy.

K. Add IEBC Section 305 Seismic force-resisting systems.

L. Add Sections 305.1 and 305.2, including subsections, to the IEBC to read:

305.1 General. Where this code requires consideration of the seismic force-resisting system of an existing building subject to repair, alteration, change of occupancy, addition or relocation of existing buildings, the seismic evaluation and design shall be based on Section 305.2 regardless of which compliance method is used.

305.2 Seismic evaluation and design procedures. The seismic evaluation and design shall be based on the procedures specified in the VCC or ASCE 41. The procedures contained in Appendix A of this code shall be permitted to be used as specified in Section 305.2.2.

305.2.1 Compliance with VCC-level seismic forces. Where compliance with the seismic design provisions of the VCC is required, the criteria shall be in accordance with one of the following:

1. 100% of the values in the VCC. Where the existing seismic force-resisting system is a type that can be designated as "Ordinary," values of R, Ω_0, and C_d used for analysis in accordance with Chapter 16 of the VCC shall be those specified for structural systems classified as "Ordinary" in accordance with Table 12.2-1 of ASCE 7, unless it can be demonstrated that the structural system will provide performance equivalent to that of a "Detailed," "Intermediate" or "Special" system.

2. ASCE 41, using a Tier 3 procedure and the two level performance objective in Table 305.2.1 for the applicable risk category.

Table 305.2.1
Performance Objectives for Use in ASCE 41 for Compliance with VCC-Level Seismic Forces

Risk Category (Based on VCC Table 1604.5)	Structural Performance Level for Use with BSE-1E Earthquake Hazard Level	Structural Performance Level for Use with BSE-2N Earthquake Hazard Level
I	Life Safety (S-3)	Collapse Prevention (S-5)
II	Life Safety (S-3)	Collapse Prevention (S-5)
III	Damage Control (S-2)	Limited Safety (S-4)
IV	Immediate Occupancy (S-1)	Life Safety (S-3)

305.2.2 Compliance with reduced VCC-level seismic forces. Where seismic evaluation and design is permitted to meet reduced VCC seismic force levels, the criteria used shall be in accordance with one of the following:

1. The VCC using 75% of the prescribed forces. Values of R, Ω_0 and C_d used for analysis shall be as specified in Section 305.2.1 of this code.

2. Structures or portions of structures that comply with the requirements of the applicable chapter in Appendix A as specified in Items 2.1 through 2.5 and subject to the limitations of the respective Appendix A chapters shall be deemed to comply with this section.

2.1. The seismic evaluation and design of unreinforced masonry bearing wall buildings in Risk Category I or II are permitted to be based on the procedures specified in Appendix Chapter A1.

2.2. Seismic evaluation and design of the wall anchorage system in reinforced concrete and reinforced masonry wall buildings with flexible diaphragms in Risk Category I or II are permitted to be based on the procedures specified in Chapter A2.

2.3. Seismic evaluation and design of cripple walls and sill plate anchorage in residential buildings of light-frame wood construction in Risk Category I or II are permitted to be based on the procedures specified in Chapter A3.

2.4. Seismic evaluation and design of soft, weak, or open-front wall conditions in multiunit residential buildings of wood construction in Risk Category I or II are permitted to be based on the procedures specified in Chapter A4.

2.5. Seismic evaluation and design of concrete buildings assigned to Risk Category I, II, or III are permitted to be based on the procedures specified in Chapter A5.

3. ASCE 41, using the performance objective in Table 305.2.2 for the applicable risk category.

Table 305.2.2

Performance Objectives for Use in ASCE 41 for Compliance with Reduced VCC-Level Seismic Forces

Risk Category (Based on VCC Table 1604.5)	Structural Performance Level for Use with BSE-1E Earthquake Hazard Level
I	Life Safety (S-3)
II	Life Safety (S-3)
III	Damage Control (S-2[a])
IV	Immediate Occupancy (S-1)

a. Tier 1 evaluation at the Damage Control performance level shall use the Tier 1 Life Safety checklists and Tier 1 Quick Check provision midway between those specified for Life Safety and Immediate Occupancy performance

M. Add IEBC Section 306 Group B teaching and research laboratories.

N. Add Section 306.1, including subsections, to the IEBC to read:

306.1 Change of occupancy in existing Group B teaching and research laboratories. Where the use of new or different hazardous materials or a change in the amount of hazardous materials in existing Group B testing and research laboratories in educational occupancies above the 12th grade would constitute a change of occupancy, this section shall be permitted to be used as an acceptable alternative to compliance with change of occupancy requirements to permit the increased amounts of hazardous materials stipulated without the laboratories being classified as Group H. In addition, as set out in Section 5001.7 of the SFPC, approval under this section is contingent upon operational requirements in the SFPC being complied with and maintained.

306.1.1 Hazardous materials in existing Group B teaching and research laboratories. The percentage of maximum allowable quantities of hazardous materials per control area and the number of control areas permitted at each floor level within an existing building shall be permitted to comply with Table 302.6.1(1) in buildings equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC or shall be permitted to comply with Table 302.6.1(2) in buildings not equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC.

Table 306.1.1(1)

Design and Number of Control Areas in Existing Buildings Equipped throughout with an Automatic Sprinkler System in Accordance with Section 903.3.1.1 of the VCC with Group B Teaching and Research Laboratories in Educational Occupancies above the 12th Grade

Floor Level		Percentage of the Maximum Allowable Quantity per Control Area[a]	Number of Control Areas per Floor	Fire-Resistance Rating for Fire Barriers and Horizontal Assemblies in Hours[b]
Above Grade Plane	Higher than 20	5	1	2
	10-20	10	1	2
	7-9	25	2	2
	4-6	50	2	2
	3	75	2	1
		100	3	1

	2 1	100	4	1
Below Grade Plane	1 2 Lower than 2	75 50 Not Allowed	3 2 Not Allowed	1 1 Not Allowed

a. Percentage shall be of the maximum allowable quantity per control area shown in Tables 307.1(1) and 307.1(2) of the VCC, with all increases allowed in the notes to those tables.

b. Separation shall include fire barriers and horizontal assemblies as necessary to provide separation from other portions of the building.

Table 306.1.1(2)

Design and Number of Control Areas in Existing Buildings Not Equipped throughout with an Automatic Sprinkler System in Accordance with Section 903.3.1.1 of the VCC with Group B Teaching and Research Laboratories in Educational Occupancies above the 12th Grade

Floor Level		Percentage of the Maximum Allowable Quantity per Control Area[a]	Number of Control Areas per Floor	Fire-Resistance Rating for Fire Barriers and Horizontal Assemblies in Hours[b]
Above Grade Plane	Higher than 9	5	1	2
	7-9	10	2	2
	4-6	25	2	2
	3	75	2	1
	2	100	3	1
	1	100	4	1
Below Grade Plane	1	75	3	1
	2	50	2	1
	Lower than 2	Not Allowed	Not Allowed	Not Allowed

a. Percentage shall be of the maximum allowable quantity per control area shown in Tables 307.1(1) and 307.1(2) of the VCC, with all increases allowed in the notes to those tables.

b. Separation shall include fire barriers and horizontal assemblies as necessary to provide separation from other portions of the building.

306.1.2 Automatic fire alarm and detection systems. An automatic fire alarm system shall be provided throughout the building in accordance with Section 907 of the VCC. An automatic fire detection system shall be provided in the control area in accordance with Section 907 of the VCC where pyrophics or Class 4 oxidizers are used and the building is not equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC.

306.1.3 System supervision and monitoring. Automatic fire detection systems shall be electronically supervised and monitored by an approved supervising station or, where approved, shall initiate an audible and visual signal at a constantly attended onsite location.

O. Add IEBC Section 307 Reroofing and roof repair.

P. Add Sections 307.1 through 307.7, including subsections, to the IEBC to read:

307.1 Reroofing. Materials and methods of application used for recovering or replacing an existing roof covering shall comply with this section and the applicable requirements of Chapter 15 of the VCC.

Exceptions:

1. Roof replacement of roof recover of existing low-slope roof coverings shall not be required to meet the minimum design slope requirement of one-quarter unit vertical in 12 units horizontal (2% slope) in Section 1507 of the VCC for roofs that provide positive roof drainage.

2. Recovering or replacing an existing roof covering shall not be required to meet the requirement of secondary (emergency overflow) drains or scuppers in Section 1503.4 of the VCC for roofs that provide for positive roof drainage. For the purposes of this exception, existing secondary drainage or scupper systems required in accordance with the VCC shall not be removed unless they are replaced by secondary drains or scuppers designed and installed in accordance with Section 1503.4 of the VCC.

307.2 Structural and construction loads. Structural roof components shall be capable of supporting the roof covering system and the material and equipment loads that will be encountered during installation of the system.

307.3 Roof replacement. Roof replacement shall include the removal of all existing layers of roof coverings down to the roof deck.

Exception: Where the existing roof assembly includes an ice barrier membrane that is adhered to the roof deck, the existing ice barrier membrane shall be permitted to remain in place and covered with an additional layer of ice barrier membrane in accordance with Section 1507 of the VCC.

307.3.1 Roof recover. The installation of a new roof covering over an existing roof covering shall be permitted where any of the following conditions occur:

1. Complete and separate roofing systems, such as standing-seam metal roof systems, that are designed to transmit the roof loads directly to the building's structural system and that do not rely on existing roofs and roof coverings for support, shall not require the removal of exiting roof coverings.

2. Metal panel, metal shingle and concrete and clay tile roof coverings shall be permitted to be installed over existing wood shake roofs when applied in accordance with Section 307.4.

3. The application of a new protective coating over an existing spray polyurethane foam roofing system shall be permitted without tear-off of existing roof coverings.

4. Where the new roof covering is installed in accordance with the roof covering manufacturer's approved instructions.

Exceptions~~.~~: A roof recover shall not be permitted where any of the following conditions occur:

1. Where the existing roof or roof covering is water soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

2. Where the existing roof covering is slate, clay, cement, or asbestos-cement tile.

3. Where the existing roof has two or more applications of any type of roof covering.

307.4 Roof recovering. Where the application of a new roof covering over wood shingle or shake roofs creates a combustible concealed space, the entire existing surface shall be covered with gypsum board, mineral fiber, glass fiber or other approved materials securely fastened in place.

307.5 Reinstallation of materials. Existing slate, clay, or cement tile shall be permitted for reinstallation, except that damaged, cracked or broken slate or tile shall not be reinstalled. Existing vent flashing, metal edgings, drain outlets, collars, and metal counter-flashings shall not be reinstalled where rusted, damaged, or deteriorated. Aggregate surfacing materials shall not be reinstalled.

307.6 Flashings. Flashings shall be reconstructed in accordance with approved manufacturer's installation instructions. Metal flashing to which bituminous materials are to be adhered shall be primed prior to installation.

307.7 Roof repair. Roof repairs shall comply with this section. Work on nondamaged components that is necessary for the required repair of damaged components shall be considered part of the roof repair and shall not be subject to the requirements of other parts of this code.

Exception: Routine maintenance required by this section, ordinary repairs exempt from permit in accordance with Section 108.2 of the VCC, and abatement of wear due to normal service conditions shall not be subject to the requirements for roof repairs in this section.

307.7.1 Building materials and systems. Building materials and systems shall comply with the requirements of Sections 307.7.1.1 and 307.7.1.2.

307.7.1.1 Existing materials. Materials already in use in a building in compliance with requirements or approvals in effect at the time of their erection or installation shall be permitted to remain in use unless determined by the building official to be unsafe.

307.7.1.2 New and replacement materials. Except as otherwise required or permitted by this code, materials permitted by the applicable code for new construction shall be used. Like materials shall be permitted for repairs, provided no hazard to life, health or property is created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

13VAC5-63-432.5. Chapter 4 Accessibility.

A. Change IEBC Section 401 to General.

B. Change Section 401.1 of the IEBC to read:

401.1 Scope. The applicable provisions of this chapter shall apply to all construction and rehabilitation.

C. Delete Sections 401.1.1 through 401.3.

D. Change IEBC Section 402 of Change of Occupancy.

E. Change Sections 402.1 through 402.3 of the IEBC to read:

402.1 Change of occupancy. Existing buildings or structures that undergo a change of occupancy shall comply with this section.

Exception: Type B dwelling or sleeping units required by Section 1107 of the VCC are not required to be provided in existing buildings and facilities undergoing a change of occupancy in conjunction with alterations where the work area is 50% or less of the aggregate area of the building.

402.2 Partial change in occupancy. Where a portion of the building is changed to a new occupancy classification, additional accessible features are not required due to the change of occupancy.

402.3 Complete change of occupancy. Where an entire building undergoes a change of occupancy classification, it shall have all of the following accessible features:

1. At least one accessible building entrance.

2. At least one accessible route from an accessible building entrance to primary function areas.

3. Signage complying with Section 1111 of the VCC.

4. Accessible parking, where parking is being provided.

5. At least one accessible passenger loading zone, when loading zones are provided.

6. At least one accessible route connecting accessible parking and accessible passenger loading zones to an accessible entrance.

Where it is technically infeasible to comply with the new construction standards for any of these requirements of a change of occupancy, Items 1 through 6 shall conform to the requirements to the maximum extent technically feasible.

Exception: The accessible features listed in Items 1 through 6 are not required for an accessible route to Type B units.

F. Delete Sections 402.3.1, 402.4 and 402.5 of the IEBC.

G. Change IEBC Section 403 to Additions.

H. Change Sections 403.1 through 403.3 of the IEBC to read:

403.1 Additions. Accessibility provisions for new construction shall apply to additions. An addition that affects the accessibility to, or contains an area of, a primary function shall comply with the requirements in Section 410.7, as applicable.

403.2 Accessible dwelling units and sleeping units. Where Group I-1, I-2, I-3, R-1, R-2, or R-4 dwelling or sleeping units are being added, the requirements of Section 1107 of the VCC for accessible units apply only to the quantity of spaces being added.

403.3 Type A dwelling or sleeping units. Where more than 20 Group R-2 dwelling or sleeping units are being added, the requirements of Section 1107 of the VCC for Type A units and Chapter 9 of the VCC for visible alarms apply only to the quantity of the spaces being added.

I. Delete Section 403.3.1.

J. Change Section 403.4 of the IEBC to read:

403.4 Type B dwelling or sleeping units. Where four or more Group I-1, I-2, R-1, R-2, R-3, or R-4 dwelling or sleeping units are being added, the requirements of Section1107 of the VCC for Type B units and Chapter 9 of the VCC for visible alarms apply only to the quantity of spaces being added.

K. Delete Sections 403.4.1 through 403.11, including subsections, of the IEBC.

L. Change IEBC Section 404 to Alterations.

M. Change Sections 404.1 through 404.4.15, including subsections, of the IEBC to read:

404.1 General. An alteration of an existing facility shall not impose a requirement for greater accessibility than that which would be required for new construction. Alterations shall not reduce or have the effect of reducing accessibility of a facility or portion of a facility.

404.2 Alterations. A facility that is altered shall comply with the applicable provisions in this section and Chapter 11 of the VCC, except as modified by Sections 404.3 and 404.4, unless technically infeasible. Where compliance with this section is technically infeasible, the alteration shall provide access to the maximum extent technically feasible.

Exceptions:

1. The altered element or space is not required to be on an accessible route, unless required by Section 404.3.

2. Accessible means of egress required by Chapter 10 of the VCC are not required to be provided in existing facilities.

3. The alteration to Type A individually owned dwelling units within a Group R-2 occupancy shall be permitted to meet the provision for a Type B dwelling unit.

4. Type B dwelling or sleeping units required by Section 1107 of the VCC are not required to be provided in existing buildings and facilities undergoing a change of occupancy in conjunction with alterations where the work area is 50% or less of the aggregate area of the building.

404.3 Alterations affecting an area containing a primary function. Where an alteration affects the accessibility to, or contains an area of primary function, the route to the primary function area shall be accessible. The accessible route to the primary function area shall include toilet facilities and drinking fountains that shall also be accessible to and useable by individuals with disabilities, serving the area of primary function.

Exceptions:

1. The costs of providing the accessible route are not required to exceed 20% of the costs of the alterations affecting the area of primary function.

2. This provision does not apply to alterations limited solely to windows, hardware, operating controls, electrical outlets and signs.

3. This provision does not apply to alterations limited solely to mechanical systems, electrical systems, installation or alteration of fire protection systems and abatement of hazardous materials.

4. This provision does not apply to alterations undertaken for the primary purpose of increasing the accessibility of a facility.

5. This provision does not apply to altered areas limited to Type B dwelling and sleeping units.

404.4 Scoping for alterations. The provisions of Sections 404.4.1 through 404.4.14 shall apply to alterations to existing buildings and facilities.

404.4.1 Entrances. Where an alteration includes alterations to an entrance, and the facility has an accessible entrance on an accessible route, the altered entrance is not required to be accessible unless required by Section 404.3. Signs complying with Section 1111 of the VCC shall be provided.

Exception: Where an alteration includes alterations to an entrance, and the facility has an accessible entrance, the altered entrance is not required to be accessible, unless required by Section 410.7. Signs complying with Section 1111 of the VCC shall be provided.

404.4.2 Elevators. Altered elements of existing elevators shall comply with ASME A17.1/CSA B44 and ICC A117.1. Such elements shall also be altered in elevators programmed to respond to the same hall call control as the altered elevator.

404.4.3 Platform lifts. Platform (wheelchair) lifts complying with ICC A117.1 and installed in accordance with ASME A18.1 shall be permitted as a component of an accessible route.

404.4.4 Stairways and escalators. In alterations, change of occupancy or additions where an escalator or stairway is added where none existed previously and major structural modifications are necessary for installation, an accessible route shall be provided between the levels served by the escalator or stairways in accordance with Section 1104.4 of the VCC.

404.4.5 Ramps. Where steeper slopes than allowed by Section 1012.2 of the VCC are necessitated by space limitations, the slope of ramps in or providing access to existing facilities shall comply with Table 404.4.5.

Table 404.4.5

Ramps

Slope	Maximum Rise
Steeper than 1:10 but not steeper than 1:8	3 inches
Steeper than 1:12 but not steeper than 1:10	6 inches
For SI: 1 inch = 25.4 mm	

404.4.6 Accessible dwelling or sleeping units. Where Group I-1, I-2, I-3, R-1, R-2, or R-4 dwelling or sleeping units are being altered, the requirements of Section 1107 of the VCC for Accessible units apply only to the quantity of the spaces being altered.

404.4.7 Type A dwelling or sleeping units. Where more than 20 Group R-2 dwelling or sleeping units are being altered, the requirements of Section 1107 of the VCC for Type A units and Chapter 9 of the VCC for visible alarms apply only to the quantity of the spaces being altered.

404.4.8 Type B dwelling or sleeping units. Where four or more Group I-1, I-2, R-1, R-2, R-3, or R-4 dwelling or sleeping units are being altered and where the work area is greater than 50% of the aggregate area of the building, the requirements of Section 1107 of the VCC for Type B units and Chapter 9 of the VCC for visible ~~Alarms~~ alarms apply only to the quantity of the spaces being altered.

Exceptions: Group I-1, I-2, R-2, R-3, and R-4 dwelling or sleeping units where the first certificate of occupancy was issued before March 15, 1991, are not required to provide Type B dwelling or sleeping units.

404.4.9 Jury boxes and witness stands. In alterations, accessible wheelchair spaces are not required to be located within the defined area of raised jury boxes or witness stands and shall be permitted to be located outside these spaces where ramp or lift access poses a hazard by restricting or projecting into a required means of egress.

404.4.10 Toilet rooms. Where it is technically infeasible to alter existing toilet and bathing rooms to be accessible, an accessible family or assisted-use toilet or bathing room constructed in accordance with Section 1109.2.1 of the VCC is permitted. The family or assisted-use toilet or bathing room shall be located on the same floor and in the same area as the existing toilet or bathing rooms. At the inaccessible toilet and bathing rooms, provide directional signs indicating the location of the nearest family or assisted-use toilet room or bathing room. These directional signs shall include the International Symbol of Accessibility and sign characters shall meet the visual character requirements in accordance with ICC A117.1.

404.4.11 Dressing, fitting and locker rooms. Where it is technically infeasible to provide accessible dressing, fitting or locker rooms at the same location as similar types of rooms, one accessible room on the same level shall be provided. Where separate-sex facilities are provided, accessible rooms for each sex shall be provided. Separate sex facilities are not required where only unisex rooms are provided.

404.4.12 Fuel dispensers. Operable parts of replacement fuel dispensers shall be permitted to be 54 inches (1370 mm) maximum, measuring from the surface of the

vehicular way where fuel dispensers are installed on existing curbs.

404.4.13 Thresholds. The maximum height of thresholds at doorways shall be 3/4 inch (19.1 mm). Such thresholds shall have beveled edges on each side.

404.4.14 Amusement rides. Where the structural or operational characteristics of an amusement ride are altered to the extent that the amusement ride's performance differs from that specified by the manufacturer or the original design, the amusement ride shall comply with requirements for new construction in Section 1110.4.8 of the VCC.

404.4.15 Dining areas. An accessible route to raised or sunken dining areas or to outdoor seating areas is not required provided that the same services and décor are provided in an accessible space usable by any occupant and not restricted to use by people with a disability.

N. Delete Sections 404.2.1, 404.2.2, 404.2.3, 404.3.1 and 404.5 of the IEBC.

O. Change Section 405 to Historic Buildings.

P. Change Section 405.1, including subsections, to read:

405.1 General. These provisions shall apply to facilities designated as historic buildings or structures that undergo alterations or a change of occupancy, unless technically infeasible. Where compliance with the requirements for accessible routes, entrances or toilet rooms would threaten or destroy the historic significance of the facility, the alternative requirements of Sections 405.1.1 through 405.1.4 for that element shall be permitted.

Exception: Type B dwelling or sleeping units required by Section 1107 of the VCC are not required to be provided in historical buildings.

405.1.1 Site arrival points. At least one accessible route from a site arrival point to an accessible entrance shall be provided.

405.1.2 Multilevel buildings and facilities. An accessible route from an accessible entrance to public spaces on the level of the accessible entrance shall be provided.

405.1.3 Entrances. At least one main entrance shall be accessible.

Exceptions:

1. If a main entrance cannot be made accessible, an accessible nonpublic entrance that is unlocked while the building is occupied shall be provided; or

2. If a main entrance cannot be made accessible, a locked accessible entrance with a notification system or remote monitoring shall be provided.

Signs complying with Section 1111 of the VCC shall be provided at the primary entrance and the accessible entrance.

405.1.4 Toilet and bathing facilities. Where toilet rooms are provided, at least one accessible family or assisted-use toilet room complying with Section 1109.2.1 of the VCC shall be provided.

Q. Delete Sections 405.2 through 405.5 of the IEBC.

R. Delete Sections 406, 407, 408, 409 and 410 of the IEBC in their entirety.

13VAC5-63-433. Chapter 5 Repairs.

A. Change Section 501.1 and 501.2 of the IEBC to read:

501.1 Scope. Repairs, including the patching or restoration or replacement of damaged materials, elements, equipment or fixtures for the purpose of maintaining such components in good or sound condition with respect to existing loads or performance requirements, shall comply with the requirements of this chapter. Repairs to historic buildings need only comply with Chapter 9. Portions of the existing building or structure not being repaired shall not be required to comply with the requirements of this code applicable to newly constructed buildings or structures. Work on nondamaged components that is necessary for the required repair of damaged components shall be considered part of the repair and shall not be subject to the provisions of Chapter 6, 7 or 8. Routine maintenance required by Section 302, ordinary repairs exempt from permit in accordance with Section 108.2 of the VCC, and abatement of wear due to normal service conditions shall not be subject to the requirements for repairs in this section.

Exception: Repairs complying with the requirements of the building code under which the building or structure or the affected portions thereof was built, or as previously approved by the building official, shall be considered in compliance with the provisions of this code, unless the building or structure or the affected portions thereof is undergoing a substantial structural alteration as described in Section 604.7.1. New structural members added as part of the alteration or repairs shall comply with the VCC. Repairs of existing buildings in flood hazard areas shall comply with Section 503.

501.2 Conformance. The work shall not make the building less conforming ~~that~~ than it was before the repair was undertaken. Repairs shall be done in a manner that maintains the following:

1. Level of fire protection that is existing.

2. Level of protection that is existing for the means of egress.

3. Level of accessibility that is existing.

B. Delete Section 501.1.1.

C. Change Section 502 to Structural.

D. Change Sections 502.1 and 502.2, including subsections, of the IEBC to read:

502.1 General. Structural repairs shall be in compliance with this section and Section 501.2. Regardless of the scope of repair, new structural members and connections used for repair or rehabilitation shall comply with the detailing provisions of the VCC for new buildings of similar structure, purpose and location.

502.2 Repairs to damaged buildings. Repairs to damaged buildings shall comply with this section.

502.2.1 Less than substantial structural damage. For damage less than substantial structural damage, repairs shall be allowed that restore the building to its predamage state. New structural members and connection used for this repair shall comply with the detailing provisions of the VCC for new buildings of similar structure, purpose, and location.

502.2.2 Substantial structural damage to vertical elements of the lateral force-resisting system. A building that has sustained substantial structural damage to the vertical elements of its lateral force-resisting system shall be evaluated in accordance with Section 502.2.2.1 and either repaired in accordance with Section 502.2.2. or repaired and rehabilitated in accordance with Section 502.2.2.3, depending on the results of the evaluation.

Exceptions:

1. Buildings assigned to Seismic Design Category A, B, or C whose substantial structural damage was not caused by earthquake need not be evaluated or rehabilitated for load combinations that include earthquake effects.

2. One-family and two-family dwellings need not be evaluated or rehabilitated for load combinations that include earthquake effects.

502.2.2.1 Evaluation. The building shall be evaluated by a registered design professional, and the evaluation findings shall be submitted to the building official. The evaluation shall establish whether the damaged building if repaired to its predamage state, would comply with the provisions of the VCC for load combinations that include wind or earthquake effects, except that the seismic forces shall be the reduced VCC-level seismic forces.

Wind loads for this evaluation shall be those prescribed in Section 1609 of the VCC. Earthquake loads for this evaluation, if required, shall be permitted to be 75% of those prescribed in Section 1613 of the VCC. Alternatively, compliance with ASCE 41, using the performance objective in Table 305.2.2 for the applicable risk category, shall be deemed to meet the earthquake evaluation requirement.

