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,** Vice Chair; **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; **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).

November 2018 through December 2019

Volume: Issue	Material Submitted By Noon*	Will Be Published On
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 PHARMACY

Agency Decision

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy.**

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

Name of Petitioner: Joseph Lavino for CVS Health.

Nature of Petitioner's Request: To amend 18VAC110-20-275 B 2 d to read:

d. The procedure for identifying on the prescription label a unique identifier for all pharmacies involved in filling and dispensing the prescription. This unique identifier is not required to identify a pharmacy solely involved in the holding of a prescription for pick-up or further delivery when that pharmacy has not shared in other filling or dispensing function;

Agency Decision: Request granted.

Statement of Reason for Decision: At its meeting on December 11, 2017, the board considered the petition and public comment in support. The board concluded it will move forward with initiation of rulemaking and has referred the petition to its Regulation Committee for further study and recommendation on amendments.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804)367-4456, or email caroline.juran@dhp.virginia.gov.

VA.R. Doc. No. R18-08; Filed October 16, 2018, 9:43 a.m.

TITLE 1. ADMINISTRATION

STATE BOARD OF ELECTIONS

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 Elections intends to consider amending **1VAC20-90, Campaign Finance and Political Advertisements**. The purpose of the proposed action is to define "express advocacy" for the purpose of administering Virginia campaign finance law. The term is not defined in the Code of Virginia or in regulation. The State Board of Elections currently provides a definition of "express advocacy" in campaign finance summaries that the board is required to provide to candidates and the public. The board now seeks to adopt the federal definition of "express advocacy" in regulation to provide continuity and clarity to campaign finance interpretation and application. The proposed regulation will align Virginia's interpretation of express advocacy with the operative definition as provided in 11 CFR 100.22, the Federal Election Commission's regulation.

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

Statutory Authority: § 24.2-103 of the Code of Virginia.

Public Comment Deadline: November 28, 2018.

Agency Contact: David Nichols, Director of Election Services, Department of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8952, or email david.nichols@elections.virginia.gov.

VA.R. Doc. No. R19-5607; Filed October 5, 2018, 1:42 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services**, and **12VAC30-60, Standards Established and Methods Used to Assure High Quality Care**. The purpose of the proposed action is to clarify that community mental health rehabilitative services fit under the umbrella of "rehabilitative services" under 42 CFR 440.130(d), services that are recommended by a physician or licensed practitioner for maximum reduction of physical or mental disability and restoration of a beneficiary to the beneficiary's best possible functional level. More specifically, the Centers for Medicare and Medicaid Services required the Department of Medical Assistance Services to more clearly define each service, list and define the subcomponents of each service, specify what type of professional could provide each subcomponent, specify what a unit of service is for each service, and provide the date that existing reimbursement rates were set. In addition, other changes are being considered to help ensure that Virginia offers a range of services that are person centered and meet the needs of Medicaid members, and that services use evidence-based practices and principles, including those that are outcome oriented, trauma informed, recovery oriented, and based upon clear medical necessity criteria.

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: November 28, 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. R19-5686; Filed September 27, 2018, 8:39 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF PHARMACY

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 Pharmacy intends to consider amending **18VAC110-20, Regulations Governing the Practice of Pharmacy**. The purpose of the proposed action is to amend 18VAC110-20-275 pertaining to the procedure for identifying all pharmacies involved in the filling and dispensing of a prescription. The proposed amendment would specify that a unique identifier on the prescription label is not required to identify a pharmacy solely involved in the holding of a prescription for pick-up or further delivery when that pharmacy has not shared in other filling or dispensing functions. The proposed action is the result of a petition for rulemaking.

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

Statutory Authority: §§ 54.1-2400 and 54.1-3307 of the Code of Virginia.

Public Comment Deadline: November 28, 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.

VA.R. Doc. No. R18-08; Filed October 4, 2018, 12:03 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Social Services intends to consider amending **22VAC40-201, Permanency Services - Prevention, Foster Care, Adoption and Independent Living**. The purpose of the proposed action is to make changes to the permanency regulation, which provides standards for local departments of social services for prevention, foster care, adoption, and independent living services, consistent with the establishment of the Kinship Guardianship Assistance Program, § 63.2-1305 of the Code of Virginia, and clarifying the procedure for the filing of petitions related to foster care court proceedings. The intent of this action is to conform the regulation to the Code of Virginia and federal laws and to make any other changes the agency deems necessary after comments and review.

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

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Public Comment Deadline: November 28, 2018.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

VA.R. Doc. No. R19-5722; Filed October 10, 2018, 10:40 a.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Final Regulation

REGISTRAR'S NOTICE: The Criminal Justice Services 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 Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Titles of Regulations: **6VAC20-172. Regulations Relating to Private Security Services Businesses (amending 6VAC20-172-40, 6VAC20-172-50, 6VAC20-172-90).**

6VAC20-173. Regulations Relating to Private Security Services Training Schools (amending 6VAC20-173-40, 6VAC20-173-50).

Statutory Authority: § 9.1-141 of the Code of Virginia.

Effective Date: November 28, 2018.

Agency Contact: Laureen Hyman, Executive Administrative Assistant to the Director, Department of Criminal Justice Services, 1100 Bank Street, Richmond, VA 23219, telephone (804) 786-8718, or email laureen.hyman@dcjs.virginia.gov.

Summary:

Pursuant to Chapter 214 of the 2018 Acts of Assembly, the amendments remove (i) certain experience requirements for a compliance agent for a private security services business and (ii) the option for a private security services business or a private security services training school to be covered by a surety bond in lieu of liability insurance.

Part IV
Business License Application Procedures; Administrative Requirements; Standards of Conduct

6VAC20-172-40. Initial business license application.

A. Prior to the issuance of a private security services business license, the applicant shall meet or exceed the requirements of licensing and application submittal to the department as set forth in this section.

B. Each person seeking a license shall file a completed application provided by the department including:

1. For each principal and supervisor of the applying business and for each electronic security employee of an electronic security services business, his fingerprints pursuant to this chapter;

2. ~~Documentation verifying that the applicant has secured a surety bond in the amount of $1 million executed by a surety company authorized to do business in Virginia or a~~ A certificate of insurance reflecting the department as a certificate holder and showing a policy of comprehensive general liability insurance in the minimum coverage amount of $1 million of general aggregate liability insurance issued by an insurance company authorized to do business in Virginia.

a. Every personal protection specialist and private investigator who has been issued a registration by the department and is hired as an independent contractor by a licensed private security services business shall maintain comprehensive general liability insurance in the minimum coverage amount of $1 million of general aggregate liability insurance; and

b. Documentation verifying the personal protection specialist or private investigator has obtained the required insurance shall be provided to the private security services business prior to the hiring of such independent contractor;

3. For each nonresident applicant for a license, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for a license except a sole proprietor or partnership, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

5. A physical address in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical address;

6. On the license application, designation of at least one individual as compliance agent who is certified or eligible for certification;

7. The applicable, nonrefundable license application fee; and

8. Designation on the license application of the type of private security business license the applicant is seeking. The initial business license fee includes one category. A separate fee will be charged for each additional category. The separate categories are identified as follows: (i) security officers/couriers (armed and unarmed), (ii) private investigators, (iii) electronic security personnel, (iv) armored car personnel, (v) personal protection specialists, (vi) locksmiths, and (vii) detector canine handlers and security canine handlers. Alarm respondents crossover into both the security officer and electronic security category; therefore, if an applicant is licensed in either of these categories, he can provide these services without an additional category fee.

C. Upon completion of the initial license application requirements, the department may issue an initial license for a period not to exceed 24 months.

D. The department may issue a letter of temporary licensure to businesses seeking licensure under § 9.1-139 of the Code of Virginia for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and compliance agent of the business, provided the applicant has met the necessary conditions and requirements.

E. A new license is required whenever there is any change in the ownership or type of organization of the licensed entity that results in the creation of a new legal entity. Such changes include:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

F. Each license shall be issued to the legal business entity named on the application, whether it is a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity.

G. Each licensee shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

H. Each licensee shall be a United States citizen or legal resident alien of the United States.

6VAC20-172-50. Renewal business license application.

A. Applications for license renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address of the licensee. However, if a renewal notification is not received by the licensee, it is the responsibility of the licensee to ensure renewal requirements are filed with the department. License renewal applications must be received by the department and all license requirements must be completed prior to the expiration date or shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Licenses will be renewed for a period not to exceed 24 months.

C. The department may renew a license when the following are received by the department:

1. A properly completed renewal application;

2. ~~Documentation verifying that the applicant has secured and maintained a surety bond in the amount of $1 million executed by a surety company authorized to do business in Virginia or a~~ A certificate of insurance reflecting the department as a certificate holder and showing a policy of comprehensive general liability insurance in the minimum coverage amount of $1 million general aggregate issued by an insurance company authorized to do business in Virginia.

a. Every personal protection specialist and private investigator who has been issued a registration by the department and is hired as an independent contractor by a licensed private security services business shall maintain comprehensive general liability insurance in the minimum coverage amount of $1 million of general aggregate liability insurance; and

b. Documentation verifying the personal protection specialist or private investigator has obtained the required insurance shall be provided to the private security services business prior to the hiring of such independent contractor;

3. Fingerprint records for any new or additional principals submitted to the department within 30 days of their hire date provided, however, that any change in the ownership or type of organization of the licensed entity has not resulted in the creation of a new legal entity;

4. On the application, designation of at least one compliance agent who has satisfactorily completed all applicable training requirements;

5. The applicable, nonrefundable license renewal fee and applicable category of service fees; and

6. On the first day of employment, each new and additional supervisor's fingerprints submitted to the department pursuant to § 9.1-139 I of the Code of Virginia.

D. Each business applying for a license renewal shall be in good standing in every jurisdiction where licensed, registered, or certified in a private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

E. Any renewal application received after the expiration date of a license shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

F. On the renewal application the licensee must designate the type of private security business license he wishes to renew. The fee will be based upon the category ~~or categories~~ selected on the renewal application.

Part V
Compliance Agent Application Procedures; Administrative Requirements; Standards of Conduct

6VAC20-172-90. Compliance agent certification requirements.

A. Each person applying for certification as compliance agent shall meet the following minimum requirements for eligibility:

1. Be a minimum of 18 years of age; and

2. ~~Have (i) three years of managerial or supervisory experience in a private security services business; with a federal, state, or local law enforcement agency; or in a related field or (ii) five years of experience in a private security services business; with a federal, state or local law enforcement agency; or in a related field; and~~

~~3.~~ Be a United States citizen or legal resident alien of the United States.

B. Each person applying for certification as compliance agent shall file with the department:

1. A properly completed application provided by the department;

2. Fingerprint card pursuant to this chapter; and

3. ~~Official documentation verifying that the individual has (i) three years of managerial or supervisory experience in a private security services business; with a federal, state, or local law enforcement agency; or in a related field or (ii) five years of experience in a private security services business, with a federal, state, or local law enforcement agency; or in a related field; and~~

~~4.~~ The applicable, nonrefundable application fee.

C. The department may issue a certification for a period not to exceed 24 months when the following are received by the department:

1. A properly completed application provided by the department;

2. The applicable, nonrefundable certification fee;

3. Verification of eligibility pursuant to § 9.1-139 A of the Code of Virginia; and

4. Verification of satisfactory completion of department regulatory compliance entry-level training requirements pursuant to this chapter.

D. Each compliance agent shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

Part IV
Training School Application Procedures; Administrative Requirements; Standards of Conduct

6VAC20-173-40. Initial training school application.

A. Prior to the issuance of a training school certification, the applicant shall meet or exceed the requirements of certification and application submittal to the department as set forth in this section.

B. Each person seeking certification as a private security services training school shall file a completed application provided by the department to include:

1. For each principal of the applying training school, the principal's fingerprints pursuant to this chapter;

2. ~~Documentation verifying that the applicant has secured a surety bond in the amount of $100,000 executed by a surety company authorized to do business in Virginia, or a~~ A certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of $100,000 per individual occurrence and $300,000 general aggregate issued by an insurance company authorized to do business in Virginia;

3. For each nonresident applicant for a training school, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;

4. For each applicant for certification as a private security services training school except a sole proprietor and partnership, on a certification application provided by the department, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

5. A physical location in Virginia where records required to be maintained by the Code of Virginia and this chapter are kept and available for inspection by the department. A post office box is not a physical location;

6. On the training school certification application, designation of at least one individual as training director who is not designated as training director for any other training school, and who is certified as an instructor pursuant to this chapter. A maximum of four individuals may be designated as an assistant training school director;

7. A copy of the curriculum in course outline format for each category of training to be offered, including the hours of instruction with initial and in-service courses on separate documents;

8. A copy of the training school regulations;

9. A copy of the range regulations to include the assigned DCJS range identification number if firearms training will be offered;

10. On the certification application, selection of the category of training the applicant is seeking to provide. The initial training school certification application fee includes one category. A separate fee will be charged for each additional category of training. The separate categories are identified as follows: (i) security officers/couriers/alarm respondents (armed and unarmed) to include arrest authority, (ii) private investigators, (iii) locksmiths and electronic security personnel to include central station dispatchers, (iv) armored car personnel, (v) personal protection specialists, (vi) detector canine handlers and security canine handlers, (vii) special conservators of the peace pursuant to § 9.1-150.1 of the Code of Virginia, (viii) bail bondsmen pursuant to § 9.1-185 of the Code of Virginia and bail enforcement agents pursuant to § 9.1-186 of the Code of Virginia, and (ix) firearms;

11. The applicable, nonrefundable category fee; and

12. The applicable, nonrefundable training school certification application fee.

C. When the department has received and processed a completed application and accompanying material, the department may inspect the training facilities, including an inspection of the firearms range, if applicable, to ensure conformity with the minimum requirements set forth in 6VAC20-174 and this chapter.

D. Upon completion of the initial training school application requirements, the department may issue an initial certification for a period not to exceed 24 months.

E. The department may issue a letter of temporary certification to training schools for not more than 120 days while awaiting the results of the state and national fingerprint search conducted on the principals and training director of the business, provided that the applicant has met the necessary conditions and requirements.

F. A new certification is required whenever there is any change in the ownership or type of organization of the certified entity that results in the creation of a new legal entity. Such changes include ~~but are not limited to~~:

1. Death of a sole proprietor;

2. Death or withdrawal of a general partner in a general partnership or the managing partner in a limited partnership; and

3. Formation or dissolution of a corporation, a limited liability company, or an association or any other business entity recognized under the laws of the Commonwealth of Virginia.

G. Each certification shall be issued to the legal entity named on the application, whether it is a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the certification. No certification shall be assigned or otherwise transferred to another legal entity.

H. Each certified training school shall comply with all applicable administrative requirements and standards of conduct and shall not engage in any acts prohibited by applicable sections of the Code of Virginia and this chapter.

6VAC20-173-50. Renewal training school application.

A. Applications for certification renewal should be received by the department at least 30 days prior to expiration. The department will provide a renewal notification to the last known mailing address or email address provided by the certified training school. However, if a renewal notification is not received by the training school, it is the responsibility of the training school to ensure renewal requirements are filed with the department. Certification renewal applications received by the department after the expiration date shall be subject to all applicable, nonrefundable renewal fees plus reinstatement fees. Outstanding fees or monetary penalties owed to DCJS must be paid prior to issuance of said renewal.

B. Upon completion of the renewal training school application requirements, the department may issue a renewal certification for a period not to exceed 24 months.

C. The department may renew a certification when the following are received by the department:

1. A properly completed renewal application;

2. ~~Documentation verifying that the applicant has secured and maintained a surety bond in the amount of $100,000 executed by a surety company authorized to do business in Virginia, or a~~ A certificate of insurance reflecting the department as a certificate holder, showing a policy of

comprehensive general liability insurance with a minimum coverage of $100,000 per individual occurrence and $300,000 general aggregate issued by an insurance company authorized to do business in Virginia;

3. On the application, designation of at least one certified instructor as training director who has satisfactorily completed all applicable training requirements;

4. Fingerprints for each new and additional principal pursuant to § 9.1-139 H of the Code of Virginia;

5. The applicable, nonrefundable certification renewal fee and category fees; and

6. Any documentation required for any new categories of training.

D. Each training school applying for a certification renewal shall be in good standing in every jurisdiction where licensed, registered, or certified in private security services or related field. This subsection shall not apply to any probationary periods during which the individual is eligible to operate under the license, registration, or certification.

E. Any renewal application received after the expiration date of a certification shall be subject to the requirements set forth by the reinstatement provisions of this chapter.

VA.R. Doc. No. R19-5687; Filed September 27, 2018, 12:28 p.m.

Final Regulation

REGISTRAR'S NOTICE: The Criminal Justice Services 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 Criminal Justice Services Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **6VAC20-230. Regulations Relating to Special Conservator of the Peace (amending 6VAC20-230-10, 6VAC20-230-150).**

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

Effective Date: November 28, 2018.

Agency Contact: David Cotter, Director of Policy and Legislative Affairs, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 225-4300, or email david.cotter@dcjs.virginia.gov.

Summary:

Pursuant to Chapter 792 of the 2018 Acts of Assembly, the amendments (i) limit the powers that may be provided to a special conservator of the peace in the order of appointment to those duties for which he is qualified by training as established by the Criminal Justice Services Board; (ii) require that the order of appointment provide that a special conservator of the peace may exercise his duties only in the geographical limitations specified by the court in such order; (iii) subject to certain exceptions, prohibit special conservators of the peace from using the word "police" on their equipment in the performance of their duties; and (iv) subject to certain exceptions, prohibit special conservators of the peace, other than those employed by a state agency, from using the seal of the Commonwealth on their equipment in the performance of their duties.

6VAC20-230-10. Definitions.

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

"Armed special conservator of the peace" means a special conservator of the peace registrant who carries or has immediate access to a firearm in the performance of his duties.

"Board" means the Criminal Justice Services Board or any successor board or agency.

"Certification" means a method of regulation indicating that qualified persons have met the minimum requirements as private security services training schools and private security services instructors.

"Certified training schools" means a training school certified by the department for the specific purpose of training a special conservator of the peace regulated in at least one category of the compulsory minimum training standards.

"Class" means a block of instruction no less than 50 minutes in length on a particular subject.

"Combat loading" means tactical loading of a shotgun while maintaining coverage of the threat area.

"Department" or "DCJS" means the Department of Criminal Justice Services or any successor agency.

"Director" means the chief administrative officer of the department.

"Electronic roster submittal" means the authority given to the training director or assistant training director of a training school, after he has submitted an application and the required nonrefundable fee, to submit a training school roster to the department electronically through the department's online system.

"Firearms verification" means verification of successful completion of either initial or retraining requirements for handgun or shotgun training, or both.

"Incident" means an event that exceeds the normal extent of one's appointed special conservator of the peace authority.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for special conservator of the peace personnel.

"Performance of his duties" means on duty in the context of this chapter.

"Person" means any individual, group of individuals, firm, company, corporation, partnership, business, trust, association, or other legal entity.

"Physical address" means the location of the building that houses a business or training school (a post office box is not a physical address).

"Private security services training school" means any person certified by the department to provide instruction in special conservator of the peace subjects for the training of special conservator of the peace personnel in accordance with this chapter.

"Registration" means a method of regulation that identifies individuals as having met the minimum requirements for a particular registration category as set forth in this chapter.

"Registration category" means any one of the following categories: (i) unarmed special conservators of the peace or (ii) armed special conservators of the peace.

"Session" means a group of classes comprising the total hours of mandated training in either of the following categories: (i) unarmed special conservator of the peace and (ii) armed special conservator of the peace.

"Special conservator of the peace" means any individual appointed by the circuit court pursuant to § 19.2-13 of the Code of Virginia on or after September 15, 2004, to perform only ~~those powers, functions,~~ the duties ~~and responsibilities authorized~~ for which he is qualified by training as established by the board within ~~such geographic~~ geographical limitations ~~as~~ specified by the court ~~may deem appropriate~~.

"Special conservator of the peace registrant" means any individual who has met the requirements under this regulation to apply for appointment to the circuit court as a special conservator of the peace.

"This chapter" means the Regulations Relating to Special Conservators of the Peace as part of the Virginia Administrative Code.

"Training certification" means verification of the successful completion of any training requirement established in this chapter.

"Training requirement" means any entry-level, in-service, or firearms retraining standard established in this chapter.

"Unarmed special conservator of the peace" means a special conservator of the peace registrant who does not carry or have immediate access to a firearm in the performance of his duties.

6VAC20-230-150. Registered individual standards of conduct.

A. A registered individual shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter;

2. Not violate or aid and abet others in violating the provisions of Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter;

3. Not commit any act or omission that results in a registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction;

4. Not obtain a special conservator of the peace registration or registration renewal through any fraud or misrepresentation;

5. Carry a valid registration or valid temporary authorization letter at all times while on duty;

6. Carry the private security state authorized identification card at all times while on duty once the authorization has been approved from the department;

7. Perform those duties authorized by the circuit court only while employed and in the jurisdiction of appointment, and perform only those duties authorized in the circuit court ordered appointment;

8. Maintain a valid firearms verification if he carries or has immediate access to firearms while on duty and is authorized by the circuit court. He may carry only those firearms that he has been trained on and is qualified to carry;

9. Carry a firearm concealed while on duty only with the expressed authorization of the circuit court that appoints the registrant and only in compliance with § 18.2-308.01 of the Code of Virginia;

10. Transport, carry and utilize firearms while on duty only in a manner that does not endanger the public health, safety and welfare;

11. Make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest;

12. Display his registration while on duty in response to the request of a law-enforcement officer, department personnel or client;

13. Not perform any unlawful or negligent act resulting in a loss, injury or death to any person;

14. If a uniform is required, wear the uniform required by the employer. If wearing a uniform while employed as a special conservator of the peace, the uniform must:

~~a. Only have the title "police" on any badge or uniform when the circuit court order indicates and to the extent~~

~~the displayed words accurately represent a special conservator of the peace; and~~

~~b. Have~~ have a name plate or tape bearing, as a minimum, the individual's last name attached on the outermost garment, except on rainwear worn only to protect from inclement weather;

15. Not display or use the word "police" or use the seal of the Commonwealth on any uniform, badge, credential, or vehicle in the performance of his duties, except a special conservator of the peace (i) employed by a state agency may use the seal of the Commonwealth on any uniform, badge, credential, or vehicle in the performance of his duties or (ii) employed by the Shenandoah Valley Regional Airport Commission or the Richmond Metropolitan Transportation Authority may use the word "police" on any badge, uniform, or vehicle or the seal of the Commonwealth on any badge or credential in the performance of his duties.

16. Act only in such a manner that does not endanger the public health, safety and welfare;

~~16.~~ 17. Not represent as one's own a special conservator of the peace registration issued to another individual;

~~17.~~ 18. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a registration;

~~18.~~ 19. Not engage in acts of unprofessional conduct in the practice of special conservator of the peace services;

~~19.~~ 20. Not engage in acts of negligent or incompetent special conservator of the peace services; and

~~20.~~ 21. Maintain at all times current liability coverage at least in the amount prescribed by the Code of Virginia.

B. No person with a criminal conviction for a misdemeanor involving (i) moral turpitude, (ii) assault and battery, (iii) damage to real or personal property, (iv) controlled substances or imitation controlled substances as defined in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, (v) prohibited sexual behavior as described in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, (vi) firearms or (vii) any felony from which no appeal is pending, the time for appeal having elapsed, shall be registered as a conservator of the peace. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

C. No person who is prohibited from possessing, transporting, or purchasing a firearm shall be registered as a special conservator of the peace.