502.2.2.2 Extent of repair for ~~noncompliant~~ compliant buildings. If the evaluation establishes that the building in its predamage condition complies with the provisions of Section 502.2.2.1, then repairs shall be permitted that restore the building to its predamage state.

502.2.2.3 Extent of repair for noncompliant buildings. If the evaluation does not establish that the building in its predamage condition complies with the provisions of Section 502.2.2.1, then the building shall be rehabilitated to comply with the provisions of this section. The wind loads for the repair shall be as required by the building code in effect at the time of original construction, unless the damage was caused by wind, in which case the wind loads shall be in accordance with the VCC. The earthquake loads for this rehabilitation design shall be those required by the building code in effect at the time of original construction, but not less than the reduced VCC-level seismic forces. New structural members and connections required by this rehabilitation design shall comply with the detailing provisions of the VCC for new buildings of similar structure, purpose and location. Alternatively, compliance with ASCE 41, using the performance objective in Table 305.2.2 for the applicable risk category, shall be deemed to meet the earthquake rehabilitation requirement.

502.2.3 Substantial structural damage to gravity load-carrying components. Gravity load-carrying components that have sustained substantial structural damage shall be rehabilitated to comply with the applicable provisions for dead and live loads in the VCC. Snow loads shall be considered if the substantial structural damage was caused by or related to snow load effects. Existing gravity load carrying structural elements shall be permitted to be designed for live loads approved prior to the damage. If the approved live load is less than that required by Section 1607 of the VCC, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Nondamaged gravity load-carrying components that receive dead, live, or snow loads from rehabilitated components shall also be rehabilitated if required to comply with the design loads of the rehabilitation design, or shown to have the capacity to carry the design loads of the rehabilitation design. New structural members and connections required by this rehabilitation design shall comply with the detailing provisions of the VCC for new buildings of similar structure purpose and location.

502.2.3.1 Lateral force-resisting elements. Regardless of the level of damage to gravity elements of the lateral force-resisting system, if substantial structural damage to gravity load-carrying components was caused primarily by wind or

earthquake effects, then the building shall be evaluated in accordance with Section 502.2.2.1 and, if noncompliant, rehabilitated in accordance with Section 502.2.2.3.

Exceptions:

1. Buildings assigned to Seismic Design Category A, B, or C whose substantial structural damage was not caused by earthquake need not be evaluated or rehabilitated for load combinations that include earthquake effects.

2. One-family and two-family dwellings need not be evaluated or rehabilitated for load combinations that include earthquake effects.

E. Delete Section 502.3 of the IEBC.

F. Change Section 503 to Flood Hazard Areas.

G. Change Section 503.1 of the IEBC to read:

503.1 Flood hazard areas. For buildings and structures, in flood hazard areas established in Section 1612.3 of the VCC, or Section R322 of the International Residential Code, as applicable, any repair that constitutes substantial improvement or repair of substantial damage of the existing building or structure shall comply with the flood design requirements for new construction and all aspects of the existing building or structure shall be brought into compliance with the requirements for new construction for flood design.

For buildings and structures in flood hazard areas established in Section 1612.3 of the VCC, or Section R322 of the International Residential Code, as applicable, any repairs do not constitute substantial improvement or repair of substantial damage of the existing building or structure are not required to comply with the flood design requirements for new construction.

H. Delete Section 503.2 of the IEBC.

I. Change Section 504 to Electrical.

J. Change Section 504.1 of the IEBC to read:

504.1 Material. Existing electrical wiring and equipment undergoing repair shall be allowed to be repaired or replaced with like material.

504.1.1 Receptacles. Replacement of electrical receptacles shall comply with the applicable requirements of Section 406.4(D) of NFPA 70.

504.1.2 Plug fuses. Plug fuses of the Edison-base type shall be used for replacements only where there is no evidence of over fusing or tampering per applicable requirements of Section 240.51(B) of NFPA 70.

504.1.3 Nongrounding-type receptacles. For replacement of nongrounding-type receptacles with grounding-type receptacles and for branch circuits that do not have an equipment grounding conductor in the branch circuitry, the grounding conductor of a grounding-type receptacle outlet shall be permitted to be grounded to any accessible point on the grounding electrode system or to any accessible point on the grounding electrode conductor in accordance with Section 250.130(C) of NFPA 70.

504.1.4 Group I-2 receptacles. Non-"hospital grade" receptacles in patient bed locations of Group I-2 shall be replaced with "hospital grade" receptacles, as required by NFPA 99 and Article 517 of NFPA 70.

504.1.5 Grounding of appliances. Frames of electric ranges, wall-mounted ovens, counter-mounted cooking units, clothes dryers and outlet or junction boxes that are part of the existing branch circuit for these appliances shall be permitted to be grounded to the grounded circuit conductor in accordance with Section 250.140 of NFPA 70.

K. Delete Section 504.2 of the IEBC.

L. Change Section 505 to Mechanical.

M. Change Sections 505.1 and 505.2 of the IEBC to read:

505.1 General. Existing mechanical systems undergoing repair shall not make the building less conforming than it was before the repair was undertaken.

505.2 Mechanical draft systems for manually fired appliances and fireplaces. A mechanical draft system shall be permitted to be used with manually fired appliances and fireplaces where such a system complies with all of the following requirements:

1. The mechanical draft device shall be listed and installed in accordance with the manufacturer's installation instructions.

2. A device shall be installed that produces visible and audible warning upon failure of the mechanical draft device or loss of electrical power at any time that the mechanical draft device is turned on. This device shall be equipped with a battery backup if it receives power from the building wiring.

3. A smoke detector shall be installed in the room with the appliance or fireplace. This device shall be equipped with a battery backup if it receives power from the building wiring.

N. Change Section 506 to Plumbing.

O. Change Sections 506.1 and 506.2 of the IEBC to read:

506.1 Materials. Plumbing materials and supplies shall not be used for repairs that are prohibited in the International Plumbing Code.

506.2 Water closet replacement. The maximum water consumption flow rates and quantities for all replaced water closets shall be 1.6 gallons (6 L) per flushing cycle.

Exception: Blowout-design water closets 3.5 gallons (13 L) per flushing cycle.

P. Delete Section 507 of the IEBC in its entirety.

Q. Delete Section 508 of the IEBC in its entirety.

R. Delete Section 509 of the IEBC in its entirety.

13VAC5-63-433.3. Chapter 6 Alterations.

A. Change Sections 601.1 through 601.5, including subsections, of the IEBC to read:

601.1 General. Except as provided by Section 905.1 or this chapter, alterations to any building or structure shall comply with the requirements of the VCC for new construction. Alterations shall be such that the existing building or structure is no less conforming to the provisions of the VCC than the existing building or structure was prior to the alteration.

Exceptions:

1. Any stairway replacing an existing stairway shall not be required to comply with the requirements of Section 1011 of the VCC where the existing space and construction does not allow a reduction in pitch or slope.

2. Handrails otherwise required to comply with Section 1011.11 of the VCC shall not be required to comply with the requirements of Section 1014.6 of the VCC regarding full extension of the handrails where such extensions would be hazardous due to plan configuration.

3. Where the current level of safety or sanitation is proposed to be reduced, the portion altered shall conform to the requirements of the VCC.

4. Alterations complying with the requirements of the building code under which the building or structure or the affected portions thereof was built, or as previously approved by the building official, shall be considered in compliance with the provisions of this code, unless the building or structure or the affected portions thereof is undergoing a substantial structural alteration as described in Section 604.7.1. New structural members added as part of the alteration or repairs shall comply with the VCC. Alterations of existing buildings in flood hazard areas shall comply with Section 601.3.

601.2 Levels of alterations. Alterations to any building or structure shall be classified as the following:

601.2.1 Level 1. Level 1 alterations include the removal and replacement or the covering of existing materials, elements, equipment, or fixtures using new materials, elements, equipment, or fixtures that serve the same purpose. Level 1 alterations shall comply with the applicable provisions Section 602.

601.2.2 Level 2. Level 2 alterations include the addition or elimination of any door or window, the reconfiguration or extension of any system, or the installation of any additional equipment and shall apply where the work area is less than 50% of the building area. Level 2 alterations shall comply with the applicable provisions Sections 602 and 603.

601.2.3 Level 3. Level 3 alterations apply where the work area exceeds 50% of the building area. Level 3 alterations shall comply with the applicable provisions of Sections 602, 603 and 604.

601.2.3.1 Special provisions. A building separated horizontally in compliance with VCC Section 510.2 shall be considered as separate and distinct buildings for the purpose of determining building area used for application of Section 601.2.3.

601.3 Flood hazard areas. In flood hazard areas, alterations that constitute substantial improvement shall require that the building comply with Section 1612 of the VCC or Section R322 of the International Residential Code, as applicable.

601.4 Energy conservation. Level 1, 2, and 3 alterations to existing buildings or structures are permitted without requiring the entire building or structure to comply with the energy requirements of the International Energy Conservation Code or International Residential Code. The alterations shall conform to the energy requirements of the International Energy Conservation Code or International Residential Code as they relate to new construction only.

Exception: Except for window and door openings, like materials, assemblies or thicknesses shall be permitted for alterations involving the exterior building thermal envelope, provided no hazard to life, health or property is created. Hazardous materials shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

601.5 Accessibility. Accessibility shall be provided in accordance with applicable provisions of Section 404.

B. Change Section 602 to Level 1 Alterations.

C. Change Sections 602.1 through 602.3, including subsections, of the IEBC to read:

602.1 Scope. Level 1 alterations as described in Section 601.2.1 shall comply with the requirements of this section. Level 1 alterations to historic buildings shall comply with this chapter, except as modified in Chapter 9.

602.2 Conformance. Alterations shall be done in a manner that maintains the following:

1. Level of fire protection that is existing.

2. Level of protection that is existing for the means of egress.

602.3 Building elements and materials. Building elements and materials shall comply with the applicable provisions of Sections 302 and 602.3.1 through 602.3.5.

602.3.1 Interior finishes. All newly installed interior wall and ceiling finishes shall comply with Chapter 8 of the VCC.

602.3.2 Interior floor finish. New interior floor finish, including new carpeting used as an interior floor finish material, shall comply with Section 804 of the VCC.

602.3.3 Interior trim. All newly installed interior trim materials shall comply with Section 806 of the VCC.

602.3.4 Materials and methods. All new work shall comply with the materials and methods requirements in the VCC, International Energy Conservation Code, International Mechanical Code, and International Plumbing Code, as applicable, that specify material standards, detail of installation and connection, joints, penetrations, and continuity of any element, component, or system in the building.

602.3.5 International Fuel Gas Code. The following sections of the International Fuel Gas Code shall constitute the fuel gas materials and methods requirements for Level 1 alterations.

1. All of Chapter 3, entitled "General Regulations," except Sections 303.7 and 306.

2. All of Chapter 4, entitled "Gas Piping Installations," except Sections 401.8 and 402.3.2.1. Sections 401.8 and 402.3 shall apply when the work being performed increases the load on the system such that the existing pipe does not meet the size required by code. Existing systems that are modified shall not require resizing as long as the load on the system is not increased and the system length is not increased even if the altered system does not meet code minimums.

3. All of Chapter 5, entitled "Chimneys and Vents."

4. All of Chapter 6, entitled "Specific Appliances."

D. Change Section 603 to Level 2 Alterations.

E. Change ~~Sections~~ Section 603.1 and add Sections 603.2 through 603.10, including subsections, of the IEBC to read:

603.1 Scope. Level 2 alterations as described in Section 601.2.2 shall comply with the requirements of this section.

Exception: Buildings in which the alteration is exclusively the result of compliance with the accessibility requirements of Section 404.3 shall be permitted to comply with Section 602.

603.2 Level 1 alteration compliance. In addition to the requirements of this section, all work shall comply with the applicable requirements of Section 602.

603.3 Compliance. All new construction elements, components, systems, and spaces shall comply with the requirements of the VCC.

Exceptions:

1. Windows may be added without requiring compliance with the light and ventilation requirements of the VCC.

2. Newly installed electrical equipment shall comply with the requirements of Section 603.8.

3. The length of dead-end corridors in newly constructed spaces shall only be required to comply with the provisions of Section 603.6.5.

4. The minimum ceiling height of the newly created habitable and occupiable spaces and corridors shall be 7 feet (2134 mm).

603.4 Building elements and materials. The requirements of Section 603.4 are limited to work areas in which Level 2 alterations are being performed and shall apply beyond the work area where specified.

603.4.1 Vertical openings. Existing vertical openings shall comply with the provisions of Sections 603.4.1.1, 603.4.1.2, and 603.4.1.3.

603.4.1.1 Existing vertical openings. Existing interior vertical openings connecting two or more floors shall be enclosed with approved assemblies having a fire-resistance rating of not less than one hour with approved opening protectives.

Exceptions:

1. Where vertical opening enclosure is not required by the VCC or the International Fire Code.

2. Interior vertical openings other than stairways may be blocked at the floor and ceiling of the work area by installation of not less than 2 inches (51 mm) of solid wood or equivalent construction.

3. The enclosure shall not be required where:

3.1. Connecting the main floor and mezzanines; or

3.2. All of the following conditions are met:

3.2.1. The communicating area has a low hazard occupancy or has a moderate hazard occupancy that is protected throughout by an automatic sprinkler system.

3.2.2. The lowest or next to the lowest level is a street floor.

3.2.3. The entire area is open and unobstructed in a manner such that it may be assumed that a fire in any part

of the interconnected spaces will be readily obvious to all of the occupants.

3.2.4. Exit capacity is sufficient to provide egress simultaneously for all occupants of all levels by considering all areas to be a single floor area for the determination of required exit capacity.

3.2.5. Each floor level, considered separately, has at least one half of its individual required exit capacity provided by exits leading directly out of that level without having to traverse another communicating floor level or be exposed to the smoke or fire spreading from another communicating floor level.

4. In Group A occupancies, a minimum 30-minute enclosure shall be provided to protect all vertical openings not exceeding three stories.

5. In Group B occupancies, a minimum 30-minute enclosure shall be provided to protect all vertical openings not exceeding three stories. This enclosure, or the enclosure specified in Section 603.4.1.1, shall not be required in the following locations:

5.1. Buildings not exceeding 3,000 square feet (279 m^2) per floor.

5.2. Buildings protected throughout by an approved automatic fire sprinkler system.

6. In Group E occupancies, the enclosure shall not be required for vertical openings not exceeding three stories when the building is protected throughout by an approved automatic fire sprinkler system.

7. In Group F occupancies, the enclosure shall not be required in the following locations:

7.1. Vertical openings not exceeding three stories.

7.2. Special purpose occupancies where necessary for manufacturing operations and direct access is provided to at least one protected stairway.

7.3. Buildings protected throughout by an approved automatic sprinkler system.

8. In Group H occupancies, the enclosure shall not be required for vertical openings not exceeding three stories where necessary for manufacturing operations and every floor level has direct access to at least two remote enclosed stairways or other approved exits.

9. In Group M occupancies, a minimum 30-minute enclosure shall be provided to protect all vertical openings not exceeding three stories. This enclosure, or the enclosure specified in Section 603.4.1.1, shall not be required in the following locations:

9.1. Openings connecting only two floor levels.

9.2. Occupancies protected throughout by an approved automatic sprinkler system.

10. In Group R-1 occupancies, the enclosure shall not be required for vertical openings not exceeding three stories in the following locations:

10.1. Buildings protected throughout by an approved automatic sprinkler system.

10.2. Buildings with less than 25 dwelling units or sleeping units where every sleeping room above the second floor is provided with direct access to a fire escape or other approved second exit by means of an approved exterior door or window having a sill height of not greater than 44 inches (1118 mm) and where:

10.2.1. Any exit access corridor exceeding 8 feet (2438 mm) in length that serves two means of egress, one of which is an unprotected vertical opening, shall have at least one of the means of egress separated from the vertical opening by a one-hour fire barrier; and

10.2.2. The building is protected throughout by an automatic fire alarm system, installed and supervised in accordance with the VCC.

11. In Group R-2 occupancies, a minimum 30-minute enclosure shall be provided to protect all vertical openings not exceeding three stories. This enclosure, or the enclosure specified in Section 603.4.1.1, shall not be required in the following locations:

11.1. Vertical openings not exceeding two stories with not more than four dwelling units per floor.

11.2. Buildings protected throughout by an approved automatic sprinkler system.

11.3. Buildings with not more than four dwelling units per floor where every sleeping room above the second floor is provided with direct access to a fire escape or other approved second exit by means of an approved exterior door or window having a sill height of not greater than 44 inches (1118 mm) and the building is protected throughout by an automatic fire alarm system complying with Section 603.5.4.

12. One-family and two-family dwellings.

13. Group S occupancies where connecting not more than two floor levels or where connecting not more than three floor levels and the structure is equipped throughout with an approved automatic sprinkler system.

14. Group S occupancies where vertical opening protection is not required for open parking garages and ramps.

603.4.1.2 Supplemental shaft and floor opening enclosure requirements. Where the work area on any floor exceeds 50% of that floor area, the enclosure requirements of

Section 603.4.1 shall apply to vertical openings other than stairways throughout the floor.

Exception: Vertical openings located in tenant spaces that are entirely outside the work area.

603.4.1.3 Supplemental stairway enclosure requirements. Where the work area on any floor exceeds 50% of that floor area, stairways that are part of the means of egress serving the work area shall, at a minimum, be enclosed with smoke-tight construction on the highest work area floor and all floors below.

Exception: Where stairway enclosure is not required by the VCC or the International Fire Code.

603.4.2 Smoke compartments. In Group I-2 occupancies where the work area is on a story used for sleeping rooms for more than 30 patients, the story shall be divided into not less than two compartments by smoke barrier walls in accordance with Section 407.5 of the VCC as required for new construction.

603.4.3 Interior finish. The interior finish of walls and ceilings in exits and corridors in any work area shall comply with the requirements of the VCC.

Exception: Existing interior finish materials that do not comply with the interior finish requirements of the VCC shall be permitted to be treated with an approved fire-retardant coating in accordance with the manufacturer's instructions to achieve the required rating.

603.4.3.1 Supplemental interior finish requirements. Where the work area on any floor exceeds 50% of the floor area, Section 603.4.3 shall also apply to the interior finish in exits and corridors serving the work area throughout the floor.

Exception: Interior finish within tenant spaces that are entirely outside the work area.

603.4.4 Guards. The requirements of Sections 603.4.4.1 and 603.4.4.2 shall apply in all work areas.

603.4.4.1 Minimum requirement. Every portion of a floor, such as a balcony or a loading dock, that is more than 30 inches (762 mm) above the floor or grade below and is not provided with guards, or those in which the existing guards are judged to be in danger of collapsing, shall be provided with guards.

603.4.4.2 Design. Where there are no guards or where existing guards must be replaced, the guards shall be designed and installed in accordance with the VCC.

603.4.5 Fire-resistance ratings. Where approved by the code official, buildings where an automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2 of the VCC has been added, and the building is now sprinklered throughout, the required fire-resistance ratings of building elements and materials shall be permitted to meet the requirements of the current building code.

603.5 Fire protection. The requirements of Section 603.5 shall be limited to work areas in which Level 2 alterations are being performed, and where specified they shall apply throughout the floor on which the work areas are located or otherwise beyond the work area.

603.5.1 Corridor ratings. Where an approved automatic sprinkler system is installed throughout the story, the required fire-resistance rating for any corridor located on the story shall be permitted to be reduced in accordance with the VCC. In order to be considered for a corridor rating reduction, such system shall provide coverage for the stairway landings serving the floor and the intermediate landings immediately below.

603.5.2 Automatic sprinkler system. Automatic sprinkler systems shall be provided in accordance with the requirements of Sections 603.5.2.1 through 603.5.2.5. Installation requirements shall be in accordance with the VCC.

603.5.2.1 High-rise buildings. In high-rise buildings, work areas that have exits or corridors shared by more than one tenant or that have exits or corridors serving an occupant load greater than 30 shall be provided with automatic sprinkler protection in the entire work area where the work area is located on a floor that has a sufficient sprinkler water supply system from an existing standpipe or a sprinkler riser serving that floor.

603.5.2.1.1 Supplemental automatic sprinkler system requirements. Where the work area on any floor exceeds 50% of that floor area, Section 603.5.2.1 shall apply to the entire floor on which the work area is located.

Exception: Occupied tenant spaces that are entirely outside the work area.

603.5.2.2 Groups A, B, E, F-1, H, I, M, R-1, R-2, R-4, S-1 and S-2. In buildings with occupancies in Groups A, B, E, F-1, H, I, M, R-1, R-2, R-4, S-1 and S-2, work areas that have exits or corridors shared by more than one tenant or that have exits or corridors serving an occupant load greater than 30 shall be provided with automatic sprinkler protection where all of the following conditions occur:

1. The work area is required to be provided with automatic sprinkler protection in accordance with the VCC as applicable to new construction; and
2. The work area exceeds 50% of the floor area.

Exception: If the building does not have sufficient municipal water supply for design of a fire sprinkler system available to the floor without installation of a new fire pump, work areas shall be protected by an automatic

smoke detection system throughout all occupiable spaces other than sleeping units or individual dwelling units that activates the occupant notification system in accordance with Sections 907.4, 907.5 and 907.6 of the VCC.

603.5.2.2.1 Mixed uses. In work areas containing mixed uses, one or more of which requires automatic sprinkler protection in accordance with Section 603.5.2.2, such protection shall not be required throughout the work area provided that the uses requiring such protection are separated from those not requiring protection by fire-resistance-rated construction having a minimum two-hour rating for Group H and a minimum one-hour rating for all other occupancy groups.

603.5.2.3 Windowless stories. Work located in a windowless story, as determined in accordance with the VCC, shall be sprinklered where the work area is required to be sprinklered under the provisions of the VCC for newly constructed buildings and the building has a sufficient municipal water supply without installation of a new fire pump.

603.5.2.4 Other required automatic sprinkler systems. In buildings and areas listed in Table 903.2.11.6 of the VCC, work areas that have exits or corridors shared by more than one tenant or that have exits or corridors serving an occupant load greater than 30 shall be provided with an automatic sprinkler system under the following conditions:

1. The work area is required to be provided with an automatic sprinkler system in accordance with the VCC applicable to new construction; and

2. The building has sufficient municipal water supply for design of an automatic sprinkler system available to the floor without installation of a new fire pump.

603.5.2.5 Supervision. Fire sprinkler systems required by this section shall be supervised by one of the following methods:

1. Approved central station system in accordance with NFPA 72;

2. Approved proprietary system in accordance with NFPA 72;

3. Approved remote station system of the jurisdiction in accordance with NFPA 72; or

4. When approved by the code official, approved local alarm service that will cause the sounding of an alarm in accordance with NFPA 72.

Exception: Supervision is not required for the following:

1. Underground gate valve with roadway boxes.

2. Halogenated extinguishing systems.

3. Carbon dioxide extinguishing systems.

4. Dry-chemical and wet-chemical extinguishing systems.

5. Automatic sprinkler systems installed in accordance with NFPA 13R where a common supply main is used to supply both domestic and automatic sprinkler systems and a separate shutoff valve for the automatic sprinkler system is not provided.

603.5.3 Standpipes. Where the work area includes exits or corridors shared by more than one tenant and is located more than 50 feet (15,240 mm) above or below the lowest level of fire department access, a standpipe system shall be provided. Standpipes shall have an approved fire department connection with hose connections at each floor level above or below the lowest level of fire department access. Standpipe systems shall be installed in accordance with the VCC.

Exceptions:

1. No pump shall be required provided that the standpipes are capable of accepting delivery by fire department apparatus of a minimum of 250 gallons per minute (gpm) at 65 pounds per square inch (psi) (946 L/m at 448KPa) to the topmost floor in buildings equipped throughout with an automatic sprinkler system or a minimum of 500 gpm at 65 psi (1892 L/m at 448KPa) to the topmost floor in all other buildings. Where the standpipe terminates below the topmost floor, the standpipe shall be designed to meet (gpm/psi) (L/m/KPa) requirements of this exception for possible future extension of the standpipe.

2. The interconnection of multiple standpipe risers shall not be required.

603.5.4 Fire alarm and detection. An approved fire alarm system shall be installed in accordance with Sections 603.5.4.1 through 603.5.4.3. Where automatic sprinkler protection is provided in accordance with Section 603.5.2 and is connected to the building fire alarm system, automatic heat detection shall not be required.

An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances, and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except that an approved alternative type of detector shall be installed in spaces such as boiler rooms, where products of combustion are present during normal operation in sufficient quantity to actuate a smoke detector.

603.5.4.1 Fire alarm requirements. A fire alarm system shall be installed in accordance with Sections 603.5.4.1.1 through 603.5.4.1.7 and Sections 1103.7 and 1103.8 of the IFC. Existing alarm-notification appliances shall be automatically activated throughout the building. Where the

building is not equipped with a fire alarm system, alarm-notification appliances within the work area shall be provided and automatically activated.

Exceptions:

1. Occupancies with an existing, previously approved fire alarm system.

2. Where selective notification is permitted, alarm-notification appliances shall be automatically activated in the areas selected.

603.5.4.1.1 Group E. Work areas classified as Group E occupancies.

603.5.4.1.2 Group I-1. Work areas classified as Group I-1 residential care/assisted living facilities.

603.5.4.1.3 Group I-2. Throughout occupancies classified as Group I-2 occupancies.

603.5.4.1.4 Group I-3. Work areas classified as Group I-3 occupancies.

603.5.4.1.5 Group R-1. Occupancies classified as Group R-1 occupancies.

603.5.4.1.6 Group R-2. Work areas classified as Group R-2 apartment buildings.

603.5.4.1.7 Group R-4. Work areas classified as Group R-4 residential care/assisted living facilities.

603.5.4.2 Supplemental fire alarm system requirements. Where the work area on any floor exceeds 50% of that floor area, Section 603.5.4.1 shall apply throughout the floor.

Exception: Alarm initiating and notification appliances shall not be required to be installed in tenant spaces outside of the work area.

603.5.4.3 Smoke alarms. Individual sleeping units and individual dwelling units in any work area in Group R and I-1 occupancies shall be provided with smoke alarms in accordance with the International Fire Code.

Exception: Interconnection of smoke alarms outside of the work area shall not be required.

603.6 Means of egress. The means of egress shall comply with the requirements of Section 603.6.

Exceptions:

1. Where the work area and the means of egress serving it complies with NFPA 101.

2. Means of egress conforming to the requirements of the building code under which the building was constructed shall be considered compliant means of egress.

603.6.1 General. The requirements of this section shall be limited to work areas that include exits or corridors shared by more than one tenant within the work area in which Level 2 alterations are being performed, and where specified they shall apply throughout the floor on which the work areas are located or otherwise beyond the work area.

603.6.2 Number of exits. The number of exits shall be in accordance with Sections 603.6.2.1 through 603.6.2.3.

603.6.2.1 Minimum number. Every story utilized for human occupancy on which there is a work area that includes exits or corridors shared by more than one tenant within the work area shall be provided with the minimum number of exits based on the occupancy and the occupant load in accordance with the VCC. In addition, the exits shall comply with Sections 603.6.2.1.1 and 303.

603.6.2.1.1 Single-exit buildings. Only one exit is required from buildings and spaces of the following occupancies:

1. In Groups A, B, E, F, M, U, and S occupancies, a single exit is permitted in the story at the level of exit discharge when the occupant load of the story does not exceed 50 and the exit access travel distance does not exceed 75 feet (22,860 mm).

2. Groups B, F-2, and S-2 occupancies not more than two stories in height that are not greater than 3,500 square feet per floor (326 m^2), when the exit access travel distance does not exceed 75 feet (22,860 mm). The minimum fire-resistance rating of the exit enclosure and of the opening protection shall be one hour.

3. Open parking structures where vehicles are mechanically parked.

4. In Group R-4 occupancies, the maximum occupant load excluding staff is 16.

5. Groups R-1 and R-2 not more than two stories in height, when there are not more than four dwelling units per floor and the exit access travel distance does not exceed 50 feet (15,240 mm). The minimum fire-resistance rating of the exit enclosure and of the opening protection shall be one hour.

6. In multilevel dwelling units in buildings of occupancy Group R-1 or R-2, an exit shall not be required from every level of the dwelling unit provided that one of the following conditions is met:

6.1. The travel distance within the dwelling unit does not exceed 75 feet (22,860 mm); or

6.2. The building is not more than three stories in height and all third floor space is part of one or more dwelling units located in part on the second floor; and no habitable room within any such dwelling unit shall have a travel distance that exceeds 50 feet (15,240 mm) from the outside of the habitable room entrance door to the inside of the entrance door to the dwelling unit.

7. In Groups R-2, H-4, H-5 and I occupancies and in rooming houses and child care centers, a single exit is permitted in a one-story building with a maximum occupant load of 10 and the exit access travel distance does not exceed 75 feet (22,860 mm). In dwelling units within Group R-2 buildings, an occupant load of 12 shall be permitted and, in addition, staff of such family day homes shall not be counted for the purposes of establishing occupant loads.

8. In buildings of Group R-2 occupancy that are equipped throughout with an automatic fire sprinkler system, a single exit shall be permitted from a basement or story below grade if every dwelling unit on that floor is equipped with an approved window providing a clear opening of at least 5 square feet (0.47 m^2) in area, a minimum net clear opening of 24 inches (610 mm) in height and 20 inches (508 mm) in width, and a sill height of not more than 44 inches (1118 mm) above the finished floor.

9. In buildings of Group R-2 occupancy of any height with not more than four dwelling units per floor; with a smoke-proof enclosure or outside stairway as an exit; and with such exit located within 20 feet (6096 mm) of travel to the entrance doors to all dwelling units served thereby.

10. In buildings of Group R-3 occupancy equipped throughout with an automatic fire sprinkler system, only one exit shall be required from basements or stories below grade.

603.6.2.2 Mezzanines. Mezzanines in the work area and with an occupant load of more than 50 or in which the common path of egress travel distance to an exit or exit access doorway exceeds 75 feet (22,860 mm) shall have access to at least two independent means of egress.

Exception: Two independent means of egress are not required where the travel distance to an exit does not exceed 100 feet (30,480 mm) and the building is protected throughout with an automatic sprinkler system.

603.6.3 Egress doorways. Egress doorways in any work area shall comply with Sections 603.6.3.1 through 603.6.3.5.

603.6.3.1 Two egress doorways required. Work areas shall be provided with two egress doorways in accordance with the requirements of Sections 603.6.3.1.1 and 603.6.3.1.2.

603.6.3.1.1 Occupant load and travel distance. In any work area, all rooms and spaces having an occupant load greater than 50 or in which the common path of egress travel distance to an exit or exit access doorway exceeds 75 feet (22,860 mm) shall have a minimum of two egress doorways.

Exceptions:

1. Storage rooms having a maximum occupant load of 10.

2. Where the work area is served by a single exit in accordance with Section 603.6.2.1.1.

603.6.3.1.2 Group I-2. In buildings of Group I-2 occupancy, any patient sleeping room or suite of patient rooms greater than 1,000 square feet (93 m^2) within the work area shall have a minimum of two egress doorways.

603.6.3.2 Door swing. In the work area and in the egress path from any work area to the exit discharge, all egress doors serving an occupant load greater than 50 shall swing in the direction of exit travel.

603.6.3.2.1 Supplemental requirements for door swing. Where the work area exceeds 50% of the floor area, door swing shall comply with Section 603.6.3.2 throughout the floor.

Exception: Means of egress within or serving only a tenant space that is entirely outside the work area.

603.6.3.3 Door closing. In any work area, all doors opening onto an exit passageway at grade or an exit stairway shall be self-closing or automatic-closing by listed closing devices.

Exceptions:

1. Where exit enclosure is not required by the VCC.

2. Means of egress within or serving only a tenant space that is entirely outside the work area.

603.6.3.3.1 Supplemental requirements for door closing. Where the work area exceeds 50% of the floor area, doors shall comply with Section 603.6.3.3 throughout the exit stairway from the work area to, and including, the level of exit discharge.

603.6.3.4 Panic hardware. In any work area, and in the egress path from any work area to the exit discharge, in buildings of Group A assembly occupancies with an occupant load greater than 100, all required exit doors equipped with latching devices shall be equipped with approved panic hardware.

603.6.3.4.1 Supplemental requirements for panic hardware. Where the work area exceeds 50% of the floor area, panic hardware shall comply with Section 603.6.3.4 throughout the floor.

Exception: Means of egress within a tenant space that is entirely outside the work area.

603.6.3.5 Emergency power source in Group I-3. Power operated sliding doors or power operated locks for swinging doors shall be operable by a manual release mechanism at the door. Emergency power shall be

provided for the doors and locks in accordance with Section 2702 of the VCC.

Exceptions:

1. Emergency power is not required in facilities with 10 or fewer locks complying with the exception to Section 408.4.1 of the VCC.

2. Emergency power is not required where remote mechanical operating releases are provided.

603.6.4 Openings in corridor walls. Openings in corridor walls in any work area shall comply with Sections 603.6.4.1 through 603.6.4.4.

Exception: Openings in corridors where such corridors are not required to be rated in accordance with the VCC.

603.6.4.1 Corridor doors. Corridor doors in the work area shall not be constructed of hollow core wood and shall not contain louvers. All dwelling unit or sleeping unit corridor doors in work areas in buildings of Groups R-1, R-2, and I-1 shall be at least 1-3/8-inch (35 mm) solid core wood or approved equivalent and shall not have any glass panels, other than approved wired glass or other approved glazing material in metal frames. All dwelling unit or sleeping unit corridor doors in work areas in buildings of Groups R-1, R-2, and I-1 shall be equipped with approved door closers. All replacement doors shall be 1-3/4-inch (44 mm) solid bonded wood core or approved equivalent, unless the existing frame will accommodate only a 1-3/8-inch (35 mm) door.

Exceptions:

1. Corridor doors within a dwelling unit or sleeping unit.

2. Existing doors meeting the requirements of Guidelines on Fire Ratings of Archaic Materials and Assemblies (VEBC Resource A) for a rating of 15 minutes or more shall be accepted as meeting the provisions of this requirement.

3. Existing doors in buildings protected throughout with an approved automatic sprinkler system shall be required only to resist smoke, be reasonably tight fitting, and shall not contain louvers.

4. In group homes with a maximum of 15 occupants and that are protected with an approved automatic detection system, closing devices may be omitted.

5. Door assemblies having a fire protection rating of at least 20 minutes.

603.6.4.2 Transoms. In all buildings of Group I-1, I-2, R-1 and R-2 occupancies, all transoms in corridor walls in work areas shall be either glazed with 1/4-inch (6.4 mm) wired glass set in metal frames or other glazing assemblies having a fire protection rating as required for the door and permanently secured in the closed position or sealed with materials consistent with the corridor construction.

603.6.4.3 Other corridor openings. In any work area, unless otherwise protected or fire-resistant rated in accordance with Section 716 of the VCC, any other sash, grille, or opening in a corridor and any window in a corridor not opening to the outside air shall be sealed with materials consistent with the corridor construction.

603.6.4.3.1 Supplemental requirements for other corridor opening. Where the work area exceeds 50% of the floor area, Section 603.6.4.3 shall be applicable to all corridor windows, grills, sashes, and other openings on the floor.

Exception: Means of egress within or serving only a tenant space that is entirely outside the work area.

603.6.4.4 Supplemental requirements for corridor openings. Where the work area on any floor exceeds 50% of the floor area, the requirements of Sections 603.6.4.1 through 603.6.4.3 shall apply throughout the floor.

603.6.5 Dead-end corridors. Dead-end corridors in any work area shall not exceed 35 feet (10 670 mm).

Exceptions:

1. Where dead-end corridors of greater length are permitted by the VCC.

2. In other than Group A and H occupancies, the maximum length of an existing dead-end corridor shall be 50 feet (15,240 mm) in buildings equipped throughout with an automatic fire alarm system installed in accordance with the VCC.

3. In other than Group A and H occupancies, the maximum length of an existing dead-end corridor shall be 70 feet (21,356 mm) in buildings equipped throughout with an automatic sprinkler system installed in accordance with the VCC.

4. In other than Group A and H occupancies, the maximum length of an existing, newly constructed, or extended dead-end corridor shall not exceed 50 feet (15,240 mm) on floors equipped with an automatic sprinkler system installed in accordance with the VCC.

603.6.6 Means-of-egress lighting. Means-of-egress lighting shall be in accordance with this section, as applicable.

603.6.6.1 Artificial lighting required. Means of egress in all work areas shall be provided with artificial lighting in accordance with the requirements of the VCC.

603.6.6.2 Supplemental requirements for means-of-egress lighting. Where the work area on any floor exceeds 50% of that floor area, means of egress throughout the floor shall comply with Section 603.6.6.1.

Exception: Means of egress within or serving only a tenant space that is entirely outside the work area.

603.6.7 Exit signs. Exit signs shall be in accordance with this section, as applicable.

603.6.7.1 Work areas. Means of egress in all work areas shall be provided with exit signs in accordance with the requirements of the VCC.

603.6.7.2 Supplemental requirements for exit signs. Where the work area on any floor exceeds 50% of that floor area, means of egress throughout the floor shall comply with Section 603.6.7.1.

Exception: Means of egress within a tenant space that is entirely outside the work area.

603.6.8 Handrails. The requirements of Sections 603.6.8.1 and 603.6.8.2 shall apply to handrails from the work area floor to, and including, the level of exit discharge.

603.6.8.1 Minimum requirement. Every required exit stairway that is part of the means of egress for any work area and that has three or more risers and is not provided with at least one handrail, or in which the existing handrails are judged to be in danger of collapsing, shall be provided with handrails for the full length of the stairway on at least one side. All exit stairways with a required egress width of more than 66 inches (1676 mm) shall have handrails on both sides.

603.6.8.2 Design. Handrails required in accordance with Section 603.6.8.1 shall be designed and installed in accordance with the provisions of the VCC.

603.6.9 Guards. The requirements of Sections 603.6.9.1 and 603.6.9.2 shall apply to guards from the work area floor to, and including, the level of exit discharge but shall be confined to the egress path of any work area.

603.6.9.1 Minimum requirement. Every open portion of a stairway, landing, or balcony that is more than 30 inches (762 mm) above the floor or grade below and is not provided with guards, or those portions in which existing guards are judged to be in danger of collapsing, shall be provided with guards.

603.6.9.2 Design. Guards required in accordance with Section 603.6.9.1 shall be designed and installed in accordance with the VCC.

603.7 Structural. Structural elements and systems within buildings undergoing Level 2 alterations shall comply with Sections 603.7.1 through 603.7.5.

603.7.1 New structural elements. New structural elements in alterations, including connections and anchorage, shall comply with the VCC.

603.7.2 Minimum design loads. The minimum design loads on existing elements of a structure that do not support additional loads as a result of an alteration shall be the loads applicable at the time the building was constructed.

603.7.3 Existing structural elements carrying gravity loads. Any existing gravity load-carrying structural element for which an alteration causes an increase in design gravity load of more than 5% shall be strengthened, supplemented, replaced or otherwise altered as needed to carry the increased gravity load required by the VCC for new structures. Any existing gravity load-carrying structural element whose gravity load-carrying capacity is decreased as part of the alteration shall be shown to have the capacity to resist the applicable design gravity loads required by the VCC for new structures.

Exception: Buildings of Group R occupancy with not more than five dwelling or sleeping units used solely for residential purposes where the existing building and its alteration comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

603.7.3.1 Design live load. Where the alteration does not result in increased design live load, existing gravity load-carrying structural elements shall be permitted to be evaluated and designed for live loads approved prior to the alteration. If the approved live load is less than that required by Section 1607 of the VCC, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Where the alteration does result in increased design live load, the live load required by Section 1607 of the VCC shall be used.

603.7.4 Existing structural elements resisting lateral loads. Except as permitted by Section 603.7.5, where the alteration increases design lateral loads in accordance with Section 1609 or 1613 of the VCC, or where the alteration results in a prohibited structural irregularity as defined in ASCE 7, or where the alteration decreases the capacity of any existing lateral load-carrying structural element, the structure of the altered building or structure shall be shown to meet the requirements of Sections 1609 and 1613 of the VCC. For purposes of this section, compliance with ASCE 41, using a Tier 3 procedure and the two-level performance objective in Table 305.2.2 for the applicable risk category, shall be deemed to meet the requirements of Section 1613 of the VCC.

Exception: Any existing lateral load-carrying structural element whose demand-capacity ratio with the alteration considered is not more than 10% greater than its demand-capacity ratio with the alteration ignored shall be permitted to remain unaltered. For purposes of calculating demand-capacity ratios, the demand shall consider applicable load combinations with design lateral loads or forces in accordance with VCC Sections 1609 and 1613. Reduced

VCC level seismic forces in accordance with Section 305.2.2 shall be permitted. For purposes of this exception, comparisons of demand-capacity ratios and calculation of design lateral loads, forces and capacities shall account for the cumulative effects of additions and alterations since original construction.

603.7.5 Voluntary lateral force-resisting system alterations. Alterations of existing structural elements and additions of new structural elements that are initiated for the purpose of increasing the lateral force-resisting strength or stiffness of an existing structure and that are not required by other sections of this code shall not be required to be designed for forces conforming to the VCC, provided that an engineering analysis is submitted to show that:

1. The capacity of existing structural elements required to resist forces is not reduced;

2. The lateral loading to existing structural elements is not increased either beyond its capacity or more than 10%;

3. New structural elements are detailed and connected to the existing structural elements as required by the VCC;

4. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required by the VCC; and

5. Voluntary alterations to lateral force-resisting systems conducted in accordance with Appendix A and the referenced standards of this code shall be permitted.

603.7.6 Voluntary seismic improvements. Alterations to existing structural elements or additions of new structural elements that are not otherwise required by this chapter and are initiated for the purpose of improving the performance of the seismic force resisting system of an existing structure or the performance of seismic bracing or anchorage of existing nonstructural elements shall be permitted, provided that an engineering analysis is submitted demonstrating the following:

1. The altered structure and the altered nonstructural elements are no less conforming to the provisions of the VCC with respect to earthquake design than they were prior to the alteration.

2. New structural elements are detailed as required for new construction.

3. New or relocated nonstructural elements are detailed and connected to existing or new structural elements as required for new construction.

4. The alterations do not create a structural irregularity as defined in ASCE 7 or make an existing structural irregularity more severe.

603.8 Electrical. Electrical elements and systems within buildings undergoing Level 2 alterations shall comply with Sections 603.8.1 through 603.8.3.

603.8.1 New installations. All newly installed electrical equipment and wiring relating to work done in any work area shall comply with all applicable requirements of NFPA 70 except as provided for in Section 603.8.3.

603.8.2 Existing installations. Existing wiring in all work areas in Groups A-1, A-2, A-5, H, and I occupancies shall be upgraded to meet the materials and methods requirements of Section 602.3.

603.8.3 Residential occupancies. In Groups R-2, R-3, R-4 and R-5 occupancies and buildings regulated by the International Residential Code, the requirements of Sections 603.8.3.1 through 603.8.3.7 shall be applicable only to work areas located within a dwelling unit.

603.8.3.1 Enclosed areas. All enclosed areas, other than closets, kitchens, basements, garages, hallways, laundry areas, utility areas, storage areas, and bathrooms shall have a minimum of two duplex receptacle outlets or one duplex receptacle outlet and one ceiling or wall-type lighting outlet.

603.8.3.2 Kitchens. Kitchen areas shall have a minimum of two duplex receptacle outlets.

603.8.3.3 Laundry areas. Laundry areas shall have a minimum of one duplex receptacle outlet located near the laundry equipment and installed on an independent circuit.

603.8.3.4 Ground fault circuit interruption. Newly installed receptacle outlets shall be provided with ground fault circuit interruption as required by NFPA 70.

603.8.3.5 Minimum lighting outlets. At least one lighting outlet shall be provided in every bathroom, hallway, stairway, attached garage, and detached garage with electric power, and to illuminate outdoor entrances and exits.

603.8.3.6 Utility rooms and basements. At least one lighting outlet shall be provided in utility rooms and basements where such spaces are used for storage or contain equipment requiring service.

603.8.3.7 Clearance for equipment. Clearance for electrical service equipment shall be provided in accordance with the NFPA 70.

603.9 Mechanical. All work areas intended for occupancy and all spaces converted to habitable or occupiable space in any work area shall be provided with natural or mechanical ventilation in accordance with the International Mechanical Code.

Exception: Existing mechanical ventilation systems shall comply with the requirements of Section 603.9.1.

603.9.1 Altered existing systems. In mechanically ventilated spaces, existing mechanical ventilation systems that are altered, reconfigured, or extended shall provide not less than 5 cubic feet per minute (cfm) (0.0024 m^3/s) per person of outdoor air and not less than 15 cfm (0.0071 m^3/s) of ventilation air per person; or not less than the amount of ventilation air determined by the Indoor Air Quality Procedure of ASHRAE 62.

603.9.2 Local exhaust. All newly introduced devices, equipment, or operations that produce airborne particulate matter, odors, fumes, vapor, combustion products, gaseous contaminants, pathogenic and allergenic organisms, and microbial contaminants in such quantities as to affect adversely or impair health or cause discomfort to occupants shall be provided with local exhaust.

603.10 Plumbing. Where the occupant load of the story is increased by more than 20%, plumbing fixtures for the story shall be provided in quantities specified in the International Plumbing Code based on the increased occupant load.

F. Change Section 604 to Level 3 Alterations.

G. Change Section 604.1 and add Sections 604.2 through 604.7, including subsections, to the IEBC to read:

604.1 Scope. Level 3 alterations as described in Section 601.2.3 shall comply with the requirements of this section.

Exception: Buildings in which the alteration is exclusively the result of compliance with the accessibility requirements of Section 404.3 shall be permitted to comply with Section 602.

604.2 Level 1 and Level 2 alterations compliance. In addition to the requirements of this section, work shall comply with the applicable requirements of Sections 602 and 603. The requirements of Sections 603.4, 603.5 and 603.6 shall apply within all work areas whether or not they include exits and corridors shared by more than one tenant and regardless of the occupant load.

Exception: Buildings in which the alteration affecting exits or shared egress access is exclusively the result of compliance with the accessibility requirements of Section 404.3 shall not be required to comply with this section.

604.3 Special use and occupancy. The following special uses and occupancies shall comply with the requirements of Section 603.6 except as specifically required in Sections 604.3.1 and 604.3.2.

604.3.1 High-rise buildings. Any building having occupied floors more than 75 feet (22,860 mm) above the lowest level of fire department vehicle access shall comply with the requirements of Sections 604.3.1.1 and 604.3.1.2.

604.3.1.1 Recirculating air or exhaust systems. When a floor is served by a recirculating air or exhaust system with a capacity greater than 15,000 cubic feet per minute (701 m^3/s), that system shall be equipped with approved smoke and heat detection devices installed in accordance with the International Mechanical Code.

604.3.1.2 Elevators. Where there are elevators for public use, at least one elevator serving the work area shall comply with this section. Existing elevators with a travel distance of 25 feet (7620 mm) or more above or below the main floor or other level of a building and intended to serve the needs of emergency personnel for firefighting or rescue purposes shall be provided with emergency operation in accordance with ASME A17.3. New elevators shall be provided with Phase I emergency recall operation and Phase II emergency in-car operation in accordance with ASME A17.1.

604.3.2 Boiler and furnace equipment rooms. Boiler and furnace equipment rooms adjacent to or within Groups I-1, I-2, I-4, R-1, R-2, and R-4 occupancies shall be enclosed by one-hour-fire-resistance-rated construction.

Exceptions:

1. Steam boiler equipment operating at pressures of 15 pounds per square inch gauge (psig) (103.4 KPa) or less is not required to be enclosed.

2. Hot water boilers operating at pressures of 170 psig (1171 KPa) or less are not required to be enclosed.

3. Furnace and boiler equipment with 400,000 British thermal units (Btu) (4.22 by 108 J) per hour input rating or less is not required to be enclosed.

4. Furnace rooms protected with an automatic sprinkler system are not required to be enclosed.

604.4 Building elements and materials. Building elements and materials shall comply with the requirements of Section 603.6 except as specifically required in Sections 604.4.1 through 604.4.3.

604.4.1 Existing stairways. Existing stairways that are part of the means of egress shall be enclosed in accordance with Section 603.4.1.1, and its exceptions if applicable, from the highest work area floor to, and including, the level of exit discharge and all floors below.

604.4.2 Fire separation in Group R-3. Where the work area is in any attached dwelling unit in Group R-3 or any multiple single-family dwelling (townhouse), walls separating the dwelling units that are not continuous from the foundation to the underside of the roof sheathing shall be constructed to provide a continuous fire separation using construction materials consistent with the existing wall or complying with the requirements for new structures. All work shall be performed on the side of the dwelling unit wall that is part of the work area.

Exception: Where alterations or repairs do not result in the removal of wall or ceiling finishes exposing the structure, walls are not required to be continuous through concealed floor spaces.

604.4.3 Interior finish. Interior finish in exits serving the work area shall comply with Section 603.4.3 between the highest floor on which there is a work area to the floor of exit discharge.

604.5 Fire protection. Fire protection shall comply with the requirements of Section ~~603.6~~ 603.5.2 except as specifically required in Sections 604.5.1 and 604.5.2.

604.5.1 Automatic sprinkler systems. An automatic sprinkler system shall be provided in a work area where required by Section 603.5.1.1 through 604.5.1.3 or Section 603.5.2.

604.5.1.1 High-rise buildings. An automatic sprinkler system shall be provided in work areas where the high-rise building has a sufficient municipal water supply for the design and installation of an automatic sprinkler system at the site.

604.5.1.2 Rubbish and linen chutes. Rubbish and linen chutes located in the work area shall be provided with automatic sprinkler system protection or an approved automatic fire extinguishing system where protection of the rubbish and linen chute would be required under the provisions of the VCC for new construction.

604.5.1.3 Upholstered furniture or mattresses. Work areas shall be provided with an automatic sprinkler system in accordance with the VCC where any of the following conditions exist:

1. A Group F-1 occupancy used for the manufacture of upholstered furniture or mattresses exceeds 2,500 square feet (232 m^2).

2. A Group S-1 occupancy used for the storage of upholstered furniture or mattresses exceeds 2,500 square feet (232 m^2).

604.5.2 Fire alarm and detection systems. Fire alarm and detection shall be provided throughout the work area in accordance with Section 907 of the VCC as required for new construction.

604.5.2.1 Manual fire alarm systems. Where required by the VCC, a manual fire alarm system shall be provided throughout the work area. Alarm notification appliances shall be provided on such floors and shall be automatically activated as required by the VCC.

Exceptions:

1. Alarm-initiating and notification appliances shall not be required to be installed in tenant spaces outside of the work area.

2. Visual alarm notification appliances are not required, except where an existing alarm system is upgraded or replaced or where a new fire alarm system is installed.

604.5.2.2 Automatic fire detection. Where required by the VCC for new buildings, automatic fire detection systems shall be provided throughout the work area.

604.6 Means of egress. The means of egress shall comply with the requirements of Section 603.6 except as specifically required in Sections 604.6.1 and 604.6.2.

604.6.1 Means-of-egress lighting. Means of egress from the highest work area floor to the floor of exit discharge shall be provided with artificial lighting within the exit enclosure in accordance with the requirements of the VCC.

604.6.2 Exit signs. Means of egress from the highest work area floor to the floor of exit discharge shall be provided with exit signs in accordance with the requirements of the VCC.

604.7 Structural. Structural alterations shall comply with the requirements of Section 603.6 except as specifically required in Sections 604.7.1 and 604.7.2.

604.7.1 Substantial structural alteration. Where more than 30% of the total floor and roof areas of the building or structure have been or are proposed to be involved in structural alteration within a five-year period, the evaluation and analysis shall demonstrate that the lateral load-resisting system of the altered building or structure complies with the International Building Code for wind loading and with reduced International Building Code-level seismic force in accordance with Section 305.2.2. The areas to be counted toward the 30% shall be those areas tributary to the vertical load-carrying components, such as joists, beams, columns, walls and other structural components that have been or will be removed, added or altered, as well as areas such as mezzanines, penthouses, roof structures and in-filled courts and shafts.

604.7.2 Limited structural alteration. Where the work does not involve a substantial structural alteration and the building is not assigned to Seismic Design Category F, the existing elements of the lateral load-resisting system shall comply with Section 603.7.4.

~~G.~~ H. Delete Sections 605, 606, 607, 608 and 609 of the IEBC in their entirety.

13VAC5-63-433.5. Chapter 7 Change of occupancy.

A. Change Sections 701.1 through 701.2 of the IEBC to read:

701.1 Scope. The provisions of this chapter shall apply where a change of occupancy occurs, except as modified by Section 906 for historic buildings. Compliance with the current VCC for the change of occupancy shall only be required as prescribed in this chapter. Compliance shall be

only as necessary to meet the specific provisions of the applicable International Codes and is not intended to require the entire building be brought into compliance.