VA.R. Doc. No. R19-5688; Filed September 27, 2018, 1:11 p.m.

TITLE 9. ENVIRONMENT

STATE AIR POLLUTION CONTROL BOARD

Final Regulation

REGISTRAR'S NOTICE: The State Air Pollution Control Board 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 State Air Pollution Control Board is also 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 State Air Pollution Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC5-91. Regulations for the Control of Motor Vehicle Emissions in the Northern Virginia Area (amending 9VAC5-91-20, 9VAC5-91-50, 9VAC5-91-185, 9VAC5-91-290, 9VAC5-91-340, 9VAC5-91-360, 9VAC5-91-380, 9VAC5-91-410, 9VAC5-91-420, 9VAC5-91-430, 9VAC5-91-440, 9VAC5-91-530, 9VAC5-91-540, 9VAC5-91-740, 9VAC5-91-750).**

Statutory Authority: § 46.2-1180 of the Code of Virginia; § 182 of the Clear Air Act; 40 CFR Part 51, Subpart S.

Effective Date: November 28, 2018.

Agency Contact: Karen Collins, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4337, FAX (804) 698-4510, or email karen.collins@deq.virginia.gov.

Summary:

Pursuant to Chapter 555 of the 2018 Acts of Assembly, which authorizes the Department of Motor Vehicles to issue a registration card and license plates for military surplus motor vehicles and exempts military surplus motor vehicles from emissions standards, an amendment adjusts the definition of "affected motor vehicle" to exclude military surplus motor vehicles. Additionally, amendments update a Code of Federal Regulations citation and correct technical errors.

9VAC5-91-20. Terms defined.

"Aborted test" means an emissions inspection procedure that has been initiated by the inspector but stopped and not completed due to inspector error or a vehicular problem that prevents completion of the test. Aborted tests are not tests that cannot be completed due to a "failed/invalid" result caused by an exhaust dilution problem or an engine condition that prevents the inspection from being completed.

"Acceleration Simulation Mode (ASM) 50-15 equipment" means dynamometer-based emissions test equipment used to perform an enhanced emissions test in one or more, discreet, simulated road speed and engine load modes.

"Acceleration Simulation Mode (ASM) 25-25 standards" means the standards utilized for one of the discreet modes of the ASM test of the enhanced ~~emission~~ emissions inspection program.

"Access code" means the security phrase or number which allows authorized station personnel, the department, and analyzer service technicians to perform specific assigned functions using the certified analyzer system, as determined by the department. Depending on the assigned function, the access code is a personal password, a state password, or a service password. Access code is not an identification number, but is used as an authenticator along with the identification number where such number is needed to perform specific tasks.

"Actual gross weight" means the gross vehicle weight rating (GVWR).

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

"Affected motor vehicle" means any motor vehicle or replica vehicle which:

1. Was manufactured or designated by the manufacturer as a model year less than 25 calendar years prior to January 1 of the present calendar year according to the formula, the current calendar year minus 24, except those identified by remote sensing as specified in subdivision 5 of this definition;

2. Is designed for the transportation of persons or property;

3. Is powered by an internal combustion engine;

4. For the Northern Virginia Emissions Inspection Program, has an actual gross weight of 10,000 pounds or less; and

5. For vehicles subject to the remote sensing requirements of 9VAC5-91-180, was designated by the manufacturer as model year 1968 or newer.

The term "affected motor vehicle" does not mean any:

1. Vehicle powered by a clean special fuel as defined in § 46.2-749.3 of the Code of Virginia, provided the federal Clean Air Act permits such exemptions for vehicles powered by clean special fuels;

2. Motorcycle or autocycle, unless such autocycle has been emissions certified with an on-board diagnostic system by the United States Environmental Protection Agency;

3. Vehicle that at the time of its manufacture was not designed to meet emissions standards set or approved by the federal government;

4. Any antique motor vehicle as defined in § 46.2-100 of the Code of Virginia and licensed pursuant to § 46.2-730 of the Code of Virginia;

5. Firefighting equipment, rescue vehicle, or ambulance;

6. Vehicle for which no testing standards have been adopted by the board;

7. Tactical military vehicle;

8. Qualified hybrid motor vehicle if such vehicle obtains a rating from the U.S. Environmental Protection Agency of at least 50 miles per gallon, or 48 miles per gallon for model years 2008 or 2009, during city fuel economy tests unless identified by the remote sensing requirements of 9VAC5-91-180 as violating the on-road high emitter emissions standards for on-road testing; ~~or~~

9. Vehicle manufactured for the current model year or any of the three immediately preceding model years unless identified by the remote sensing requirements of 9VAC5-91-180 as violating the emissions standards for on-road testing~~.~~; or

10. Military surplus motor vehicle, which means a multipurpose or tactical vehicle manufactured by or under the direction of the United States armed forces for off-road use and subsequently authorized for sale to civilians. A military surplus motor vehicle does not include specialized mobile equipment as defined in § 46.2-700 of the Code of Virginia, trailers, or semitrailers.

"Air intake systems" means those systems that allow for the induction of ambient air (to include preheated air) into the engine combustion chamber for the purpose of mixing with a fuel for combustion.

"Air pollution" means the presence in the outdoor atmosphere of one or more substances which are or may be harmful or injurious to human health, welfare, or safety~~,~~ to animal or plant life~~,~~ or to property; or which unreasonably interfere with the enjoyment by the people of life or property.

"Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 et seq.) of Title 10.1 of the Code of Virginia.

"Air system" or "air injection system" means a system for providing supplementary air to promote further oxidation of hydrocarbons and carbon monoxide gases and to assist catalytic reaction.

"Alternative fuel" means an internal combustion engine fuel other than (i) gasoline, (ii) diesel, or (iii) fuel mixtures containing more than 15% volume of gasoline.

"Alternative method" means any method of sampling and analyzing for an air pollutant that is not a reference method,

but that has been demonstrated to the satisfaction of the board, in specific cases, to produce results adequate for its determination of compliance.

"Authorized personnel" means department personnel, an individual designated by analyzer system manufacturer, station owner, licensed emissions inspector, program coordinator, station manager, or other person as designated by the station manager.

"Basic engine systems" means those parts or assemblies which provide for the efficient conversion of a compressed air and fuel charge into useful power to include ~~but not be limited to~~ valve train mechanisms, cylinder head to block integrity, piston-ring-cylinder sealing integrity, and post-combustion emissions control device integrity.

"Board" means the State Air Pollution Control Board or its designated representative.

"Calibration" means establishing or verifying the response curve of a measurement device using several different measurements having precisely known quantities.

"Calibration gases" means gases of precisely known concentrations that are used as references for establishing or verifying the response curve of a measurement device.

"Catalytic converter" means a post combustion device that oxidizes hydrocarbons, carbon monoxide gases, and may also reduce oxides of nitrogen.

"Certificate of emissions inspection" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, which indicates that (i) an affected motor vehicle has satisfactorily complied with the emissions standards and passed the emissions inspection provided for in this chapter~~;~~, (ii) the requirement of compliance with the emissions standards has been temporarily waived~~;~~, or (iii) the affected motor vehicle has failed the emissions inspection.

"Certified emissions repair facility" means a facility, or portion of a facility, that has obtained a certification in accordance with Part VII (9VAC5-91-500 et seq.) to perform emissions related repairs on motor vehicles.

"Certified emissions repair technician" means a person who has obtained a certification in accordance with Part VIII (9VAC5-91-550 et seq.) to perform emissions related repairs on motor vehicles.

"Certified enhanced analyzer system" or "analyzer system" means the complete system that samples and reads concentrations of hydrocarbon, carbon dioxide, nitric oxides, and carbon monoxide gases or interrogates the vehicle OBD system or both, and that is approved by the department for use in the Enhanced Emissions Inspection Program in accordance with Part X (9VAC5-91-640 et seq.). The analyzer system includes the exhaust gas handling system, the exhaust gas analyzer, associated automation hardware and software, data media, the analyzer system cabinet, dynamometer control devices, vehicle identification equipment, printer, and calibration gases. The analyzer system does not include the dynamometer and associated cooling and exhaust fans that are supplied by the inspection station.

"Certified thermometer" means a laboratory grade ambient temperature-measuring device with a range of at least 20°F through 120°F, and an attested accuracy of at least 1°F with increments of 1°, with protective shielding.

"Chargeable inspection" means a completed inspection on an affected motor vehicle, for which the station owner is entitled to collect an inspection fee. No fee shall be paid for (i) inspections for which a certificate of emissions inspection has not been issued, (ii) inspections that are conducted by the department for referee purposes, (iii) inspections which were ordered due to on-road test failures but which result in an emissions inspection "pass" at an inspection station, or (iv) the first reinspection done at the same station that performed the initial inspection within 14 days. An inspection ordered by the department due to an on-road test failure that results in a confirmation test failure at an emissions inspection station is a chargeable inspection.

"Clean screen vehicle" means a vehicle that has been identified by the on-road inspector as having met the criteria in 9VAC5-91-185 A or B and is eligible to participate in the on-road clean screen program.

"Clean screen vehicle notification" means a document, device, or symbol, whether recorded in written or electronic form, as prescribed by the director and issued pursuant to this chapter, that (i) indicates that an affected motor vehicle has satisfactorily complied with the clean screen vehicle emissions standards for on-road testing, and (ii) may be used by the motor vehicle owner to voluntarily comply with the vehicle registration requirements of § 46.2-1183 of the Code of Virginia. The notification shall also indicate that the motor vehicle owner may obtain an emissions inspection from an emissions inspection station.

"Clean screen vehicle standard" means any provision of 9VAC5-91-185 that prescribes an emission limitation, or other criteria used to select clean screen vehicles.

"Confirmation test" means an emissions inspection required due to a determination that the vehicle exceeds the on-road high emitter emissions standards prescribed in 9VAC5-91-180 B. The confirmation emissions inspection procedure may include an exhaust test (ASM or TSI), OBD system test, or both.

"Consent order" means a mutual agreement between the department and any owner, operator, emissions inspector, or emissions repair technician that such owner or other person will perform specific actions for the purpose of diminishing

or abating the causes of air pollution or for the purpose of coming into compliance with this chapter. A consent order may include agreed upon civil charges. Such orders may be issued without a formal hearing.

"Curb idle" means vehicle operation whereby the transmission is disengaged and the engine is operated with the throttle in the closed or idle stop position with the resultant engine speed between 400 and 1,250 revolutions per minute (rpm), or at another idle speed if so specified by the manufacturer.

"Data handling system" means all the computer hardware, software, and peripheral equipment used to conduct emissions inspections and manage the enhanced emissions inspection program.

"Data media" means the media contained in the certified analyzer system and used to electronically record test data.

"Day" means a 24-hour period beginning at midnight.

"Department" means any employee or other representative of the Virginia Department of Environmental Quality, as designated by the director.

"Director" means the director of the Virginia Department of Environmental Quality or a designated representative.

"Emissions control equipment" means any part, assembly, or equipment originally installed by the manufacturer in or on a motor vehicle for the sole or primary purpose of reducing emissions.

"Emissions control systems" means any system consisting of parts, assemblies, or equipment originally installed by the manufacturer in or on a motor vehicle for the primary purpose of reducing emissions.

"Emissions inspection" means an emissions inspection of a motor vehicle performed by an emissions inspector employed by or working at an emissions inspection station or fleet emissions inspection station, using the tests, procedures, and provisions set forth in this chapter.

"Emissions inspection station" means a facility or portion of a facility that has obtained an emissions inspection station permit from the director authorizing the facility to perform emissions inspections in accordance with the provisions of this chapter.

"Emissions inspector" means, except for an on-road emissions inspector, a person licensed by the department to perform inspections of vehicles required under the Virginia Motor Vehicle Emissions Control Law and is qualified in accordance with this chapter.

"Emissions standard" means any provision of Part III (9VAC5-91-160 et seq.) or Part XIV (9VAC5-91-790 et seq.) that prescribes an emission limitation, or other emission control requirements for motor vehicle air pollution.

"Empty weight" or "EW" means that weight stated as the EW on a Virginia motor vehicle registration or derived from the motor vehicle title or manufacturer's certificate of origin. The EW may be used to determine emissions inspection standards.

"Enhanced emissions inspection program" means a motor vehicle emissions inspection system established by this chapter that designates, as the only authorized testing equipment for emissions inspection stations, (i) the use of the ASM 50-15 (acceleration simulation mode or method) together with an OBD-II (on-board diagnostic system) with wireless capability, (ii) the use of the ASM 50-15 together with the use of a dynamometer, and (iii) two-speed tailpipe testing equipment. Possession and availability of a dynamometer shall be required for enhanced emissions inspection stations. Only those computer software programs and emissions testing procedures necessary to comply with applicable provisions of Title I of the federal Clean Air Act shall be included. Such testing equipment shall be approvable for motor vehicle manufacturers' warranty repairs. An enhanced emissions inspection program shall include remote sensing and an on-road clean screen program as provided in this chapter.

"EPA" means the United States Environmental Protection Agency.

"Equivalent test weight," "ETW," or ~~"emission~~ "emissions test weight" means the weight of a motor vehicle as automatically determined by the emissions analyzer system based on vehicle make, model, body, style, model year, engine size, permanently installed equipment, and other manufacturer and aftermarket supplied information, and used for the purpose of assigning dynamometer resistance and exhaust emissions standards for the conduct of an exhaust emissions inspection.

"Exhaust gas analyzer" or "gas analyzer" means an exhaust gas handling system that is capable of measuring the concentrations of certain air pollutants in the exhaust gas from a motor vehicle.

"Facility" means something that is built, installed, or established to serve a particular purpose; includes~~, but is not limited to,~~ buildings, installations, public works, businesses, commercial and industrial plants, shops and stores, apparatus, processes, operations, structures, and equipment of all types.

"Federal Clean Air Act" means Chapter 85 (§ 7401 et seq.) of Title 42 of the United States Code.

"Fleet" means 20 or more motor vehicles that are owned, operated, leased, or rented for use by a common owner.

"Fleet emissions inspection station" means any inspection facility operated under a permit issued to a qualified fleet owner or lessee as determined by the director.

"Formal hearing" means a board or department process that provides for the right of private parties to submit factual proofs as provided in § 2.2-4020 of the Administrative Process Act in connection with case decisions. Formal hearings do not include the factual inquiries of an informal nature provided in § 2.2-4019 of the Administrative Process Act.

"Fuel control systems" means those mechanical, electro-mechanical, galvanic, or electronic parts or assemblies which regulate the air-to-fuel ratio in an engine for the purpose of providing a combustible charge.

"Gas span" means the adjustment of an exhaust gas analyzer to correspond with known concentrations of gases.

"Gas span check" means a procedure using known concentrations of gases to verify the gas span adjustment of a gas analyzer.

"Gross vehicle weight rating" or "GVWR" means the maximum recommended combined weight of the motor vehicle and its load as prescribed by the manufacturer and is (i) expressed on a permanent identification label affixed to the motor vehicle; (ii) stated on the manufacturer's certificate of origin; or (iii) coded in the vehicle identification number. If the GVWR can be determined it shall be one element used to determine emissions inspection standards and test type. If the GVWR is unavailable, the department may make a determination based on the best available evidence including manufacturer reference, information coded in the vehicle identification number, or other available sources of information from which to make the determination.

"Heavy duty gasoline vehicle" or "HDGV" means a heavy duty vehicle using gasoline as its fuel.

"Heavy duty vehicle" or "HDV" means any affected motor vehicle (i) which is rated at more than 8,500 pounds GVWR or (ii) which has a loaded vehicle weight or GVWR of more than 6,000 pounds and has a basic frontal area in excess of 45 square feet.

"High emitter value" means the values in Table III-B of 9VAC5-91-180 that are used to determine vehicles in violation of the on-road high emitter emissions standard.

"Identification number" means the number assigned by the department to uniquely identify department personnel, an emissions inspection station, a certified emissions repair facility, a licensed emissions inspector, a certified emissions repair technician, or other authorized personnel as necessary for specific tasks.

"Idle mode" means a condition where the vehicle engine is warm and running at the rate specified by the manufacturer as curb idle, where the engine is not propelling the vehicle, and where the throttle is in the closed or idle stop position.

"Ignition systems" means those parts or assemblies that are designed to cause and time the ignition of a compressed air and fuel charge.

"Implementation plan" means the plan, including any revision thereof, that has been submitted by the Commonwealth and approved in Subpart VV of 40 CFR Part 52 by the administrator under § 110 of the federal Clean Air Act, or promulgated in Subpart VV of 40 CFR Part 52 by the administrator under § 110(c) of the federal Clean Air Act, or promulgated or approved by the administrator pursuant to regulations promulgated under § 301(d) of the federal Clean Air Act and that implements the relevant requirements of the federal Clean Air Act.

"Informal fact finding" means an informal conference or consultation proceeding used to ascertain the fact basis for case decisions as provided in § 2.2-4019 of the Administrative Process Act.

"Initial inspection" means the first complete emissions inspection of a motor vehicle conducted in accordance with the biennial inspection requirement and for which a valid vehicle emissions inspection report was issued. Any test following the initial inspection is a retest or reinspection.

"Inspection area" means in reference to an emissions inspection station, (i) the area that is occupied by the certified analyzer system and the vehicle being inspected or (ii) for only an OBD II test, the area within wireless range that is on the property on which the inspection station is located.

"Inspection fee" means the amount of money that (i) the emissions inspection station may collect from the motor vehicle owner for each chargeable inspection or (ii) an on-road emissions inspector may collect from the motor vehicle owner in response to a clean screen vehicle notification.

"Light duty gasoline vehicle" or "LDGV" means a light duty vehicle using gasoline as its fuel.

"Light duty gasoline truck" or "LDGT1" means a light duty truck 1 using gasoline as its fuel.

"Light duty gasoline truck" or "LDGT2" means a light duty truck 2 using gasoline as its fuel.

"Light duty truck" or "LDT" means any affected motor vehicle which (i) has a loaded vehicle weight or GVWR of 6,000 pounds or less and meets any one of the criteria below; or (ii) is rated at more than 6,000 pounds GVWR but less than 8,500 pounds GVWR and has a basic vehicle frontal area of 45 square feet or less; and meets one of the following criteria:

1. Designed primarily for purposes of transportation of property or is a derivation of such a vehicle.

2. Designed primarily for transportation of persons and has a capacity of more than 12 persons.

3. Equipped with special features enabling off-street or off-highway operation and use.

"Light duty truck 1" or "LDT1" means any light duty truck rated at 6,000 pounds GVWR or less. LDT1 is a subset of light duty trucks.

"Light duty truck 2" or "LDT2" means any light duty truck rated at greater than 6,000 pounds GVWR. LDT2 is a subset of light duty trucks.

"Light duty vehicle" or "LDV" means an affected motor vehicle that is a passenger car or passenger car derivative capable of seating 12 passengers or less.

"Loaded vehicle weight," "LVW," or "curb weight" means the weight of a vehicle and its standard equipment; that is, the empty weight as recorded on the vehicle's registration or the base shipping weight as recorded in the vehicle identification number, whichever is greater; plus the weight of any permanent attachments, the weight of a nominally filled fuel tank, plus 300 pounds.

"Locality" means a city, town, or county created by or pursuant to state law.

"Mobile fleet emissions inspection station" means a facility or entity that provides emissions inspection equipment or services to a fleet emissions inspection station on a temporary basis. Such equipment is not permanently installed at the fleet facility but is temporarily located at the fleet facility for the sole purpose of testing vehicles owned, operated, leased, or rented for use by a common owner.

"Model year" means, except as may be otherwise defined in this chapter, the motor vehicle manufacturer's annual production period which includes the time period from January 1 of the calendar year prior to the stated model year to December 31 of the calendar year of the stated model year; provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year of manufacture. For the purpose of this definition, model year is applied to the vehicle chassis, irrespective of the year of manufacture of the vehicle engine.

"Monitors" means those computer programs in the on-board vehicle computer that evaluate the various emissions components and systems to determine status of such components and systems.

"Motor vehicle" means any motor vehicle as defined in § 46.2-100 of the Code of Virginia as a motor vehicle and that:

1. Is designed for the transportation of persons or property; and

2. Is powered by an internal combustion engine.

"Motor vehicle dealer" means a person who is licensed by the Department of Motor Vehicles in accordance with §§ 46.2-1500 and 46.2-1508 of the Code of Virginia.

"Motor vehicle emissions" means any emissions related information that can be captured through (i) a basic test and repair inspection, (ii) enhanced emissions inspection, or (iii) on-road testing.

"Motor vehicle inspection report" means a printed certificate of emissions inspection that is a report of the results of an emissions inspection. It indicates whether the motor vehicle has (i) passed, (ii) failed, or (iii) obtained a temporary emissions inspection waiver. It may also indicate whether the emissions inspection could not be completed due to an exhaust dilution or an engine condition that prevents the inspection from being completed. The report shall accurately identify the motor vehicle and shall include inspection results, recall information provided by the department, warranty and repair information, and a unique identification number.

"Motor vehicle owner" means any person who owns, leases, operates, or controls a motor vehicle or fleet of motor vehicles.

"Nonconforming vehicle" means a vehicle not manufactured for sale in the United States to conform to emissions standards established by the federal government.

"Normal business hours" for emissions inspection stations, means a daily eight-hour period Monday through Friday, between the hours of 8 a.m. and 6 p.m., with the exception of national holidays, state holidays, temporary closures noticed to the department, and closures due to the inability to meet the requirements of this chapter. Nothing in this chapter shall prevent stations from performing inspections at other times in addition to the "normal business hours." Emissions inspection stations may, with the approval of the department, substitute a combined total of eight hours, between 8 a.m. and 6 p.m., over a weekend period for one weekday as their "normal business hours" for conducting ~~emission~~ emissions inspections. Emissions inspection stations shall post inspection hours.

"Northern Virginia emissions inspection program" means the emissions inspection program required by this chapter in the Northern Virginia program area.

"Northern Virginia program area" or "program area" means the territorial area encompassed by the boundaries of the following localities: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

"On-board diagnostic system" or "OBD system" means the computerized emissions control diagnostic system installed on model year 1996 and newer affected motor vehicles.

"On-board diagnostic system test" or "OBD test" means an evaluation of the OBD system pursuant to either 40 CFR 86.094-17 (2009 CFR) or 40 CFR 86.099-17 as applicable, according to procedures specified in 40 CFR 85.2222 and this chapter.

"On-board diagnostic vehicle" or "OBD vehicle" means a model year 1996 and newer model affected motor vehicle equipped with an on-board diagnostic system and meeting the requirements of 40 CFR 85.2231.

"On-road clean screen program" means a program that allows a motor vehicle owner to voluntarily certify compliance with emissions standards by means of on-road remote sensing.

"On-road emissions inspector" means the entity or entities authorized by the Department of Environmental Quality to perform on-road testing, including on-road testing in accordance with the on-road clean screen program.

"On-road emissions measurement" means data obtained through on-road testing.

"On-road high emitter emissions standard" means any provision of 9VAC5-91-180 that prescribes an emission limitation, or other emission control requirements for motor vehicle emissions. The on-road high emitter emissions standard shall be determined by multiplying the high emitter value in Table III-B of 9VAC5-91-180 with the appropriate ASM 25-25 standard in 9VAC5-91-810 or the TSI standard in Table III-A of 9VAC5-91-160.

"On-road testing" means tests of motor vehicle emissions or emissions control devices by means of roadside pullovers or remote sensing devices.

"Operated primarily" means motor vehicle operation that constitutes routine operation into or within the program area as evidenced by observation using remote sensing equipment at least three times in a 60-day period with no less than 30 days between the first and last observation. The director may increase the number of observations required for compliance determination if, in his discretion, based on program experience, such an increase would not significantly adversely impact the objectives of this chapter. The term "operated primarily" shall be used to identify motor vehicle operation that is subject to the exhaust emission standards for on-road testing through remote sensing set forth in 9VAC5-91-180. The term "operated primarily" shall not be used to identify motor vehicle operation that will subject the vehicle to the compliance provisions set forth in 9VAC5-91-160 and 9VAC5-91-170 for biennial emissions inspections.

"Order" means any decision or directive of the board or the director, including orders, consent orders, and orders of all types rendered for the purpose of diminishing or abating the causes of air pollution or enforcement of this chapter. Unless specified otherwise in this chapter, orders shall only be issued after the appropriate administrative proceeding.

"Owner" means any person who owns, leases, operates, controls, or supervises a facility or motor vehicle.

"Party" means any person who actively participates in the administrative proceeding or offers comments through the public participation process and is named in the administrative record. The term "party" also means the department.

"Person" means an individual, corporation, partnership, association, a governmental body, a municipal corporation, or any other legal entity.

"Pollutant" means any substance the presence of which in the outdoor atmosphere is or may be harmful or injurious to human health, welfare, or safety, to animal or plant life, or to property; or which unreasonably interferes with the enjoyment by the people of life or property.

"Program coordinator" means any person or corporation that has entered into a contract with the director to provide services in accordance with Part X (9VAC5-91-640 et seq.) and other services not to include remote sensing.

"Qualified hybrid motor vehicle" means a motor vehicle that (i) meets or exceeds all applicable regulatory requirements, (ii) meets or exceeds the applicable federal motor vehicle emissions standards for gasoline-powered passenger cars, and (iii) can draw propulsion energy both from gasoline or diesel fuel and a rechargeable energy storage system.

"Reconstructed vehicle" means every vehicle of a type required to be registered under Title 46.2 (§ 46.2-100 et seq.) of the Code of Virginia, materially altered from its original construction by the removal, addition or substitution of new or used essential parts. Such vehicles, at the discretion of the Department of Motor Vehicles, shall retain their original vehicle identification number, line-make, and model year.

"Referee station" or "referee facility" means those facilities operated or used by the department to (i) determine program effectiveness, (ii) resolve emissions inspection conflicts between motor vehicle owners and emissions inspection stations, and (iii) provide such other technical support and information, as appropriate, to emissions inspection stations and motor vehicle owners.

"Reference method" means any method of sampling and analyzing for an air pollutant as described in Appendix A of 40 CFR Part 60.

"Reinspection" or "retest" means a type of inspection selected by the department or the emissions inspector when a request for an inspection is due to a previous failure. Any inspection that occurs 120 days or less following the most recent chargeable inspection is a retest.

"Rejected" or "rejected from testing" means that the vehicle cannot be inspected due to conditions in accordance with 9VAC5-91-420 C or 9VAC5-91-420 G 3.

"Remote sensing" means the measurement of motor vehicle emissions through electronic or light-sensing equipment from a remote location such as the roadside. Remote sensing equipment may include devices to detect and record the vehicle's registration or other identification numbers.

"Replica vehicle" means every vehicle of a type required to be registered under Title 46.2 (§ 46.2-100 et seq.) of the Code of Virginia not fully constructed by a licensed manufacturer but either constructed or assembled from components. Such components may be from a single vehicle, multiple vehicles, a kit, parts, or fabricated components. The kit may be made up of "major components" as defined in § 46.2-1600 of the Code of Virginia, a full body, or a full chassis, or a combination of these parts. The vehicle shall resemble a vehicle of distinctive name, line-make, model, or type as produced by a licensed manufacturer or manufacturer no longer in business and is not a reconstructed or specially constructed vehicle. Any vehicle registered as a replica vehicle shall meet emission requirements as established for the model year of which the vehicle is a replica.

"Sensitive mission vehicle" means any vehicle which, for law enforcement or national security reasons, cannot be tested in the public inspection system and must not be identified through the fleet testing system. For such vehicles, an autonomous fleet testing system may be established by agreement between the controlling agency and the director.

"Span gas" means gases of known concentration used as references to adjust or verify the accuracy of an exhaust gas analyzer that are approved by the department and are so labeled.

"Specially constructed vehicle" means any vehicle that was not originally constructed under a distinctive name, make, model, or type by a generally recognized manufacturer of vehicles and not a reconstructed vehicle as defined in this section.

"Specific engine family" means a group of motor vehicles with the same vehicle type, make, year, and engine size.

"Standardized instruments" or "standardizing instruments" means laboratory instruments calibrated with precision gases traceable to the National Institute of Standards and Technology and accepted by the department as the standards to be used for comparison purposes. All candidate instruments are compared in performance to the standardized instruments.

"Tactical military vehicle" means any motor vehicle designed to military specifications or a commercially designed motor vehicle modified to military specifications to meet direct transportation support of combat, tactical, or military relief operations, or training of personnel for such operations.

"Tampering" means to alter, remove, or otherwise disable or reduce the effectiveness of emissions control equipment on a motor vehicle.

"Test" means an emissions inspection of a vehicle, or any portion thereof, performed by an emissions inspector at an emissions inspection station, using the procedures and provisions set forth in this chapter.

"Test and repair" means motor vehicle emissions inspection stations that perform emissions inspections and may also perform vehicle repairs. No provision of this chapter shall bar emissions inspection stations from also performing vehicle repairs.

"Thermostatic air cleaner" means a system that supplies temperature-regulated air to the air intake system during engine operation.

"Two-speed idle test" or "TSI" means a vehicle exhaust emissions test, performed in accordance with section (II) of 40 CFR Part 51, Appendix B to Subpart S, which measures the concentrations of pollutants in the exhaust gases of an engine (i) while the motor vehicle transmission is not propelling the vehicle and (ii) while the engine is operated at both curb idle and at a nominal engine speed of 2,500 rpm.

"Vehicle emissions index" means the ranking of probable emissions inspection failure-rates of affected motor vehicles. Values within the index are determined by calculating a percentile of the historical emissions inspection failure-rates of a specific engine family, and comparing that to the historical emissions inspection failure-rates of all engine families in a specific model year group. Motor vehicles with the highest percentage of failure rates have the highest ranking on the index. Failure rates are based on the two most recent calendar years of emissions inspection test data from the Virginia Motor Vehicle Emissions Control Program.

"Vehicle specific power" or "VSP" means an indicator expressed as a function of vehicle speed, acceleration, drag coefficient, tire rolling resistance, and roadway grade that is used to characterize the load a vehicle is operating under at the time and place a vehicle is measured by remote sensing equipment. It is calculated using the following formula:

VSP = 4.39 x Sine (Site Grade in Degrees/57.3) x Speed + K1 x Speed x Acceleration + K2 x Speed + K3 x Speed^3.

Where:

VSP = vehicle specific power indicator;

Sine = the trigonometric function that for an acute angle is the ratio between the side opposite the angle when it is considered part of a right triangle and the hypotenuse;

Site Grade in Degrees = slope of road where remote sensing measurement is taken;

K1, K2, and K3 = empirically determined coefficients specific to the weight class of the vehicle;

Speed = rate of motion in miles per hour of vehicle at the time remote sensing measurement is taken; and

Acceleration = change in speed in miles per hour per second.

For light duty vehicles the values for K1, K2, and K3 are respectively 0.22, 0.0954, and 0.0000272. Based on EPA guidance, the department may develop different values for K1, K2, and K3 that are applicable to heavy duty vehicles or to specific classes of light duty vehicles.

"Virginia Motor Vehicle Emissions Control Program" means the program for the inspection and control of motor vehicle emissions established by Virginia Motor Vehicle Emissions Control Law.

"Virginia Motor Vehicle Emissions Control Law" means Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia.

"Visible smoke" means any air pollutant, other than visible water droplets, consisting of black, gray, blue, or blue-black airborne particulate matter emanating from the exhaust system or crankcase. Visible smoke does not mean steam.

9VAC5-91-50. Documents incorporated by reference.

A. The Administrative Process Act and Virginia Register Act provide that state regulations may incorporate documents by reference. Throughout this chapter, documents of the types specified below have been incorporated by reference.

1. United States Code.

2. Code of Virginia.

3. Code of Federal Regulations.

4. Federal Register.

5. Technical and scientific reference documents.

Additional information on key federal regulations and nonstatutory documents incorporated by reference and their availability may be found in subsection E of this section.

B. Any reference in this chapter to any provision of the Code of Federal Regulations (CFR) shall be considered as the adoption by reference of that provision. The specific version of the provision adopted by reference shall be that contained in the latest revision to the CFR in effect on July 1, ~~2012~~ 2018, unless noted otherwise. In making reference to the Code of Federal Regulations, 40 CFR Part 35 means Part 35 of Title 40 of the Code of Federal Regulations; 40 CFR 35.20 means § 35.20 in Part 35 of Title 40 of the Code of Federal Regulations.

C. Failure to include in this section any document referenced in this chapter shall not invalidate the applicability of the referenced document.

D. Copies of materials incorporated by reference in this section may be examined by the public at the central office of the Department of Environmental Quality, Air Division, 1111 East Main Street, Suite 1400, Richmond, Virginia, between 8:30 a.m. and 4:30 p.m. of each business day.

E. Information on federal regulations and nonstatutory documents incorporated by reference and their availability may be found below in this subsection.

1. Code of Federal Regulations.

a. The provisions specified below from the Code of Federal Regulations (CFR) are incorporated herein by reference:

(1) 40 CFR Part 51 - Requirements for Preparation, Adoption and Submittal of Implementation Plans, specifically Subpart S (Inspection and Maintenance Program Requirements).

(2) 40 CFR Part 85 - Control of Air Pollution from ~~Motor Vehicles and Motor Vehicle Engines~~ Mobile Sources, specifically Subpart W (Emission Control System Performance Warranty Short Tests).

b. Copies may be obtained from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402; phone (202) 783-3238.

2. Environmental Protection Agency, Motor Vehicle Emissions Laboratory.

a. The following document is incorporated herein by reference: Environmental Protection Agency technical report, "EPA Recommended Practice for Naming I/M Calibration Gas," EPA-AA-TSS-83-8-B, September 1983.

b. The following document is incorporated herein by reference: Environmental Protection Agency technical guidance, Acceleration Simulation Mode Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications," EPA420-B-04-011, July 2004.

c. Copies may be obtained from: Environmental Protection Agency, Office of Transportation and Air Quality, 2000 Traverwood, Ann Arbor, MI 48105.

3. Building Officials & Code Administrators International, Inc.

a. The following document is incorporated herein by reference: The BOCA National Mechanical Code/1993, Eighth Edition.

b. Copies may be obtained from: Building Officials & Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478-5795.

9VAC5-91-185. Clean screen vehicle emissions standards for on-road testing.

A. Clean screen vehicles shall be identified by an on-road emissions inspector using on-road testing based on all of the following criteria until the provisions of subsection B of this section become effective according to the schedule in subsection D of 9VAC5-91-740:

1. Up to 5.0% of the number of vehicles measured during any 30-day period may be identified as clean screen vehicles. This percentage may be evaluated annually by the department and adjusted based on the amount of emissions reduction lost due to clean screening.

2. Vehicles that have the cleanest measurements based on an average of at least three measurements (taken on three different days in a 120-day time period) may be identified as clean screen vehicles.

3. Vehicles must have no measurements exceeding the on-road high emitter emissions standard within the 120-day time period as required in subdivision 2 of this subsection to be identified as clean screen vehicles.

4. Vehicles must not be equipped with an OBD system unless DEQ makes a determination to include certain OBD model years based on evidence that there would not be a significant loss in emissions reduction benefits.

B. Vehicles shall be identified as clean screen vehicles by an on-road emissions inspector using on-road testing based on the following criteria:

1. The vehicle is due for an emissions inspection test within 120 days;

2. The result of the most recent initial emissions test on record with the department is not a "fail";

3. No on-road emissions measurement since the most recent initial emissions test exceeds the on-road high emitter emissions standards as determined according to 9VAC5-91-180 B;

4. The two most recent on-road emissions measurements taken within 12 months of the registration expiration date shall not exceed the clean screen standards as determined in subsection D of this section and the vehicle must have a vehicle emissions index no greater than 80; or

5. The most recent on-road emissions measurement taken within 12 months of the registration expiration date shall not exceed the clean screen standards as determined in subsection D of this section and the vehicle shall have a vehicle emissions index no greater than 75.

C. On an annual basis, at least 2.0% of the vehicles meeting the clean screen criteria in subsection B of this section shall not be notified of the clean screen and may receive an emissions test at an ~~emission~~ emissions inspection station. The department shall analyze these test results to determine the effect of on-road testing on total emissions reductions. The director may decrease the maximum vehicle emissions index specified in subdivision B 4 and 5 of this section as necessary to ensure compliance with federal requirements in accordance with 9VAC5-91-740 F.

D. The clean screen vehicle standards are determined as a percentage of the values in Table III-C. The director may adjust the percentage between 50% to 80% to ensure compliance with federal requirements in accordance with 9VAC5-91-740 F.

E. The director may exempt certain vehicle models with known emissions related deficiencies.

F. Clean screen vehicles in accordance with subsections A and B of this section may be recorded as having passed the next emissions inspection required by § 46.2-1178 of the Code of Virginia and the result shall be entered into the emissions inspection record for that vehicle.

TABLE III-C

On Road Clean Screen Maximum Standards

Emissions Test Weight (ETW)	LDGV			LDGT 1 & 2		
	HC(ppm)	CO(%)	NO (ppm)	HC(ppm)	CO(%)	NO (ppm)
1750	136	0.77	1095	136	0.77	1095
1875	129	0.73	1031	129	0.73	1031
2000	123	0.69	973	123	0.69	973
2125	116	0.66	920	116	0.66	920
2250	111	0.62	871	111	0.62	871

2375	106	0.59	827	106	0.59	827
2500	101	0.57	786	101	0.57	786
2625	97	0.54	749	97	0.54	749
2750	93	0.52	715	93	0.52	715
2875	89	0.50	684	89	0.50	684
3000	86	0.48	656	86	0.48	656
3125	83	0.46	630	83	0.46	630
3250	80	0.45	607	80	0.45	607
3375	78	0.43	585	78	0.43	585
3500	76	0.42	566	76	0.42	566
3625	74	0.41	547	75	0.41	547
3750	72	0.40	531	72	0.40	531
3875	70	0.39	515	91	0.50	644
4000	68	0.38	501	88	0.49	626
4125	67	0.37	487	87	0.48	609
4250	65	0.36	475	84	0.47	594
4375	64	0.35	463	83	0.46	579
4500	63	0.35	451	81	0.45	564
4625	61	0.34	440	79	0.44	551
4750	60	0.33	430	78	0.43	538
4875	59	0.33	420	76	0.43	525
5000	58	0.32	410	75	0.42	513
5125	57	0.31	400	74	0.41	500
5250	56	0.31	391	72	0.40	489
5375	55	0.30	382	71	0.39	478
5500	54	0.30	373	70	0.39	466
5625	53	0.30	364	68	0.38	455
5750	52	0.29	356	67	0.37	445
5875	51	0.28	348	66	0.36	435
6000	50	0.28	340	65	0.36	425
6125	49	0.27	333	64	0.35	416
6250	48	0.27	326	62	0.35	408
6375	48	0.26	320	62	0.34	400
6500	47	0.26	315	61	0.34	394
6625	46	0.26	311	60	0.34	389
6750	46	0.26	307	60	0.34	384

6875	46	0.25	305	60	0.33	382
7000	46	0.25	305	59	0.33	381
7125	46	0.25	305	59	0.33	381
7250	46	0.25	305	59	0.33	381
7375	46	0.25	305	59	0.33	381
7500	46	0.25	305	59	0.33	381

9VAC5-91-290. Emissions inspection station operations.

A. Emissions inspection station operations shall be conducted in accordance with applicable statutes and this chapter.

B. Emissions inspection stations shall cooperate with the department during the conduct of audits, investigations and complaint resolutions.

C. Emissions inspection stations, except fleet emissions inspection stations permitted under 9VAC5-91-370, shall conduct emissions inspections during normal business hours and shall inspect every vehicle presented for inspection within a reasonable time period.

D. Emissions inspection stations that have performed a chargeable initial inspection that resulted in a test failure or failed invalid result shall provide one free reinspection on the same vehicle upon request within 14 calendar days of the initial inspection test failure or failed invalid result.

E. Emissions inspection stations finding it necessary to suspend inspections due to analyzer system malfunction or any other reason shall refund any inspection fee collected when a station cannot accommodate a customer's request for a free reinspection in accordance with subsection D of this section and 9VAC5-91-420 M.

F. Emissions inspection stations shall notify the department when they are unable to perform ~~emission~~ emissions inspections for any reason and shall notify the department when they are able to resume inspections.

G. Emissions inspection stations shall:

1. Employ at least one emissions inspector.

2. Have an emissions inspector on duty during posted emissions inspection hours, except for fleet emissions inspection stations permitted under 9VAC5-91-370.

3. Only allow licensed emissions inspectors to conduct inspections.

H. Emissions inspection stations shall provide to emissions inspection customers any information ~~which~~ that has been provided to the emissions inspection station by the department and ~~which~~ that is intended to be provided to the customer.

I. Emissions inspection stations shall allow emissions inspection customers to have viewing access to the inspection process.

J. Emissions inspections and vehicle safety inspections may be performed in the same service bay provided that the facility is both an emissions inspection station and an official safety inspection station in accordance with §§ 46.2-1163 and 46.2-1166 of the Code of Virginia.

K. Emissions inspections may be performed in the inspection area of the emissions inspection station or, if by wireless means, in any other area on the premises of the emissions inspection station provided that all applicable test components can be performed at that location.

9VAC5-91-340. Motor vehicle inspection report; certificate of emissions inspection.

A. ~~Emission~~ Emissions inspection stations and emissions inspectors shall be responsible for ensuring that all motor vehicle inspection reports are legible, and properly completed and printed with correct information appearing in the correct location on the form and shall notify immediately the department and the vehicle operator of any incorrect information appearing on the form.

B. Emissions inspectors and emissions inspection stations shall be responsible for ensuring that all emissions inspection results are properly communicated to the department and to the vehicle operator. The use of the motor vehicle inspection report may serve as proper communication to the vehicle operator.

C. Certificates of vehicle emissions inspection shall be used only for documentation of official test results.

D. Certificates of ~~emission~~ emissions inspections and motor vehicle inspection reports shall be issued only by licensed emissions inspectors employed by permitted emissions inspection stations.

9VAC5-91-360. Inspector identification number and access code usage.

A. The department shall assign each emissions inspector a unique number and numerical code known as an inspector identification number and an access code to gain access to the analyzer system at the inspector's place of employment.

Biometric identification may be used in place of an access code.

B. Access codes and identification numbers shall be added and deleted only by department personnel.

C. An inspector identification number and access code shall be used only by the inspector to whom it was assigned.

D. An inspector's name printed on a motor vehicle inspection report shall be an endorsement that the entire test was performed by the inspector whose name appears on the vehicle inspection report. Each inspector must sign his full name on the vehicle inspection report for each ~~emission~~ emissions inspection conducted.

E. Emissions inspection stations and emissions inspectors shall report any unauthorized use of an inspector identification number or access code to the department within 24 hours of the discovery of unauthorized use.

F. Emissions inspection stations and inspectors shall be responsible for any violation or fraudulent inspection which occurs using inspector identification numbers or access codes.

G. Emissions inspection stations shall be responsible for all certificates of vehicle emissions inspection and motor vehicle inspection reports issued by that emissions inspection station.

Part V

Emissions Inspector Testing and Licensing

9VAC5-91-380. Emissions inspector licenses and renewals.

A. The director shall issue, suspend, revoke or deny licenses, and establish procedures and other instructions for emissions inspectors.

B. Applicants shall qualify under 9VAC5-91-390 and shall demonstrate to the department proof of identification and the ability to properly conduct vehicle emissions inspections according to this chapter prior to being issued an emissions inspector license.

C. Application for licenses shall be made to, and in accordance with procedures approved by, the department.

D. Licenses shall be valid for time periods determined by the department, not to exceed three years from the end of the month in which issued.

1. Upon expiration of the license, the emissions inspector shall no longer be authorized to perform emissions inspections.

2. Upon expiration of the license, the applicant shall be required to pass the testing requirements in 9VAC5-91-390 before being relicensed.

E. When supported by justification which the department deems adequate, the director may, upon written request by an emissions inspector, extend the expiration date of a license by a period not to exceed three months beyond the original expiration date for the purpose of allowing sufficient time for an inspector to correct such deficiencies in the application, such as completion of the required instruction, as have been identified by the department and to allow completion of the application review by the department. Such application for license extension may require demonstration of the applicant's ability to perform an emissions inspection at an emissions inspection or referee facility to the satisfaction of the department.

F. No person shall represent themselves as an emissions inspector without holding a valid emissions inspector license issued by the director and a valid motor vehicle driver's or operator's license.

1. All required licenses shall be made available to department personnel upon request.

2. It is the responsibility of the emissions inspector to have both a current valid emissions inspector and a valid motor vehicle driver's or operator's license. The department will endeavor to notify inspectors prior to the expiration of their emissions inspector license.

3. Licenses shall be valid only for the person to whom they are issued.

4. Emissions inspector identification numbers and access codes are valid only for the person to whom they are issued. Emissions inspectors shall not provide access codes to anyone except department personnel upon request.

G. Upon notification of revocation, the inspector shall surrender to the department all licenses issued by the director. It is the responsibility of the emissions inspector to notify the department of the termination of a suspension period.

H. Emissions inspectors shall keep their current mailing address and place of employment on file with the department and must notify the department of any changes in employment or mailing address.

I. Emissions inspectors may perform emissions inspections at more than one permitted ~~emission~~ emissions inspection station after notification to the department and with the authorization of the emissions inspection station owners.

J. The provisions of this part apply to current license holders and applicants for initial, renewal, or reinstatement of licenses.

K. Requalification may be required at any time by the department based on the results of monitoring of the performance of the emissions inspector or based on changes in applicable vehicle emissions control or inspection technology. Inspectors may be required to complete instruction or testing to satisfy any deficiencies identified by the department and, if necessary, require demonstration of the

inspector's ability to perform an emissions inspection at an emissions inspection station or referee facility. Failure to requalify within three months of notification shall result in expiration of the emissions inspector's licenses.

Part VI

Inspection Procedures

9VAC5-91-410. General.

A. The key steps in the emissions inspection procedure are as follows:

1. Preliminary inspection of the vehicle to determine whether to accept the vehicle for testing or reject it, as approved by the department and according to 9VAC5-91-420 C. If the vehicle is rejected, the results of such preliminary inspection shall be provided to the customer.

2. Advise the customer of the ability of the emissions inspection station to perform emissions related repairs including the availability of certified emissions repair technicians and necessary equipment. If the vehicle failed the test, inform the customer of their right to seek repairs elsewhere.

3. An agreement between the customer and the emissions inspection station, oral or written, that an emissions inspection will be performed and the requisite fee paid.

4. Determination of the type of emissions test required, ASM or two-speed idle test, or OBD system test for OBD vehicles. For certain OBD vehicles, the director may require an exhaust test (ASM or two-speed idle) in addition to the OBD system test if he conducts appropriate studies and determines that (i) the expected failure rate for exhaust testing for these certain vehicles would be greater than 5.0%, (ii) additional ~~emission~~ emissions reductions would be achieved, and (iii) the EPA acknowledges such ~~emission~~ emissions reduction benefits.