Exception: Compliance with the provisions of Chapter 14 shall be permitted in lieu of complying with this chapter for a change of occupancy.

701.2 Work undertaken in connection with a change of occupancy. Any repairs, alterations, or additions undertaken in connection with a change of occupancy shall conform to the applicable requirements for the work as classified in this code and as modified by this chapter.

B. Delete Section 701.3 of the IEBC.

C. Change Section 702 to Special Use and Occupancy.

D. Change Sections 702.1 and 702.2 of the IEBC to read:

702.1 Compliance with the building code. Where a building undergoes a change of occupancy to one of the special use or occupancy categories described in Chapter 4 of the VCC, the building shall comply with all of the requirements of Chapter 4 of the VCC applicable to the special use or occupancy.

702.2 Incidental uses. Where a portion of a building undergoes a change of occupancy to one of the incidental uses listed in Table 509 of the VCC, the incidental use shall comply with the applicable requirements of Section 509 of the VCC.

E. Delete Sections 702.3 through 702.6 of the IEBC.

F. Change Section 703 to Building Elements and Materials.

G. Change Section 703.1 of the IEBC and add Section 703.2, including subsections, to the IEBC to read:

703.1 Interior finish. In areas of the building undergoing a change of occupancy classification, the interior finish of walls and ceilings shall comply with the requirements of the VCC for the new occupancy classification.

703.2 Enclosure of vertical openings. When a change of occupancy classification is made to a higher hazard category as shown in Table 705.2, protection of existing vertical openings shall be in accordance with Sections 703.2.1 through 703.2.3.

703.2.1 Stairways. Interior stairways shall be protected as required by Section 705.1.

703.2.2 Other vertical openings. Interior vertical openings, other than stairways, within the area of the change of occupancy shall be protected as required by the VCC.

Exceptions:

1. Existing one-hour interior shaft enclosures shall be accepted where a higher rating is required.

2. Vertical openings, other than stairways, in buildings of other than Group I occupancy and connecting less than six stories shall not be required to be enclosed are permitted if the entire building is provided with an approved automatic sprinkler system.

703.2.3 Shaft openings. All openings into existing vertical shaft enclosures shall be protected by fire assemblies having a fire protection rating of not less than one hour and shall be maintained self-closing or shall be automatic-closing by actuation of a smoke detector. All other openings shall be fire protected in an approved manner. Existing fusible link-type automatic door-closing devices shall be permitted in all shafts except stairways if the fusible link rating does not exceed 135°F (57°C).

H. Change Section 704 to Fire Protection.

I. Change Section 704.1 of the IEBC and add Sections 704.2 and 704.3 to the IEBC to read:

704.1 Fire protection systems. Fire protection systems shall be provided in accordance with Sections 704.2 and 704.3.

704.2 Fire sprinkler system. Where a building undergoes a change of occupancy that requires an automatic fire sprinkler system to be provided based on the new occupancy in accordance with Chapter 9 of the VCC, such system shall be provided throughout the area where the change of occupancy occurs.

704.3 Fire alarm and detection system. Where a building undergoes a change of occupancy that requires a fire alarm and detection system to be provided based on the new occupancy in accordance with Chapter 9 of the VCC, such system shall be provided throughout the area where the change of occupancy occurs. Existing alarm notification appliances shall be automatically activated throughout the building. Where the building is not equipped with a fire alarm system, alarm notification appliances shall be provided throughout the area where the change of occupancy occurs in accordance with Section 907 of the VCC as required for new construction.

J. Change Section 705 to Means of Egress.

K. Change Sections 705.1 through 705.2, deleting subsections, and add Sections 705.3 and 705.4 to the IEBC to read:

705.1 General. Means of egress in buildings undergoing a change of occupancy shall comply with Sections 705.2 through 705.4.

705.2 Means of egress, hazards. Hazard categories in regard to life safety and means of egress shall be in accordance with Table 705.2.

TABLE 705.2 MEANS OF EGRESS HAZARD CATEGORIES	
RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
2	I-2, I-3, I-4
3	A, E, I-1, M, R-1, R-2, R-4
4	B, F-1, R-3, S-1, R-5
5 (Lowest Hazard)	F-2, S-2, U

705.3 Means of egress for change to higher hazard category. When a change of occupancy classification is made to a higher hazard category (lower number) as shown in Table 705.2, the means of egress serving the area of the change of occupancy shall comply with the requirements of Chapter 10 of the VCC.

Exceptions:

1. Existing interior stairways are permitted to be enclosed in accordance with Section 603.4.1.1 from the highest floor where the change of occupancy classification occurs to, and including, the level of exit discharge and all floors below.

2. An enclosure shall not be required for openings serving only one adjacent floor and that are not connected with corridors or stairways serving other floors.

3. Unenclosed existing stairways need not be enclosed in a continuous vertical shaft if each story is separated from other stories by one-hour-fire-resistance-rated construction or approved wired glass set in steel frames and all exit corridors are sprinklered. The openings between the corridor and the occupant space shall have at least one sprinkler head above the openings on the tenant side. The sprinkler system shall be permitted to be supplied from the domestic water supply systems, provided the system is of adequate pressure, capacity, and sizing for the combined domestic and sprinkler requirements.

4. Existing corridor walls constructed on both sides of wood lath and plaster in good condition or 1/2-inch-thick (12.7 mm) gypsum wallboard shall be permitted. Such walls shall either terminate at the underside of a ceiling of equivalent construction or extend to the underside of the floor or roof next above.

5. Existing corridor doorways, transoms, and other corridor openings are permitted to comply with the requirements in Sections 603.6.4.1, 603.6.4.2, and 603.6.4.3 regardless of work areas.

6. Existing dead-end corridors are permitted to comply with the requirements in Section 603.6.5 regardless of work areas.

7. An existing operable window with clear opening area no less than 4 square feet (0.38 m^2) and minimum opening height and width of 22 inches (559 mm) and 20 inches (508 mm), respectively, shall be accepted as an emergency escape and rescue opening.

8. Regardless of work areas, existing handrails are permitted to comply with the requirements of Section 603.6.8, and existing guards are permitted to comply with the requirements of Section 603.6.10.

9. Fire escapes in compliance with Section 303.

10. Existing stairways are not required to be altered to meet current tread depth and riser height requirements.

705.4 Means of egress for change of occupancy to equal or lower hazard category or without a change in classification. When a change of occupancy classification is made to an equal or lesser hazard category (higher number) as shown in Table 705.2 or a change of occupancy without a change of classification is made, the means of egress shall be deemed acceptable provided the means of egress serving the area of the change of occupancy meets the egress capacity and occupant load based means of egress provisions in Chapter 10 of the VCC for the new occupancy.

L. Change Section 706 to Heights and Areas.

M. Change Sections 706.1 through 706.5, including subsections, of the IEBC to read:

706.1 General. Heights and areas of buildings and structures undergoing a change of occupancy classification shall comply with this Section.

706.2 Heights and areas, hazards. Hazard categories in regard to height and area shall be in accordance with Table 706.2.

TABLE 706.2 HEIGHTS AND AREAS HAZARD CATEGORIES	
RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
~~2~~	~~I-2, I-3, I-4~~
~~3~~ 2	A-1, A-2, A-3, A-4, I, R-1, R-2, R-4
~~4~~ 3	E, F-1, S-1, M
~~5~~ 4 (Lowest Hazard)	B, F-2, S-2, A-5, R-3, R-5, U

706.3 Height and area for change to higher hazard category. When a change of occupancy classification is made to a higher hazard category as shown in Table 706.2, heights and areas of buildings and structures shall comply with the requirements of Chapter 5 of the VCC for the new occupancy classification.

Exception: For high-rise buildings constructed in compliance with a previously issued permit, the type of construction reduction specified in Section 403.2.1 of the VCC is permitted. This shall include the reduction for columns. The high-rise building is required to be equipped throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC.

706.3.1 Fire wall alternative. In other than Groups H, F-1 and S-1, fire barriers and horizontal assemblies constructed in accordance with Sections 707 and 711, respectively, of the VCC shall be permitted to be used in lieu of fire walls to subdivide the building into separate buildings for the purpose of complying with the area limitations required for the new occupancy where all of the following conditions are met:

1. The buildings are protected throughout with an automatic sprinkler system in accordance with Section 903.3.1.1 of the International Building Code.

2. The maximum allowable area between fire barriers, horizontal assemblies, or any combination thereof shall not exceed the maximum allowable area determined in accordance with Chapter 5 of the VCC without an increase allowed for an automatic sprinkler system in accordance with Section 506 of the VCC.

3. The fire-resistance rating of the fire barriers and horizontal assemblies shall be not less than that specified for fire walls in Table 706.4 of the VCC.

Exception: Where horizontal assemblies are used to limit the maximum allowable area, the required fire-resistance rating of the horizontal assemblies shall be permitted to be reduced by one hour provided the height and number of stories increases allowed for an automatic sprinkler system by Section 504 of the VCC are not used for the buildings.

706.4 Height and area for change to equal or lesser hazard category. When a change of occupancy classification is made to an equal or lesser hazard category as shown in Table 706.2, the height and area of the existing building shall be deemed acceptable.

706.5 Fire barriers. When a change of occupancy classification is made to a higher hazard category as shown in Table 706.2, fire barriers in separated mixed use buildings shall comply with the fire-resistance requirements of the VCC.

Exception: Where the fire barriers are required to have a one-hour-fire-resistance rating, existing wood lath and plaster in good condition or existing 1/2-inch-thick (12.7 mm) gypsum wallboard shall be permitted.

N. Delete Section 706.6 of the IEBC.

O. Change Section 707 to Exterior Wall Fire-Resistance Ratings

P. Change Sections 707.1 through 707.3, ~~including~~ deleting subsections, of the IEBC and add Section 707.4 to the IEBC to read:

707.1 Exterior wall fire-resistance ratings, hazards. Hazard categories in regard to fire-resistance ratings of exterior walls shall be in accordance with Table 707.1.

TABLE 707.1
EXPOSURE OF EXTERIOR WALLS HAZARD CATEGORIES

RELATIVE HAZARD	OCCUPANCY CLASSIFICATIONS
1 (Highest Hazard)	H
2	F-1, M, S-1
3	A, B, E, I, R
4 (Lowest Hazard)	F-2, S-2, U

707.2 Exterior wall rating for change of occupancy classification to a higher hazard category. When a change of occupancy classification is made to a higher hazard category as shown in Table 707.1, exterior walls shall have fire resistance and exterior opening protectives as required by the VCC.

Exception: A two-hour-fire-resistance rating shall be allowed where the building does not exceed three stories in height and is classified as one of the following groups: A-2 and A-3 with an occupant load of less than 300, B, F, M, or S.

707.3 Exterior wall rating for change of occupancy classification to an equal or lesser hazard category. When a change of occupancy classification is made to an equal or lesser hazard category as shown in Table 707.1, existing exterior walls, including openings, shall be accepted.

707.4 Opening protectives. Openings in exterior walls shall be protected as required by the VCC. Where openings in the exterior walls are required to be protected because of their distance from the lot line, the sum of the area of such openings shall not exceed 50% of the total area of the wall in each story.

Exceptions:

1. Where the VCC permits openings in excess of 50%.

2. Protected openings shall not be required in buildings of Group R occupancy that do not exceed three stories in

height and that are located not less than 3 feet (914 mm) from the lot line.

3. Where exterior opening protectives are required, an automatic sprinkler system throughout may be substituted for opening protection.

4. Exterior opening protectives are not required when the change of occupancy group is to an equal or lower hazard classification in accordance with Table 707.1.

Q. Change Section 708 to Electrical and Lighting.

R. Change Section 708.1 of the IEBC and add Sections 708.2 through 708.4 to the IEBC to read:

708.1 Special occupancies. Where a building undergoes a change of occupancy to one of the following special occupancies as described in NFPA 70, the electrical wiring and equipment of the building that contains the proposed occupancy shall comply with the applicable requirements of NFPA 70:

1. Hazardous locations.

2. Commercial garages, repair, and storage.

3. Aircraft hangars.

4. Gasoline dispensing and service stations.

5. Bulk storage plants.

6. Spray application, dipping, and coating processes.

7. Health care facilities.

8. Places of assembly.

9. Theaters, audience areas of motion picture and television studios, and similar locations.

10. Motion picture and television studios and similar locations.

11. Motion picture projectors.

12. Agricultural buildings.

708.2 Service upgrade. When a new occupancy is required to have a higher electrical load demand per NFPA 70 and the service cannot accommodate the increased demand, the service shall be upgraded to meet the requirements of NFPA 70 for the new occupancy.

708.3 Number of electrical outlets. Where a building undergoes a change of occupancy, the number of electrical outlets shall comply with NFPA 70 for the new occupancy.

708.4 Lighting. Lighting shall comply with the requirements of the VCC for the new occupancy.

S. Add Section 709 Mechanical and Ventilation.

T. Add Section 709.1 to the IEBC to read:

709.1 Mechanical and ventilation requirements. Where a building undergoes a change of occupancy such that the new occupancy is subject to different kitchen exhaust requirements or to increased ventilation requirements in accordance with the International Mechanical Code, the new occupancy shall comply with the respective International Mechanical Code provisions.

U. Add Section 710 Plumbing.

V. Add Sections 710.1 through 710.3 to the IEBC to read:

710.1 Increased demand. Where ~~the occupancy~~ a building or portion thereof undergoes a change of ~~an existing building or part of an existing building is changed~~ occupancy, such that the new occupancy is subject to increased or different plumbing fixture requirements or to increased water supply requirements in accordance with the International Plumbing Code, the new occupancy shall comply with the ~~intent of the~~ respective International Plumbing Code provisions.

Exception: In other than Group R or I occupancies or child care facilities classified as Group E, where the occupant load is increased by 20% or less in the area where the change of occupancy occurs, additional plumbing fixtures required based on the increased occupant load in quantities specified in the International Plumbing Code are not required.

710.2 Interceptor required. If the new occupancy will produce grease or oil-laden wastes, interceptors shall be provided as required in the International Plumbing Code.

710.3 Chemical wastes. If the new occupancy will produce chemical wastes, the following shall apply:

1. If the existing piping is not compatible with the chemical waste, the waste shall be neutralized prior to entering the drainage system, or the piping shall be changed to a compatible material.

2. No chemical waste shall discharge to a public sewer system without the approval of the sewage authority.

W. Add Section 711 Structural.

X. Add Sections 711.1 through 711.3 to the IEBC to read:

711.1 Gravity loads. Buildings subject to a change of occupancy where such change in the nature of occupancy results in higher uniform or concentrated loads based on Table 1607.1 of the VCC shall comply with the gravity load provisions of the VCC.

Exception: Structural elements whose stress is not increased by more than 5%.

711.2 Snow and wind loads. Buildings and structures subject to a change of occupancy where such change in the

nature of occupancy results in higher wind or snow risk categories based on Table 1604.5 of the VCC shall be analyzed and shall comply with the applicable wind or snow load provisions of the VCC.

Exception: Where the new occupancy with a higher risk category is less than or equal to 10% of the total building floor area. The cumulative effect of the area of occupancy changes shall be considered for the purposes of this exception.

711.3 Seismic loads. Existing buildings with a change of occupancy shall comply with the seismic provisions of Sections 711.3.1 and 711.3.2.

711.3.1 Compliance with VCC-level seismic forces. Where a building is subject to a change of occupancy that results in the building being assigned to a higher risk category based on Table 1604.5 of the VCC, the building shall comply with the requirements for VCC-level seismic forces as specified in Section 305.2.1 for the new risk category.

Exceptions:

1. Specific detailing provisions required for a new structure are not required to be met where it can be shown that an equivalent level of performance and seismic safety is obtained for the applicable risk category based on the provision for reduced VCC-level seismic forces as specified in Section 305.2.2.

2. Where the area of the new occupancy with a higher hazard category is less than or equal to 10% of the total building floor area and the new occupancy is not classified as Risk Category IV. For the purposes of this exception, buildings occupied by two or more occupancies not included in the same risk category, shall be subject to the provisions of Section 1604.5.1 of the VCC. The cumulative effect of the area of occupancy changes shall be considered for the purposes of this exception.

3. Unreinforced masonry bearing wall buildings in Risk Category III when assigned to Seismic Design Category A or B shall be allowed to be strengthened to meet the requirements of Appendix Chapter A1 of this code Guidelines for the Seismic Retrofit of Existing Buildings (GSREB).

711.3.2 Access to Risk Category IV. Where a change of occupancy is such that compliance with Section 711.3.1 is required and the building is assigned to Risk Category IV, the operational access to the building shall not be through an adjacent structure, unless that structure conforms to the requirements for Risk Category IV structures. Where operational access is less than 10 feet (3048 mm) from either an interior lot line or from another structure, access protection from potential falling debris shall be provided by the owner of the Risk Category IV structure.

Y. Add Section 712 Accessibility.

Z. Add Section 712.1 to the IEBC to read:

712.1 General. Existing buildings that undergo a change of occupancy classification shall comply with Section 402.

13VAC5-63-434. Chapter 8 Additions.

A. Change Sections 801.1 through 801.3 of the IEBC to read:

801.1 Scope. Additions to any building or structure shall comply with the requirements of the VCC for new construction without requiring the existing building or structure to comply with any requirements of those codes or of these provisions, except as required by this chapter. Where an addition impacts the existing building or structure, that portion shall comply with this code. Where a fire wall that complies with Section 706 of the VCC is provided between the addition and the existing building, the addition shall be considered a separate building.

801.2 Creation or extension of nonconformity. An addition shall not create or extend any nonconformity in the existing building to which the addition is being made with regard to accessibility, structural strength, fire safety, means of egress, or the capacity of mechanical, plumbing, or electrical systems. Alterations to the existing building or structure shall be made so that the existing building or structure, together with the addition, are no less conforming to the provisions of the VCC than the existing building or structure was prior to the addition.

801.3 Other work. Any repair or alteration work within an existing building to which an addition is being made shall comply with the applicable requirements for the work as classified in this code.

B. Change Section 802 to Heights and Areas.

C. Change Section 802.1 of the IEBC to read:

802.1 Height limitations. No addition shall increase the height of an existing building beyond that permitted under the applicable provisions of Chapter 5 of the VCC for new buildings.

D. Add Sections 802.2 and 802.3 to the IEBC to read:

802.2 Area limitations. No addition shall increase the area of an existing building beyond that permitted under the applicable provisions of Chapter 5 of the VCC for new buildings unless fire separation as required by the VCC is provided.

Exception: In-filling of floor openings and nonoccupiable appendages such as elevator and exit stairway shafts shall be permitted beyond that permitted by the VCC.

802.3 Fire protection systems. Existing fire areas increased by the addition shall comply with Chapter 9 of the VCC.

E. Change Section 803 to Structural.

F. Change Sections 803.1 through 803.5, including subsections, and delete Sections 803.2.2, 803.2.3, 803.4.1, 803.5.1 and 803.5.2 of the IEBC.

803.1 Compliance with the VCC. Additions to existing buildings or structures are new construction and shall comply with the VCC.

803.2 Existing structural elements carrying gravity load. Any existing gravity load-carrying structural element for which an addition and its related alterations cause an increase in design gravity load of more than 5% shall be strengthened, supplemented, replaced or otherwise altered as needed to carry the increased gravity load required by the VCC for new structures. Any existing gravity load-carrying structural element whose gravity load-carrying capacity is decreased shall be considered an altered element subject to the requirements of Section 603.7.3. Any existing element that will form part of the lateral load path for any part of the addition shall be considered an existing lateral load-carrying structural element subject to the requirements of Section 803.3.

Exception: Buildings of Group R occupancy with no more than five dwelling units or sleeping units used solely for residential purposes where the existing building and the addition comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

803.2.1 Design live load. Where the addition does not result in increased design live load, existing gravity load-carrying structural elements shall be permitted to be evaluated and designed for live loads approved prior to the addition. If the approved live load is less than that required by Section 1607 of the VCC, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Where the addition does result in increased design live load, the live load required by Section 1607 of the VCC shall be used.

803.3 Existing structural elements carrying lateral load. Where the addition is structurally independent of the existing structure, existing lateral load-carrying structural elements shall be permitted to remain unaltered. Where the addition is not structurally independent of the existing structure, the existing structure and its addition acting together as a single structure shall be shown to meet the requirements of Sections 1609 and 1613 of the VCC. For purposes of this section, compliance with ASCE 41, using a Tier 3 procedure and the two-level performance objective in Table 305.2.1 for the applicable risk category, shall be deemed to meet the requirements of Section 1613.

Exceptions:

1. Any existing lateral load-carrying structural element whose demand-capacity ratio with the addition considered is not more than 10% greater than its demand-capacity ratio with the addition ignored shall be permitted to remain unaltered. For purposes of this exception, comparisons of demand-capacity ratios and calculation of design lateral loads, forces and capacities shall account for the cumulative effects of additions and alterations since original construction. For purposes of calculating demand-capacity ratios, the demand shall consider applicable load combinations involving VCC-level seismic forces in accordance with Section 305.2.1.

2. Buildings of Group R occupancy with no more than five dwelling or sleeping units used solely for residential purposes where the existing building and the addition comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

803.4 Voluntary addition of structural elements to improve the lateral force-resisting system. Voluntary addition of structural elements to improve the lateral force-resisting system of an existing building shall comply with Section 603.7.5.

803.5 Snow drift loads. Any structural element of an existing building subjected to additional loads from the effects of snow drift as a result of an addition shall comply with the VCC.

Exceptions:

1. Structural elements whose stress is not increased by more than 5%.

2. Buildings of Group R occupancy with no more than five dwelling units or sleeping units used solely for residential purposes where the existing building and the addition comply with the conventional light-frame construction methods of the VCC or the provisions of the International Residential Code.

G. Delete Section 803.6 from the IEBC .

H. Change Section 804 to Flood Hazard Areas.

I. Change Section 804.1, and delete Sections 804.2, 804.3, and 804.4, including subsections, of the IEBC ~~to read:~~.

804.1 Flood hazard areas. Additions and foundations in flood hazard areas shall comply with the following requirements:

1. For horizontal additions that are structurally interconnected to the existing building:

1.1. If the addition and all other proposed work, when combined, constitute substantial improvement, the existing building and the addition shall comply with

Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

1.2. If the addition constitutes substantial improvement, the existing building and the addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

2. For horizontal additions that are not structurally interconnected to the existing building:

2.1. The addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

2.2. If the addition and all other proposed work when combined constitute substantial improvement, the existing building and the addition shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

3. For vertical additions and all other proposed work that when combined constitute substantial improvement, the existing building shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

4. For a raised or extended foundation, if the foundation work and all other proposed work when combined constitute substantial improvement, the existing building shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

5. For a new foundation or replacement foundation, the foundation shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

J. Delete Sections 805, 806, 807, 808, 809, 810, and 811, in their entirety, from the IEBC.

13VAC5-63-434.5. Chapter 9 Historic buildings.

A. Change Sections 901.1 and 901.2 of the IEBC to read:

901.1 Scope. It is the intent of this chapter to provide means for the preservation of historic buildings. The provisions of this code relating to construction involving historic buildings shall not be mandatory unless such a construction constitutes a life safety hazard. Accessibility shall be provided in accordance with Section 405.

901.2 Report. The code official shall be permitted to require that a historic building undergoing repair, alteration or change of occupancy be investigated and evaluated by an RDP or other qualified person or agency as a condition of determining compliance with this code.

B. Add Section 901.3 to the IEBC to read:

901.3 Special occupancy exceptions. When a building in Group R-3 is also used for Group A, B, or M purposes such as museum tours, exhibits, and other public assembly activities, or for museums less than 3,000 square feet (279 m^2), the code official may determine that the occupancy is Group B when life safety conditions can be demonstrated in accordance with Section 901.2. Adequate means of egress in such buildings, which may include a means of maintaining doors in an open position to permit egress, a limit on building occupancy to an occupant load permitted by the means of egress capacity, a limit on occupancy of certain areas or floors, or supervision by a person knowledgeable in the emergency exiting procedures, shall be provided.

C. Change Section 902 to Flood hazard areas.

D. Change Section 902.1 of the IEBC to read:

902.1 Flood hazard areas. In flood hazard areas, if all proposed work, including repairs, work required because of a change of occupancy, and alterations, constitutes substantial improvement, then the existing building shall comply with Section 1612 of the International Building Code or Section R322 of the International Residential Code, as applicable.

Exception: If an historic building will continue to be an historic building after the proposed work is completed, then the proposed work is not considered a substantial improvement. For the purposes of this exception, an historic building is:

1. Listed or preliminarily determined to be eligible for listing in the National Register of Historic Places;

2. Determined by the Secretary of the U.S. Department of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined to qualify as an historic district; or

3. Designated as historic under a state or local historic preservation program that is approved by the Department of Interior.

E. Delete Section 902.2 of the IEBC.

F. Change Section 903 to Repairs.

G. Change Sections 903.1 through 903.3, including subsections, to read:

903.1 General. Repairs to any portion of an historic building or structure shall be permitted with original or like materials and original methods of construction, subject to the provisions of this chapter. Hazardous materials, such as asbestos and lead-based paint, shall not be used where the code for new construction would not permit their use in buildings of similar occupancy, purpose and location.

903.2 Moved buildings. Foundations of moved historic buildings and structures shall comply with the VCC. Moved historic buildings shall otherwise be considered an historic building for the purposes of this code. Moved historic buildings and structures shall be sited so that exterior wall and opening requirements comply with the VCC or with the compliance alternatives of this code.

903.3 Replacement. Replacement of existing or missing features using original materials shall be permitted. Partial replacement for repairs that match the original in configuration, height, and size shall be permitted. Replacement glazing in hazardous locations shall comply with the safety glazing requirements of Chapter 24 of the VCC.

Exception: Glass block walls, louvered windows, and jalousies repaired with like materials.

H. Change Section 904 to Fire Safety.

I. Change Sections 904.1 and 904.2, deleting subsections, of the IEBC to read:

904.1 Scope. Except as provided in Section 901, historic buildings undergoing alterations, changes of occupancy, or that are moved shall comply with this section.

904.2 General. Every historic building that does not conform to the construction requirements specified in this code for the occupancy or use and that constitutes a distinct fire hazard as defined in this code shall be provided with an approved automatic fire-extinguishing system as determined appropriate by the code official. However, an automatic fire-extinguishing system shall not be used to substitute for, or act as an alternative to, the required number of exits from any facility.

J. Add Sections 904.3 through 904.12, including subsections, to the IEBC to read:

904.3 Means of egress. Existing door openings and corridor and stairway widths less than those specified elsewhere in this code shall be permitted, provided there is sufficient width and height for a person to pass through the opening or traverse the means of egress. The front or main exit doors need not swing in the direction of the path of exit travel, provided that other approved means of egress having sufficient capacity to serve the total occupant load are provided.

904.4 Transoms. In fully sprinklered buildings of Group R-1, R-2 or R-3 occupancy, existing transoms in corridors and other fire-resistance-rated walls may be maintained if fixed in the closed position. A sprinkler shall be installed on each side of the transom.

904.5 Interior finishes. The existing finishes of walls and ceilings shall be accepted when it is demonstrated that they are the historic finishes.

904.6 Stairway enclosure. In buildings of three stories or less, exit enclosure construction shall limit the spread of smoke by the use of tight-fitting doors and solid elements. Such elements are not required to have a fire-resistance rating.

904.7 One-hour-fire-resistant assemblies. Where one-hour-fire-resistance-rated construction is required by these provisions, it need not be provided, regardless of construction or occupancy, where the existing wall and ceiling finish is wood or metal lath and plaster.

904.8 Glazing in fire-resistance-rated systems. Historic glazing materials are permitted in interior walls required to have a one-hour-fire-resistance rating where the opening is provided with approved smoke seals and the area affected is provided with an automatic sprinkler system.

904.9 Stairway railings. Grand stairways shall be accepted without complying with the handrail and guard requirements. Existing handrails and guards at all stairways shall be permitted to remain, provided they are not structurally dangerous.

904.10 Guards. Guards shall comply with Sections 904.10.1 and 904.10.2.

904.10.1 Height. Existing guards shall comply with the requirements of Section ~~604~~ 501.2.

904.10.2 Guard openings. The spacing between existing intermediate railings or openings in existing ornamental patterns shall be accepted. Missing elements or members of a guard may be replaced in a manner that will preserve the historic appearance of the building or structure.

904.11 Exit signs. Where exit sign or egress path marking location would damage the historic character of the building, alternative exit signs are permitted with approval of the code official. Alternative signs shall identify the exits and egress path.

904.12 Automatic fire-extinguishing systems. Every historical building that cannot be made to conform to the construction requirements specified in the VCC for the occupancy or use and that constitutes a distinct fire hazard shall be deemed to be in compliance if provided with an approved automatic fire-extinguishing system.

Exception: When the code official approves an alternative life safety system.

K. Change Section 905 to Alterations.

L. Change Section 905.1 to the IEBC to read:

905.1 General. The provisions of Chapter 6, as applicable, shall apply to facilities designated as historic structures that undergo alterations, unless technically infeasible.

M. Delete Sections 905.2 and 905.3 of the IEBC.

N. Change Section 906 to Change of Occupancy.

O. Change Sections 906.1 and 906.2 of the IEBC to read:

906.1 General. Historic buildings undergoing a change of occupancy shall comply with the applicable provisions of Chapter 7, except as specifically permitted in this chapter. When Chapter 7 requires compliance with specific requirements of Chapter 6 and when those requirements are subject to the exceptions in Section 903, the same exceptions shall apply to this section.

906.2 Building area. The allowable floor area for historic buildings undergoing a change of occupancy shall be permitted to exceed by 20% the allowable areas specified in Chapter 5 of the VCC.

P. Add Sections 906.3 through 906.14 to the IEBC to read:

906.3 Location on property. Historic structures undergoing a change of use to a higher hazard category in accordance with Section 707.1 may use alternative methods to comply with the fire-resistance and exterior opening protective requirements. Such alternatives shall comply with Section 901.2.

906.4 Occupancy separation. Required occupancy separations of one hour may be omitted when the building is provided with an approved automatic sprinkler system throughout.

906.5 Roof covering. Regardless of occupancy or use group, Roof covering materials not less than Class C, when tested in accordance with ASTM E 108 or UL 790, shall be permitted where a fire-retardant roof covering is required.

906.6 Means of egress. Existing door openings and corridor and stairway widths less than those that would be acceptable for nonhistoric buildings under these provisions shall be permitted, provided there is sufficient width and height for a person to pass through the opening or traverse the exit and that the capacity of the exit system is adequate for the occupant load or where other operational controls to limit occupancy are approved by the code official.

906.7 Door swing. Existing front doors need not swing in the direction of exit travel, provided that other approved exits having sufficient capacity to serve the total occupant load are provided.

906.8 Transoms. In corridor walls required by these provisions to be fire-resistance rated, existing transoms may be maintained if fixed in the closed position and fixed wired glass set in a steel frame or other approved glazing shall be installed on one side of the transom.

Exception: Transoms conforming to Section 904.4 shall be accepted.

906.9 Finishes. Where interior finish materials are required to have a flame spread index of Class C or better, when tested in accordance with ASTM E 84 or UL 723, existing nonconforming materials shall be surfaced with approved fire-retardant paint or finish.

Exception: Existing nonconforming materials need not be surfaced with an approved fire-retardant paint or finish where the building is equipped throughout with an automatic sprinkler system installed in accordance with the VCC and the nonconforming materials can be substantiated as being historic in character.

906.10 One-hour-fire-resistant assemblies. Where one-hour-fire-resistance-rated construction is required by these provisions, it need not be provided, regardless of construction or occupancy, where the existing wall and ceiling finish is wood lath and plaster.

906.11 Stairways and guards. Existing stairways shall comply with the requirements of these provisions. The code official shall grant alternatives for stairways and guards if alternative stairways are found to be acceptable or are judged to meet the intent of these provisions. Existing stairways shall comply with Section 904.

Exception: For buildings less than 3,000 square feet (279 m^2), existing conditions are permitted to remain at all stairways and guards.

906.12 Exit signs. Where exit signs would damage the historic character of the building or structure, alternative locations shall be permitted. Such signs shall identify the exits and exit paths.

906.13 Exit stair live load. Existing stairways in buildings changed to a Group R-1 or R-2 occupancy shall be permitted where it can be shown that the stairway can support a 75-pounds-per-square-foot (366 kg/m^2) live load.

906.14 Natural light. When the natural light requirements of Section 709.1 will lead to loss of historic character or historic materials in the building, the existing level of natural lighting shall be considered acceptable.

Q. Change Section 907 to Structural.

R. Change Section 907.1 of the IEBC to read:

907.1 General. Historic buildings shall comply with the applicable structural provisions for the work as classified in Section 103.10.

Exception: The code official shall be authorized to accept existing floors and approve operational controls that limit the live load on any such floor.

S. Delete Sections 907.2 through 907.4, including subsections, of the IEBC.

T. Delete Section 908 of the IEBC in its entirety.

13VAC5-63-435.5. Chapter 11 Retrofit requirements.

A. Replace Chapter 11 of the IEBC with the following:

B. Change the title of Chapter 11 of the IEBC to "Retrofit Requirements."

C. Add IEBC Section 1101 General.

D. Add Section 1101.1 to the IEBC to read:

1101.1 Scope. In accordance with Section 103.7 of the VCC and as set out in this code, the following buildings are required to be provided with certain fire protection equipment or systems or other retrofitted components.

E. Add Section 1101.2 to the IEBC to read:

1101.2 Smoke detectors in colleges and universities. In accordance with § 36-99.3 of the Code of Virginia, college and university buildings containing dormitories for sleeping purposes shall be provided with battery-powered or AC-powered smoke detector devices installed therein in accordance with this code in effect on July 1, 1982. All public and private college and university dormitories shall have installed such detectors regardless of when the building was constructed. The chief administrative office of the college or university shall obtain a certificate of compliance with the provisions of this subsection from the building official of the locality in which the college or university is located or, in the case of state-owned buildings, from the Director of the Virginia Department of General Services. The provisions of this section shall not apply to any dormitory at a state-supported military college or university that is patrolled 24 hours a day by military guards.

F. Add Section 1101.3 to the IEBC to read:

1101.3 Smoke detectors in certain juvenile care facilities. In accordance with § 36-99.4 of the Code of Virginia, battery-powered or AC-powered smoke detectors shall be installed in all local and regional detention homes, group homes, and other residential care facilities for children and juveniles that are operated by or under the auspices of the Virginia Department of Juvenile Justice, regardless of when the building was constructed, by July 1, 1986, in accordance with the provisions of this code that were in effect on July 1, 1984. Administrators of such homes and facilities shall be responsible for the installation of the smoke detector devices.

G. Add Section 1101.4 to the IEBC to read:

1101.4 Smoke detectors for the deaf and hearing-impaired. In accordance with § 36-99.5 of the Code of Virginia, smoke detectors providing an effective intensity of not less than 100 candela to warn a deaf or hearing-impaired individual shall be provided, upon request by the occupant to the landlord or proprietor, to any deaf or hearing-impaired occupant of any of the following occupancies, regardless of when constructed:

1. All dormitory buildings arranged for the shelter and sleeping accommodations of more than 20 individuals;

2. All multiple-family dwellings having more than two dwelling units, including all dormitories and boarding and lodging houses arranged for shelter and sleeping accommodations of more than five individuals; or

3. All buildings arranged for use as one-family or two-family dwelling units.

A tenant shall be responsible for the maintenance and operation of the smoke detector in the tenant's unit.

A hotel or motel shall have available no fewer than one such smoke detector for each 70 units or portion thereof, except that this requirement shall not apply to any hotel or motel with fewer than 35 units. The proprietor of the hotel or motel shall post in a conspicuous place at the registration desk or counter a permanent sign stating the availability of smoke detectors for the hearing impaired. Visual detectors shall be provided for all meeting rooms for which an advance request has been made.

H. Add Sections 1101.5, 1101.5.1, and 1101.5.2 to the IEBC to read:

1101.5 Assisted living facilities (formerly known as adult care residences or homes for adults). Existing assisted living facilities licensed by the Virginia Department of Social Services shall comply with sections 1101.5.1 and 1101.5.2.

1101.5.1 Fire protective signaling system and fire detection system. A fire protective signaling system and an automatic fire detection system meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in assisted living facilities by August 1, 1994.

Exception: Assisted living facilities that are equipped throughout with a fire protective signaling system and an automatic fire detection system.

1101.5.2 Single-station and multiple-station smoke detectors. Battery-powered or AC-powered single-station and multiple-station smoke detectors meeting the requirements of the USBC, Volume I, 1987 Edition, Third Amendment, shall be installed in assisted living facilities by August 1, 1994.

Exception: Assisted living facilities that are equipped throughout with single-station and multiple-station smoke detectors.

I. Add Section 1101.6 to the IEBC to read:

1101.6 Smoke detectors in buildings containing dwelling units. AC-powered smoke detectors with battery backup or

an equivalent device shall be required to be installed to replace a defective or inoperative battery-powered smoke detector located in buildings containing one or more dwelling units or rooming houses offering to rent overnight sleeping accommodations when it is determined by the building official that the responsible party of such building or dwelling unit fails to maintain battery-powered smoke detectors in working condition.

J. Add Section 1101.7 to the IEBC to read:

1101.7 Fire suppression, fire alarm, and fire detection systems in nursing homes and facilities. Fire suppression systems as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing facilities licensed by the Virginia Department of Health by January 1, 1993, regardless of when such facilities or institutions were constructed. Units consisting of certified long-term care beds located on the ground floor of general hospitals shall be exempt from the requirements of this section.

Fire alarm or fire detector systems, or both, as required by the edition of this code in effect on October 1, 1990, shall be installed in all nursing homes and nursing facilities licensed by the Virginia Department of Health by August 1, 1994.

K. Add Section 1101.8 to the IEBC to read:

1101.8 Fire suppression systems in hospitals. Fire suppression systems shall be installed in all hospitals licensed by the Virginia Department of Health as required by the edition of this code in effect on October 1, 1995, regardless of when such facilities were constructed.

L. Add Section 1101.9 to the IEBC to read:

1101.9 Identification of disabled parking spaces by above grade signage. All parking spaces reserved for the use of persons with disabilities shall be identified by above grade signs, regardless of whether identification of such spaces by above grade signs was required when any particular space was reserved for the use of persons with disabilities. A sign or symbol painted or otherwise displayed on the pavement of a parking space shall not constitute an above grade sign. Any parking space not identified by an above grade sign shall not be a parking space reserved for the disabled within the meaning of this section. All above grade disabled parking space signs shall have the bottom edge of the sign no lower than 4 feet (1219 mm) nor higher than 7 feet (2133 mm) above the parking surface. Such signs shall be designed and constructed in accordance with the provisions of Chapter 11 of this code. All disabled parking signs shall include the following language: "PENALTY, $100-500 Fine, TOW-AWAY ZONE." Such language may be placed on a separate sign and attached below existing above grade disabled parking signs, provided that the bottom edge of the attached sign is no lower than 4 feet above the parking surface.

M. Add Section 1101.10 to the IEBC to read:

1101.10 Smoke detectors in hotels and motels. Smoke detectors shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, by the dates indicated, regardless of when constructed.

N. Add Section 1101.11 to the IEBC to read:

1101.11 Sprinkler systems in hotels and motels. By September 1, 1997, an automatic sprinkler system shall be installed in hotels and motels as required by the edition of VR 394-01-22, USBC, Volume II, in effect on March 1, 1990, regardless of when constructed.

O. Add Section 1101.12 to the IEBC to read:

1101.12 Fire suppression systems in dormitories. An automatic fire suppression system shall be provided throughout all buildings having a Group R-2 fire area that are more than 75 feet (22,860 mm) or six stories above the lowest level of exit discharge and are used, in whole or in part, as a dormitory to house students by any public or private institution of higher education, regardless of when such buildings were constructed, in accordance with the edition of this code in effect on August 20, 1997, and the requirements for sprinkler systems under the edition of the NFPA 13 standard referenced by that code. The automatic fire suppression system shall be installed by September 1, 1999. The chief administrative office of the college or university shall obtain a certificate of compliance from the building official of the locality in which the college or university is located or, in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

Exceptions:

1. Buildings equipped with an automatic fire suppression system in accordance with Section 903.3.1.1 of the 1983 or later editions of NFPA 13.

2. Any dormitory at a state-supported military college or university that is patrolled 24 hours a day by military guards.

3. Application of the requirements of this section shall be modified in accordance with the following:

3.1. Building systems, equipment, or components other than the fire suppression system shall not be required to be added or upgraded except as necessary for the installation of the fire suppression system and shall only be required to be added or upgraded where the installation of the fire suppression system creates an unsafe condition.

3.2. Residential sprinklers shall be used in all sleeping rooms. Other sprinklers shall be quick response or residential unless deemed unsuitable for a space.

Standard response sprinklers shall be used in elevator hoistways and machine rooms.

3.3. Sprinklers shall not be required in wardrobes in sleeping rooms that are considered part of the building construction or in closets in sleeping rooms when such wardrobes or closets (i) do not exceed 24 square feet (2.23 m^2) in area, (ii) have the smallest dimension less than 36 inches (914 mm), and (iii) comply with all of the following:

3.3.1. A single-station smoke detector monitored by the building fire alarm system is installed in the room containing the wardrobe or closet that will activate the general alarm for the building if the single station smoke detector is not cleared within five minutes after activation.

3.3.2. The minimum number of sprinklers required for calculating the hydraulic demand of the system for the room shall be increased by two, and the two additional sprinklers shall be corridor sprinklers where the wardrobe or closet is used to divide the room. Rooms divided by a wardrobe or closet shall be considered one room for the purpose of this requirement.

3.3.3. The ceiling of the wardrobe, closet, or room shall have a fire resistance rating of not less than 1/2 hour.

3.4. Not more than one sprinkler shall be required in bathrooms within sleeping rooms or suites having a floor area between 55 square feet (5.12 m^2) and 120 square feet (11.16 m^2), provided the sprinkler is located to protect the lavatory area and the plumbing fixtures are of a noncombustible material.

3.5. Existing standpipe residual pressure shall be permitted to be reduced when the standpipe serves as the water supply for the fire suppression system, provided the water supply requirements of NFPA 13-94 are met.

3.6. Limited service controllers shall be permitted for fire pumps when used in accordance with their listing.

3.7. Where a standby power system is required, a source of power in accordance with Section 701-11(d) or 701-11(e) of NFPA 70-96 shall be permitted.

P. Add Section 1101.13 to the IEBC to read:

1101.13 Fire extinguishers and smoke detectors in SRCFs. SRCFs shall be provided with at least one approved type ABC portable fire extinguisher with a minimum rating of 2A10BC installed in each kitchen. In addition, SRCFs shall provide at least one approved and properly installed battery operated smoke detector outside of each sleeping area in the vicinity of bedrooms and bedroom hallways and on each additional floor.

Q. Add Section 1101.14 to the IEBC to read:

1101.14 Smoke detectors in adult day care centers. Battery-powered or AC-powered smoke detector devices shall be installed in all adult day care centers licensed by the Virginia Department of Social Services, regardless of when the building was constructed. The location and installation of the smoke detectors shall be determined by the provisions of this code in effect on October 1, 1990. The licensee shall obtain a certificate of compliance from the building official of the locality in which the center is located or, in the case of state-owned buildings, from the Director of the Virginia Department of General Services.

R. Add Section 1101.15 to the IEBC to read:

1101.15 Posting of occupant load. Every room or space that is an assembly occupancy, and where the occupant load of that room or space is 50 or more, shall have the occupant load of the room or space as determined by the building official posted in a conspicuous place near the main exit or exit access doorway from the room or space. Posted signs shall be of an approved legible permanent design and shall be maintained by the owner or owner's authorized agent.

S. Add Section 1101.16 to the IEBC to read:

1101.16 ALFSTs. Existing ALFSTs, regardless of when constructed, shall by October 1, 2011, meet the applicable requirements of API 653 and TFI RMIP for suitability for service and inspections and shall provide a secondary containment system complying with Section 426.3 of the VCC.

T. Add Section 1101.17 to the IEBC to read:

1101.17 Standards for replacement glass. In accordance with § 36-99.2 of the Code of Virginia, any replacement glass installed in buildings constructed prior to the first edition of the USBC shall meet the quality and installation standards for glass installed in new buildings as are in effect at the time of installation. In addition, as a requirement of this code, the installation or replacement of glass in buildings constructed under any edition of the USBC shall be as required for new installations.

U. Delete Sections 1102 through 1106 of the IEBC in their entirety.

13VAC5-63-440. Chapter 14 Compliance alternative – Change of occupancy.

A. Change Section 1401.1 of the IEBC to read:

1401.1 Scope. The provisions of this chapter are intended to maintain or increase the current degree of public safety, health, and general welfare in existing buildings or structures, while permitting changes of occupancy without requiring full compliance with Chapter 7, except where

compliance with other provisions of this code is specifically required in this chapter.

Exception: The provisions of this chapter shall not apply to buildings with occupancies in Group H or I.

B. Change Section 1401.1.1 of the IEBC to read:

1401.1.1 Complete change of occupancy. Where an entire existing building undergoes a change of occupancy, the applicable provisions of this chapter for the new occupancy shall be used to determine compliance with this code.

Exception: Plumbing, mechanical, and electrical systems in buildings undergoing a change of occupancy shall be subject to any applicable requirements of Chapter 7.

C. Change Section 1401.1.2 of the IEBC to read:

1401.1.2 Partial change of occupancy. Where a portion of the building undergoes a change of occupancy and that portion is separated from the remainder of the building with fire barrier or horizontal assemblies having a fire-resistance rating as required by Table 508.4 of the VCC or Section R317 of the International Residential Code for the separate occupancies, or with approved compliance alternatives, the portion changed shall be made to conform to the provisions of this chapter.

Where a portion of the building undergoes a change of occupancy and that portion is not separated from the remainder of the building with fire barriers or horizontal assemblies having a fire-resistance rating as required by Table 508.4 of the VCC or Section R317 of the International Residential Code for the separate occupancies, or with approved compliance alternatives, the provisions of this chapter which apply to each occupancy shall apply to the entire building. Where there are conflicting provisions, those requirements that are the most restrictive shall apply to the entire building or structure.

D. Change Section 1401.2 and delete Sections 1401.2.1 through 1401.2.5 of the IEBC ~~to read:~~.

1401.2 Accessibility requirements. All portions of the buildings proposed for change of occupancy to existing buildings or structures shall conform to the applicable accessibility provisions of Chapter 4.

E. Change Section 1401.3 of the IEBC to read:

1401.3 Acceptance. For changes of occupancy to existing buildings that are evaluated in accordance with this chapter, compliance with this chapter shall be accepted by the code official.

F. Change Section 1401.3.1 and delete Sections 1401.3.2 and 1401.3.3 of the IEBC ~~to read:~~.

1401.3.1 Compliance with flood hazard provisions. In flood hazard areas, buildings or structures that are evaluated in accordance with this chapter shall comply with Section 1612 of the VCC or Section R322 of the International Residential Code, as applicable if the work covered by this chapter constitutes substantial improvement.

G. Change Section 1401.4 of the IEBC to read:

1401.4 Investigation and evaluation. For proposed work covered by this chapter, the building owner shall cause the existing building to be investigated and evaluated in accordance with the provisions of Sections 1401.4 through 1401.9.

H. Change Section 1401.4.1 of the IEBC to read:

1401.4.1 Structural analysis. The owner shall have a structural analysis of the existing building made to determine adequacy of structural systems for the proposed alteration, addition, or change of occupancy. The analysis shall demonstrate that the building with the work completed is capable of resisting the loads specified in Chapter 16 of the VCC.

I. Change Section 1401.4.2 of the IEBC to read:

1401.4.2 Submittal. The results of the investigation and evaluation as required in Section 1401.4 along with proposed compliance alternatives shall be submitted to the code official.

J. Change Section 1401.4.3 of the IEBC to read:

1401.4.3 Determination of compliance. The code official shall determine whether the existing building with the proposed change of occupancy complies with the provisions of this section in accordance with the evaluation process in Sections 1401.5 through 1401.9.

K. Change Section 1401.5 of the IEBC to read:

1401.5 Evaluation. The evaluation shall be comprised of three categories: fire safety, means of egress, and general safety, as defined in Sections 1401.5.1 through 1401.5.3.

L. Change Section 1401.5.1 of the IEBC to read:

1401.5.1 Fire safety. Included within the fire safety category are the structural fire resistance, automatic fire detection, fire alarm, automatic sprinkler system, and fire suppression system features of the facility.

M. Change Section 1401.5.2 of the IEBC to read:

1401.5.2 Means of egress. Included within the means of egress category are the configuration, characteristics, and support features for means of egress in the facility.

N. Change Section 1401.5.3 of the IEBC to read:

1401.5.3 General safety. Included within the general safety category are the fire safety parameters and the means-of-egress parameters.

O. Change Section 1401.6 of the IEBC to read:

1401.6 Evaluation process. The evaluation process specified in this code shall be followed in its entirety to evaluate existing buildings. Table 1401.7 shall be utilized for tabulating the results of the evaluation. References to other sections of this code indicate that compliance with those sections is required in order to gain credit in the evaluation outlined in this code. In applying this section to a building with mixed occupancies, where the separation between the mixed occupancies does not qualify for any category indicated in Section 1401.6.16, the score for each occupancy shall be determined, and the lower score determined for each section of the evaluation process shall apply to the entire building.

Where the separation between the mixed occupancies qualifies for any category indicated in Section 1401.6.16, the score for each occupancy shall apply to each portion, or smoke compartment of the building based on the occupancy of the space.

P. Change Section 1401.6.1 of the IEBC to read:

1401.6.1 Building height and number of stories. The value for building height and number of stories shall be the lesser value determined by the formula in Section 1401.6.1.1. Section 504 of the International Building Code shall be used to determine the allowable height and number of stories of the building. Subtract the actual building height from the allowable height and divide by 12-1/2 feet (3810 mm). Enter the height value and its sign (positive or negative) in Table 1401.7 under Safety Parameter 1401.6.1, Building Height, for fire safety, means of egress, and general safety. The maximum score for a building shall be 10.

Q. Change Section 1401.6.2 of the IEBC to read:

1401.6.2 Building area. The value for building area shall be determined by the formula in Section 1401.6.2.2. Section 506 of the VCC and the formula in Section 1401.6.2.1 shall be used to determine the allowable area of the building. Subtract the actual building area from the allowable area and divide by 1,200 square feet (112 m^2). Enter the area value and its sign (positive or negative) in Table 1401.7 under Safety Parameter 1401.6.2, Building Area, for fire safety, means of egress and general safety. In determining the area value, the maximum permitted positive value for area is 50% of the fire safety score as listed in Table 1401.8, Mandatory Safety Scores.

R. Change Section 1401.6.4 of the IEBC to read:

1401.6.4 Tenant and dwelling unit separations. Evaluate the fire-resistance rating of floors and walls separating tenants, including dwelling units, and not evaluated under Sections 1401.6.3 and 1401.6.5.

S. Change Section 1401.6.7 of the IEBC to read:

1401.6.7 HVAC systems. Evaluate the ability of the HVAC system to resist the movement of smoke and fire beyond the point of origin. Under the categories in Section 1401.6.7.1, determine the appropriate value and enter that value into Table 1401.7 under Safety Parameter 1401.6.7, HVAC Systems, for fire safety, means of egress, and general safety.

T. Change Section 1401.6.8 of the IEBC to read:

1401.6.8 Automatic fire detection. Evaluate the smoke detection capability based on the location and operation of automatic fire detectors in accordance with Section 907 of the VCC and the International Mechanical Code. Under the categories and occupancies in Table 1401.6.8, determine the appropriate value and enter that value into Table 1401.7 under Safety Parameter 1401.6.8, Automatic Fire Detection, for fire safety, means of egress, and general safety.

U. Change Section 1401.6.8.1 of the IEBC to read:

1401.6.8.1 Categories. The categories for automatic fire detection are:

1. Category a - None.

2. Category b - Existing smoke detectors in HVAC systems.

3. Category c - Smoke detectors in HVAC systems. The detectors are installed in accordance with the requirements for new buildings in the International Mechanical Code.

4. Category d - Smoke detectors throughout all floor areas other than individual sleeping units, tenant spaces, and dwelling units.

5. Category e - Smoke detectors installed throughout the floor area.

6. Category f - Smoke detectors in corridors only.

V. Change Section 1401.6.14 of the IEBC to read:

1401.6.14 Elevator control. Evaluate the passenger elevator equipment and controls that are available to the fire department to reach all occupied floors. Emergency recall and in-car operation of elevators shall be provided in accordance with the building code under which the building or the affected portion thereof was constructed or previously approved. Under the categories and occupancies in Table 1401.5.14, determine the appropriate value and enter that value into Table 1401.7 under Safety Parameter 1401.5.14, Elevator Control, for fire safety, means of egress and general safety. The values shall be zero for a single-story building.