5. The inspection of emissions control equipment and an evaluation for the presence of visible smoke.

6. The test of exhaust emissions levels, or the vehicle's on-board diagnostic system if applicable, using a certified analyzer system.

7. The distribution of documents and emissions inspection results. The emissions inspector shall sign each motor vehicle emissions inspection report for each emissions inspection performed by that inspector. The inspector's identification number or the inspector's signature, or both, shall be an endorsement that all aspects of the emissions inspection were performed by the inspector in accordance with this chapter.

8. Advise customers of emissions inspection results, options for waiver if applicable, and the obligation of the station to perform a free retest within 14 days for failed vehicles and the conditions placed on the motorist in regard to free retests.

9. Conduct free retest, if necessary, within 14 days of a chargeable initial test.

B. The emissions inspection station may charge a fee not to exceed the amount specified in § 46.2-1182 of the Code of Virginia.

9VAC5-91-420. Inspection procedure; rejection, pass, fail, waiver.

A. All aspects of the inspection shall be performed by an emissions inspector, using the instructions programmed in the certified analyzer system and procedures approved by the department, within the designated inspection area, and on the permitted premises.

B. The emissions inspection station shall notify the customer prior to initiating an emissions inspection that the emissions inspection station is either able or unable to perform the emissions-related repairs required by 9VAC5-91-480 for that particular vehicle should that vehicle fail the inspection. The emissions inspector shall not conduct an inspection on a motor vehicle unless the customer gives approval after being so notified.

C. The emissions inspector shall not conduct an inspection on a motor vehicle if the vehicle is in an unsafe condition for testing according to the following conditions. The customer shall be informed of any such condition.

1. The vehicle shall not have holes or detectable leaks in the exhaust system. The inspector may check the system for leaks by listening or visually inspecting for such leaks or by measuring carbon dioxide. The presence of leaks shall cause the vehicle to be rejected from testing.

2. The motor vehicle shall be evaluated for the presence of visible smoke emissions. Those vehicles exhibiting any visible smoke emissions from the engine crankcase or exhaust system or both, shall be rejected from testing.

3. The vehicle shall not have any mechanical problems, such as engine, brake, or transmission problems or engine, radiator, or transmission fluid leaks that would create a safety hazard for the applicable test, or bias test results. Such conditions shall cause the vehicle to be rejected from testing.

4. For vehicles receiving a test while operating on a dynamometer, the vehicle shall be rejected from testing if drive wheel tire tread wear indicators, tire cords, bubbles, cuts, or other damage are visible. Such vehicles shall be rejected from testing if space-saver spare tires are being used on a drive axle or if they do not have reasonably sized tires on the drive axle or axles based on dynamometer manufacturer safety criteria or if the set of tires is a mixture of radial and bias ply. Vehicles may be rejected if

they have different sized tires on the drive axle or axles. Drive wheel tires shall be checked for appropriate tire pressure and adjusted as necessary as recommended by the tire or vehicle manufacturer.

5. The vehicle shall be rejected from testing if the fuel filler cap (gas cap) is missing.

6. The vehicle shall be rejected from testing if a known, emissions-related, manufacturers recall has not been satisfied according to Part XI (9VAC5-91-720 et seq.).

7. Vehicles that are overheated shall be rejected from testing. Vehicles that indicate that an overheated condition will be achieved during testing may be rejected from testing at the discretion of the inspector.

8. OBD vehicles shall be rejected from testing for any of the following:

a. The OBD data link cannot be accessed physically or electronically.

b. The testing equipment indicates that the OBD system is in a "not ready" status. A "not ready" status shall be indicated by the following:

(1) For model year 1996 through 2000, three or more monitors indicate "not ready."

(2) For model year 2001 and newer, two or more monitors indicate "not ready."

(3) For vehicles that failed the emissions inspection for a catalytic converter related fault code, and the catalyst monitor indicates "not ready" during a reinspection.

c. The catalyst monitor or oxygen sensor monitor, or both, are not supported, except for models exempt by the director.

d. The OBD system is unable to communicate successfully with the analyzer system.

e. The OBD system indicates evidence of tampering.

f. The director may adjust the number of "not ready" monitors required for rejection from testing for specific vehicle models based upon information from this program or other state programs, vehicle manufacturers, or the EPA.

D. The emissions inspection procedure shall be performed under the following conditions:

1. For vehicles subject to exhaust emissions testing, the entire vehicle shall be in normal operating condition as indicated by a temperature gauge or touch test on the radiator hose. If ASM testing is performed, a cooling fan shall be directed at the engine cooling system if the ambient temperature exceeds 72°F.

2. The inspection shall be performed with the transmission in park or neutral for OBD testing or for two-speed idle testing, or in drive (if automatic), or the appropriate gear to achieve necessary RPM range (if manual) for ASM testing; and with all accessories off.

3. All electronic and mechanical testing equipment shall be properly attached according to vehicle and analyzer system manufacturer requirements and instructions.

4. For vehicles subject to exhaust emissions testing, the analyzer probe shall be properly inserted into the exhaust system.

a. The analyzer probe shall be inserted into the tailpipe as recommended by the gas analyzer manufacturer for a quality sample, or at least 10 inches if not specified by the manufacturer.

b. If a baffle or screen prevents probe insertion to an adequate depth, a suitable probe adapter or extension boot which effectively lengthens the tail pipe must be used.

c. If the vehicle is equipped with multiple unique exhaust outlets, a suitable analyzer system manufacturer recommended adapter or other apparatus shall be used in order to provide a single supply of the sample exhaust to the gas analyzer.

d. Vehicle exhaust shall be vented safely out of the inspection area and facility.

5. If the vehicle stops running or the engine stalls during the test it shall be started as soon as possible and, for vehicles subject to exhaust emissions testing, shall be running for at least 30 seconds prior to the restart of the test.

6. For vehicles subject to exhaust emissions testing, the exhaust test shall be terminated upon reaching the overall maximum test time for the applicable test, or if CO plus CO_2 concentration falls below 6.0% as determined by the analyzer system.

7. Each emissions inspection, whether initial or retest, shall be conducted in its entirety with the exception of: (i) conditions which require that the vehicle be rejected from testing in accordance with subsection C of this section, (ii) invalid test conditions, or (iii) conditions beyond the emissions inspector's control that cause the test to be aborted.

E. In consideration of maintaining inspection integrity:

1. The temperature of the inspection area shall be between 41°F and 110°F during the inspection. Inspection area temperatures shall be accurately measured in a well-ventilated location away from vehicle engine and exhaust heat sources and out of direct sunlight. The analyzer

system shall not be operated when the temperature of the inspection area is not within the range stated above.

2. The analyzer system shall be kept in a stable environment which affords adequate protection from the weather and local sources of hydrocarbons or other pollutants that may interfere with gas analyzer performance or accuracy of test results, or both.

3. The electrical supply to the analyzer system shall be able to meet the manufacturer's requirements for voltage and frequency stability.

4. The inspection location shall meet all applicable zoning requirements.

5. The analyzer system shall be operated according to quality assurance procedures and other procedures approved by the department.

F. The emissions inspector shall accurately identify and enter vehicle information, visual component and visible smoke inspection results as applicable for vehicle emissions inspection records. The data entered into the certified analyzer system and recorded on the certificate of vehicle emissions inspection shall be the data from the vehicle being inspected and must be obtained from that vehicle.

G. The emissions inspector shall perform an inspection of the emissions control systems. The inspection shall include the following:

1. An examination of the emissions control information decal (sticker) under the hood, reference manual, and applications guide to determine if the vehicle, as manufactured or certified for sale or use within the United States, should be equipped with a catalytic converter system, air injection system, fuel evaporative emissions control system, positive crankcase ventilation system, exhaust gas recirculation valve, on-board diagnostic system, or thermostatic air cleaner system, as appropriate.

2. Based on the determinations made in subdivision 1 of this subsection, a visual inspection for the presence and operability of the catalytic converter system and, for vehicles subject to exhaust emissions testing, the air injection system, fuel evaporative emissions control system, positive crankcase ventilation system, exhaust gas recirculation system and thermostatic air cleaner system. If any of these parts or systems are inoperable, or have been removed or damaged, or rendered inoperable, the vehicle will not qualify for an emissions inspection approval or waiver. If systems are missing which the reference manual or applications guide indicates should be present, the motor vehicle manufacturer's emissions control information provided for that vehicle shall apply. The inspector shall enter the result of the visual inspection, "pass," "fail," or "not applicable" as appropriate into the certified analyzer system. The department may issue a temporary waiver because of the unavailability of component parts listed in subdivision 2 of this subsection if it is determined that the subject components or parts are not available provided the following conditions have been met:

a. The owner of the vehicle obtains a signed statement from the manufacturer's dealer or automotive parts source that supplies parts for the vehicle model indicating the nonavailability of such parts.

b. The statement submitted must be on letterhead or other official form or document and signed by an officer, owner or other responsible official of the automotive parts source.

c. The statement must identify the parts by description and part number and must indicate whether the parts are not currently stocked, have been superseded by other parts, or are out of production.

d. The department may conduct an independent investigation to locate any such parts or to verify the information on the statement prior to the issuance of any vehicle inspection report. The vehicle shall be held to all applicable inspection parameters, test type and standards or other conditions with the exception of the emissions control components and parts that have been verified as unavailable.

e. Any additional requirements to repair the vehicle to meet the applicable emissions standards or to qualify for an emissions inspection waiver under subsection M of this section shall apply.

f. If the department is able to determine that (i) the unavailable part, or parts, is the only method of controlling the emissions for which the vehicle has failed an emissions inspection or (ii) no other repairs will be effective in reducing such emissions, the department may issue a temporary waiver notwithstanding the provisions of subsection M of this section.

3. For OBD vehicles, an electronic inspection of the applicable on-board diagnostic (OBD) system according to manufacturer specifications and procedures approved by the EPA. The exhaust emissions test may also be performed on a limited basis as specified by the department for quality control or program evaluation purposes.

a. Emissions-related failure codes that cause the malfunction indicator lamp to be commanded "on" provided by OBD systems of OBD vehicles shall cause the vehicle to fail the emissions inspection. If testing equipment or visual inspection indicates that the malfunction indicator lamp is inoperable, the vehicle shall fail the emissions inspection. If the testing equipment indicates that the OBD system is in a "not

ready" status, the vehicle shall be rejected from testing according to subdivision C 8 of this section.

b. Emissions-related failure codes that cause the malfunction indicator lamp to be commanded "on" as provided by OBD systems of light duty diesel powered vehicles of model years 1997 and newer shall cause the vehicle to fail the inspection. In addition, if the testing equipment or visual examination indicates that the malfunction indicator lamp is inoperable, the vehicle shall fail the emissions inspection. If the testing equipment indicates that the OBD system is in a "not ready" status, the vehicle shall be rejected from testing according to subdivision C 8 of this section. The director may increase or decrease the number of "not ready" monitors allowed based on an analysis of the program data, data from other state's programs and the EPA.

c. The department may exempt vehicle models or some classes of vehicles from OBD testing due to known OBD system problems or anomalies associated with such vehicles. If exempted from OBD testing, such vehicles shall receive the ASM or TSI test as applicable.

H. For vehicles otherwise subject to ASM testing based on model year and weight classification, the department may determine, due to complications identified in this or other state programs, or consultation with vehicle manufacturers, that certain vehicle makes or models shall be tested using the two-speed idle test in lieu of the ASM test or using a mixture of test modes such as an ASM 2525 coupled with an idle test.

I. For 1981 model year and newer vehicles with a GVWR up to and including 8,500 pounds, the exhaust emissions inspection procedure, if applicable, shall be an ASM, two-mode (ASM 5015 plus ASM 2525), loaded test, performed while the vehicle is operating on a dynamometer. The test shall be preceded by a 30-90 second preconditioning period, as determined by the department, using the ASM 2525 load simulation.

J. The exhaust emissions inspection procedure, if applicable, shall be a two-speed idle test as specified in section (II) of Appendix B of 40 CFR Part 51, Subpart S, and 9VAC5-91-440 for the following affected motor vehicles:

1. Vehicles with a GVWR greater than 8,500 pounds and up to and including 10,000 pounds;

2. Vehicles of model years 1980 and older;

3. Vehicles which employ full-time four wheel drive systems;

4. Vehicles which have traction control or anti-lock brake systems which have been determined by the manufacturer or the department to interfere with proper ASM testing; or

5. Vehicles which have some other configuration which has been determined by the department to interfere with proper ASM testing.

K. In order to obtain a vehicle registration from the Department of Motor Vehicles, a certificate of emissions inspection shall be issued by an emissions inspector or the department indicating that the vehicle has either passed the emissions inspection or has received a waiver as specified in subsections L and M of this section. A motor vehicle shall pass the emissions inspection and a certificate of vehicle emissions inspection and a motor vehicle inspection report indicating the vehicle has passed shall be issued if the following conditions are met:

1. The motor vehicle meets the applicable emissions control systems inspection requirements.

2. For vehicles subject to exhaust emissions testing, the vehicle emissions levels are the same as or less than the applicable exhaust emission standards in Part III (9VAC5-91-160 et seq.) and Part XIV (9VAC5-91-790 et seq.), as applicable; or for vehicles subject to OBD, the vehicle passes the OBD test and exhaust emissions test, if applicable.

3. There are no visible smoke emissions from the vehicle engine crankcase or tail pipe, or both.

L. If the vehicle fails the initial emissions inspection, a certificate of emissions inspection and a motor vehicle inspection report shall be issued indicating a failure, and the owner shall have 14 days in which to have repairs or adjustments made and return the vehicle to the emissions inspection station which performed the initial inspection for one free reinspection.

M. A certificate of vehicle emissions inspection waiver may be issued if all of the following conditions are met:

1. The vehicle passes the emissions control systems inspection described by subsection G of this section if applicable.

2. There are no visible smoke emissions from the vehicle engine crankcase or exhaust system, or both.

3. The vehicle continues to exceed applicable emissions standards after emissions related repairs required by 9VAC5-91-480 have been performed.

4. An amount equal to or greater than the adjusted waiver cost for enhanced emissions inspection programs specified in subsection N of this section has been spent on emissions related repairs as specified in 9VAC5-91-480 provided that:

a. Proof that ~~emission~~ emissions related repairs have been accomplished and costs for that specific vehicle have been provided to the emissions inspection station in the form of an itemized bill, invoice, paid work order, or

statement in which emissions related parts or repairs, or both, are specifically identified, and to the extent practical, the inspector can confirm the repairs by visual examination;

b. The emissions inspector has been provided with a properly completed emissions repair data form indicating that the repair work was performed at a certified emissions repair facility and that the repairs were performed by or under the supervision or approval of a certified emissions repair technician at a certified emissions repair facility; and

c. The repair work was performed no earlier than 60 days prior to the initial inspection.

N. The repair cost requirements for waiver eligibility for the enhanced emissions inspection program shall be $450 adjusted to reflect the increase in the Consumer Price Index (CPI) and adjusted annually thereafter, as described at 40 CFR 51.360(a)(7) and § 46.2-1181 C of the Code of Virginia.

O. A waiver shall not be issued for a vehicle which is eligible for the emissions control systems performance warranty, under the provisions of § 207(b) of the federal Clean Air Act. In accordance with the provisions of § 207(b) of the federal Clean Air Act, the repair costs necessary for compliance with emissions standards specified in Part III (9VAC5-91-160 et seq.) and Part XIV (9VAC5-91-790 et seq.) will be borne by the vehicle manufacturer or authorized dealer representative.

P. The analyzer system shall generate an electronic record of the certificate of emissions inspection and transmit the appropriate data to the department and the emissions inspector shall make distribution of the vehicle inspection report to the customer.

Q. The customer shall be advised as specified below upon completion or termination of the inspection procedure.

1. If the test is terminated prior to completion, explain the problem with the vehicle or equipment and, if applicable, advise of free retest and time limit.

2. If the vehicle passes or receives a waiver, provide a motor vehicle inspection report and advise motorist of registration requirement and process, including the process to be used in case of interruption of the electronic data transfer system.

3. If the vehicle fails:

a. Give vehicle inspection report of failure to customer;

b. Advise of type of failure;

c. Advise of free retest and time limit;

d. Advise of repair facility information as provided by the department; and

e. Advise of waiver requirements, if applicable.

R. In cases of complaints or disputes between the emissions inspector or emissions inspection station and the customer, the customer shall be advised of the location and phone number of a department representative to be contacted to obtain assistance in resolving disputes.

9VAC5-91-430. ASM test procedure.

A. The ASM equipment shall be in proper operating condition according to the manufacturer's instructions prior to initiating a test.

1. The vehicle shall be maneuvered onto the dynamometer with the drive wheels positioned on the dynamometer rolls. Prior to test initiation, the rolls shall be rotated until the vehicle laterally stabilizes on the dynamometer. Vehicles that cannot be stabilized on the dynamometer shall be rejected from testing. Drive wheel tires shall be dried if necessary to prevent slippage.

2. Prior to initiating the ASM exhaust test procedure:

a. Vehicles that are also required to receive OBD testing shall be connected to the appropriate test equipment and vehicle and analyzer system manufacturer instructions.

b. The OBD test, if applicable, shall be performed prior to the ASM test.

3. When ambient temperatures exceed 72°F, testing shall not begin until the cooling fan is positioned and activated. The cooling fan shall be positioned to direct air to the vehicle cooling system, but shall not be directed at the catalytic converter.

4. Testing shall not begin until the vehicle is properly restrained for ASM testing.

5. Testing shall not begin until the exhaust ventilation system is properly functioning and attached or positioned as necessary.

6. To ensure that the motor vehicle and the dynamometer are in a warmed-up condition prior to official testing, a 30-90 second preconditioning, as determined by the department, shall be performed using the ASM 2525 load simulation.

7. Prior to each test or mode of a test, the analyzer system shall automatically select the load setting of the dynamometer.

8. Engine speed shall be monitored by means of an RPM sensor and recorded in the test record.

B. The test sequence shall consist of first chance and, if applicable, second chance tests in both ASM modes described in this section. Vehicles that fail the first chance test as described within 150% of the standard shall receive a second chance test. The department may increase this percentage to

200% when interim or final standards take effect according to 9VAC5-91-170 B. The second chance test shall consist of a repetition of the mode or modes that were failed in the first chance test. The department may eliminate the need to do a second chance test if the vehicle has already failed an ~~emission~~ emissions component check.

C. The ASM 2525 mode timer shall start when the dynamometer speed (and corresponding power) are maintained at 25 ±1.0 miles per hour for five continuous seconds. If the acceleration simulation exceeds the tolerance specified by the analyzer system equipment manufacturer for more than five consecutive seconds after the mode timer is started, the test mode timer shall be reset. Should this happen a third time, the test shall be aborted and another started. The dynamometer shall apply the required torque load for 25.0 mph at any testing speed within the tolerance of 25 ±1.0 miles per hour (i.e., constant torque load over speed range). The torque tolerance shall be ±5.0% of the correct torque at 25 mph.

1. The analyzer system shall automatically select the proper load setting for the dynamometer and test standards, based on the Equivalent Test Weight (ETW) and the look-up table in Part XIV (9VAC5-91-790 et seq.), using vehicle identification information.

2. If the dynamometer speed or torque falls outside the speed or torque tolerance for more than two consecutive seconds, or for more than five seconds total, the test mode time shall reset to zero and resume timing. The minimum mode length shall be 45 seconds. The maximum mode length shall be 90 seconds elapsed time.

3. During the 10 second period used for the pass/fail decision, dynamometer speed shall not fall more than 0.5 mph (absolute drop, not cumulative). If the speed at the end of the 10 second period is more than 0.5 mph less than the speed at the start of the 10 second period, testing shall continue until the speed stabilizes enough to meet this criterion.

4. The pass/fail analysis shall begin after an elapsed time of 30 seconds, which may include up to 15 seconds of the preconditioning time period if the ASM 2525 torque and speed tolerances are maintained. A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

a. The vehicle shall pass the ASM 2525 mode and the mode shall be immediately terminated if, at any point between an elapsed time of 30 seconds and 90 seconds, the 10 second running average measured values for each pollutant are simultaneously less than or equal to the applicable test standards described in Part XIV (9VAC5-91-790 et seq.).

b. The vehicle shall fail the ASM 2525 mode and the mode shall be terminated if subdivision C 4 a of this section is not satisfied by an elapsed time of 90 seconds.

5. Upon termination of the ASM 2525 mode, the vehicle and dynamometer shall immediately begin a transition to the speed required for the ASM 5015 mode. The dynamometer torque shall smoothly transition during the transition period and shall automatically reset to the load required for the ASM 5015 mode as specified in subdivision D 1 of this section.

D. The ASM 5015 mode timer shall start when the dynamometer speed (and corresponding power) are maintained at 15 ±1.0 miles per hour for five continuous seconds. If the acceleration simulation exceeds the tolerance specified by the analyzer system manufacturer for more than five consecutive seconds after the mode timer is started, the test mode timer shall be reset. Should this happen a third time, the test shall be aborted and another started. The dynamometer shall apply the required torque for 15.0 mph at any testing speed within the tolerance of 15 ±1.0 miles per hour (i.e., constant torque load over speed range). The torque tolerance shall be ±5.0% of the correct torque at 15 mph.

1. The analyzer system shall automatically select the proper load setting for the dynamometer and test standards, based on the ETW and the look-up table in Part XIV (9VAC5-91-790 et seq.), using vehicle identification information.

2. If the dynamometer speed or torque falls outside the speed or torque tolerance for more than two consecutive seconds, or for more than five seconds total, the mode timer shall reset to zero and resume timing. The minimum mode length shall be 40 seconds. The maximum mode length shall be 90 seconds elapsed time.

3. During the 10 second period used for the pass/fail decision, dynamometer speed shall not fall more than 0.5 mph (absolute drop, not cumulative). If the speed at the end of the 10 second period is more than 0.5 mph less than the speed at the start of the 10 second period, testing shall continue until the speed stabilizes enough to meet this criterion.

4. The pass/fail analysis shall begin after an elapsed time of 30 seconds. A pass or fail determination shall be made for the vehicle and the mode shall be terminated as follows:

a. The vehicle shall pass the ASM 5015 mode if, at any point between an elapsed time of 30 seconds and 90 seconds, the 10-second running average measured values for each pollutant are simultaneously less than or equal to the applicable test standards described in Part XIV (9VAC5-91-790 et seq.). If the vehicle passed the ASM 2525 mode, the ASM 5015 mode shall be terminated upon obtaining passing scores for all three pollutants.

b. The vehicle shall fail the first chance ASM 5015 mode if subdivision D 4 a of this section is not satisfied by an elapsed time of 90 seconds.

E. The inspector shall perform a second chance test on vehicles which fail either mode of the previous test sequence as follows:

1. If the vehicle fails the first-chance test, the test timer shall reset to zero and a second-chance test shall be performed, except as noted below. The second-chance test shall have an overall maximum test time of 145 seconds if one mode is repeated, an overall maximum time of 290 seconds if two modes are repeated.

2. If the vehicle failed only the ASM 2525 mode of the first chance test, then that mode shall be repeated upon completion of the first chance ASM 5015 mode. The repeated mode shall be performed as described in this section except that the provisions of subdivision C 5 of this section shall be omitted.

3. If the vehicle failed only the ASM 5015 mode of the first chance test, then the first chance ASM 5015 mode shall not end at 90 seconds but shall continue for up to 180 seconds.