W. Change Section 1401.6.14.1 of the IEBC to read:

1401.6.14.1 Categories. The categories for elevator controls are:

1. Category a - No elevator.

2. Category b - Any elevator without Phase I emergency recall operation and Phase II emergency in-car operation.

3. Category c - All elevators with Phase I emergency recall operation and Phase II emergency in-car operation as required by the building code under which the building or the affected portion thereof was constructed or previously approved.

4. Category d - All meet Category c or Category b where permitted to be without Phase I emergency recall operation and Phase II emergency in-car operation, and there is at least one elevator that complies with new construction requirements serves all occupied floors.

X. Change Section 1401.6.16 of the IEBC to read:

1401.6.16 Mixed occupancies. Where a building has two or more occupancies that are not in the same occupancy classification, the separation between the mixed occupancies shall be evaluated in accordance with this section. Where there is no separation between the mixed occupancies or the separation between mixed occupancies does not qualify for any of the categories indicated in Section 1401.6.16.1, the building shall be evaluated as indicated in Section 1401.6, and the value for mixed occupancies shall be zero. Under the categories and occupancies in Table 1401.6.16, determine the appropriate value and enter that value into Table 1401.7 under Safety Parameter 1401.6.16, Mixed Occupancies, for fire safety and general safety. For buildings without mixed occupancies, the value shall be zero.

Y. Change Section 1401.6.17 of the IEBC to read:

1401.6.17 Automatic sprinklers. Evaluate the ability to suppress a fire based on the installation of an automatic sprinkler system in accordance with Section 903.3.1.1 of the VCC. "Required sprinklers" shall be based on the requirements of this code. Under the categories and occupancies in Table 1401.6.17, determine the appropriate value and enter that value into Table 1401.7 under Safety Parameter 1401.6.17, Automatic Sprinklers, for fire safety, means of egress divided by two, and general safety. High-rise buildings defined in Chapter 2 of the VCC that undergo a change of occupancy to Group R shall be equipped throughout with an automatic sprinkler system in accordance with Section 403 of the VCC and Chapter 9 of the VCC.

Z. Change Section 1401.6.20 of the IEBC to read:

1401.6.20 Smoke compartmentation. Evaluate the smoke compartments for compliance with Section 407.5 of the VCC. Under the categories and occupancies in Table 1401.6.20, determine the appropriate smoke compartmentation value (SCV) and enter that value into Table 1401.7 under Safety Parameter 1401.6.20, Smoke Compartmentation, for fire safety, means of egress and general safety.

Part III
Maintenance

13VAC5-63-450. Chapter 1 Administration; Section 101 General.

A. Section 101.1 Short title. The Virginia Uniform Statewide Building Code, Part III, Maintenance, may be cited as the "Virginia Maintenance Code," or as the "VMC."

B. Section 101.2 Incorporation by reference. Chapters 2 - 8 of the 2015 International Property Maintenance Code, published by the International Code Council, Inc., are adopted and incorporated by reference to be an enforceable part of the VMC. The term "IPMC" means the 2015 International Property Maintenance Code, published by the International Code Council, Inc. Any codes and standards referenced in the IPMC are also considered to be part of the incorporation by reference, except that such codes and standards are used only to the prescribed extent of each such reference.

C. Section 101.3 Numbering system. A dual numbering system is used in the VMC to correlate the numbering system of the Virginia Administrative Code with the numbering system of the IPMC. IPMC numbering system designations are provided in the catchlines of the Virginia Administrative Code sections and cross references between sections or chapters of the Virginia Maintenance Code use only the IPMC numbering system designations. The term "chapter" is used in the context of the numbering system of the IPMC and may mean a chapter in the VMC, a chapter in the IPMC or a chapter in a referenced code or standard, depending on the context of the use of the term. The term "chapter" is not used to designate a chapter of the Virginia Administrative Code, unless clearly indicated.

D. Section 101.4 Arrangement of code provisions. The VMC is comprised of the combination of (i) the provisions of Chapter 1, Administration, which are established herein, (ii) Chapters 2 - 8 of the IPMC, which are incorporated by reference in Section 101.2, and (iii) the changes to the text of the incorporated chapters of the IPMC which are specifically identified. The terminology "changes to the text of the incorporated chapters of the IPMC which are specifically identified" shall also be referred to as the "state amendments to the IPMC." Such state amendments to the IPMC are set out using corresponding chapter and section numbers of the IPMC numbering system.

E. Section 101.5 Use of terminology and notes. The term "this code," or "the code," where used in the provisions of Chapter 1, in Chapters 2 - 8 of the IPMC, or in the state

amendments to the IPMC, means the VMC, unless the context clearly indicates otherwise. The term "this code," or "the code," where used in a code or standard referenced in the IPMC, means that code or standard, unless the context clearly indicates otherwise. The term "USBC" where used in this code means the VCC unless the context clearly indicates otherwise. In addition, the use of notes in Chapter 1 is to provide information only and shall not be construed as changing the meaning of any code provision. Notes in the IPMC, in the codes and standards referenced in the IPMC, and in the state amendments to the IPMC, may modify the content of a related provision and shall be considered to be a valid part of the provision, unless the context clearly indicates otherwise.

F. Section 101.6 Order of precedence. The provisions of this code shall be used as follows:

1. The provisions of Chapter 1 of this code supersede any provisions of Chapters 2 - 8 of the IPMC that address the same subject matter and impose differing requirements.

2. The provisions of Chapter 1 of this code supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

3. The state amendments to the IPMC supersede any provisions of Chapters 2 - 8 of the IPMC that address the same subject matter and impose differing requirements.

4. The state amendments to the IPMC supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

5. The provisions of Chapters 2 - 8 of the IPMC supersede any provisions of the codes and standards referenced in the IPMC that address the same subject matter and impose differing requirements.

G. Section ~~101.8~~ 101.7 Definitions. The definitions of terms used in this code are contained in Chapter 2 along with specific provisions addressing the use of definitions. Terms may be defined in other chapters or provisions of the code and such definitions are also valid.

13VAC5-63-500. Section 107 Appeals.

A. Section 107.1 Establishment of appeals board. In accordance with § 36-105 of the Code of Virginia, there shall be established within each local enforcing agency a LBBCA. Whenever a county or a municipality does not have such a LBBCA, the local governing body shall enter into an agreement with the local governing body of another county or municipality or with some other agency, or a state agency approved by DHCD for such appeals resulting therefrom. Fees may be levied by the local governing body in order to defray the cost of such appeals. The LBBCA for hearing appeals under the VCC shall be permitted to serve as the appeals board required by this section. The locality is responsible for maintaining a duly constituted LBBCA prepared to hear appeals within the time limits established in this section. The LBBCA shall meet as necessary to assure a duly constituted board, appoint officers as necessary, and receive such training on the code as may be appropriate or necessary from staff of the locality.

B. Section 107.2 Membership of board. The LBBCA shall consist of at least five members appointed by the locality for a specific term of office established by written policy. Alternate members may be appointed to serve in the absence of any regular members and as such, shall have the full power and authority of the regular members. Regular and alternate members may be reappointed. Written records of current membership, including a record of the current chairman and secretary shall be maintained in the office of the locality. In order to provide continuity, the terms of the members may be of different length so that less than half will expire in any one-year period.

C. Section 107.3 Officers and qualifications of members. The LBBCA shall annually select one of its regular members to serve as chairman. When the chairman is not present at an appeal hearing, the members present shall select an acting chairman. The locality or the chief executive officer of the locality shall appoint a secretary to the LBBCA to maintain a detailed record of all proceedings. Members of the LBBCA shall be selected by the locality on the basis of their ability to render fair and competent decisions regarding application of the USBC and shall to the extent possible, represent different occupational or professional fields relating to the construction industry. At least one member should be an experienced builder; at least one member should be an RDP, and at least one member should be an experienced property manager. Employees or officials of the locality shall not serve as members of the LBBCA.

D. Section 107.4 Conduct of members. No member shall hear an appeal in which that member has a conflict of interest in accordance with the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq. of the Code of Virginia). Members shall not discuss the substance of an appeal with any other party or their representatives prior to any hearings.

E. Section 107.5 Right of appeal; filing of appeal application. Any person aggrieved by the local enforcing agency's application of this code or the refusal to grant a modification to the provisions of this code may appeal to the LBBCA. The applicant shall submit a written request for appeal to the LBBCA within 14 calendar days of the receipt of the decision being appealed. The application shall contain the name and address of the owner of the building or structure and, in addition, the name and address of the person appealing, when the applicant is not the owner. A copy of the code official's decision shall be submitted along with the application for appeal and maintained as part of the record.

The application shall be marked by the LBBCA to indicate the date received. Failure to submit an application for appeal within the time limit established by this section shall constitute acceptance of a code official's decision.

F. Section 107.6 Meetings and postponements. The LBBCA shall meet within 30 calendar days after the date of receipt of the application for appeal, except that a period of up to 45 calendar days shall be permitted where the LBBCA has regularly scheduled monthly meetings. A longer time period shall be permitted if agreed to by all the parties involved in the appeal. A notice indicating the time and place of the hearing shall be sent to the parties in writing to the addresses listed on the application at least 14 calendar days prior to the date of the hearing, except that a lesser time period shall be permitted if agreed to by all the parties involved in the appeal. When a quorum of the LBBCA is not present at a hearing to hear an appeal, any party involved in the appeal shall have the right to request a postponement of the hearing. The LBBCA shall reschedule the appeal within 30 calendar days of the postponement, except that a longer time period shall be permitted if agreed to by all the parties involved in the appeal.

G. Section 107.7 Hearings and decision. All hearings before the LBBCA shall be open meetings and the appellant, the appellant's representative, the locality's representative and any person whose interests are affected by the code official's decision in question shall be given an opportunity to be heard. The chairman shall have the power and duty to direct the hearing, rule upon the acceptance of evidence and oversee the record of all proceedings. The LBBCA shall have the power to uphold, reverse, or modify the decision of the official by a concurring vote of a majority of those present. Decisions of the LBBCA shall be final if no further appeal is made. The decision of the LBBCA shall be explained in writing, signed by the chairman and retained as part of the record of the appeal. Copies of the written decision shall be sent to all parties by certified mail. In addition, the written decision shall contain the following wording:

"Any person who was a party to the appeal may appeal to the State Review Board by submitting an application to such Board within 21 calendar days upon receipt by certified mail of the written decision. Application forms are available from the Office of the State Review Board, 600 East Main Street, Richmond, Virginia 23219, (804) 371-7150."

H. Section 107.8 Appeals to the State Review Board. After final determination by the LBBCA in an appeal, any person who was a party to the appeal may further appeal to the State Review Board. In accordance with § 36-98.2 of the Code of Virginia for state-owned buildings and structures, appeals by an involved state agency from the decision of the code official for state-owned buildings or structures shall be made directly to the State Review Board. The application for appeal shall be made to the State Review Board within 21 calendar days of the receipt of the decision to be appealed. Failure to submit an application within that time limit shall constitute an acceptance of the code official's decision. For appeals from a LBBCA, a copy of the code official's decision and the ~~resolution~~ written decision of the LBBCA shall be submitted with the application for appeal to the State Review Board. Upon request by the Office of the State Review Board, the LBBCA shall submit a copy of all pertinent information from the record of the appeal. In the case of appeals involving state-owned buildings or structures, the involved state agency shall submit a copy of the code official's decision and other relevant information with the application for appeal to the State Review Board. Procedures of the State Review Board are in accordance with Article 2 (§ 36-108 et seq.) of Chapter 6 of Title 36 of the Code of Virginia. Decisions of the State Review Board shall be final if no further appeal is made.

13VAC5-63-510. Chapter 2 Definitions.

A. Change Section 201.3 of the IPMC to read:

201.3 Terms defined in other codes. Where terms are not defined in this code and are defined in the IBC, IFC, IFGC, IPC, IMC, International Existing Building Code, IRC, International Zoning Code or NFPA 70, such terms shall have the meanings ascribed to them as stated in those codes, except that terms defined in the VCC shall be used for this code and shall take precedence over other definitions.

B. Change Section 201.5 of the IPMC to read:

201.5 Parts. Whenever the words "dwelling unit," "dwelling," "premises," "building," "rooming unit," "housekeeping unit," or "story" are stated in this code, they shall be construed as though they were followed by the words "or part thereof."

C. Add the following definitions to Section 202 of the IPMC to read:

Applicable building code. The local or statewide building code and referenced standards in effect at the time the building or portion thereof was constructed, altered, renovated or underwent a change of occupancy. See Section 103 for the application of the code.

Maintained. To keep unimpaired in an appropriate condition, operation, and continuance as installed in accordance with the applicable building code, or as previously approved, and in accordance with the applicable operational and maintenance provisions of this code.

Structure unfit for human occupancy. An existing structure determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public because (i) of the degree to which the structure is in disrepair or lacks maintenance, ventilation, illumination, sanitary or heating facilities or other essential

equipment, or (ii) the required plumbing and sanitary facilities are inoperable.

Unsafe equipment. Unsafe equipment includes any boiler, heating equipment, elevator, moving stairway, electrical wiring or device, flammable liquid containers or other equipment that is in such disrepair or condition that such equipment is determined by the code official to be dangerous to the health, safety and welfare of the occupants of a structure or the public.

Unsafe structure. An existing structure (i) determined by the code official to be dangerous to the health, safety and welfare of the occupants of the structure or the public, (ii) that contains unsafe equipment, or (iii) that is so damaged, decayed, dilapidated, structurally unsafe or of such faulty construction or unstable foundation that partial or complete collapse is likely. A vacant existing structure unsecured or open shall be deemed to be an unsafe structure.

D. Delete the following definitions from Section 202 of the ~~IEBC~~ IPMC:

Condemn

Cost of such demolition of emergency repairs

Equipment support

Inoperable motor vehicle

Labeled

Neglect

Openable area

Pest elimination

Strict liability offense

Ultimate deformation

Workmanlike

VA.R. Doc. No. R19-5648; Filed September 12, 2018, 11:58 a.m.

TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Final Regulation

Title of Regulation: **16VAC25-60. Administrative Regulation for the Virginia Occupational Safety and Health Program (amending 16VAC25-60-10, 16VAC25-60-20, 16VAC25-60-30, 16VAC25-60-260, 16VAC25-60-270, 16VAC25-60-280).**

Statutory Authority: §§ 40.1-2.1, 40.1-6, and 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

Effective Date: November 1, 2018.

Agency Contact: Holly Raney, Agency Regulatory Coordinator, Department of Labor and Industry, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email holly.raney@doli.virginia.gov.

Summary:

The amendments (i) establish procedures for the application of penalties for state and local government employers in accordance with § 40.1-2.1 of the Code of Virginia and (ii) allow Virginia Occupational Safety and Health to issue proposed penalties to state and local government employers for willful, repeat, and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as high gravity (i.e., classified as high severity and high probability). Violations that are classified as nonhigh gravity serious and other-than-serious violations would not receive a penalty.

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

Part I
Definitions

16VAC25-60-10. Definitions.

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

"Abatement period" means the period of time defined or set out in the citation for correction of a violation.

"Board" means the Safety and Health Codes Board.

"Bureau of Labor Statistics" means the Bureau of Labor Statistics of the ~~United States~~ U.S. Department of Labor.

"Citation" means the notice to an employer that the commissioner has found a condition or conditions that violate Title 40.1 of the Code of Virginia or the standards, rules or regulations established by the commissioner or the board.

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any such reference shall include his authorized representatives.

"Commissioner of Labor and Industry" means only the individual who is Commissioner of Labor and Industry.

"Department" means the Virginia Department of Labor and Industry.

"De minimis violation" means a violation ~~which~~ that has no direct or immediate relationship to safety and health.

"Employee" means an employee of an employer who is employed in a business of his employer.

"Employee representative" means a person specified by employees to serve as their representative.

"Employer" means any person or entity engaged in business who has employees but does not include the United States.

"Establishment" means, for the purpose of ~~record-keeping~~ recordkeeping requirements, a single physical location where business is conducted or where services or industrial operations are performed, ~~e.g.~~ for example, factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract activities operated from the same physical location as a lumberyard~~;~~, each activity is a separate establishment. In the public sector, an establishment is either (i) a single physical location where a specific governmental function is performed; or (ii) that location which is the lowest level where attendance or payroll records are kept for a group of employees who are in the same specific organizational unit, even though the activities are carried on at more than a single physical location.

"Failure to abate" means that the employer has failed to correct a cited violation within the period permitted for its correction.

"FOIA" means the Freedom of Information Act.

"Gravity based penalty" means an unadjusted penalty that is calculated based on the severity of the hazard and the probability that an injury or illness would result from the hazard.

"High gravity violation" means a violation with a gravity based penalty calculated at the statutory maximums contained in subsections H, I, and J of § 40.1-49.4 of the Code of Virginia.

"Imminent danger condition" means any condition or practice in any place of employment such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through standard enforcement procedures provided by Title 40.1 of the Code of Virginia.

"OSHA" means the Occupational Safety and Health Administration of the ~~United States~~ U.S. Department of Labor.

"Other violation" means a violation which is not, by itself, a serious violation within the meaning of the law but which has a direct or immediate relationship to occupational safety or health.

"Person" means any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.

~~"Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.~~

"Public employee" means any employee of a public employer. Volunteer members of volunteer fire departments, pursuant to § 27-42 of the Code of Virginia, members of volunteer rescue squads who serve without pay, and other volunteers pursuant to the Virginia State Government Volunteers Act are not public employees. Prisoners confined in jails controlled by any political subdivision of the Commonwealth and prisoners in institutions controlled by the Department of Corrections are not public employees unless employed by a public employer in a work-release program pursuant to § 53.1-60 or ~~§~~ 53.1-131 of the Code of Virginia.

"Public employer" means the Commonwealth of Virginia, including its agencies, authorities, or instrumentalities or any political subdivision or public body.

"Recordable occupational injury and illness" means (i) a fatality, regardless of the time between the injury and death or the length of illness; (ii) a nonfatal case that results in lost work days; or (iii) a nonfatal case without lost work days which results in transfer to another job or termination of employment, which requires medical treatment other than first aid, or involves loss of consciousness or restriction of work or motion. This category also includes any diagnosed occupational illness which is reported to the employer but is not otherwise classified as a fatality or lost work day case.

"Repeated violation" means a violation deemed to exist in a place of employment that is substantially similar to a previous violation of a law, standard or regulation that was the subject of a prior final order against the same employer. A repeated violation results from an inadvertent or accidental act, since a violation otherwise repeated would be willful.

"Serious violation" means a violation deemed to exist in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations, or processes which have been adopted or are in use, in such place of employment, unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation. The term "substantial probability" does not refer to the likelihood that illness or injury will result from the violative condition but to the likelihood that, if illness or injury does occur, death or serious physical harm will be the result.

"Standard" means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.

"VOSH" means Virginia Occupational Safety and Health.

"Willful violation" means a violation deemed to exist in a place of employment where (i) the employer committed an intentional and knowing, as contrasted with inadvertent, violation and the employer was conscious that what he was doing constituted a violation; or (ii) the employer, even though not consciously committing a violation, was aware that a hazardous condition existed and made no reasonable effort to eliminate the condition.

"Working days" means Monday through Friday, excluding legal holidays, Saturday, and Sunday.

Part II
General Provisions

16VAC25-60-20. Jurisdiction.

All Virginia statutes, standards, and regulations pertaining to occupational safety and health shall apply to every employer, employee, and place of employment in the Commonwealth of Virginia except where:

1. The United States is the employer or exercises exclusive jurisdiction;

2. The federal Occupational Safety and Health Act of 1970 does not apply by virtue of § 4(b)(1) of that Act. The commissioner shall consider federal OSHA case law in determining where jurisdiction over specific working conditions has been preempted by the regulations of a federal agency; or

3. The employer is a public employer, as that term is defined in this chapter. In such cases, the Virginia laws, standards, and regulations governing occupational safety and health are applicable as stated, including 16VAC25-60-10, 16VAC25-60-30, 16VAC25-60-260, 16VAC25-60-280, 16VAC25-60-290, and 16VAC25-60-300.

16VAC25-60-30. Applicability to public employers.

A. All occupational safety and health standards adopted by the board shall apply to public employers and their employees in the same manner as to private employers.

B. All sections of this chapter shall apply to public employers and their employees. Where specific procedures are set out for the public sector, such procedures shall take precedence.

C. The following portions of Title 40.1 of the Code of Virginia shall apply to public employers: ~~§§~~ § 40.1-10~~,~~; subdivisions A 1 and A 4, except that the reference to subsection G in subdivision A ~~1~~ 4 does not apply, and subsections C, D, H, I, and J of § 40.1-49.4~~,~~; and §§ 40.1-49.8, 40.1-51, 40.1-51.1, 40.1-51.2, 40.1-51.2:1, 40.1-51.3, 40.1-51.3:2, and 40.1-51.4:2.

D. Section 40.1-51.2:2 A of the Code of Virginia shall apply to the Commonwealth and its agencies except that the commissioner shall not bring action in circuit court in the event that a voluntary agreement cannot be obtained.

E. Sections 40.1-7, [~~Subdivision~~ subdivision] A 4, except that the reference to subsection G in subdivision A 4 does not apply, and subsections C, D, F, H, I, and J of § [40.1-49.4 ~~F~~] of the Code of Virginia and §§ 40.1-49.9, 40.1-49.10, 40.1-49.11, 40.1-49.12, and 40.1-51.2:2 of the Code of Virginia shall apply to public employers other than the Commonwealth and its agencies.

F. If the commissioner determines that an imminent danger situation, as defined in § 40.1-49.4 F of the Code of Virginia, exists for an employee of the Commonwealth or one of its agencies, and if the employer does not abate that imminent danger immediately upon request, the Commissioner of Labor and Industry shall forthwith petition the governor to direct that the imminent danger be abated.

G. If the commissioner is unable to obtain a voluntary agreement to resolve a violation of § 40.1-51.2:1 of the Code of Virginia by the Commonwealth or one of its agencies, the Commissioner of Labor and Industry shall petition for redress in the manner provided in 16VAC25-60-300 B.

Part VI
Citation and Penalty

16VAC25-60-260. Issuance of citation and proposed penalty.

A. Each citation shall be in writing and describe with particularity the nature of the violation or violations, including a reference to the appropriate safety or health provision of Title 40.1 of the Code of Virginia or the appropriate rule, regulation, or standard. In addition, the citation must fix a reasonable time for abatement of the violation. The commissioner shall have authority to propose penalties for cited violations in accordance with § 40.1-49.4 of the Code of Virginia and this chapter. The citation will contain substantially the following: "NOTICE: This citation will become a final order of the commissioner unless contested within fifteen working days from the date of receipt by the employer." The citation may be delivered to the employer or his agent by the commissioner or may be sent by certified mail or by personal service to an officer or agent of the employer or to the registered agent if the employer is a corporation.

No citation may be issued after the expiration of six months following the occurrence of any alleged violation. The six-month timeframe is deemed to be tolled on the date the citation is issued by the commissioner, without regard for when the citation is received by the employer. For purposes of calculating the six-month timeframe for citation issuance, the following requirements shall apply:

1. The six-month timeframe begins to run on the day after the incident or event occurred or notice was received by

the commissioner (as specified ~~below)~~ in subdivisions 1 [~~b~~] through [~~e~~ 5] of this subsection), in accordance with § 1-210 A of the Code of Virginia. The word "month" shall be construed to mean one calendar month in accordance with § 1-223 of the Code of Virginia.

2. An alleged violation is deemed to have "occurred" on the day it was initially created by commission or omission on the part of the creating employer, and every day thereafter that it remains in existence uncorrected.

3. Notwithstanding subdivision 1 of this subsection, if an employer fails to notify the commissioner of any work-related incident resulting in a fatality or in the in-patient hospitalization of three or more persons within eight hours of such occurrence as required by § 40.1-51.1 D of the Code of Virginia, the six-month timeframe shall not be deemed to commence until the commissioner receives actual notice of the incident.

4. Notwithstanding subdivision 1 of this subsection, if the commissioner is first notified of a work-related incident resulting in an injury or illness to an employee or employees through receipt of an Employer's Accident Report (EAR) form from the Virginia Workers' Compensation Commission as provided in § 65.2-900 of the Code of Virginia, the six-month timeframe shall not be deemed to commence until the commissioner actually receives the EAR form.

5. Notwithstanding subdivision 1 of this subsection, if the commissioner is first notified of a work-related hazard, or incident resulting in an injury or illness to an employee or employees, through receipt of a complaint in accordance with 16VAC25-60-100 or referral, the six-month timeframe shall not be deemed to commence until the commissioner actually receives the complaint or referral.

B. A citation issued under subsection A of this section to an employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. Employees of such employer have been provided with the proper training and equipment to prevent such a violation;

2. Work rules designed to prevent such a violation have been established and adequately communicated to employees by such employer and have been effectively enforced when such a violation has been discovered;

3. The failure of employees to observe work rules led to the violation; and

4. Reasonable steps have been taken by such employer to discover any such violation.

C. For the purposes of subsection B of this section only, the term "employee" shall not include any officer, management official or supervisor having direction, management control or custody of any place of employment which was the subject of the violative condition cited.

D. The penalties as set forth in § 40.1-49.4 of the Code of Virginia shall also apply to violations relating to the requirements for recordkeeping, reports or other documents filed or required to be maintained and to posting requirements.

E. In determining the amount of the proposed penalty for a violation the commissioner will ordinarily be guided by the system of penalty adjustment set forth in the VOSH Field Operations Manual. In any event the commissioner shall consider the gravity of the violation, the size of the business, the good faith of the employer, and the employer's history of previous violations.

The commissioner shall have authority to propose civil penalties to public employers for willful, repeat, and failure-to-abate violations in accordance with subsections I and J of § 40.1-49.4, and for serious violations that cause death to an employee or are classified as high gravity in accordance with subsection H of § 40.1-49.4.