4. If the vehicle failed both ASM 5015 and ASM 2525 modes of the first chance test, then the vehicle shall receive a second-chance test for the ASM 2525 mode immediately following the first chance ASM 5015 mode. If the vehicle fails the second-chance ASM 2525 mode, then the vehicle shall fail the test, otherwise the vehicle shall also receive a second-chance ASM 5015 mode test.

9VAC5-91-440. Two-speed idle test procedure.

A. The emissions inspection procedure shall be a two-speed idle test as specified in section (II) of Appendix B of 40 CFR Part 51, Subpart S.

1. The two-speed idle test shall consist of a test of the vehicle's exhaust emissions at idle and at 2500 rpm while the vehicle's gear selector is in neutral or park.

2. The idle test shall be administered after the 2500 rpm test. The tests shall be run consecutively.

3. The complete test shall consist of a first chance 2500 RPM mode test; followed by a first chance idle mode test. If either first chance mode fails, the first chance shall be followed by a preconditioning at 2500 RPM for up to three minutes and a second chance 2500 RPM mode test followed by a second chance idle mode. The department may eliminate the need to repeat a mode that passed the first chance test.

4. If the vehicle fails the first chance test, the second chance test and preconditioning shall be omitted if no exhaust hydrocarbon concentration less than 1800 ppm is detected within an elapsed time of 30 seconds. The department may eliminate the need to do a second chance test if the vehicle has already failed an ~~emission~~ emissions component check.

5. Motor vehicle manufacturers and the Environmental Protection Agency may issue special test instructions for specific vehicle models which shall be followed in lieu of the test procedures specified in this section if such instructions are provided through the administrator.

6. In order to pass the two-speed idle test, the vehicle's exhaust shall not exceed the standards listed in 9VAC5-91-160.

7. Vehicles which are required to receive OBD testing shall be connected to the appropriate test equipment according to vehicle and analyzer manufacturer instructions. The OBD test shall be performed prior to the two-speed idle test.

B. The idle test mode shall be performed as follows:

1. The vehicle transmission shall be in neutral or park and the parking brake applied; the engine shall be operating at curb idle and there shall not be any manipulation of the engine throttle mechanism.

2. The engine speed (RPM) shall be obtained and shall be between 400 and 1250 RPM for the duration of the test mode.

3. The pass/fail analysis shall begin after an elapsed time of 10 seconds.

4. The idle mode elapsed time shall be 30 seconds.

5. The exhaust concentrations shall be measured as percent carbon monoxide and parts per million hydrocarbons after stabilized readings are obtained and averaged over the last five seconds at the end of the idle test mode.

C. The 2500 RPM test mode shall be performed as follows:

1. The vehicle transmission shall be in neutral or park.

2. The vehicle engine speed shall be increased from idle to between 2200 and 2800 RPM and maintained at that level.

3. If the engine speed varies outside the parameters of 2200 to 2800 RPM for more than two seconds during a sampling period, the 2500 RPM mode shall be invalid and the 2500 RPM test shall be restarted. If the engine speed varies outside such parameters for more than a cumulative total of 10 seconds, the 2500 RPM test mode shall be invalid and another initiated.

4. The pass/fail analysis shall begin after an elapsed time of 10 seconds.

5. The 2500 RPM mode elapsed time shall be 30 seconds.

6. The exhaust concentrations shall be measured as percent carbon monoxide and parts per million hydrocarbons after

stabilized readings are obtained and averaged over the last five seconds at the end of the 2500 RPM test mode.

9VAC5-91-530. Emissions repair facility operations.

A. Emissions repair facilities shall maintain applicable repair and certification related records available for inspection and audit by the department any time during normal business hours for 12 months.

B. Emissions repair facilities shall employ at least one certified emissions repair technician during posted emissions repair station hours. Facilities shall immediately notify the department if repairs applicable toward a waiver are unable to be performed for any reason.

C. Emissions repair facility operations shall be conducted in accordance with applicable statutes and this chapter.

D. Emissions repair facilities shall provide emissions repair data and other such information related to repair effectiveness as required by the department in accordance with subsection A of this section for the purposes of emissions related repair performance monitoring. The facilities shall ensure that emissions repair data forms are (i) ~~are~~ properly and completely filled-out, (ii) ~~are~~ signed by the certified emissions repair technician employed by that facility who performed, supervised or approved the repairs, and (iii) ~~are~~ provided to the customer along with a receipt, invoice or repair order for the work performed.

E. No facility shall be represented as a certified emissions repair facility unless a valid certification has been issued for that facility by the director.

F. Emissions repair facilities shall cooperate with the department during the conduct of audits, investigations, and complaint resolutions.

G. Equipment, tools, and reference materials must be maintained in proper working order.

H. Emissions repair facilities shall maintain a file of the name, address, and identification number of all currently employed certified emissions repair technicians and shall provide such information to the department upon request.

I. Repairs to qualify toward the waiver cost threshold shall be conducted in accordance with 9VAC5-91-420 N, 9VAC5-91-480 C and 9VAC5-91-580 D.

9VAC5-91-540. Sign and certificate posting.

A. Emissions repair facilities performing emissions related repairs for the public shall post a sign approved or provided by the department designating the location as a certified vehicle emissions repair facility in a conspicuous location on the premises, in view of the public and approved by the department.

B. Emissions ~~inspection station~~ repair facility certificates shall be posted in a frame, in a conspicuous place on the permitted premises, within view of the public and approved by the department.

C. ~~Emission~~ Emissions repair facilities performing emissions related repairs for the public shall post all signs in a manner consistent with local sign ordinances or codes.

Part XII

On-Road Testing

9VAC5-91-740. General requirements.

A. The on-road testing program shall conform, at a minimum, to the requirements of 40 CFR 51.371 and § 46.2-1178.1 of the Code of Virginia applicable to the program area in which it is employed.

B. The emissions standards for the on-road remote sensing program are the on-road high emitter emissions standards, the clean screen vehicle standards, or both.

C. The on-road testing program and clean screen program including the emissions standards applicable thereto shall apply to any affected motor vehicles registered or operated primarily in the program area.

D. An on-road clean screen program shall be implemented according to the following schedule:

1. On and after July 1, 2012, and before July 1, 2013, an on-road clean screen program shall be limited to no more than 10% of the motor vehicles described in subsection C of this section that are eligible for emissions inspection during the applicable 12-month period;

2. On and after July 1, 2013, and before July 1, 2014, an on-road clean screen program shall be limited to no more than 20% of the motor vehicles described in subsection C of this section that are eligible for emissions inspection during the applicable 12-month period; and

3. On and after July 1, 2014, an on-road clean screen program shall be limited to no more than 30% of the motor vehicles described in subsection C of this section that are eligible for emissions inspection during the applicable 12-month period.

E. The on-road emissions inspector shall issue a clean screen vehicle notification to owners of affected motor vehicles that have met the clean screen emissions standards. The notification shall be issued in a timeframe compatible with the Virginia ~~Division~~ Department of Motor Vehicles vehicle registration renewal notification.

F. A motor vehicle owner who has received a clean screen vehicle notification may choose to meet the vehicle registration requirements of § 46.2-1183 of the Code of Virginia by participating in the clean screen program according to § 46.2-1178.1 E of the Code of Virginia.

G. The on-road emissions inspector performing on-road testing under this subsection may charge each motor vehicle owner who elects to participate in the on-road clean screen program an inspection fee in an amount as designated in § 46.2-1182 of the Code of Virginia.

H. The director may reduce the percentage of vehicles eligible to participate in the on-road clean screen program as is necessary to meet applicable air quality requirements under the federal Clean Air Act in accordance with § 46.2-1178 C of the Code of Virginia.

I. At the discretion of the director, the implementation or operation of the clean screen program may be suspended or revoked for failure to operate in accordance with the provisions of Article 22 (§ 46.2-1176 et seq.) of Chapter 10 of Title 46.2 of the Code of Virginia and the regulations adopted thereunder.

9VAC5-91-750. Operating procedures; violation of on-road high emitter standards.

A. Remote sensing equipment shall be operated in accordance with the remote sensing equipment manufacturers operating instructions and any contract or agreement between the department and the equipment operator.

B. Motor vehicles determined by remote sensing equipment to have exceeded on-road high emitter standards shall be considered to have violated such emissions standards.

1. Owners of such motor vehicles will be issued a notice of violation and shall be subject to the civil charges in 9VAC5-91-760 unless waived pursuant to this section.

2. Upon a determination by the department that a violation has occurred, motorists will be informed by the department or its representative of the failure to comply with emissions standards and of the dates, times, and places such remote sensing measurement occurred.

C. Civil charges assessed pursuant to this part will be waived if, within 30 days of the date of the notice of the violation, the motor vehicle owner provides proof to the department that:

1. Since the date of the violation, the vehicle has passed, or received a waiver as the result of, a confirmation test, or

2. Within the 12 months prior to the violation, the vehicle had received an emissions inspection waiver.

D. The requirement for an emissions inspection or payment of civil charges, based on a remote sensing failure, may be waived by the department if the affected motor vehicle in question is, by virtue of its registration date, required to have an emissions inspection within three months of the date of the remote sensing measurement that indicates the vehicle has (i) exceeded the on-road high emitter emission standards; or (ii) has received a waiver within the 12 months prior to the violation.

E. For 1996 and newer model vehicles with OBD, the director may require that the vehicle pass an exhaust test (ASM or two-speed idle) in addition to the OBD system test.

F. ~~Notice of violations~~ Notices of violation and civil charges may be issued to any motorist no more than two times in any 365-day period for any one motor vehicle.

VA.R. Doc. No. R19-5545; Filed September 28, 2018, 2:25 p.m.

VIRGINIA WASTE MANAGEMENT BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation 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 a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations.**

Agency Contact: Debra Harris, Virginia Waste Management Board, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4209, or email debra.harris@deq.virginia.gov.

FORMS (9VAC20-81)

Annual Report QA/QC Submission Checklist, DEQ Form ARSC–01 (rev. 7/2011)

~~Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC–01 (rev. 7/2012)~~

~~Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC–02 (rev. 7/2017)~~

~~Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC–03 (rev. 7/2017)~~

Solid Waste Management Facility Permit Applicant's Disclosure Statement, DEQ Form DISC–01 (rev. 8/2018)

Solid Waste Management Facility Permit Applicant - Key Personnel Disclosure Statement, DEQ Form DISC–02 (rev. 8/2018)

Solid Waste Management Facility Disclosure Statement - Quarterly Update, DEQ Form DISC–03 (rev. 8/2018)

Request for Certification (Local Government), DEQ Form SW–11–1 (rev. 6/2016)

~~Special Waste Disposal Request, DEQ Form SWDR (rev. 1/2012)~~

Special Waste Disposal Request, DEQ Form SWDR (rev. 8/2018)

Solid Waste Part A Application, DEQ Form SW PTA (rev. 3/2011)

Solid Waste Disposal Facility Part B Application, DEQ Form SW PTB (rev. 3/2011)

Solid Waste Information and Assessment Program - Reporting Table, Form DEQ 50–25 with Statement of Economic Benefits Form and Instructions (rev. 11/2014)

Exempt Yard Waste Composting Annual Report, DEQ Form YW–2 (rev. 7/2011)

Exempt Yard Waste Compost Facility – Notice of Intent and Certification, DEQ Form YW–3 (rev. 7/2011)

Exempt Yard Waste & Herbivorous Manures Compost Facility – Notice of Intent and Certification, DEQ Form YW–4 (rev. 7/2011)

VA.R. Doc. No. R19-5685; Filed October 9, 2018, 3:37 p.m.

STATE WATER CONTROL BOARD

Proposed Regulation

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

Title of Regulation: **9VAC25-151. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity (amending 9VAC25-151-10, 9VAC25-151-15, 9VAC25-151-40 through 9VAC25-151-110, 9VAC25-151-130 through 9VAC25-151-160, 9VAC25-151-180 through 9VAC25-151-220, 9VAC25-151-240, 9VAC25-151-280, 9VAC25-151-320, 9VAC25-151-340, 9VAC25-151-350, 9VAC25-151-370; adding 9VAC25-151-380, 9VAC25-151-390; repealing 9VAC25-151-170, 9VAC25-151-230, 9VAC25-151-250, 9VAC25-151-260, 9VAC25-151-270, 9VAC25-151-290, 9VAC25-151-300, 9VAC25-151-310, 9VAC25-151-330, 9VAC25-151-360).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Hearing Information:

November 27, 2018 - 11 a.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060

November 28, 2018 - 11 a.m. - Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019

Public Comment Deadline: December 28, 2018.

Agency Contact: Matthew Richardson, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4195, FAX (804) 698-4032, or email matthew.richardson@deq.virginia.gov.

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

Summary:

The proposed action amends and reissues the existing Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater Associated with Industrial Activity, which expires on June 30, 2018. The general permit establishes permit conditions and monitoring requirements for point source discharges of stormwater associated with industrial activity to surface waters. The permit requirements are designed to protect the quality of the waters receiving the stormwater discharges.

The proposed changes:

• Reorganize sectors, including moving SIC codes with no analytical sampling requirements to a new Sector AE and facilities with only total suspended solids (TSS) sampling requirements to new Sector AF;

• Require permittees to notify municipal separate storm sewer systems of discharges at time of registration;

• Remove benchmark parameters that are not required in the U.S. Environmental Protection Administration (EPA) Multisector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity and where data analysis from the current permit term determines that these constituents are not a water quality concern;

• Require all dischargers with a Chesapeake Bay total maximum daily load to submit calculations to regional permit staff. Those that are above TSS, total nitrogen, or total phosphate loading values must submit and implement

an action plan with annual reporting requirements. Reductions must be met by June 30, 2024;

• Add new waiver conditions for an annual reporting requirement. Waivers are for installing and maintaining the Chesapeake Bay program or best management practice (BMP) clearinghouse BMPs, purchasing perpetual credits, or other BMPs where four samples are used to demonstrate a facility has met required reductions;

• Add new e-reporting requirements to meet 9VAC25-31-1020;

• Require new housekeeping language in conformance with the 2015 EPA MSGP (waste disposal, material storage, minimize material exposure to stormwater, and eliminate discharge of plastics);

• Add new control measures language in conformance with the 2015 EPA MSGP (prevent or divert run-on, contain or divert spills before discharge, clean up spills immediately, store leaking equipment under cover, use overflow protection, and perform vehicle maintenance under cover);

• Remove comprehensive site compliance evaluation per 2015 EPA MSGP, which was found to be redundant, and add additional language to routine site inspection;

• Remove sector specific and stormwater pollution protection plan requirement redundant language;

• Make this general permit similar to the 2015 EPA MSGP and consistent with other VPDES general permits and respond to technical advisory committee suggestions; and

• Address staff requests to simplify, clarify, and update permit requirements.

CHAPTER 151
~~GENERAL~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT REGULATION FOR DISCHARGES OF ~~STORM WATER~~ STORMWATER ASSOCIATED WITH INDUSTRIAL ACTIVITY

9VAC25-151-10. Definitions.

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

"Best management practices" or "BMPs" means schedules of activities, practices ~~(and prohibitions of practices)~~, prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices, including both structural and nonstructural practices, to prevent or reduce the discharge of pollutants to surface waters. ~~BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.~~

"Board" means the Virginia State Water Control Board or State Water Control Board.

"Closed landfill" means a landfill that, on a permanent basis, will no longer receive waste and has completed closure in accordance with applicable federal, state, or local requirements.

"Coal pile runoff" means the rainfall runoff from or through any coal storage pile.

"Colocated industrial activity" means any industrial activity, excluding the facility's primary industrial activity, located on-site that meets the description of a category included in the "industrial activity" definition. An activity at a facility is not considered colocated if the activity, when considered separately, does not meet the description of a category included in the "industrial activity" definition or identified by the Standard Industrial Classification (SIC) code list in Table 50-2 in 9VAC25-151-50.

"Commercial treatment and disposal facilities" means facilities that receive, on a commercial basis, any produced hazardous waste (not their own) and treat or dispose of those wastes as a service to the generators. Such facilities treating or disposing exclusively residential hazardous wastes are not included in this definition.

"Control measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to surface waters.

"Corrective action" means any action to (i) repair, modify, or replace any stormwater control used at the facility, (ii) clean up and properly dispose of spills, releases, or other deposits at the facility, or (iii) return to compliance with permit requirements.

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

"Director" means the Director of the Department of Environmental Quality or an authorized representative.

"Existing discharger" means an operator applying for coverage under this permit for discharges authorized previously under a VPDES general or individual permit.

"Impaired water" means, for purposes of this chapter, a water that has been identified by Virginia pursuant to § 303(d) of the Clean Water Act as not meeting applicable water quality standards (these waters are called "water quality limited segments" under 40 CFR 30.2(j)). Impaired waters include both waters with approved or established TMDLs, and those for which a TMDL has not yet been approved or established.

"Impervious surface" means a surface composed of any material that significantly impedes or prevents natural infiltration of water into the soil.

"Industrial activity" - the following categories of facilities are considered to be engaging in "industrial activity":

1. Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards which are exempted under category 10 of this definition);

2. Facilities classified as Standard Industrial Classification (SIC) 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373 (Office of Management and Budget (OMB) SIC Manual, 1987);

3. Facilities classified as SIC 10 through 14 (mineral industry) (OMB SIC Manual, 1987) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) authority has been released, or except for areas of noncoal mining operations which have been released from applicable state or federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable ~~owner/operator~~ owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, benefication, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

4. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of the Resource Conservation and Recovery Act (RCRA) (42 USC § 6901 et seq.);

5. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this definition, and ~~debris/wastes~~ debris or wastes from VPDES regulated construction ~~activities/sites~~ activities or sites), including those that are subject to regulation under Subtitle D of RCRA;

6. Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification Codes 5015 and 5093 (OMB SIC Manual, 1987);

7. Steam electric power generating facilities, including coal handling sites;

8. Transportation facilities classified as SIC Codes 40, 41, 42 (except 4221-4225), 43, 44, 45, and 5171 (OMB SIC Manual, 1987) which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operation, airport deicing operation, or which are otherwise identified under categories 1 through 7 or 9 and 10 of this definition are associated with industrial activity;

9. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that is located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved POTW pretreatment program under 9VAC25-31. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 9VAC25-31-420 through 9VAC25-31- 720;

10. Facilities under SIC Codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-4225 (OMB SIC Manual, 1987).

"Industrial stormwater" means stormwater runoff from industrial activity.

"Land application unit" means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

"Measurable storm event" means a storm event that results in ~~an actual~~ a discharge from ~~a site~~ an outfall.

"Minimize" means reduce or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.

~~"MS4" means a municipal separate storm sewer system.~~

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains): (i) owned or operated by a state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the CWA that discharges to surface waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).

"No exposure" means all industrial materials or activities are protected by a storm-resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff.

"Primary industrial activity" includes any activities performed on-site which are:

1. Identified by the facility's primary SIC code; or

2. Included in the narrative descriptions of the definition of "industrial activity."

Narrative descriptions in the "industrial activity" definition include: category 1 activities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; category 4 hazardous waste treatment storage or disposal facilities, including those that are operating under interim status or a permit under subtitle C of the Resource Conservation and Recovery Act (RCRA); category 5 landfills, land application sites, and open dumps that receive or have received industrial wastes; category 7 steam electric power generating facilities; and category 9 sewage treatment works with a design flow of 1.0 mgd or more.

For colocated activities covered by multiple SIC codes, the primary industrial determination should be based on the value of receipts or revenues, or, if such information is not available for a particular facility, the number of employees or production rate for each process may be compared. The operation that generates the most revenue or employs the most personnel is the operation in which the facility is primarily engaged. In situations where the vast majority of on-site activity falls within one SIC code, that activity may be the primary industrial activity.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Significant materials" includes~~, but is not limited to:~~ raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under § 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the facility is required to report pursuant to EPCRA § 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

"Significant spills" includes~~, but is not limited to:~~ releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of CERCLA (see 40 CFR 302.4).

"Site" means the land or water area where any facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

"Stormwater" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes~~, but is not limited to,~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this definition, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots, as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas. Industrial facilities include those that are federally, state, or municipally owned or operated that meet the description of the facilities listed in the "industrial activity" definition. The term also

includes those facilities designated under the provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation.

"SWPPP" means stormwater pollution protection plan.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, load allocations (LAs) for nonpoint sources ~~and/or~~ or natural background, and must include a margin of safety (MOS) and account for seasonal variations.

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

"Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

9VAC25-151-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 CFR is referenced and incorporated herein, that regulation shall be as it exists and has been published as of July 1, ~~2013~~ 2018.

9VAC25-151-40. Effective date of the permit.

This general permit will become effective on July 1, ~~2014~~ 2019. This general permit will expire on June 30, ~~2019~~ 2024.

9VAC25-151-50. Authorization to discharge.

A. To be eligible to discharge under this permit, an owner must (i) have a stormwater discharge associated with industrial activity from the facility's primary industrial activity, as defined in 9VAC25-151-10 (Definitions), provided the primary industrial activity is included in Table 50-2 of this section, or (ii) be notified that discharges from the facility have been designated by the board for permitting under the provisions of 9VAC25-31-120 A 1 c, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation, and are eligible for coverage under Sector AD of this permit.

Any owner governed by this general permit is hereby authorized to discharge stormwater associated with industrial activity, as defined in this chapter, to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-151-60, and that registration statement is accepted by the board;

2. The owner submits the required permit fee;

3. The owner complies with the applicable requirements of 9VAC25-151-70 et seq.; and

4. The board has not notified the owner that the discharge is ineligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge violates or would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL. ~~Note:~~ Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) states that wasteloads for future growth for new facilities in the Chesapeake Bay watershed with industrial stormwater discharges cannot exceed the nutrient and sediment loadings that were discharged prior to the land being developed for the new industrial activity. For purposes of this permit regulation, facilities that commence construction after June 30, ~~2014~~ 2019, must be consistent with this requirement to be eligible for coverage under this general permit.

C. 1. Facilities with colocated industrial activities on-site shall comply with all applicable effluent limitations, monitoring and ~~pollution prevention plan~~ SWPPP requirements of each section of 9VAC25-151-70 et seq. in which a colocated industrial activity is described.

2. Stormwater discharges associated with industrial activity that are mixed with other discharges (both stormwater and nonstormwater) requiring a VPDES permit are authorized by this permit, provided that the owner obtains coverage under this VPDES general permit for the industrial activity discharges, and a VPDES general or individual permit for the other discharges. The owner shall comply with the terms and requirements of each permit obtained that authorizes any component of the discharge.

3. The stormwater discharges authorized by this permit may be combined with other sources of stormwater which

are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit.

4. Authorized nonstormwater discharges. The following "nonstormwater" discharges are authorized by this permit:

a. Discharges from emergency firefighting activities;

b. Fire hydrant ~~flushings~~ flushing, managed in a manner to avoid an instream impact;

c. Potable water, including water line ~~flushings~~ flushing, managed in a manner to avoid an instream impact;

d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

e. Irrigation drainage;

f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;

g. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed in a manner to avoid an instream impact;

h. Routine external building washdown that does not use detergents or hazardous cleaning products;

i. Uncontaminated ground water or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

5. Stormwater discharges associated with construction activity that are regulated under a VPDES permit are not authorized by this permit.

6. Discharges subject to stormwater effluent limitation guidelines under 40 CFR Subchapter N (Effluent Guidelines and Standards). Only those stormwater discharges subject to stormwater effluent limitation guidelines under 40 CFR Subchapter N that are identified in Table 50-1 of this subsection are eligible for coverage under this permit.

TABLE 50 - 1
STORMWATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES.