F. On multi-employer worksites for all covered industries, citations shall normally be issued to an employer whose employee is exposed to an occupational hazard (the exposing employer). Additionally, the following employers shall normally be cited, whether or not their own employees are exposed:

1. The employer who actually creates the hazard (the creating employer);

2. The employer who is either:

a. Responsible, by contract or through actual practice, for safety and health conditions on the entire worksite, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or

b. Responsible, by contract or through actual practice, for safety and health conditions for a specific area of the worksite, or specific work practice, or specific phase of a construction project, and has the authority for ensuring that the hazardous condition is corrected (the controlling employer); or

3. The employer who has the responsibility for actually correcting the hazard (the correcting employer).

G. A citation issued under subsection F of this section to an exposing employer who violates any VOSH law, standard, rule or regulation shall be vacated if such employer demonstrates that:

1. The employer did not create the hazard;

2. The employer did not have the responsibility or the authority to have the hazard corrected;

3. The employer did not have the ability to correct or remove the hazard;

4. The employer can demonstrate that the creating, the controlling or the correcting employers, as appropriate, have been specifically notified of the hazards to which his employees were exposed;

5. The employer has instructed his employees to recognize the hazard and, where necessary, informed them how to avoid the dangers associated with it;

6. Where feasible, an exposing employer must have taken appropriate alternative means of protecting employees from the hazard; and

7. When extreme circumstances justify it, the exposing employer shall have removed his employees from the job.

H. The commissioner's burden of proving the basis for a VOSH citation, penalty, or order of abatement is by a preponderance of the evidence.

I. The burden of proof in establishing an affirmative defense to a VOSH citation resides with the employer.

16VAC25-60-270. Contest of citation or proposed penalty; general proceedings.

A. An employer to whom a citation, abatement order, or proposed penalty has been issued may contest the citation by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from the receipt of the citation or proposed penalty. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15-working-day period in which the employer must contest.

B. The notice of contest shall indicate whether the employer is contesting the alleged violation, the proposed penalty or the abatement time.

C. Employees may contest abatement orders by notifying the commissioner in the same manner as described in subsection A of this section.

~~C.~~ D. The employer's contest of a citation or proposed penalty shall not affect the citation posting requirements of 16VAC25-60-40 unless and until the court ruling on the contest vacates the citation.

~~D.~~ E. When the commissioner has received written notification of a contest of citation or proposed penalty, he will attempt to resolve the matter by settlement, using the procedures of 16VAC25-60-330 and 16VAC25-60-340.

~~E.~~ F. If the matter is not settled or it is determined that settlement does not appear probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth's Attorney and arranging for the filing of a bill of complaint and issuance of a subpoena to the employer.

~~F.~~ G. A contest of the proposed penalty only shall not stay the time for abatement.

16VAC25-60-280. General contest proceedings applicable to the public sector.

~~A. The commissioner will not propose penalties for citations issued to public employers.~~

~~B.~~ A. Public employers may contest citations ~~or,~~ abatement orders, or proposed penalties by notifying the commissioner in writing of the contest. The notice of contest must be mailed or delivered by hand within 15 working days from receipt of the citation or abatement order. No mistake, inadvertence, or neglect on the part of the employer shall serve to extend the 15-working-day period during which the employer may contest.

~~C.~~ B. The notice of contest shall indicate whether the public employer is contesting the alleged violations, the proposed penalty, or the abatement order.

~~D.~~ C. Public employees may contest abatement orders by notifying the commissioner in the same manner as described at subsection ~~B~~ A of this section.

~~E.~~ D. The commissioner shall seek to resolve any controversies or issues rising from a citation issued to any public employer in an informal conference as described in 16VAC25-60-330.

~~F.~~ E. The contest by a public employer shall not affect the requirements to post the citation as required at 16VAC25-60-40 unless and until the commissioner's or the court ruling on the contest vacates the citation. A contest of a citation may stay the time permitted for abatement pursuant to § 40.1-49.4 C of the Code of Virginia.

F. A contest of the proposed penalty only shall not stay the time for abatement.

VA.R. Doc. No. R17-4963; Filed September 5, 2018, 11:57 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

Final Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-320, 18VAC110-20-540, 18VAC110-20-550, 18VAC110-20-555).**

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Effective Date: October 31, 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.

Summary:

In response to two separate petitions for rulemaking, the amendments (i) permit a pharmacist, when deemed appropriate in the pharmacist's professional judgement and upon request by the patient, to dispense a quantity of a Schedule VI drug, excluding certain drugs, in excess of the specific quantity prescribed for a dispensing, not to exceed the total amount authorized in refills and (ii) authorize the use of automated dispensing devices in nursing homes in lieu of manual emergency drug kits and stat-drug boxes.

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

18VAC110-20-320. [~~Refilling~~ Dispensing or refilling] of ~~Schedule~~ Schedules III through VI prescriptions.

A. A prescription for a drug listed in Schedule III, IV, or V shall not be dispensed or refilled more than six months after the date on which such prescription was issued, and no such prescription authorized to be filled may be refilled more than five times.

1. Each refilling of a prescription shall be entered on the back of the prescription or on another record in accordance with § 54.1-3412 [of the Code of Virginia] and 18VAC110-20-255, initialed [,] and dated by the pharmacist as of the date of dispensing. If the pharmacist merely initials and dates the prescription, it shall be presumed that the entire quantity ordered was dispensed.

2. The partial dispensing of a prescription for a drug listed in Schedule III, IV, or V is permissible, provided that:

a. Each partial dispensing is recorded in the same manner as a refilling;

b. The total quantity of drug dispensed in all partial dispensing does not exceed the total quantity prescribed; and

c. No dispensing occurs after six months after the date on which the prescription order was issued.

B. A prescription for a drug listed in Schedule VI ~~shall~~ may be refilled ~~only~~ as ~~expressly~~ authorized by the practitioner. If no such authorization is given, the prescription shall not be refilled, except as provided in § 54.1-3410 C or subdivision 4 of § 54.1-3411 of the Code of Virginia. Except for drugs classified by the American Hospital Formulary Service as psychotherapeutic agents, anxiolytics, sedatives, or hypnotics or for drugs of concern as defined in § 54.1-2519 of the Code of Virginia, a pharmacist, using professional judgment and upon request by the patient, may [dispense or] refill a drug listed in Schedule VI with any quantity, up to the total amount authorized, taking all refills into consideration.

A prescription for a Schedule VI drug or device shall not be dispensed or refilled more than one year after the date on which it was issued unless the prescriber specifically authorizes dispensing or refilling for a longer period of time not to exceed two years.

C. As an alternative to all manual recordkeeping requirements provided for in subsections A and B of this section, an automated data processing system as provided in 18VAC110-20-250 may be used for the storage and retrieval of all or part of dispensing information for prescription drugs dispensed.

D. The timing of dispensing an authorized refill of a prescription shall be within reasonable conformity with the directions for use as indicated by the practitioner; if directions have not been provided, then any authorized refills may only be dispensed in reasonable conformity with the recommended dosage and with the exercise of sound professional judgment. An authorized refill may be dispensed early provided the pharmacist documents a valid reason for the necessity of the early refill.

18VAC110-20-540. Emergency drug kit.

A. The pharmacist providing services may prepare an emergency kit for a long-term care facility in which access to the kit is restricted to a licensed nurse, pharmacist, or prescriber and only these licensed individuals may administer a drug taken from the kit and only under the following conditions:

1. The contents of the emergency kit shall be of such a nature that the absence of the drugs would threaten the survival of the patients.

2. The contents of the kit or an automated drug dispensing system, as provided in subsection B of this section, shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the institutions and shall be limited to drugs for administration by injection or inhalation only, except that Nitroglycerin SL [~~and,~~] diazepam rectal gel [, and the intranasal spray formulation of naloxone] may be included.

3. The kit is sealed in such a manner that it will preclude any possible loss of the drug.

a. The dispensing pharmacy must have a method of sealing such kits so that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication, resealing, or both. The pharmacy shall maintain a record of the seal identifiers when placed on a box or kit and maintain the record until such time as the seal is replaced.

c. In lieu of seals, a kit with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy is also acceptable.

4. The kit shall have a form to be filled out upon opening the kit and removing contents to write the name of the person opening the kit, the date, time [,] and name and quantity of items removed. The opened kit is maintained under secure conditions and returned to the pharmacy within 72 hours for replenishing.

5. Any drug used from the kit shall be covered by a prescription, signed by the prescriber, when legally required, within 72 hours.

B. Drugs that would be stocked in an emergency kit, pursuant to this section, may be stocked in an automated drug dispensing system in a nursing home in accordance with 18VAC110-20-555.

18VAC110-20-550. Stat-drug box.

A. An additional drug box called a stat-drug box may be prepared by a pharmacy to provide for initiating therapy prior to the receipt of ordered drugs from the pharmacy. Access to the stat-drug box is restricted to a licensed nurse, pharmacist, or prescriber and only these licensed individuals may administer a drug taken from the stat-drug box. Additionally, a valid prescription or lawful order of a prescriber must exist prior to the removal of any drug from the stat-drug box. A stat-drug box shall be subject to the following conditions:

1. The box is sealed in such a manner that will preclude the loss of drugs.

a. The dispensing pharmacy must have a method of sealing such boxes so that once the seal is broken, it cannot be reasonably resealed without the breach being detected.

b. If a seal is used, it shall have a unique numeric or alphanumeric identifier to preclude replication or resealing, or both. The pharmacy shall maintain a record of the seal identifiers when placed on a box and maintain the record until such time as the seal is replaced.

c. In lieu of seals, a box with a built-in mechanism preventing resealing or relocking once opened except by the provider pharmacy is also acceptable.

2. The box shall have a form to be filled out upon opening the box and removing contents to write the name of the person opening the box, the date, the time, and the name and quantity of ~~item(s)~~ items removed. When the stat-drug box has been opened, it is returned to the pharmacy.

3. There shall be a listing of the contents of the box maintained in the pharmacy and also attached to the box in the facility. This same listing shall become a part of the policy and procedure manual of the facility served by the pharmacy.

4. The drug listing on the box shall bear an expiration date for the box. The expiration date shall be the day on which the first drug in the box will expire.

5. The contents of the box shall be limited to those drugs in which a delay in initiating therapy may result in harm to the patient.

a. The listing of drugs contained in the stat-drug box shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the long-term care facility.

b. The stat-drug box shall contain no more than 20 solid dosage units per schedule of ~~Schedule~~ Schedules II through V drugs except that one unit of liquid, not to exceed 30 ml, may be substituted for a solid dosage unit. If the unit of a liquid that may contain more than one dose is removed from the stat-drug box pursuant to a patient order, the remainder shall be stored with that patient's other drugs, may be used for subsequent doses administered to that patient, and shall not be administered to any other patient.

B. Drugs that would be stocked in a stat-drug box, pursuant to this section, may be stocked in an automated drug dispensing system in a nursing home in accordance with 18VAC110-20-555, except that the quantity of drugs in Schedules II through V stocked in the system shall be determined by the provider pharmacist in consultation with the medical and nursing staff of the nursing home.

18VAC110-20-555. Use of automated dispensing devices.

Nursing homes licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title 32.1 of the Code of Virginia may use automated drug dispensing systems, as defined in § 54.1-3401 of the Code of Virginia, upon meeting the following conditions:

1. Drugs placed in an automated drug dispensing system in a nursing home shall be under the control of the pharmacy providing services to the nursing home, the pharmacy shall have ~~on-line~~ online communication with and control of the automated drug dispensing system, and access to any drug for a patient shall be controlled by the pharmacy.

2. A nursing home without an in-house pharmacy shall obtain a controlled substances registration prior to using an automated dispensing system, unless the system is exclusively stocked with drugs that would be kept in a stat-drug box pursuant to 18VAC110-20-550 or an emergency drug kit pursuant to 18VAC110-20-540 and are solely administered for stat or emergency administration.

3. For facilities not required to obtain a controlled substance registration, access to the automated dispensing device shall be restricted to a licensed nurse, pharmacist, or prescriber, or a registered pharmacy technician for the purpose of stocking or reloading.

4. Removal of drugs from any automated drug dispensing system for administration to patients can only be made pursuant to a valid prescription or lawful order of a prescriber under the following conditions:

a. A drug, including a drug that would be stocked in a stat-drug box pursuant to subsection B of 18VAC110-20-550, may not be administered to a patient from an automated dispensing device until a pharmacist has reviewed the prescription order and electronically authorized the access of that drug for that particular patient in accordance with the order.

b. The PIC of the provider pharmacy shall ensure that a pharmacist who has ~~on-line~~ online access to the system is available at all times to review a prescription order as needed and authorize administering pursuant to the order reviewed.

c. Drugs that would be stocked in an emergency drug kit pursuant to 18VAC110-20-540 may be accessed prior to receiving electronic authorization from the pharmacist provided that the absence of the drugs would threaten the survival of the patients.

d. Automated dispensing devices shall be capable of producing a hard-copy record of distribution that shall show patient name, drug name and strength, dose withdrawn, dose to be administered, date and time of withdrawal from the device, and identity of person withdrawing the drug.

~~4.~~ 5. Drugs placed in automated dispensing devices shall be in the manufacturer's sealed original unit dose or unit-of-use packaging or in repackaged unit-dose containers in compliance with the requirements of 18VAC110-20-355 relating to repackaging, labeling, and records.

~~5.~~ 6. Prior to the removal of drugs from the pharmacy, a delivery record shall be generated for all drugs to be placed in an automated dispensing device, which shall include the date; drug name, dosage form, and strength; quantity; nursing home; a unique identifier for the specific device receiving drugs; and initials of the pharmacist checking the order of drugs to be removed from the pharmacy and the records of distribution for accuracy.

~~6.~~ 7. At the direction of the PIC, drugs may be loaded in the device by a pharmacist or a pharmacy technician adequately trained in the proper loading of the system.

~~7.~~ 8. At the time of loading, the delivery record for all ~~Schedule~~ Schedules II through VI drugs shall be signed by a nurse or other person authorized to administer drugs from that specific device, and the record returned to the pharmacy.

~~8.~~ 9. At the time of loading any ~~Schedule~~ Schedules II through V drug, the person loading will verify that the count of that drug in the automated dispensing device is correct. Any discrepancy noted shall be recorded on the delivery record and immediately reported to the PIC, who shall be responsible for reconciliation of the discrepancy or the proper reporting of a loss.

~~9.~~ 10. The PIC of the provider pharmacy or his designee shall conduct at least a monthly audit to review distribution and administration of ~~Schedule~~ Schedules II through V drugs from each automated dispensing device as follows:

a. The audit shall reconcile records of all quantities of ~~Schedule~~ Schedules II through V drugs dispensed from the pharmacy with records of all quantities loaded into each device to detect whether any drugs recorded as removed from the pharmacy were diverted rather than being placed in the proper device.

b. A discrepancy report shall be generated for each discrepancy in the count of a drug on hand in the device. Each such report shall be resolved by the PIC or his designee within 72 hours of the time the discrepancy was discovered or, if determined to be a theft or an unusual loss of drugs, shall be immediately reported to the board in accordance with § 54.1-3404 E of the Drug Control Act.

c. The audit shall include a review of a sample of administration records from each device per month for possible diversion by fraudulent charting. A sample shall include all ~~Schedule~~ Schedules II through V drugs administered for a time period of not less than 24 consecutive hours during the audit period.

d. The audit shall include a check of medical records to ensure that a valid order exists for a random sample of doses recorded as administered.

e. The audit shall also check for compliance with written procedures for security and use of the automated dispensing devices, accuracy of distribution from the device, and proper recordkeeping.

f. The hard copy distribution and administration records printed out and reviewed in the audit shall be initialed and dated by the person conducting the audit. If nonpharmacist personnel conduct the audit, a pharmacist shall review the record and shall initial and date the record.

~~10.~~ 11. Automated dispensing devices shall be inspected monthly by pharmacy personnel to verify proper storage, proper location of drugs within the device, expiration dates, the security of drugs and validity of access codes.

~~11.~~ 12. Personnel allowed access to an automated dispensing device shall have a specific access code which records the identity of the person accessing the device.

~~12.~~ 13. The PIC of the pharmacy providing services to the nursing home shall establish, maintain, and assure compliance

with written policy and procedure for the accurate stocking and proper storage of drugs in the automated drug dispensing system, accountability for and security of all drugs maintained in the automated drug dispensing system, preventing unauthorized access to the system, tracking access to the system, complying with federal and state regulations related to the storage and dispensing of controlled substances, maintaining patient confidentiality, maintaining required records, and assuring compliance with the requirements of this chapter. The manual shall be capable of being accessed at both the pharmacy and the nursing home.

~~13.~~ 14. All records required by this section shall be filed in chronological order from date of issue and maintained for a period of not less than two years. Records shall be maintained at the address of the pharmacy providing services to the nursing home except:

a. Manual Schedule VI distribution records may be maintained in offsite storage or electronically as an electronic image that provides an exact image of the document that is clearly legible provided such offsite or electronic storage is retrievable and made available for inspection or audit within 48 hours of a request by the board or an authorized agent.

b. Distribution and delivery records and required signatures may be generated or maintained electronically provided:

(1) The system being used has the capability of recording an electronic signature that is a unique identifier and restricted to the individual required to initial or sign the record.

(2) The records are maintained in a read-only format that cannot be altered after the information is recorded.

(3) The system used is capable of producing a hard-copy printout of the records upon request.

c. ~~Schedule II V~~ Schedules II through V distribution and delivery records may only be stored offsite or electronically as described in subdivisions [~~13~~ 14] a and [~~13~~ 14] b of this section if authorized by DEA or in federal law or regulation.

d. Hard-copy distribution and administration records that are printed and reviewed in conducting required audits may be maintained ~~off-site~~ offsite or electronically provided they can be readily retrieved upon request; provided they are maintained in a read-only format that does not allow alteration of the records; and provided a separate log is maintained for a period of two years showing dates of audit and review, the identity of the automated dispensing device being audited, the time period covered by the audit and review, and the initials of all reviewers.

VA.R. Doc. No. R16-27; Filed August 30, 2018, 11:43 a.m.

REAL ESTATE BOARD

Final Regulation

REGISTRAR'S NOTICE: The Real Estate Board 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 where no agency discretion is involved. The Real Estate Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-180).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Effective Date: November 1, 2018.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Summary:

Chapters 60 and 86 of the 2018 Acts of Assembly add § 54.1-2108.2 of the Code of Virginia, concerning protection of escrow funds in the event of termination of a real estate purchase contract. The amendments conform the regulation to the act and include (i) updating the notice provisions and required procedures a real estate broker must follow when releasing escrow funds in the event of termination of a real estate purchase contract and (ii) clarifying that fulfilling the requirements enumerated in the regulation provide a real estate broker immunity from liability to parties of the real estate contract.

18VAC135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository into which all down payments, earnest money deposits, money received upon final settlement, application deposits as defined by § 55-248.4 of the Code of Virginia, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be

sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the accounts shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

4. Lease transactions: application deposits. Any application deposit as defined by § 55-248.4 of the Code of Virginia paid by a prospective tenant for the purpose of being considered as a tenant for a dwelling unit to a licensee acting on behalf of a landlord client shall be placed in escrow by the end of the fifth business banking day following approval of the rental application by the landlord unless all principals to the lease transaction have agreed otherwise in writing.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, an earnest money ~~deposits and down payments~~ deposit received by the principal broker or supervising broker or his associates ~~must~~ shall be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event that the transaction is not consummated ~~(nonconsummation)~~, the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in ~~writing~~ a written agreement as to their disposition, ~~and~~ upon which the funds shall be returned to the agreed upon principal ~~within 20 days of the~~ as provided in such written agreement, (ii) a court of competent jurisdiction orders such disbursement of the funds, (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section, or (iv) the broker ~~can pay~~ releases the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract that established the earnest money deposit. ~~In the latter event, prior to disbursement~~ At the option of a broker, written notice may be sent by the broker ~~shall give written notice to the principal to the transaction not to receive the deposit by either~~ that release of such funds shall be made unless a written protest is received from the principal who is not receiving the funds by such broker within 15 calendar days of the date of such notice. Notice of a disbursement shall be given to the parties to the transaction in accordance with the contract, but if the contract does not specify a method of delivery, one of the following methods complies with this section: (i) hand delivery ~~receipted for by the addressee,or;~~ (ii) ~~certified~~ United States mail ~~return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No~~, postage prepaid, provided that the sender retains sufficient proof of mailing, which may be either a United States postal certificate of mailing or a certificate of service prepared by the sender confirming such mailing; (iii) electronic means, provided that the sender retains sufficient proof of the electronic delivery, which may be an electronic receipt of delivery, a confirmation that the notice was sent by facsimile, or a certificate of service prepared by the sender confirming the electronic delivery; or (iv) overnight delivery using a commercial service or the United States Postal Service. Except as provided in the clear and explicit terms of the contract, no broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. ~~The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination.~~ A broker who ~~has carried out the above procedure~~ complies with this section shall be ~~construed to have fulfilled the requirements of this chapter~~ immune from liability to any of the parties to the contract.

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia and otherwise comply with the provisions of § 54.1-2108.1 of the Code of Virginia.

If there is in effect at the date of the foreclosure sale a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker or supervising broker may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the principals.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing in this section shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: prepaid rent or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all prepaid rent and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable, except the prepaid rent, which shall be treated in accordance with the prepaid rent provision of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia.

d. Lease transactions: rent payments. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the rent is paid to a licensee acting on behalf of the landlord pursuant to a properly executed property management agreement, the licensee may collect the rent in accordance with § 54.1-2108.1 A 4 of the Code of Virginia.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant. Except in the event of a foreclosure, if a licensee elects to terminate the property management agreement with the landlord, the licensee may transfer any funds held in escrow on behalf of the landlord in accordance with § 54.1-2108.1 B 5 of the Code of Virginia. If there is in effect at the date of the foreclosure sale a written property management agreement between the licensee and the landlord, the property management agreement shall continue in accordance with § 54.1-2108.1 A 5 of the Code of Virginia.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of

contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction (e.g., fees for appraisal, insurance, credit report, etc.) shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

VA.R. Doc. No. R19-5659; Filed September 7, 2018, 12:41 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-601. Supplemental Nutrition Assistance Program (adding 22VAC40-601-70).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 7 CFR 271.4.

Effective Date: October 31, 2018.

Agency Contact: Vanea Preston, Assistant Director, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7889, FAX (804) 726-7356, TTY (800) 828-1120, or email vanea.preston@dss.virginia.gov.

Summary:

The section allows amounts paid by a Supplemental Nutrition Assistance Program (SNAP) household member for child support pursuant to a court or administrative order to be excluded as countable income for SNAP-eligibility purposes.

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.

22VAC40-601-70. Income exclusion for legally obligated child support payments.

Legally obligated child support payments paid by a SNAP household member to or for a nonhousehold member will be allowed as an exclusion from countable income for SNAP purposes.

VA.R. Doc. No. R17-4595; Filed September 5, 2018, 8:37 a.m.

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

DEPARTMENT OF TRANSPORTATION

Final Regulation

REGISTRAR'S NOTICE: The Department of Transportation is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 B 11 of the Code of Virginia, which exempts regulations relating to traffic signs, markers, or control devices.

Title of Regulation: **24VAC30-630. Rules Governing Person with Disability Traffic Signs (adding 24VAC30-630-10, 24VAC30-630-20).**

Statutory Authority: § 46.2-830.2 of the Code of Virginia.

Effective Date: October 31, 2018.

Agency Contact: JoAnne P. Maxwell, Agency Regulatory Coordinator, Governance and Legislative Affairs Division, Department of Transportation, 1401 East Broad Street, Richmond, VA 23219, telephone (804) 786-1830, FAX (804) 225-4700, or email joanne.maxwell@vdot.virginia.gov.

Summary:

Pursuant to Chapter 432 of the 2018 Acts of Assembly, which requires the Department of Transportation to establish regulations governing the installation of signs informing drivers that a person with a disability may be

present in or around the roadway, the new regulation establishes who qualifies for a sign, how an individual requests a sign, and the requirements to which signs shall conform, including those in the Manual on Uniform Traffic Control Devices for Streets and Highways and the Virginia Supplement to the Manual on Uniform Traffic Control Devices for Streets and Highways.

CHAPTER 630
RULES GOVERNING PERSON WITH DISABILITY TRAFFIC SIGNS

24VAC30-630-10. Requests for signs.

A. Any person who is deaf, blind, or deaf-blind; any person with autism or an intellectual or developmental disability as defined in § 37.2-100 of the Code of Virginia; or the agent of any such person may submit a request to the Virginia Department of Transportation (VDOT) by filling out a Request for Person with Disability Sign Form and submitting the completed form to the local VDOT office in the area where the sign is requested. The submitted form must include (i) medical certification that such person meets the disability requirement and (ii) the location of the requested sign.

B. Signs shall conform to the edition of the Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD) and the Virginia Supplement to the MUTCD in 24VAC30-315-10.

C. The requestor shall notify the VDOT office to which the original request was made of any change in circumstances such that the sign is no longer necessary (e.g., when the person with a disability relocates).

24VAC30-630-20. Signs; type, size, color, location, and installation.

A. Signs warning drivers to be aware of persons with disabilities must be posted on a non-limited access highway maintained by the Virginia Department of Transportation (VDOT) and shall be installed in advance of the location where a person with a disability may be on or near the roadway, such that motorists may effectively perceive and respond to the signs.

B. The type, size, color, installation, and specific location of signs shall be determined at VDOT's discretion using engineering judgment in accordance with related VDOT procedures and regulations (including the MUTCD and the Virginia Supplement to the MUTCD as referenced in 24VAC30-630-10).

C. Signs warning drivers to be aware of persons with disabilities may not be posted:

1. Where any pedestrian activity is highly discouraged due to safety concerns.

2. Where they may conflict with, are redundant to, or in combination (e.g., on the same pole) with any other regulatory or warning signs.

3. Closer than 200 feet to any existing regulatory or warning signs.

4. At signalized locations such as crosswalks at intersections or pedestrian hybrid beacons. Requests concerning a person with a visual disability and the absence of accessible pedestrian signals at a particular traffic signal will be addressed separately.

5. At a crossing with an existing rectangular rapid flashing beacon. Requests concerning a person with a visual disability and the absence of audible information devices will be addressed separately.

6. At any location in which the presence of the sign would otherwise create a safety concern, in the discretion of VDOT.

NOTICE: Forms used in administering the regulations have been 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 the 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 (24VAC30-630)

Request for Person with Disability Sign Form (eff. 7/2018)

VA.R. Doc. No. R19-5548; Filed September 4, 2018, 8:27 a.m.