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429 Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445 Subparts A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	~~S~~ Facilities subject to the effluent limitation guidelines in 40 CFR Part 449 are not authorized under this permit.

7. Permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity summarized in Table 50-2 of this subsection. These sector descriptions are based on Standard Industrial Classification (SIC) Codes and Industrial Activity Codes. References to "sectors" in this permit ~~(e.g., sector-specific monitoring requirements)~~ refer to these groupings.

TABLE 50 - 2
SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT

SIC Code or Activity Code	Activity Represented
Sector A: Timber Products	
~~2411~~	~~Log Storage and Handling (wet deck storage areas are only authorized if no chemical additives are used in the spray water or applied to the logs).~~
~~2421~~	~~General Sawmills and Planing Mills.~~
~~2426~~	~~Hardwood Dimension and Flooring Mills.~~
~~2429~~	~~Special Product Sawmills, Not Elsewhere Classified.~~
~~2431-2439 (except 2434 - see Sector W)~~	~~Millwork, Veneer, Plywood, and Structural Wood.~~
~~2441, 2448, 2449~~	~~Wood Containers.~~
~~2451, 2452~~	~~Wood Buildings and Mobile Homes.~~
2491	Wood Preserving.
~~2493~~	~~Reconstituted Wood Products.~~
2499	Wood Products, Not Elsewhere Classified (includes SIC Code 24991303 - Wood, Mulch and Bark facilities).
Sector B: Paper and Allied Products	
~~2611~~	~~Pulp Mills.~~
~~2621~~	~~Paper Mills.~~
2631	Paperboard Mills.
~~2652-2657~~	~~Paperboard Containers and Boxes.~~
~~2671-2679~~	~~Converted Paper and Paperboard Products, except Containers and Boxes.~~
Sector C: Chemical and Allied Products	
2812-2819	Industrial Inorganic Chemicals.
2821-2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other ~~Manmade~~ Synthetic Fibers, except Glass.
~~2833-2836~~	~~Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; In Vitro and In Vivo Diagnostic Substances; Biological Products, except Diagnostic Substances.~~
2841-2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
~~2851~~	~~Paints, Varnishes, Lacquers, Enamels, and Allied Products.~~
~~2861-2869~~	~~Industrial Organic Chemicals.~~
2873-2879	Agricultural Chemicals (includes SIC Code 2875 - Composting Facilities).
~~2891-2899~~	~~Miscellaneous Chemical Products.~~
~~3952 (limited to list)~~	~~Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.~~
Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products	
~~3211~~	~~Flat Glass.~~
~~3221, 3229~~	~~Glass and Glassware, Pressed or Blown.~~
~~3231~~	~~Glass Products Made of Purchased Glass.~~
~~3241~~	~~Hydraulic Cement.~~
3251-3259	Structural Clay Products.
3261-3269	Pottery and Related Products.

3274, 3275	Concrete, Gypsum and Plaster Products, Except: Concrete Block and Brick; Concrete Products, except Block and Brick; and Ready-Mixed Concrete Facilities (SIC Codes 3271-3273).
~~3281~~	~~Cut Stone and Stone Products~~
~~3291-3299~~	~~Abrasive, Asbestos, and Miscellaneous Non-Metallic Mineral Products.~~
Sector F: Primary Metals	
3312-3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
3321-3325	Iron and Steel Foundries.
~~3331-3339~~	~~Primary Smelting and Refining of Nonferrous Metals.~~
~~3341~~	~~Secondary Smelting and Refining of Nonferrous Metals.~~
3351-3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
3363-3369	Nonferrous Foundries (Castings).
~~3398, 3399~~	~~Miscellaneous Primary Metal Products.~~
Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores.
1021	Copper Ores.
1031	Lead and Zinc Ores.
1041, 1044	Gold and Silver Ores.
1061	Ferroalloy Ores, except Vanadium.
1081	Metal Mining Services.
1094, 1099	Miscellaneous Metal Ores.
Sector H: Coal Mines and Coal Mining Related Facilities	
1221-1241	Coal Mines and Coal Mining-Related Facilities.
~~Sector I: Oil and Gas Extraction and Refining~~	
~~1311~~	~~Crude Petroleum and Natural Gas.~~
~~1321~~	~~Natural Gas Liquids.~~
~~1381-1389~~	~~Oil and Gas Field Services.~~
~~2911~~	~~Petroleum Refineries.~~
Sector J: Mineral Mining and Dressing Facilities (SIC Codes 1411-1499 are not authorized under this permit)	
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment Storage or Disposal.
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites, and Open Dumps.
Sector M: Automobile Salvage Yards	
5015	Automobile Salvage Yards.
Sector N: Scrap Recycling Facilities	
5093	Scrap Recycling Facilities.
4499 (limited to list)	Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships for Scrap.
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities.
~~Sector P: Land Transportation and Warehousing~~	
~~4011, 4013~~	~~Railroad Transportation.~~
~~4111-4173~~	~~Local and Highway Passenger Transportation.~~
~~4212-4231~~	~~Motor Freight Transportation and Warehousing.~~
~~4311~~	~~United States Postal Service.~~
~~5171~~	~~Petroleum Bulk Stations and Terminals.~~
Sector Q: Water Transportation and Ship and Boat Building or Repairing Yards.	
4412-4499 (except 4499 facilities as specified in Sector N)	Water Transportation.
3731, 3732	Ship and Boat Building or Repairing Yards.
~~Sector R: Ship and Boat Building or Repairing Yards~~	
~~3731, 3732~~	~~Ship and Boat Building or Repairing Yards.~~

~~Sector S: Air Transportation~~	
~~4512-4581~~	~~Air Transportation Facilities.~~
~~Sector T: Treatment Works~~	
~~TW~~	~~Treatment Works.~~
Sector U: Food and Kindred Products	
~~2011-2015~~	~~Meat Products.~~
2021-2026	Dairy Products.
~~2032-2038~~	~~Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties.~~
2041-2048	Grain Mill Products.
~~2051-2053~~	~~Bakery Products.~~
~~2061-2068~~	~~Sugar and Confectionery Products.~~
2074-2079	Fats and Oils.
~~2082-2087~~	~~Beverages.~~
~~2091-2099~~	~~Miscellaneous Food Preparations and Kindred Products.~~
~~2111-2141~~	~~Tobacco Products.~~
~~Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products~~	
~~2211-2299~~	~~Textile Mill Products.~~
~~2311-2399~~	~~Apparel and Other Finished Products Made from Fabrics and Similar Materials.~~
~~3131-3199 (except 3111 - see Sector Z)~~	~~Leather and Leather Products, except Leather Tanning and Finishing.~~
~~Sector W: Furniture and Fixtures~~	
~~2434~~	~~Wood Kitchen Cabinets.~~
~~2511-2599~~	~~Furniture and Fixtures.~~
~~Sector X: Printing and Publishing~~	
~~2711-2796~~	~~Printing, Publishing, and Allied Industries.~~
Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	
3011	Tires and Inner Tubes.
3021	Rubber and Plastics Footwear.
3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
~~3081-3089~~	~~Miscellaneous Plastics Products.~~
~~3931~~	~~Musical Instruments.~~
~~3942-3949~~	~~Dolls, Toys, Games, and Sporting and Athletic Goods.~~
~~3951-3955 (except 3952 facilities as specified in Sector C)~~	~~Pens, Pencils, and Other Artists' Materials.~~
~~3961, 3965~~	~~Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.~~
~~3991-3999~~	~~Miscellaneous Manufacturing Industries.~~
~~Sector Z: Leather Tanning and Finishing~~	
~~3111~~	~~Leather Tanning, Currying, and Finishing.~~
Sector AA: Fabricated Metal Products	
3411-3499	Fabricated Metal Products, except Machinery and Transportation Equipment.
3911-3915	Jewelry, Silverware, and Plated Ware.
Sector AB: ~~Transportation Equipment,~~ Industrial or Commercial Machinery	
3511-3599 ~~(except 3571-3579 - see Sector AC)~~ (except 3731, 3732)	Industrial and Commercial Machinery (except Computer and Office Equipment).
~~3711-3799 (except 3731, 3732 - see Sector R)~~	~~Transportation Equipment (except Ship and Boat Building and Repairing).~~
~~Sector AC: Electronic, Electrical, Photographic, and Optical Goods~~	
~~3571-3579~~	~~Computer and Office Equipment.~~

~~3612-3699~~	~~Electronic and Other Electrical Equipment and Components, except Computer Equipment.~~
~~3812-3873~~	~~Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks.~~
Sector AD: Nonclassified Facilities/Stormwater Discharges Designated by the Board as Requiring Permits	
N/A	Stormwater Discharges Designated by the Board for Permitting under the Provisions of 9VAC25-31-120 A 1, or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. ~~Note:~~ Facilities may not elect to be covered under Sector AD. Only the board may assign a facility to Sector AD.
Sector AE: Facilities with No Analytical Benchmark Monitoring Requirements	
2611	Pulp Mills.
2621	Paper Mills.
2652-2657	Paperboard Containers and Boxes.
2671-2679	Converted Paper and Paperboard Products, except Containers and Boxes.
2833-2836	Medicinal Chemicals and Botanical Products; Pharmaceutical Preparations; In Vitro and In Vivo Diagnostic Substances; Biological Products, except Diagnostic Substances.
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
2861-2869	Industrial Organic Chemicals.
2891-2899	Miscellaneous Chemical Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's paints, and Artist's Watercolors.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
3211	Flat Glass.
3221, 3229	Glass and Glassware, Pressed or Blown.
3231	Glass Products Made of Purchased Glass.
3241	Hydraulic Cement.
3281	Cut Stone and Stone Products.
3291-3299	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products.
3331-3339	Primary Smelting and Refining of Nonferrous Metals.
3398, 3399	Miscellaneous Primary Metal Products.
3341	Secondary Smelting and refining of Nonferrous Metals.
1311	Crude Petroleum and Natural Gas.
1321	Natural Gas Liquids.
1381-1389	Oil and Gas Field Services.
2911	Petroleum Refineries.
4512-4581	Air Transportation Facilities.
TW	Treatment Works.
2011-2015	Meat Products.
2032-2038	Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties.
2051-2053	Bakery Products.
2061-2068	Sugar and Confectionary Products.
2082-2087	Beverages.
2091-2099	Miscellaneous Food Preparations Kindred Products.
2111-2141	Tobacco Products.
2211-2299	Textile Mill Products.
2311-2399	Apparel and Other Finished Products Made from Fabrics and Similar Materials.

3131-3199 (except 3111-Z)	Leather and Leather Products, except Leather Tanning and Finishing.
2434	Wood Kitchen Cabinets.
2511-2599	Furniture and Fixtures.
2711-2796	Printing, Publishing, and Allied Products.
3081-3089	Miscellaneous Plastics Products.
3931	Musical Instruments.
3942-3949	Dolls, Toys, Games, and Sporting and Athletic Goods.
3951-3955 (except 3952 facilities as specified in Sector C)	Pens, Pencils, and Other Artist's Materials.
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, except Precious Metal.
3991-3999	Miscellaneous Manufacturing Industries.
3111	Leather Tanning, Currying, and Finishing.
3711-3799 (except 3731, 3732 – see Sector Q)	Transportation Equipment, except Ship and Boat Building and Repairing.
3571-3579	Computer and Office Equipment.
3612-3699	Electronic and Other Electrical Equipment and Components, except Computer Equipment.
3812-3873	Measuring, Analyzing, and Controlling Instruments; Photographic, Medical, and Optical Goods; Watches and Clocks.
Sector AF: Facilities Limited to Total Suspended Solids Benchmark Monitoring Requirements	
2411	Log Storage and Handling (wet deck storage areas are only authorized if no chemical additives are used in the spray water or applied to the logs).
2421	General Sawmills and Planing Mills.
2426	Hardwood Dimension and Flooring Mills.
2429	Special Products Sawmills Not Elsewhere Classified.
2431-2433, 2435-2439	Millwork, Veneer, Plywood, and Structural Wood.
2441, 2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2493	Reconstituted Wood Products.
4011, 4013	Railroad Transportation.
4111-4173	Local and Highway Passenger Transportation.
4212-4231	Motor Freight Transportation and Warehousing.
4311	United State Postal Service.
5171	Petroleum Bulk Stations and Terminals.

D. Conditional exclusion for no exposure. Any owner covered by this permit who becomes eligible for a no exposure exclusion from permitting under 9VAC25-31-120 E may file a no exposure certification. Upon submission and acceptance by the board of a complete and accurate no exposure certification, the permit requirements no longer apply, and the owner is not required to submit a notice of termination. A no exposure certification must be submitted to the board once every five years.

E. Compliance with this general permit constitutes compliance with the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

F. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the industrial activity stormwater general permit issued in 2009 and that submits a complete registration statement before July 1, 2014, is authorized to continue to discharge under the terms of the 2009 general permit until such time as the board either~~ Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a

complete registration statement at least 60 days prior to the expiration date of the permit or a later submittal date established by the board, which cannot extend beyond the expiration date of the original permit. The permittee is authorized to continue to discharge until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the ~~2009~~ general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the ~~reissued~~ amended general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by ~~administratively~~ the continued general permit coverage ~~under the terms of the 2009 general permit~~ or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-151-60. Registration statement and ~~Stormwater Pollution Prevention Plan~~ stormwater pollution prevention plan (SWPPP).

A. An owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES general ~~VPDES~~ permit for discharges of stormwater associated with industrial activity.

Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, ~~2009~~ 2014, and that intends to continue coverage under this general permit shall review and update the ~~Stormwater Pollution Prevention Plan~~ stormwater pollution prevention plan (SWPPP) to meet all provisions of the general permit (9VAC25-151-70 et seq.) within 90 days of the board granting coverage under this permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who wish to obtain coverage under this general permit shall prepare and implement a written SWPPP for the facility in accordance with the general permit (9VAC25-151-70 et seq.) prior to submitting the registration statement.

B. Deadlines for submitting registration statements.

1. Existing facilities.

a. Any owner that was authorized to discharge under the industrial stormwater general permit that became effective on July 1, ~~2009~~ 2014, and that intends to continue coverage under this general permit shall submit a complete registration statement to the board on or before May 2, ~~2014~~ 2019.

b. Any owner covered by ~~an~~ a VPDES individual ~~VPDES~~ permit for stormwater discharges associated with industrial activity that is proposing to be covered under this general permit shall submit a complete registration statement at least 240 days prior to the expiration date of the VPDES individual ~~VPDES~~ permit.

c. Any owner of an existing facility with stormwater discharges associated with industrial activity, not currently covered by a VPDES permit, that is proposing to be covered under this general permit shall submit a complete registration statement to the board.

2. New facilities. Any owner proposing a new discharge of stormwater associated with industrial activity shall submit a complete registration statement at least 60 days prior to the date planned for the commencement of the industrial activity at the facility.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall submit a complete registration statement within 30 days of the ownership change.

4. Late registration statements. Registration statements for existing facilities covered under subdivision 1 a of this subsection will be accepted after June 30, ~~2014~~ 2019, but authorization to discharge will not be retroactive. Owners described in subdivision 1 a of this subsection that submit registration statements after May 2, ~~2014~~ 2019, are authorized to discharge under the provisions of 9VAC25-151-50 F (Continuation of permit coverage) if a complete registration statement is submitted before July 1, ~~2014~~ 2019.

C. The required registration statement shall contain the following information:

~~1. Name, mailing address, email address (where available), and telephone number of the:~~

~~a. Facility owner; and~~

~~b. Operator applying for permit coverage (if different than the facility owner);~~

1. Facility name and mailing address, owner name and mailing address, telephone number, and email address.

2. ~~Facility name, street address, county (or city), contact name, email address (where available), phone number, and FAX number (where available)~~ Facility street address (if different from mailing address) or location (if the facility location does not have a mailing address);

3. Facility operator (local contact) name, address, telephone number, and email address (if available) if different than owner;

~~3.~~ 4. The nature of the business conducted at the facility to be covered under this general permit;

~~4.~~ 5. The receiving waters of the industrial activity discharges;

~~5. Whether the facility discharges, or will discharge, to an MS4. If so, provide the name of the MS4 owner. (Note: Permit special condition 13 requires the permittee to notify the MS4 owner in writing of the existence of the discharge within 30 days of coverage under this permit. The notification shall include the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number)~~ 6. A determination of whether the facility will discharge to an MS4. If the facility discharges to an MS4, the facility owner must notify the owner of the MS4 of the existence of the discharge information at the time of registration under this permit and include that notification with the registration statement. The notice shall include the following information: the name of the facility, a contact person and telephone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

~~6.~~ 7. The permit number for any existing VPDES permit assigned to the facility;

~~7. Whether an~~ 8. Indicate that a SWPPP has been prepared prior to submitting this registration statement by the owner of a new facility, a facility previously covered by an expiring individual permit, or an existing facility not currently covered by a VPDES permit;

~~8.~~ 9. Whether or not this facility will discharge stormwater runoff from coal storage piles;

~~9.~~ 10. Identification of up to four ~~4-digit~~ four-digit Standard Industrial Classification (SIC) Codes or 2-letter Industrial Activity Codes that best represent the principal products or services rendered by the facility and major colocated industrial activities (2-letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal facilities; LF – landfills and disposal facilities that receive or have received any industrial wastes; SE – steam electric power generating facilities; or TW – treatment works treating domestic sewage);

~~10.~~ 11. Identification of all applicable industrial sectors in this permit (as designated in Table 50-2) that cover the industrial activities at the facility, and major colocated industrial activities to be covered under this permit, and the stormwater outfalls associated with each industrial sector.

a. If the facility is a landfill (sector L), indicate the type of landfill (i.e., MSWLF (municipal solid waste landfill), CDD (construction debris and demolition), or other), and which outfalls (if any) receive contaminated stormwater runoff;

b. If the facility is a timber products operation (sector A), indicate which outfalls (if any) receive discharges from wet decking areas;

c. For all facilities, indicate ~~which~~ any outfalls ~~(if any) receive~~ receiving discharges from coal storage piles;

d. If the facility manufactures asphalt paving and roofing materials (sector D), indicate which outfalls (if any) receive discharges from areas where production of asphalt paving ~~and~~ emulsions or roofing emulsions occurs;

e. If the facility manufactures cement (sector E), indicate which outfalls (if any) receive discharges from material storage piles;

f. If a scrap recycling and waste recycling facility (sector N - SIC 5093) only receives source-separated recyclable materials, indicate which outfalls (if any) receive discharges from this activity. List the metals (if any) that are received; or

g. For primary airports ~~(sector S)~~, list the average deicing season and indicate which outfalls (if any) receive discharges from deicing of non-propeller aircraft, and the annual average departures of non-propeller aircraft. It should be noted that airport facilities subject to the effluent limitation guidelines in 40 CFR Part 449 are not authorized under this permit;

~~11. Facility~~ 12. List the following facility area information~~. List the total area of the facility (in acres), the area of industrial activity at the facility (in acres), the total impervious area of the industrial activity at the facility (in acres), and the area (in acres) draining to each industrial activity outfall at the facility. Outfalls shall be numbered using a unique numerical identification code for each outfall (e.g., Outfall No. 001, No. 002, etc.);~~:

a. The total area of the facility in acres;

b. The total area of industrial activity of the facility in acres;

c. The total impervious surface area of the industrial activity of the facility in acres; and

d. The impervious and total areas in acres draining to each industrial activity outfall at the facility. Outfalls shall be numbered using a unique numerical identification code for each outfall. For example: Outfall Number 001, Outfall Number 002, etc.;

~~12. The following maps~~ 13. A site map depicting the following shall be included with the registration statement:

a. ~~General location map. A USGS 7.5 minute topographic map, or other equivalent computer generated map, with sufficient resolution to clearly show the location of the facility and the surrounding locale; and~~ The property boundaries;

b. ~~Site map. A map showing the property boundaries, the location of all industrial activity areas, all stormwater outfalls, and all water bodies receiving stormwater discharges from the site. Outfall numbering shall be the same as that used for the facility area information in subdivision 11 of this subsection;~~ All industrial activity outfalls labeled with unique numerical identification for each outfall. Outfall numbering shall be the same as that used for the facility area information in subdivision 12 of this subsection; and

c. All water bodies or MS4 conveyances, labeled with names if applicable, receiving stormwater discharges from the site;

~~13.~~ 14. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010) states that wasteloads for future growth for new facilities in the Chesapeake Bay watershed with industrial stormwater discharges cannot exceed the nutrient and sediment loadings that were discharged prior to the land being developed for the industrial activity. For purposes of this permit regulation, facilities that commence construction after June 30, ~~2014~~ 2019, must be consistent with this requirement to be eligible for coverage under this general permit.

If this is a new facility that commenced construction after June 30, ~~2014~~ 2019, in the Chesapeake Bay watershed, and applying for first time general permit coverage, attach documentation to the registration statement to ~~show~~ demonstrate:

a. That the total phosphorus load does not exceed the greater of~~:~~ (i) the total phosphorus load that was discharged from the industrial area of the property prior to the land being developed for the new industrial activity, or (ii) 0.41 pounds per acre per year (VSMP water quality design criteria). The documentation must include the measures and controls that were employed to meet this requirement, along with the supporting calculations. The owner may include additional nonindustrial land on the site as part of any plan to comply with the no net increase requirement. Consistent with the definition of "site," this includes adjacent land used in connection with the facility. Compliance with the water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the board. Design specifications and pollutant removal efficiencies for specific BMPs can be found on the Virginia Stormwater BMP Clearinghouse website at http://www.vwrrc.vt.edu/swc; or

b. The owner may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the no net increase requirement;

15. State Corporation Commission entity identification number if the facility is required to obtain an entity identification number by law; and

~~14.~~ 16. The following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with 9VAC25-31-110 A ~~of the VPDES Permit Regulation~~.

E. Where to submit. The registration statement may be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

9VAC25-151-70. General permit.

Any owner whose registration statement is accepted by the director will receive the following general permit and shall comply with the requirements therein and be subject to the VPDES Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all applicable monitoring and ~~pollution prevention plan~~ SWPPP requirements of each industrial activity sector of this chapter in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and 9VAC25-151-80 apply to all stormwater discharges associated with industrial activity covered under this general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. The

determination of which pages apply will be based on an evaluation of the regulated activities located at the facility.

General Permit No.: VAR05
Effective Date: July 1, ~~2014~~ 2019
Expiration Date: June 30, ~~2019~~ 2024
GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY
AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of facilities with stormwater discharges associated with industrial activity are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those waters specifically named in board regulation that prohibit such discharges.

The authorized discharge shall be in accordance with this cover page, the registration statement, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-Conditions Applicable to All VPDES Permits, Part III-Stormwater Pollution Prevention Plan, and Part IV-Sector-Specific Permit Requirements, as set forth ~~herein~~ in this general permit.

Part I
Effluent Limitations, Monitoring Requirements and Special Conditions

A. Effluent limitations and monitoring requirements.

There are four individual and separate categories of monitoring requirements that a facility may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of discharges associated with specific industrial activities; (iii) compliance monitoring for discharges subject to numerical effluent limitations; and (iv) monitoring of discharges to impaired waters, both those with an approved TMDL and those without an approved TMDL. The monitoring requirements and numeric effluent limitations applicable to a facility depend on the types of industrial activities generating stormwater runoff from the facility, and for TMDL monitoring, the location of the facility's discharge or discharges. Part IV of the permit (9VAC25-151-90 et seq.) identifies monitoring requirements applicable to specific sectors of industrial activity. The permittee shall review Part I A 1 and Part IV of the permit to determine which monitoring requirements and numeric limitations apply to his facility. Unless otherwise specified, limitations and monitoring requirements under Part I A 1 and Part IV are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with colocated activities. Where stormwater from the colocated activities are commingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where benchmark, numerical effluent limitations, or TMDL monitoring requirements for a monitoring period overlap ~~(e.g., need to monitor TSS twice per year for a limit and also twice per year for benchmark monitoring)~~, the permittee may use a single sample to satisfy ~~both~~ monitoring requirements.

1. Types of monitoring requirements and limitations.

a. Quarterly visual monitoring. The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of the facility's sector of industrial activity.

(1) The permittee shall perform and document a quarterly visual examination of a stormwater discharge associated with industrial activity from each outfall, except discharges exempted in Part I A 3 or Part I A 4. The ~~examination(s)~~ examinations shall be made at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December. The visual examination shall be made during normal working hours, where practicable, and when considerations for safety and feasibility allow. If no storm event resulted in runoff from the facility during a monitoring quarter, the permittee is excused from visual monitoring for that quarter provided that documentation is included with the monitoring records indicating that no runoff occurred. The documentation shall be signed and certified in accordance with Part II K of this permit.

(2) Samples shall be collected in accordance with Part I A 2. ~~The~~ Sample examination shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. The visual examination of the sample shall be conducted in a well-lit area. No analytical tests are required to be performed on the samples.

(3) The visual examination reports shall be maintained on-site with the ~~Stormwater Pollution Prevention Plan (SWPPP)~~ SWPPP. The report shall include the outfall location, the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution), and probable sources of any observed stormwater contamination.

b. Benchmark monitoring of discharges associated with specific industrial activities.

Table 70-1 identifies the specific industrial sectors subject to the benchmark monitoring requirements of this permit and the industry-specific pollutants of concern. The permittee shall refer to the tables found in the individual sectors in Part IV (9VAC25-151-90 et seq.) for benchmark monitoring concentration values. Colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply with all applicable benchmark monitoring requirements from each sector.

The results of benchmark monitoring are primarily for the permittee to use to determine the overall effectiveness of the SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark concentration values, included in Part IV of this permit, are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in ~~the comprehensive site compliance evaluation (Part III E)~~ a routine facility inspection. In addition, exceedance of benchmark concentrations may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 70-1
INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING

Industry Sector[1]	~~Industry Sub-sector~~ SIC Code or Activity Code	Benchmark Monitoring Parameters
A	~~General Sawmills and Planing Mills~~	~~TSS.~~
	~~Wood Preserving Facilities~~ 2491	Arsenic, Chromium, Copper.
	~~Log Storage and Handling~~	~~TSS.~~
	~~Hardwood Dimension and Flooring Mills~~	~~TSS.~~
	~~Mulch, Wood and Bark Facilities~~ 2499 (24991303)	~~BOD~~ COD, TSS.
	~~Mulching Dying Operations~~ 2499 (Mulch Dyeing)	BOD, TSS, COD, Aluminum, Arsenic, Cadmium, Chromium, Copper, Iron, ~~Lead, Manganese, Mercury, Nickel,~~ Selenium, Silver, Zinc, Total N, Total P.
B	~~Paperboard Mills~~ 2631	BOD.
C	~~Industrial Inorganic Chemicals~~ 2812-2819	Aluminum, Iron, Total N.
	~~Plastics, Synthetic Resins, etc.~~ 2821-2824	Zinc.
	~~Soaps, Detergents, Cosmetics, Perfumes~~ 2841-2844	Total N, Zinc.
	~~Agricultural Chemicals~~ 2873-2879	Total N, Iron, Zinc, Total P.
	~~Composting Facilities~~ 2875 (Composting Facilities)	TSS, BOD, COD, Ammonia, Total N, Total P.
~~D~~	~~Asphalt Paving and Roofing Materials~~	~~TSS.~~
E	~~Clay Products~~ 3251-3259	Aluminum.
	~~Lime and Gypsum Products~~ 3274, 3275	TSS, pH, Iron.
F	~~Steel Works, Blast Furnaces, and Rolling and Finishing Mills~~ 3312-3317	Aluminum, Zinc.
	~~Iron and Steel Foundries~~ 3321-3325	Aluminum, TSS, Copper, Iron, Zinc.
	~~Nonferrous Rolling and Drawing~~ 3351-3357	Copper, Zinc.
	~~Nonferrous Foundries (Castings)~~ 3363-3369	Copper, Zinc.
G[2]	~~Copper Ore Mining and Dressing~~ 1021	TSS.
H	~~Coal Mines and Coal Mining Related Facilities~~ 1221-1241	TSS, Aluminum, Iron.
K	~~Hazardous~~ HZ (Hazardous Waste Treatment, Storage, or	TKN, TSS, TOC, Arsenic, Cadmium,

	~~Disposal~~ Disposal)	Cyanide, Lead, Magnesium, Mercury, Selenium, Silver.
L	~~Landfills~~ LF (Landfills, Land Application Sites, and Open ~~Dumps~~ Dumps)	TSS.
M	~~Automobile Salvage Yards~~ 5015	TSS, Aluminum, Iron, Lead.
N	~~Scrap Recycling and Waste Recycling Facilities~~ 5093	Copper, Aluminum, Iron, Lead, Zinc, TSS, Cadmium, Chromium.
	~~Ship Dismantling, Marine Salvaging and Marine Wrecking~~ 4499	Aluminum, Cadmium, Chromium, Copper, Iron, Lead, Zinc, TSS.
O	~~Steam~~ SE (Steam Electric Generating ~~Facilities~~ Facilities)	Iron.
~~P~~	~~Land Transportation and Warehousing~~	~~TPH, TSS.~~
Q	~~Water Transportation Facilities~~ 4412-4499 (except 4499 facilities as specified in Sector N)	TSS, Copper, Zinc.
	3731, 3732	TSS, Copper, Zinc.
~~R~~	~~Ship and Boat Building or Repairing Yards~~	~~TSS, Copper, Zinc.~~
~~S~~	~~Airports~~	~~TSS, TPH.~~
U	~~Dairy Products~~ 2021-2026	BOD, TSS.
	~~Grain Mill Products~~ 2041-2048	TSS, TKN.
	~~Fats and Oils~~ 2074-2079	BOD, Total N, TSS.
Y	~~Rubber Products~~ 3011-3069	Zinc.
~~Z~~	~~Leather Tanning and Finishing~~	~~TKN.~~
AA	~~Fabricated Metal Products Except Coating~~ 3411-3471, 3482-3499, 3911-3915	Iron, Aluminum, Copper, Zinc.
	~~Fabricated Metal Coating and Engraving~~ 3479	Zinc.
AB	~~Transportation Equipment, Industrial, or Commercial Machinery~~ 3511-3599 (except 3571-3579)	TSS, TPH, Copper, Zinc.
AD	Nonclassified Facilities/Stormwater Discharges Designated by the Board as Requiring Permits	~~TSS.~~ As determined by the director.
AE	2611, 2621, 2652-2657, 2671-2679, 2833-2836, 2851, 2861-2869, 2891-2899, 3952, 2992, 2999, 3211, 3221, 3229, 3231, 3241, 3281, 3291-3299, 3331-3339, 3398, 3399, 3341, 1311, 1321, 1381-1389, 2911, 4512-4581, (TW) Treatment Works, 2011-2015, 2032-2038, 2051-2053, 2061-2068, 2082-2087, 2091-2099, 2111-2141, 2211-2299, 2311-2399, 3131-3199, 2434, 2511-2599, 2711-2796, 3081-3089, 3931, 3942-3949, 3951-3955 (except 3952 facilities as specified in Sector C), 3961, 3965, 3991-3999, 3111, 3711-3799 (except 3731, 3732 see Sector Q), 3571-3579, 3612-3699, 3812-3873	Facilities in Sector AE are not subject to benchmark monitoring requirements.
AF	2411, 2421, 2426, 2429, 2431-2433, 2435-2439, 2441, 2448, 2449, 2451, 2452, 2493, 4011, 4013, 4111-4173, 4212-4231, 4311, 5171	TSS.

[1]Table does not include parameters for compliance monitoring under effluent limitations guidelines.

[2]See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.

(1) Benchmark monitoring shall be performed for all benchmark parameters specified for the industrial sector or sectors applicable to a facility's discharge. Monitoring shall be performed at least once during each of the first four, and potentially all, monitoring periods after coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

Depending on the results of four consecutive monitoring periods, benchmark monitoring may not be required to be conducted in subsequent monitoring periods (see ~~subdivision~~ Part I A 1 b (2) ~~below~~).

(2) Benchmark monitoring waivers for facilities testing below benchmark concentration values. Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark concentration values on an outfall by outfall basis. Sector-specific benchmark monitoring is not required to be conducted in subsequent monitoring periods during the term of this permit provided:

(a) Samples were collected in four consecutive monitoring periods, and the average of the four samples for all parameters at the outfall is below the applicable benchmark concentration value in Part IV. ~~(Note: facilities~~ Facilities that were covered under the ~~2009~~ 2014 industrial stormwater general permit may use sampling data from the last two monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement~~)~~; ~~and~~

(b) The facility is not subject to a numeric effluent limitation established in Part I A 1 c (1) ~~(Stormwater Effluent Limitations)~~ (stormwater effluent limitations), Part I A 1 c (2) ~~(Coal Pile Runoff)~~ (coal pile runoff), or Part IV (Sector Specific Permit Requirements) for any of the parameters at that outfall; and

(c) A waiver request is submitted to and approved by the board. The waiver request shall be sent to the appropriate DEQ regional office, along with the supporting monitoring data for four consecutive monitoring periods, and a certification that, based on current potential pollutant sources and control measures used, discharges from the facility are reasonably expected to be essentially the same (or cleaner) compared to when the benchmark monitoring for the four consecutive monitoring periods was done.

Waiver requests will be evaluated by the board based upon~~:~~ (i) benchmark monitoring results below the benchmark concentration values; (ii) a favorable compliance history (including inspection results); and (iii) no outstanding enforcement actions.

The monitoring waiver may be revoked by the board for ~~just~~ cause. The permittee will be notified in writing that the monitoring waiver is revoked, and that the benchmark monitoring requirements are again in force and will remain in effect until the permit's expiration date.

(3) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C and retained in accordance with Part II B.

c. Compliance monitoring for discharges subject to numerical effluent limitations or discharges to impaired waters.

(1) Facilities subject to stormwater effluent limitation guidelines.

(a) Facilities subject to stormwater effluent limitation guidelines (see Table 70-2) are required to monitor such discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part IV of the permit (9VAC25-151-90 et seq.). Permittees with colocated industrial activities at the facility that are described in more than one sector in Part IV shall comply on a discharge-by-discharge basis with all applicable effluent limitations from each sector.

(b) Permittees shall monitor the discharges for the presence of the pollutant subject to the effluent limitation at least once during each of the monitoring periods after coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I A 2 f) are not available for numeric effluent limits monitoring.

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

TABLE 70-2
STORMWATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES

Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E

Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445, Subpart A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	~~S~~ Facilities subject to the effluent limitation guidelines in 40 CFR Part 449 are not authorized under this permit.

(2) Facilities subject to coal pile runoff monitoring.

(a) Facilities with discharges of stormwater from coal storage piles shall comply with the limitations and monitoring requirements of Table 70-3 for all discharges containing the coal pile runoff, regardless of the facility's sector of industrial activity.

(b) Permittees shall monitor such stormwater discharges at least once during each of the monitoring periods after coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I A 2 f) are not available for coal pile numeric effluent limits monitoring.

(c) The coal pile runoff shall not be diluted with other stormwater or other flows in order to meet this limitation.

(d) If a facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

(e) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

TABLE 70-3
NUMERIC LIMITATIONS FOR COAL PILE RUNOFF

Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/l, max.	1/6 months	Grab
pH	6.0 min. - 9.0 max.	1/6 months	Grab

(3) Facilities discharging to an impaired water with an approved TMDL wasteload allocation.

Owners of facilities that are a source of the specified pollutant of concern to waters for which a TMDL wasteload allocation has been approved prior to the term of this permit will be notified as such by the department when they are approved for coverage under the general permit.

(a) Upon written notification from the department, facilities subject to TMDL wasteload allocations ~~will~~ shall be required to monitor such discharges to evaluate compliance with the TMDL requirements.

(b) Permittees shall monitor the discharges for the pollutant subject to the TMDL wasteload allocation at least once during each of the monitoring periods after coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

(c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

(d) If the pollutant subject to the TMDL wasteload allocation is below the quantitation level in all of the samples from the first four monitoring periods (i.e., the first two years of coverage under the permit), the permittee may request to the board in writing that further sampling be discontinued, unless the TMDL has specific instructions to the contrary (in which case those instructions shall be followed). The laboratory certificate of analysis shall be submitted with the request. If

approved, documentation of this shall be kept with the SWPPP.

If the pollutant subject to the TMDL wasteload allocation is above the quantitation level in any of the samples from the first four monitoring periods, the permittee shall continue the scheduled TMDL monitoring throughout the term of the permit.

(4) Facilities discharging to an impaired water without an approved TMDL wasteload allocation.

Owners of facilities that discharge to waters listed as impaired in the ~~2012~~ 2016 Final 305(b)/303(d) Water Quality Assessment Integrated Report, and for which a TMDL wasteload allocation has not been approved prior to the term of this permit, will be notified as such by the department when they are approved for coverage under the general permit.

(a) Upon written notification from the department, facilities discharging to an impaired water without an approved TMDL wasteload allocation ~~will~~ shall be required to monitor such discharges for the ~~pollutant(s)~~ pollutants that caused the impairment.

(b) Permittees shall monitor the discharges for all pollutants for which the waterbody is impaired, and for which a standard analytical method exists, at least once during each of the monitoring periods after coverage under the permit begins. Monitoring commences with the first full monitoring period after the owner is granted coverage under the permit. Monitoring periods are specified in Part I A 2.

(c) If the pollutant for which the waterbody is impaired is suspended solids, turbidity, or sediment, or sedimentation, monitor for total suspended solids (TSS). If the pollutant for which the waterbody is impaired is expressed in the form of an indicator or surrogate pollutant, monitor for that indicator or surrogate pollutant. No monitoring is required when a waterbody's biological communities are impaired but no pollutant, including indicator or surrogate pollutants, is specified as causing the impairment, or when a waterbody's impairment is related to hydrologic modifications, impaired hydrology, or temperature.

Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

(d) If the pollutant for which the water is impaired is below the quantitation level in the discharges from the facility, or it is above the quantitation level but its presence is caused solely by natural background sources, the permittee may request to the board in writing that further impaired water monitoring be discontinued. The laboratory certificate of analysis shall be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.

To support a determination that the pollutant's presence is caused solely by natural background sources, the following documentation shall be submitted with the request and kept with the SWPPP: (i) an explanation of why it is believed that the presence of the impairment pollutant in the facility's discharge is not related to the activities at the facility; and (ii) data or studies that tie the presence of the impairment pollutant in the facility's discharge to natural background sources in the watershed. Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity at the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

2. Monitoring instructions.

a. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part II A.

b. When and how to sample. A minimum of one grab sample shall be taken from the discharge associated with industrial activity resulting from a storm event that results in ~~an actual~~ a discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document that less than a 72-hour interval is representative for local storm events during the sampling period. In the case of snowmelt, the monitoring shall be performed at a time when a measurable discharge occurs at the site. For discharges from a stormwater management structure, the monitoring shall be performed at a time when a measurable discharge occurs from the structure.

The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of the discharge, provided that the permittee explains why a grab sample during the first 30 minutes was impracticable. This information shall be submitted ~~on or with the Discharge Monitoring Report (DMR)~~ in the department's electronic discharge monitoring report (e-DMR) system, and maintained with the SWPPP. If the sampled discharge commingles with process or nonprocess water, the permittee shall attempt to sample the stormwater discharge before it mixes with the nonstormwater.

c. Storm event data. For each monitoring event (except snowmelt monitoring), along with the monitoring results, the permittee shall identify the date and duration (in hours) of the storm ~~event(s)~~ events sampled; rainfall total (in inches) of the storm event that generated the sampled runoff; and the duration between the storm event sampled and the end of the previous measurable storm event. For snowmelt monitoring, the permittee shall identify the date of the sampling event.

d. Monitoring periods.

(1) Quarterly visual monitoring. The quarterly visual examinations shall be made at least once in each of the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

(2) Benchmark monitoring, effluent limitation monitoring, and impaired waters monitoring (for waters both with and without an approved TMDL). Monitoring shall be conducted at least once in each of the following semiannual periods each year of permit coverage: January through June, and July through December.

e. Documentation explaining a facility's inability to obtain a sample (including dates and times the outfalls were viewed or sampling was attempted), of no rain event, or of ~~no~~ deviation from the "measurable" storm event requirements shall be maintained with the SWPPP. Acceptable documentation includes~~, but is not limited to,~~ National Climatic Data Center (NCDC) weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data.

f. Representative outfalls - substantially identical discharges. If the facility has two or more outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and stormwater management practices occurring within the drainage areas of the outfalls, frequency of discharges, and stormwater management practices occurring within the drainage areas of the outfalls, the permittee may conduct monitoring on the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall or outfalls. The substantially identical outfall monitoring provisions apply to quarterly visual monitoring, benchmark monitoring, and impaired waters monitoring (both those with and without an approved TMDL). The substantially identical outfall monitoring provisions are not available for numeric effluent limits monitoring.

The permittee shall include the following information in the SWPPP:

(1) The locations of the outfalls;

(2) ~~Why the~~ An evaluation, including available monitoring data, indicating the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data where available; and

(3) ~~Estimates~~ An estimate of the size ~~of the drainage area (in square feet) for each of the outfalls~~ of each outfall's drainage area in acres.

3. Adverse climatic conditions waiver. When adverse weather conditions prevent the collection of samples, a substitute sample may be taken during a qualifying storm event in the next monitoring period. Adverse weather conditions are those that are dangerous or create inaccessibility for personnel, and may include such things as local flooding, high winds, electrical storms, or situations that otherwise make sampling impracticable, such as drought or extended frozen conditions. Unless specifically stated otherwise, this waiver may be applied to any monitoring required under this permit. Narrative documentation of conditions necessitating the use of the waiver shall be kept with the SWPPP.

4. Inactive and unstaffed sites (including temporarily inactive sites).

a. A waiver of the quarterly visual ~~assessments~~ monitoring, routine facility inspections, and monitoring requirements (including benchmark, effluent limitation, and impaired waters monitoring) may be granted by the board at a facility that is both inactive and unstaffed, as long as the facility remains inactive and unstaffed and there are no industrial materials or activities exposed to stormwater. The owner of such a facility is only required to conduct an annual ~~comprehensive~~ routine site inspection in accordance with the requirements in Part III ~~E~~ B 5.

b. An inactive and unstaffed sites waiver request shall be submitted to the board for approval and shall include~~:~~ the name of the facility; the facility's VPDES general permit registration number; a contact person, phone number and email address ~~(if available)~~; the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part II K. If this waiver is granted, a copy of the request and the board's written approval of the waiver shall be maintained with the SWPPP.

c. If circumstances change and industrial materials or activities become exposed to stormwater, or the facility becomes either active or staffed, the permittee shall notify the department within 30 days, and all quarterly visual ~~assessments~~ monitoring, routine facility inspections, and monitoring requirements shall be resumed immediately.

d. The board retains the right to revoke this waiver when it is determined that the discharge is causing, has a reasonable potential to cause, or contributes to a water quality standards violation.

e. Inactive and unstaffed facilities covered under Sector G (Metal Mining) and Sector H (Coal Mines and Coal Mining-Related Facilities) are not required to meet the "no industrial materials or activities exposed to stormwater" standard to be eligible for this waiver, consistent with the conditional exemption requirements established in Part IV Sector G and Part IV Sector H.

5. Reporting monitoring results.

a. Reporting to the department. The permittee shall follow the reporting requirements and deadlines below for the types of monitoring that apply to the facility:

TABLE 70-4
MONITORING REPORTING REQUIREMENTS

Semiannual Monitoring	Submit the results on a DMR by January 10 and by July 10.
Quarterly Visual Monitoring	Retain results with SWPPP - do not submit unless requested to do so by the department.

Permittees shall submit results for each outfall associated with industrial activity according to the requirements of Part II C. ~~For each outfall sampled, one signed discharge monitoring report (DMR) form shall be submitted to the department per storm event sampled. For representative outfalls, the sampled outfall will be reported on the DMR, and the outfalls that are representative of the sampled outfall will be listed in the comment section of the DMR. Signed DMRs are not required for each of the outfalls that are representative of the sampled outfall.~~

~~b. Additional reporting. In addition to submitting copies of discharge monitoring reports in accordance with Part II C, permittees with at least one stormwater discharge associated with industrial activity through a regulated municipal separate storm sewer system (MS4) shall submit signed copies of DMRs to the MS4 operator at the same time as the reports are submitted to the department. Permittees not required to report monitoring data and permittees that are not otherwise required to monitor their discharges need not comply with this provision.~~

~~c.~~ b. Significant digits. The permittee shall report at least the same number of significant digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter; otherwise, at least two significant digits shall be reported for a given parameter. Regardless of the rounding convention used by the permittee (i.e., five always rounding up or to the nearest even number), the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

6. Corrective actions.

a. Data exceeding benchmarks concentration values.

(1) If the benchmark monitoring result exceeds the benchmark concentration value for that parameter, the permittee shall review the SWPPP and modify it as necessary to address any deficiencies that caused the exceedance. Revisions to the SWPPP shall be completed within ~~30~~ 60 days after an exceedance is discovered. When control measures need to be modified or added (distinct from regular preventive maintenance of existing control measures described in Part III C), implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the exceedance is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the exceedance is discovered. Where a construction compliance schedule is included in the SWPPP, the ~~plan~~ SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected ~~portion(s)~~ portions of the facility prior to completion of the permanent control measure. Any control measure modifications shall be documented and dated, and retained with the SWPPP, along with the amount of time taken to modify the applicable control measures or implement additional control measures.

(2) Natural background pollutant levels. If the concentration of a pollutant exceeds a benchmark concentration value, and the permittee determines that exceedance of the benchmark is attributable solely to the presence of that pollutant in the natural background, corrective action is not required provided that:

(a) The concentration of the benchmark monitoring result is less than or equal to the concentration of that pollutant in the natural background;

(b) The permittee documents and maintains with the SWPPP the supporting rationale for concluding that benchmark exceedances are in fact attributable solely to natural background pollutant levels. The supporting rationale shall include any data previously collected by the facility or others (including literature studies) that describe the levels of natural background pollutants in the facility's stormwater discharges; and

(c) The permittee notifies the department on the benchmark monitoring DMR that the benchmark exceedances are attributable solely to natural background pollutant levels.

Natural background pollutants include those substances that are naturally occurring in soils or groundwater. Natural background pollutants do not include legacy pollutants from earlier activity on the facility's site, or pollutants in run-on from neighboring sources that are not naturally occurring.

b. Corrective actions. The permittee shall take corrective action whenever:

(1) Routine facility inspections, ~~comprehensive site compliance evaluations,~~ inspections by local, state or federal officials, or any other process, observation or event result in a determination that modifications to the stormwater control measures are necessary to meet the permit requirements;

(2) There is any exceedance of an effluent limitation (including coal pile runoff), TMDL wasteload allocation, or a reduction required by a local ordinance established by a municipality to meet Chesapeake Bay TMDL requirements; or

(3) The department determines, or the permittee becomes aware, that the stormwater control measures are not stringent enough for the discharge to meet applicable water quality standards.