EXECUTIVE ORDER NUMBER SEVENTEEN (2018)

Amended
Declaration of a State of Emergency for the Commonwealth of Virginia Due to Potential Impacts from Hurricane Florence

Importance of the Issue

On September 8, 2018, I declared that a state of emergency exists in the Commonwealth of Virginia based on the need to prepare and coordinate our response for potential impacts from Hurricane Florence. National Weather Service forecasts indicate Hurricane Florence could produce damaging winds, periods of heavy rainfall, power outages, and flooding in the Commonwealth. These conditions have the potential to impact life safety and create significant transportation issues throughout Virginia.

State action is required to protect the health and general welfare of Virginia residents. The anticipated effects of this situation constitute a disaster wherein human life and public and private property are, or are likely to be, imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby proclaim a state of emergency exists. Accordingly, I direct state and local governments to render appropriate assistance to prepare for the impacts of Hurricane Florence, to alleviate any conditions resulting from the situation, and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions as much as possible.

In order to marshal all public resources and appropriate preparedness, response, and recovery measures to meet this threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Code of Virginia, I order the following:

A. Implementation of the Commonwealth of Virginia Emergency Operations Plan (COVEOP), as amended, by state agencies along with other appropriate state plans.

B. Activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Support Team (VEST), as directed by the State Coordinator of Emergency Management, to coordinate the provision of assistance to local governments and emergency services assignments of other agencies as necessary and determined by the State Coordinator of Emergency Management and other agencies as appropriate.

C. Activation of the Virginia National Guard and the Virginia Defense Force to state active duty to assist in providing such aid. This shall include Virginia National Guard assistance to the Virginia Department of State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police (in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety and Homeland Security) may find necessary. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of the Department of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the Virginia State Police officers appointed by the Superintendent. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and are not subject to the civilian authorities of county or municipal governments.

D. Evacuation of areas threatened or stricken by effects of this event, as appropriate. Pursuant to § 44-146.17(1) of the Code of Virginia, I reserve the right to direct and compel the evacuation of all or part of the populace therein from such areas upon a determination by the State Coordinator of Emergency Management. I reserve the right to control the ingress and egress at an emergency area, including the movement of persons within the area and the occupancy of premises therein based upon a determination made by the State Coordinator of Emergency Management. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. Activation, implementation, and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to §§ 44-146.17(5) and 44-146.28:1 of the Code of Virginia. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. This Emergency Declaration implements limited relief from the provisions of 49 CFR §§ 390.23 and 395.3 for the purpose of providing direct relief or assistance as a result of this disaster.

G. Authorization of the Virginia Departments of State Police, Transportation, and Motor Vehicles to grant temporary

overweight, over width, registration, license, or hours of service exemptions to all carriers transporting essential emergency relief supplies to, through and from any area of the Commonwealth. This authorization also applies to water, food, heating oil, motor fuels or propane, or agricultural products, agricultural supplies, livestock and poultry, livestock and poultry feed, forest products and salvaged wood, waste, and trees cut in preparation for the storm, or providing restoration of utilities (including but not limited to electricity, gas, phone, water, wastewater, and cable) or removal of waste to, through and from any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination. Weight exemptions are not valid on posted structures for restricted weight. Weight exemptions are also not valid on interstate highways unless there is an associated Federal emergency declaration. The exemption shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or 30 days from the initial declaration of emergency, whichever is less.

1. All over width loads, up to a maximum of 12 feet, and over height loads up to a maximum of 14 feet must follow Virginia Department of Motor Vehicles hauling permit and safety guidelines.

2. In addition to described overweight/over width transportation privileges, carriers are also exempt from vehicle registration with the Department of Motor Vehicles. This includes vehicles en route and returning to their home base. The agencies cited in this provision shall communicate this information to all staff responsible for permit issuance and truck legalization enforcement.

H. Implementation and discontinuance of the transportation-related provisions authorized above shall be disseminated by the publication of administrative notice to all affected and interested parties. I hereby delegate to the Secretary of Public Safety and Homeland Security, after consultation with other affected Cabinet Secretaries, the authority to implement and disseminate this Order as set forth in § 2.2-104 of the Code of Virginia.

I. Authorization of the Commissioner of Agriculture and Consumer Services to grant a temporary waiver of the maximum vapor pressure prescribed in regulation 2VAC5-425 et seq., and to prescribe a vapor pressure limit the Commissioner deems reasonable. The temporary waiver shall remain in effect until emergency relief is no longer necessary, as determined by the Commissioner of Agriculture and Consumer Services.

J. Provision of appropriate assistance, including temporary assignments of non-essential state employees to the Adjunct Emergency Workforce, be rendered by state agencies to respond to this situation.

K. Authorization of appropriate oversight boards, commissions, and agencies to ease building code restrictions, permitting requirements, and to allow for emergency demolition, hazardous waste disposal, debris removal, emergency landfill sitting, and other operations and activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties. All appropriate executive branch agencies are to exercise discretion to the extent allowed by law to address any pending deadlines or expirations affected by or attributable to this emergency event.

L. Authorization of the Marine Resources Commissioner to act on behalf of the Commission in issuing permits pursuant to Chapter 12 of Title 28.2 of the Code of Virginia when, in the judgment of the Commissioner, it is necessary to address immediate health and safety needs and the Commissioner would be unable to convene a meeting of the full Commission in a timely manner. In an effort to address the impacts attributable to Hurricane Florence on the health, safety, and general welfare of the residents of the Commonwealth, and in an attempt to expedite the return of impacted areas and structures to pre-event conditions insofar as possible, no permits for encroachments on state-owned submerged lands, tidal wetlands and coastal primary sand dunes or beaches shall be required to replace previously permitted structures in the same location and in identical or smaller dimensions as the previously permitted structure, and for beach nourishment activities along public beaches, provided any structure replacement or beach nourishment is initiated prior to the expiration of this Executive Order. No person may proceed with replacement of a previously permitted structure or beach nourishment activity under the provisions of this Executive Order without written approval from the Commissioner of the Virginia Marine Resources Commission.

M. Authorization for the heads of executive branch agencies, with the concurrence of their Cabinet Secretary, to act, when appropriate, on behalf of their regulatory boards to waive any state requirement or regulation where the federal government has waived the corresponding federal or state regulation based on the impact of events related to this situation.

N. Authorization for the State Veterinarian to grant exemptions for specific requirements for the importation of agricultural and companion animals into the Commonwealth from affected areas.

O. Activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging.

P. Authorization of a maximum of $60,000,000 in state sum sufficient funds for state and local government mission assignments authorized and coordinated through the Virginia Department of Emergency Management that are allowable as defined by The Stafford Act, 42 U.S.C. § 5121 et seq. This funding is also available for state response and recovery

operations and incident documentation. Out of this state disaster sum sufficient, an amount estimated at $1,500,000 is authorized for the Department of Military Affairs for the state's portion of the eligible disaster-related costs incurred for salaries, travel, and meals during mission assignments authorized and coordinated through the Virginia Department of Emergency Management.

Q. Authorization of an amount estimated at $1,000,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act, 42 U.S.C. § 5121 et seq. (when presidentially authorized), to be paid from state funds.

R. Implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28(b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

S. During this declared emergency, any person who holds a license, certificate, or other permit issued by any state or political subdivision thereof, evidencing the meeting of qualifications for professional, mechanical, or other skills, the person, without compensation other than reimbursement for actual and necessary expenses, may render aid involving that skill in the Commonwealth during this emergency. Such person shall not be liable for negligently causing the death of, or injury to, any person or for the loss of, or damage to, the property of any person resulting from such service as set forth in § 44-146.23(C) of the Code of Virginia. Additionally, members and personnel of volunteer, professional, auxiliary, and reserve groups identified and tasked by the State Coordinator of Emergency Management for specific disaster-related mission assignments, as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23(A) of the Code of Virginia, shall not be liable for the death of, or any injury to, persons or damage to property as a result of such activities, as provided in § 44-146.23(A) of the Code of Virginia.

T. Designation of physicians, nurses, and other licensed and non-licensed health care providers and other individuals as well as hospitals, nursing facilities, and other licensed and non-licensed health care organizations, political subdivisions and other private entities by state agencies, including the Departments of Health, Behavioral Health and Developmental Services, Social Services, Emergency Management, Transportation, State Police, Motor Vehicles, as representatives of the Commonwealth engaged in emergency services activities, at sites designated by the Commonwealth, within the meaning of the immunity provisions of § 44-146.23(A) of the Code of Virginia, in the performance of their disaster-related mission assignments.

U. A license issued to a health care practitioner by another state, and in good standing with such state, shall be deemed to be an active license issued by the Commonwealth to provide health care or professional services as a health care practitioner of the same type for which such license is issued in another state, provided such health care practitioner is engaged by a hospital, licensed nursing facility, or dialysis facility in the Commonwealth for the purpose of assisting that facility with public health and medical disaster response operations. Hospitals, licensed nursing facilities, and dialysis facilities must submit to the applicable licensing authority each out-of-state health care practitioner's name, license type, state of license, and license identification number within a reasonable time of such healthcare practitioner arriving at the applicable health care facility in the Commonwealth.

V. As provided in § 44-146.23(A) of the Code of Virginia, no individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, fraternal organization, religious organization, charitable organization, or any other legal or commercial entity and any successor, officer, director, representative, or agent thereof, who, without compensation other than reimbursement for actual and necessary expenses, provides services, goods, real or personal property, or facilities at the request and direction of the State Department of Emergency Management or a county or city employee whose responsibilities include emergency management shall be liable for the death of or injury to any person or for the loss of, or damage to, the property of any person where such death, injury, loss, or damage was proximately caused by the circumstances of the actual emergency or its subsequent conditions, or the circumstances this emergency.

W. The Director of the Virginia Department of Social Services (VDSS), in coordination with Virginia Department of Emergency Management, is directed to activate the statewide sheltering plan and identify and make available such shelters as necessary. Pursuant to the authority in § 44.146.15 of the Code of Virginia, and in order to ensure public safety, all weapons listed in § 18.2-308 A of the Code of Virginia, including all firearms, are prohibited from such shelters. This prohibition applies to both open and concealed carry of firearms pursuant to a concealed carry permit. The firearm restriction shall not apply to members of the National Guard and Law Enforcement Officers in the performance of their official duties.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and pertaining to the Virginia Defense Force, shall be paid from state funds.

Effective Date of this Executive Order

This Executive Order shall be effective September 8, 2018, and shall remain in full force and in effect until December 31, 2018, unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 12th day of September, 2018.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER EIGHTEEN (2018)

Directing the Commissioner of the Department of Motor Vehicles to Extend the Validity of Expiring Driver's Licenses and Identification Cards

Importance of the Issue

On Saturday, September 8, 2018, I declared that a state of emergency existed in the Commonwealth of Virginia due to the potential impacts of Hurricane Florence. In furtherance of state action to protect the health and general welfare of Virginia residents, some state government offices, including Department of Motor Vehicles customer service centers, in affected regions were closed, which greatly impacted the ability of many Virginians to renew their driver's licenses and identification cards. This widespread emergency closure placed residents at risk of incurring fines and other costs resulting from their inability to renew their credentials in a timely manner.

Therefore, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia, and in accordance with my authority contained in §§ 46.2-330 A and 46.2-345 of the Code of Virginia, in order to prevent any hardship to the residents of Virginia, I hereby direct the Commissioner of the Department of Motor Vehicles to extend the validity period of Virginia driver's licenses, learner's permits, commercial driver's licenses, and identification cards issued by the Commonwealth that expire September 11, 2018, through September 16, 2018, until September 21, 2018, 11:59:59 PM EST.

Effective Date of this Executive Order

This Executive Order shall be effective from September 11, 2018, and shall remain in full force and effect until September 21, 2018, 11:59:59 PM EST.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 14th day of September, 2018.

/s/ Ralph S. Northam
Governor

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice of the 2018 Annual Report on the Agricultural Stewardship Act

The Commissioner of Agriculture and Consumer Services announces the availability of the annual report on the Agricultural Stewardship Act for the program year April 1, 2017, through March 31, 2018. Copies of this report can be obtained by contacting Katherine Coates at telephone (804) 786-3538 or via email at katherine.coates@vdacs.virginia.gov. The report can also be obtained at http://www.vdacs.virginia.gov/conservation-and-environmental-agricultural-stewardship.shtml. A written request may be sent to Virginia Department of Agriculture and Consumer Services, Office of Policy, Planning, and Research, P.O. Box 1163, Richmond, VA 23218. Copies of the report are available without charge.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Loblolly Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Surry County

Loblolly Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Surry County, Virginia, pursuant to § 10.1-1197.6 B 1 of the Code of Virginia and 9VAC15-60. The project will be located on multiple parcels comprising approximately 1,384 acres along Colonial Trail West near Spring Grove in Surry. The project conceptually consists of approximately 432,000 440-watt modules across 60 2.5-megawatt alternating current arrays.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Piney Creek Solar LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Halifax County

Piney Creek Solar LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Halifax County, Virginia, pursuant to § 10.1-1197.6 B 1 of the Code of Virginia and 9VAC15-60. The project will be located on multiple parcels comprising approximately 700 acres along Rodgers Chapel Road near Clover. The project conceptually consists of approximately 230,400 440-watt modules across 32 2.5-megawatt alternating current arrays.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

VSF Solar 1 LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Westmoreland County

VSF Solar 1 LLC provided to the Department of Environmental Quality a notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Westmoreland County, Virginia, pursuant to § 10.1-1197.6 B 1 of the Code of Virginia and 9VAC15-60. The project will be located on roughly 125 acres of agricultural land west of Routes 205 and 628, in the general vicinity of Oak Grove, Virginia. The project is anticipated to have a nameplate capacity of 20 megawatts alternating current and will be comprised of approximately 77,580 solar panels.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Walnut Solar I LLC Revised Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - King and Queen County

A notice of intent for Walnut Solar I LLC, an affiliate of Open Road Renewables LLC, was published in the Virginia Register of Regulations on August 21, 2017. Walnut Solar I LLC has provided the Department of Environmental Quality a revised notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in King and Queen County pursuant to 9VAC15-60. The project is located approximately two miles southeast of the community of Shacklefords on the south side of State Route 14 in King and Queen County. The revised project will be constructed on multiple parcels of land totaling approximately 1,800 acres (previously 700 acres) and will use conventional solar panels to deliver up to 110 megawatts (previously 70 megawatts) of electricity (alternating current) to an existing transmission line. The preliminary design of the project calls for the project to use approximately 380,000 solar panels (previously 266,000 solar panels).

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

Westmoreland Solar LLC Withdrawal of Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Westmoreland County

Westmoreland Solar LLC has withdrawn the notice of intent to submit the necessary documentation for a permit by rule for a small renewable energy project (solar) in Westmoreland County, Virginia, pursuant to § 10.1-1197.6 B 1 of the Code of Virginia and 9VAC15-60. The notice was previously published in the Virginia Register of Regulations on July 10, 2017.

Contact Information: Mary E. Major, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, FAX (804) 698-4510, or email mary.major@deq.virginia.gov.

STATE BOARD OF HEALTH

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 State Board of Health is conducting a periodic review and small business impact review of **12VAC5-475, Regulations Implementing the Virginia Donor Registry**. 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 October 1, 2018, and ends October 22, 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 Robin Buskey, Policy Analyst, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7253, FAX (804) 864-7771, or email robin.buskey@vdh.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.

Notice of Availability of Title V Maternal and Child Health Services Block Grant

The Virginia Department of Health (VDH) has prepared and made available the 2019 Application/2017 Annual Report for the Title V Maternal and Child Health Services Block Grant. The report is available at http://www.vdh.virginia.gov/vdhlivewell/. Title V funds support programs to improve the health of women, infants, children, and adolescents in Virginia, including individuals with special health care needs.

Contact Information: Carla Hegwood, Title V Block Grant Consultant, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7674, or email carla.hegwood@vdh.virginia.gov.

VIRGINIA LOTTERY

Director's Orders

The following Director's Orders of the Virginia Lottery were filed with the Virginia Registrar of Regulations on September 12, 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 Ninety-Nine (18)

Virginia Lottery "2 Ways to Win Retailer Incentive Promotion" (effective December 1, 2018)

Director's Order Number One Hundred (18)

Virginia Lottery "7Rewards App Retailer Incentive Promotion" (effective December 1, 2018)

Director's Order Number One Hundred Two (18)

Virginia Lottery "Go for the Grand Retailer Incentive Promotion" (effective December 1, 2018)

Director's Order Number One Hundred Three (18)

Virginia Lottery "Holiday Games Llama* Sign Retailer Incentive Promotion" (effective December 1, 2018)

Director's Order Number One Hundred Four (18)

Virginia Lottery "Sheetz District Battle Retailer Incentive Promotion" (effective October 1, 2018)

Director's Order Number One Hundred Sixteen (18)

Virginia Lottery's Scratch Game 1902 "Win A Spin" Final Rules for Game Operation (effective August 31, 2018)

Director's Order Number One Hundred Nineteen (18)

Virginia Lottery "G.E.M. Beats This Retailer Incentive Promotion" (effective October 1, 2018)

Director's Order Number One Hundred Twenty (18)

Virginia Lottery "G.E.M. Go For The Grand Retailer Incentive Promotion" (effective December 1, 2018)

Director's Order Number One Hundred Twenty-Six (18)

Virginia Lottery's "2018 Events Win A Spin" Promotion Final Rules for Operation (effective September 11, 2018)

Director's Order Number One Hundred Twenty-Seven (18)

Virginia Lottery's "Made in Virginia" Promotion Final Rules for Operation (effective September 4, 2018)

Director's Order Number One Hundred Thirty-One (18)

Virginia Lottery's "Win A Spin On-Field" Final Rules for Operation (effective September 13, 2018)

STATE WATER CONTROL BOARD

Public Meeting for Water Quality Study Total Maximum Daily Load for the Mattaponi River and Tributaries

Community meeting: A community meeting will be held Monday, October 15, 2018, at 5:30 p.m. at the King and Queen Branch Library, 396 Newtown Road, Saint Stephen's Church, VA 23148. This meeting will be open to the public and all are welcome to participate. In the case of inclement weather or other reason for postponement, an alternate meeting date is scheduled for Wednesday, October 17, 2018, at 5:30 p.m. at the same location. For more information, please contact Anna Reh-Gingerich at telephone (804) 527-5021, or email anna.reh-gingerich@deq.virginia.gov.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, Virginia Institute for Marine Science and StreamsTech, will announce the development of a water quality study known as a total maximum daily load (TMDL) for a portion of the Mattaponi River and select tributaries located in King and Queen and King William Counties. This is an opportunity for local residents to learn about the condition of these waters, share information about the area, and become involved in the process of local water quality improvement. A public comment period will follow the meeting (October 16, 2018, through November 14, 2018). Persons interested in reviewing project materials through an advisory committee should notify the DEQ contact person, Anna Reh-Gingerich, by the end of the comment period and provide their name, address, phone number, email address, and the organization they represent (if any).

Description of study: Portions of the Mattaponi River and its tributaries were identified in Virginia's 2016 Water Quality Assessment and Integrated Report as impaired due to exceedances of the state's water quality standards for E. coli and do not support the designated uses of "primary contact (recreational or swimming)." The specific impairments are attached. Reductions and TMDLs for the causes of the impairments will be developed during the water quality study process.

How to comment and participate: The meetings of the TMDL process are open to the public and all interested parties are welcome. Written comments will be accepted through November 14, 2018, and should include the name, address, and telephone number of the person submitting the comments. For more information or to submit written comments, please contact Anna Reh-Gingerich, Department of Environmental Quality, Piedmont Regional Office, 4949 Cox Road, Glen Allen, VA 23060, telephone (804) 527-5021, or email anna.reh-gingerich@deq.virginia.gov.

Affected Waterways: Mattaponi Tributaries

Mattaponi River (F23E-02-BAC), 1.756 sq. miles; Assessment unit VAP-F23E_MPN03A06 begins at Aylett Creek and extends to Garnetts Creek, tidal
Mattaponi River (F21R-06-BAC), 8.00 miles; Assessment Units VAN-F21R_MPN01B02 and VAN-F21R_MPN01B02 begin at the confluence with Maracossic Creek and continue downstream to the confluence with Gravel Run
Herring Creek (F21R-05-BAC), 5.09 miles; Assessment unit VAN-F21R_HER01B02 begins at the confluence with Dorrell Creek and continues downstream until the confluence with an unnamed tributary to Herring Creek, at rivermile 2.14
Aylett Creek (F23R-04-BAC), 6.83 miles; Assessment unit VAP-F23R_AYL01A12 headwaters to mouth at Mattaponi River
Dogwood Fork (F23R-11-BAC), 2.91 miles, Assessment unit VAP-F23R_DWD01A00 headwaters to its mouth at Dickeys Swamp
XJG – Dickeys Swamp, unnamed tributary (F23R-10-BAC) 1.99 miles, Assessment unit VAP-F23R_XJG01A14 headwaters to mouth at confluence with Dickeys Swamp
Dickeys Swamp, (F23R-08-BAC), 4.33 miles, Assessment unit VAP-F23R_DK201B00 begins at Dogwoods Fork and ends at Route 620
Market Swamp (F23R-09-BAC), 2.01 miles, Assessment unit VAP-F23R_MKT01B00 begins at Walker Coleman Pond and extends to mouth at confluence with Dickeys Swamp
XDN – Garnetts Creek, unnamed tributary (F23R-12-BAC), 2.53 miles, Assessment unit VAP-F23R_XDN01A00 begins at headwaters and extends to mouth at confluence with Garnetts Creek
Garnetts Creek (F23R-01-BAC), 2.83 miles, Assessment unit VAP-F23R_GNT01A00 extends from Dickeys Swamp to the tidal limit
Courthouse Creek (F24R-03-BAC), 0.72 miles; Assessment unit VAP-F24R_CTH01A00 extends from King and Queen Courthouse Pond downstream to the tidal limit

Amendment of Water Quality Management Planning Regulation

Notice of action: The State Water Control Board is considering the amendment of the regulation on water quality management planning in accordance with the public participation procedures for water quality management planning. A regulation is a general rule governing people's rights or conduct that is upheld by a state agency.

Purpose of notice: The board is seeking comments through the Department of Environmental Quality (DEQ) on the proposed amendment. The purpose of the amendment to the state's Water Quality Management Planning Regulation (9VAC25-720) is to adopt seven new total maximum daily load (TMDL) wasteload allocations.

Public comment period: October 1, 2018, through October 31, 2018.

Description of proposed action: DEQ staff will propose amendments of the state's Water Quality Management Planning Regulation for the Chesapeake Bay-Small Coastal-Eastern Shore River Basin (9VAC25-720-110 A), and the New River Basin (9VAC25-720-130 A). Statutory authority for promulgating these amendments can be found in subdivision 10 of § 62.1-44.15 of the Code of Virginia.

Staff intends to recommend (i) that the board approve the two TMDL reports as the plan for the pollutant reductions necessary for attainment of water quality goals in the impaired segments, (ii) that the board authorize inclusion of the two TMDL reports in the appropriate water quality management plan, and (iii) that the board adopt seven new TMDL wasteload allocations (WLAs) as part of the state's Water Quality Management Planning Regulation in accordance with §§ 2.2-4006 A 14 and 2.2-4006 B of the Code of Virginia.

The TMDL reports were developed in accordance with federal regulations (40 CFR 130.7) and are exempt from the provisions of Article 2 of the Virginia Administrative Process Act. The reports were subject to the TMDL public participation process contained in DEQ's public participation procedures for water quality management planning. The public comment process provides the affected stakeholders an opportunity for public appeal of the TMDL.

As of July 1, 2014, TMDL WLAs can receive State Water Control Board approval prior to U.S. Environmental Protection Agency (EPA) approval due to amendments outlined in § 2.2-4006 A 14 of the Code of Virginia. The two TMDL reports in this public notice have been reviewed by EPA for required TMDL elements, however, remain in draft form awaiting State Water Control Board approval. The draft reports can be found at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx.

Affected waterbodies and localities for the seven new TMDL wasteload allocations:

Chesapeake Bay-Small Coastal-Eastern Shore River Basin (9VAC25-720-110 A):

1. "Total Maximum Daily Loads for Bacteria and a Proactive Implementation Approach for Dissolved Oxygen Impairment for Rudee Inlet, Virginia Beach, Virginia"

- The Rudee Inlet Bacteria TMDL, located in the City of Virginia Beach, proposes fecal coliform reductions for the Rudee Inlet watershed and provides a new fecal coliform wasteload allocation of 2.20E+13 counts/year.

- The Rudee Inlet Bacteria TMDL, located in the City of Virginia Beach, proposes a proactive approach to address the dissolved oxygen (DO) impairment on Owl Creek. Therefore, no wasteload allocation is provided.

New River Basin (9VAC25-720-130 A):

2. "PCB Total Maximum Daily Load Development for Reed Creek, the Upper New River, Peak Creek, Walker Creek, Stony Creek, and the Lower New River"

- The New River PCB TMDL, located in the Montgomery, Giles, Pulaski, and Wythe Counties and the City of Radford, proposes PCB reductions for the Reed Creek, Upper New River, Peak Creek, Walker Creek, Stony Creek, and Lower New River watersheds and provides new PCB wasteload allocations of 2,548.2 mg/year, 1,616.5 mg/year, 345 mg/year, 13.6 mg/year 7,601.9 mg/year, and 38,868.0 mg/year.

How to comment: The DEQ accepts written comments by email, fax, and postal mail. All written comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by 5 p.m. on the last day of the comment period.

How a decision is made: After comments have been considered, the board will make the final decision. Citizens who submit statements during the comment period may address the board members during the board meeting at which a final decision is made on the proposal.

To review documents: The TMDL reports are available on the DEQ website at http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DraftTMDLReports.aspx and by contacting the DEQ representative named below for any report. The electronic copies are in PDF or Word format and may be read online or downloaded.

For public comments, document requests, and additional information contact Kelly Meadows, Department of Environmental Quality, 1111 East Main Street, Suite 1400, Richmond, VA 23219, telephone (804) 698-4291, FAX (804) 698-4032, or email kelly.meadows@deq.virginia.gov.

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 OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waivered Services.**

Publication: 35:2 VA.R. 263-286 September 17, 2018

Correction to Final Regulation:

Page 280, 12VAC30-120-935 H 3 b (4), lines 5 and 6, replace "http://www.olg.hhs.govfraud/exclusions/exclusions%20list.asp" with "https://oig.hhs.gov/exclusions/exclusions_list.asp"

VA.R. Doc. No. R16-3805; Filed September 11, 2018