The permittee shall review the SWPPP and modify it as necessary to address any deficiencies. Revisions to the SWPPP shall be completed within ~~30~~ 60 days following the discovery of the deficiency. When control measures need to be modified or added (distinct from regular preventive maintenance of existing control measures described in Part III C), implementation shall be completed before the next anticipated storm event if possible, but no later than 60 days after the deficiency is discovered, or as otherwise provided or approved by the department. In cases where construction is necessary to implement control measures, the permittee shall include a schedule in the SWPPP that provides for the completion of the control measures as expeditiously as practicable, but no later than three years after the deficiency is discovered. Where a construction compliance schedule is included in the SWPPP, the ~~plan~~ SWPPP shall include appropriate nonstructural and temporary controls to be implemented in the affected ~~portion(s)~~ portion of the facility prior to completion of the permanent control measure. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

Any corrective actions taken shall be documented and retained with the SWPPP. Reports of corrective actions shall be signed in accordance with Part II K.

c. Follow-up reporting. If at any time monitoring results indicate that discharges from the facility exceed an effluent limitation or a TMDL wasteload allocation, or the department determines that discharges from the facility are causing or contributing to an exceedance of a water quality standard, immediate steps shall be taken to eliminate the exceedances in accordance with the above Part I A 6 b (Corrective actions). Within 30 calendar days of implementing the relevant corrective ~~action(s)~~ action, an exceedance report shall be submitted to the department. The following information shall be included in the report: ~~general permit registration number; facility name, address, and location; receiving water; monitoring data from this event; an explanation of the situation; description of what has been done and the intended actions (should the corrective actions not yet be complete) to further reduce pollutants in the discharge; and an appropriate contact name and phone number.~~

(1) General permit registration number;

(2) Facility name and address;

(3) Receiving water for each outfall exceeding an effluent limitation of TMDL wasteload allocation;

(4) Monitoring data from the event being reported;

(5) A narrative description of the situation;

(6) A description of actions taken since the event was discovered and steps taken to minimize to the extent feasible pollutants in the discharge; and

(7) A local facility contact name, email address, and phone number.

B. Special conditions.

1. ~~Allowable~~ Authorized nonstormwater discharges. Except as provided in this section or in Part IV (9VAC25-151-90 et seq.), all discharges covered by this permit shall be composed entirely of stormwater. The following nonstormwater discharges are authorized by this permit:

a. Discharges from emergency firefighting activities;

b. Fire hydrant flushings, managed in a manner to avoid an instream impact;

c. Potable water, including water line flushings, managed in a manner to avoid an instream impact;

d. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

e. Irrigation drainage;

f. Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with the approved labeling;

g. Routine external building washdown that does not use detergents or hazardous cleaning products;

h. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed in a manner to avoid an instream impact;

i. Uncontaminated ground water or spring water;

j. Foundation or footing drains where flows are not contaminated with process materials; and

k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

All other nonstormwater discharges are not authorized and shall either be eliminated or covered under a separate VPDES permit.

~~The following nonstormwater discharges are specifically not authorized by this permit:~~

~~Sector A - Timber products. Discharges of stormwater from areas where there may be contact with chemical formulations sprayed to provide surface protection.~~

~~Sector C - Chemical and allied products manufacturing. Inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on-site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.~~

~~Sector G - Metal mining (ore mining and dressing). Adit drainage or contaminated springs or seeps; and contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events.~~

~~Sector H - Coal mines and coal mining related facilities. Discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events; and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.~~

~~Sector I - Oil and gas extraction and refining. Discharges of vehicle and equipment washwater, including tank cleaning operations.~~

~~Sector K - Hazardous waste treatment, storage, or disposal facilities. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory derived wastewater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.~~

~~Sector L - Landfills, land application sites and open dumps. Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.~~

~~Sector N - Scrap recycling and waste recycling facilities. Discharges from turnings containment areas in the absence of a storm event.~~

~~Sector O - Steam electric generating facilities. Nonstormwater discharges subject to effluent limitation guidelines.~~

~~Sector P - Land transportation and warehousing. Vehicle, equipment, or surface washwater, including tank cleaning operations.~~

~~Sector Q - Water transportation. Bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.~~

~~Sector R - Ship and boat building or repair yards. Bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.~~

~~Sector S - Air transportation. Aircraft, ground vehicle, runway and equipment washwaters; and dry weather discharges of deicing and anti-icing chemicals.~~

~~Sector T - Treatment works. Sanitary and industrial wastewater; and equipment or vehicle washwaters.~~

~~Sector U - Food and kindred products. Boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing and clean out operations.~~

~~Sector V - Textile mills, apparel, and other fabric products. Discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); reused or recycled water; and waters used in cooling towers.~~

2. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the stormwater ~~discharge(s)~~ discharges from the facility shall be prevented or minimized in accordance with the ~~stormwater pollution prevention plan~~ SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an on-site spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period:

a. The permittee is required to notify the department in accordance with the requirements of Part II G as soon as he has knowledge of the discharge;

b. Where a release enters ~~a municipal separate storm sewer system (MS4)~~ an MS4, the permittee shall also notify the owner of the MS4; and

c. The ~~stormwater pollution prevention plan~~ SWPPP required under Part III shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the ~~plan~~ SWPPP shall be modified where appropriate.

3. Colocated industrial activity. If the facility has industrial activities occurring on-site which are described by any of the activities in Part IV of the permit (9VAC25-151-90 et seq.), those industrial activities are considered to be colocated industrial activities. Stormwater discharges from colocated industrial activities are authorized by this permit, provided that the permittee complies with any and all additional ~~pollution prevention plan~~ SWPPP and monitoring requirements from Part IV applicable to that particular colocated industrial activity. The permittee shall ~~determine which~~ be responsible for additional ~~pollution prevention plan~~ SWPPP and monitoring requirements ~~are~~ applicable to the colocated industrial activity by examining the narrative descriptions of ~~each coverage section (Discharges covered under this section)~~ all discharges covered under this section.

4. The stormwater discharges authorized by this permit may be combined with other sources of stormwater which are not required to be covered under a VPDES permit, so long as the combined discharge is in compliance with this permit.

5. There shall be no discharge of waste, garbage, or floating debris in other than trace amounts.

6. Approval for coverage under this general permit does not relieve the permittee of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

7. Discharges to waters subject to TMDL wasteload allocations. ~~a.~~ Owners of facilities that are a source of the specified pollutant of concern to waters for which a ~~total maximum daily load (TMDL)~~ TMDL wasteload allocation has been approved prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part III that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. The facility's SWPPP shall specifically address any conditions or requirements included in the TMDL that are applicable to discharges from the facility. If the TMDL establishes a specific numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any required monitoring in accordance with Part I A 1 c (3), and implement control measures designed to meet that allocation.

~~b. Facilities in the Chesapeake Bay watershed.~~

8. Discharges to waters subject to the Chesapeake Bay TMDL.

~~(1)~~ a. Owners of facilities in the Chesapeake Bay watershed shall monitor their discharges for total suspended solids (TSS), total nitrogen (TN), and total phosphorus (TP) to characterize the contributions from their facility's specific industrial sector for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be derived from the results of those tests. After the facility is granted coverage under the permit, samples shall be collected during each of the first four monitoring periods (i.e., the first two years of permit coverage). Monitoring periods are specified in Part I A 2. Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and Part II C, and retained in accordance with Part II B.

~~(2)~~ b. Facilities that were covered under the ~~2009~~ 2014 industrial stormwater general permit ~~that sampled for TSS, TN, or TP may use applicable sampling data from the last two monitoring periods of that permit and the first two monitoring periods of this permit to satisfy the four consecutive monitoring periods requirement.~~ shall comply with the following:

(1) Facilities that submitted a Chesapeake Bay TMDL action plan that was approved by the board during the 2014 industrial stormwater general permit term shall continue to implement the approved Chesapeake Bay TMDL action plan during this permit term. An annual report shall be submitted to the department by June 30 of each year describing the progress in meeting the required reductions unless this reporting requirement is waived by the department in accordance with Part I B 8 g. Monitoring in accordance with Part I B 8 a is not required for these facilities during this permit term.

(2) Facilities that completed four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall utilize the procedures in Part I B 8 c (2) to calculate their facility stormwater loads. The permittee shall submit a copy of the calculations and Chesapeake Bay TMDL action plan if required under Part I B 8 f to the department within 60 days of coverage under this general permit.

(3) Facilities that did not complete four samples for TSS, TN, and TP during the 2014 industrial stormwater general permit term shall be subject to completing the monitoring requirements in Part I B 8 a beginning with

the first full monitoring period after receiving permit coverage. Calculations and a Chesapeake Bay TMDL action plan if required under Part I B 8 f shall be submitted no later than 90 days following the completion of the fourth monitoring period to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department and maintained with the facility's SWPPP.

(4) Facilities that monitored for TSS, TN, or TP may use the applicable sampling data collected during the 2014 industrial stormwater general permit term to satisfy all or part of the four monitoring periods requirement in accordance with Part I B 8 a.

~~(3)~~ c. Chesapeake Bay TMDL wasteload allocations and Chesapeake Bay TMDL action plans.

~~(a)~~ (1) EPA's Chesapeake Bay TMDL (December 29, 2010) includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial stormwater permits per county and the number of urban acres regulated by industrial stormwater permits, as part of their development of the aggregate load. Aggregate loads for industrial stormwater facilities were appropriate because actual facility loading data were not available to develop individual facility wasteload allocations.

Virginia estimated the loadings from industrial stormwater facilities using actual and estimated facility acreage information and TP, TN, and TSS loading ~~values~~ rates from the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the Metropolitan Washington Council of Governments. The loading ~~values~~ rates used were as follows:

TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

TSS - High (80%) imperviousness industrial; 440 lb/ac/yr

The actual facility area information and the TP, TN, and TSS data collected for this permit will be used by the board to quantify the nutrient and sediment loads from VPDES permitted industrial stormwater facilities ~~and will be submitted to EPA to aid in further refinements to its Chesapeake Bay TMDL model. The loading information will also be used by the board to determine any additional load reductions needed for industrial stormwater facilities for the next reissuance of this permit~~.

~~(b) Data analysis and Chesapeake Bay TMDL action plans~~ (2) Calculation of facility loads. The permittee shall analyze the nutrient and sediment data collected in accordance with ~~subdivision 7 b (1) of this subsection~~ Part I B 8 a and 8 b to determine if ~~additional action is needed~~ pollution reductions are required for this permit term. The permittee shall average the data collected at the facility for each of the pollutants of concern (POC) (e.g., TP, TN, and TSS) and compare the results to the loading ~~values~~ rates for TP, TN, and TSS presented in ~~subdivision 7 b (3) (a) of this subsection~~ Part I B 8 c (1). ~~To calculate the facility loadings, the permittee may use either (i) actual annual average rainfall data for the facility location (in inches/year), or the Virginia annual average rainfall of 44.3 inches/year; or (ii) another method approved by the board.~~

The following formula may be used to determine the loading ~~value~~ rate:

L = ~~(0.2263 x R x C) / A~~ 0.226 x P x Pj x (0.05 + (0.9 x Ia)) x C

where:

L = the POC loading ~~value~~ rate (lb/acre/year)

~~R = the annual average rainfall (inches/year)~~

P = the annual rainfall (inches/year) - The permittee may use either actual annual average rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of 44.3 inches/year, or another method approved by the board.

Pj = the fraction of annual events that produce runoff - The permittee shall use 0.9 unless the board approves another rate.

Ia = the impervious fraction of the facility impervious area of industrial activity to the facility industrial activity area

C = the POC average concentration of all facility samples (mg/L) - Facilities with multiple outfalls shall calculate a weighted average concentration for each outfall using the drainage area of each outfall.

~~A = the facility industrial activity area (acres)~~

~~(c)~~ For total phosphorus and total suspended solids, all daily concentration data below the quantitation level (QL) for the analytical method used shall be treated as half the QL. All daily concentration data equal to or above the QL for the analytical method used shall be treated as it is reported.

For total nitrogen, if none of the daily concentration data for the respective species (i.e., TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods used, the daily TN concentration value reported

shall equal one half of the largest QL used for the respective species. If one of the data is equal to or above the QL, the daily TN concentration value shall be treated as that data point is reported. If more than one of the data is above the QL, the daily TN concentration value shall equal the sum of the data points as reported.

d. The permittee shall submit a copy of the calculations to the department within 90 days from the end of the last monitoring period that satisfies the monitoring requirement in Part I B 8 a. Calculations shall be submitted to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department and maintained with the facility's SWPPP.

e. Any modification to the facility's industrial acreage or impervious industrial acreage will require the facility to recalculate facility loading rates. This may require the facility to modify the facility's Chesapeake Bay TMDL action plan or submit a Chesapeake Bay TMDL action plan as appropriate. Any recalculation of facility loading rates or modifications to a Chesapeake Bay TMDL action plan shall be submitted to the department within 90 days of the date on which the permittee completes a site modification. If previous monitoring is no longer representative of the modified facility, monitoring in accordance with Part I B 8 a shall commence within 90 days of the modification and the revised calculations and Chesapeake Bay TMDL action plan if required under Part I B 8 f shall be submitted no later than 90 days following completion of the fourth monitoring period.

f. Chesapeake Bay TMDL action plan Requirements. If the calculated facility loading ~~value~~ rate for TP, TN, or TSS is above the loading ~~values~~ rates for TP, TN, or TSS presented in ~~subdivision 7 b (3) (a) of this subsection~~ Part I B 8 c (1), then the permittee shall develop and submit ~~to the board for review and approval~~ a Chesapeake Bay TMDL ~~Action Plan~~ action plan to the department. ~~The plan shall be submitted within 90 days from the end of the second year's monitoring period (by September 28, 2016). The permittee shall implement the approved plan over the remaining term of this permit to achieve all the necessary reductions by June 30, 2024. The action plan shall include:~~

~~(i)~~ The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the department to the regional office serving the area where the industrial facility is located within 90 days following the completion of the fourth monitoring period. A copy of the current Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

(1) A determination of the total pollutant load reductions for TP, TN, and TSS (as appropriate) necessary to reduce the annual loads from industrial activities. This shall be determined by ~~calculating~~ multiplying the industrial average times the difference between the TMDL loading ~~values~~ rates listed in ~~subdivision 7 b (3) (a) of this subsection,~~ Part I B 8 c (1) and the ~~average of the sampling data for TP, TN, or TSS (as appropriate) for the entire facility~~ actual facility loading rates calculated in accordance with Part I B 8 c (2). The reduction applies to the total difference calculated for each pollutant of concern;

~~(ii)~~ (2) The means and methods, such as management practices and retrofit programs, that will be utilized to meet the required reductions determined in ~~subdivision 7 b (3) (c) (i) of this subsection,~~ Part I B 8 f (1) and a schedule to achieve those reductions by June 30, 2024. The schedule should include annual ~~benchmarks~~ milestones to demonstrate the ongoing progress in meeting those reductions; and

~~(iii)~~ (3) The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the required reductions.

~~(d)~~ g. A permittee required to develop and implement a Chesapeake Bay TMDL Action Plan shall submit an annual report to the department by June 30 of each year describing the progress in meeting the required reductions.

h. Chesapeake Bay TMDL action plan annual reporting waiver. Upon implementation of the facility's Chesapeake Bay TMDL action plan, permittees may submit a waiver for the annual reporting requirements. The waiver request shall be submitted for board approval to the DEQ regional office serving the area where the industrial facility is located on a form provided by the department. Annual reporting requirements will be in effect until the permittee receives notice from the department that the waiver has been approved. A copy of the waiver approval shall be maintained with the SWPPP. The waiver may be revoked for cause by the board. A waiver request may be approved by the board once the permittee demonstrates that they have achieved all of the required pollutant reductions calculated under Part I B 8 f (1). Pollutant reductions may be achieved using a combination of the following alternatives:

(1) Reductions provided by one or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed in 9VAC25-870-65, approved BMPs found on the Virginia Stormwater Clearinghouse website, or BMPs approved by the Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant reductions

shall be incorporated in the SWPPP and be permanently maintained by the permittee;

(2) Implementation of site-specific BMPs followed by a minimum of four stormwater samples collected in accordance with sampling requirements in Part I B 8 a that demonstrate pollutant loadings have been reduced below those calculated under Part I B 8 c. Any BMPs implemented to provide the required pollutant reductions shall be incorporated in the SWPPP and be permanently maintained by the permittee; or

(3) Acquisition of nonpoint source credits certified by the board as perpetual in accordance with § 62.1-44.19:20 of the Code of Virginia.

~~8.~~ 9. Discharges through a regulated MS4 to waters subject to the Chesapeake Bay TMDL. In addition to the requirements of this permit, any facility with industrial activity discharges through a regulated MS4 that is notified by the MS4 operator that the locality has adopted ordinances to meet the Chesapeake Bay TMDL shall incorporate measures and controls into its SWPPP to comply with applicable local TMDL ordinance requirements.

~~9.~~ 10. Expansion of facilities that discharge to waters subject to the Chesapeake Bay TMDL. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November 29, 2010), states that the wasteloads from any expansion of an existing permitted facility discharging stormwater in the Chesapeake Bay watershed cannot exceed the nutrient and sediment loadings that were discharged from the expanded portion of the land prior to the land being developed for the expanded industrial activity.

a. For any industrial activity area expansions (i.e., construction activities, including clearing, grading, and excavation activities) that commence on or after July 1, ~~2014~~ 2019, (the effective date of this permit), the permittee shall document in the SWPPP the information and calculations used to determine the nutrient and sediment loadings discharged from the expanded land area prior to the land being developed, and the measures and controls that were employed to meet the no net increase of stormwater nutrient and sediment load as a result of the expansion of the industrial activity. Any land disturbance that is exempt from permitting under the VPDES construction stormwater general permit regulation (9VAC25-880) is exempt from this requirement.

b. The permittee may use the VSMP water quality design criteria to meet the requirements of ~~subdivision 9~~ Part I B 10 a ~~of this subsection~~. Under this criteria, the total phosphorus load shall not exceed the greater of~~:~~ (i) the total phosphorus load that was discharged from the expanded portion of the land prior to the land being developed for the industrial activity or (ii) 0.41 pounds per acre per year. Compliance with the water quality design criteria may be determined utilizing the Virginia Runoff Reduction Method or another equivalent methodology approved by the board. Design specifications and pollutant removal efficiencies for specific BMPs can be found on the Virginia Stormwater BMP Clearinghouse website ~~at http://www.vwrrc.vt.edu/swc~~.

c. The permittee may consider utilization of any pollutant trading or offset program in accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia, governing trading and offsetting, to meet the no net increase requirement.

10. Water quality protection. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards. The board expects that compliance with the conditions in this permit will control discharges as necessary to meet applicable water quality standards.

11. Adding or deleting stormwater outfalls. The permittee may add new or delete existing stormwater outfalls at the facility as necessary and appropriate. The permittee shall update the SWPPP and notify the department of all outfall changes within 30 days of the change. The permittee shall submit a copy of the updated SWPPP site map with this notification.

12. Antidegradation requirements for new or increased discharges to high quality waters. Facilities that add new outfalls, or increase their discharges from existing outfalls that discharge directly to high quality waters designated under Virginia's water quality standards antidegradation policy under 9VAC25-260-30 A 2 may be notified by the department that additional control measures, or other permit conditions are necessary to comply with the applicable antidegradation requirements, or may be notified that an individual permit is required in accordance with 9VAC25-31-170 B 3.

~~13. If the permittee discharges to surface waters through a municipal separate storm sewer system (MS4), the permittee shall, within 30 days of coverage under this general permit, notify the owner of the MS4 in writing of the existence of the discharge and provide the following information: the name of the facility, a contact person and phone number, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit registration number. A copy of such notification shall be provided to the department.~~

~~14.~~ 13. Termination of permit coverage.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the

department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of stormwater associated with industrial activity from the facility;

(2) A new owner has assumed responsibility for the facility ~~(Note:~~. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been ~~submitted)~~ submitted;

(3) All stormwater discharges associated with industrial activity have been covered by an individual VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES industrial stormwater general permit registration number;

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, and there are no longer discharges of stormwater associated with industrial activity from the facility;

(c) A statement indicating that all stormwater discharges associated with industrial activity have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason ~~(state the reason);~~ and a description of the reason; and

(5) The following certification: "I certify under penalty of law that all stormwater discharges associated with industrial activity from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual permit, or that I am no longer the owner of the industrial activity, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge stormwater associated with industrial activity in accordance with the general permit, and that discharging pollutants in stormwater associated with industrial activity to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

c. The notice of termination shall be signed in accordance with Part II K.

d. The notice of termination shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

Part II
Conditions Applicable to All VPDES Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain copies of the SWPPP, including any modifications made during the term of this permit, records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the

registration statement for this permit, for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

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

2. Monitoring results shall be reported ~~on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department~~ in the department's electronic discharge monitoring report (e-DMR) system. All reports and forms submitted in compliance with this permit shall be submitted electronically by the permittee in accordance with 9VAC25-31-1020.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted ~~on the DMR~~ in e-DMR or reporting form specified by the department.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information which the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request, copies of records required to be kept by this permit.

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

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

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

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

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

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with

Part II I ~~2~~ 1 b. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance ~~which~~ that may adversely affect state waters or may endanger public health.

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

~~a.~~ (1) Any unanticipated bypass; and

~~b.~~ (2) Any upset which causes a discharge to surface waters.

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

~~a.~~ (1) A description of the noncompliance and its cause;

~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

~~NOTE:~~ 3. The immediate (within 24 hours) reports required in Part II G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the Clean Water Act which are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the Clean Water Act which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

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

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means~~:~~ (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated

facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Part II K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage termination~~, revocation and reissuance, or modification;~~ or denial of a permit coverage renewal ~~application~~.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants ~~and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act~~ within the time provided in the regulations that establish these standards ~~or prohibitions or standards for sewage sludge use or disposal,~~ even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities,

liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

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

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

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part II I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part II U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed above in Part II U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part II V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the ~~cause(s)~~ causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part II I; and

d. The permittee complied with any remedial measures required under Part II S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or an authorized representative, including an authorized contractor acting as a representative of the administrator, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. ~~Permits~~ Permit coverages may be ~~modified, revoked and reissued, or~~ terminated for cause. The filing of a request by the permittee for a permit ~~modification, revocation and reissuance, or~~ termination~~,~~ or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of permits.

1. Permits are not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

~~1.~~ a. The current permittee notifies the department within 30 days of the ~~proposed~~ transfer of the title to the facility or property, unless permission for a later date has been granted by the board;

~~2.~~ b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~3.~~ c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part II Y 2 b.

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

Part III
Stormwater Pollution Prevention Plan

9VAC25-151-80. Stormwater ~~Pollution Prevention Plans~~ pollution prevention plans.

A Stormwater ~~Pollution Prevention Plans~~ pollution prevention plan (SWPPP) shall be developed and implemented for the facility covered by this permit. The SWPPP is intended to document the selection, design, and installation of control measures, including BMPs, to ~~eliminate or reduce~~ minimize the pollutants in all stormwater discharges from the facility, and to meet applicable effluent limitations and water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act, or best management practices (BMP) programs otherwise required for the facility, provided that the incorporated plan meets or exceeds the plan requirements of Part III B (Contents of the Plan). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP of Part III B, the permittee shall develop the missing SWPPP elements and include them in the required plan.

A. Deadlines for ~~plan~~ SWPPP preparation and compliance.

1. Facilities that were covered under the ~~2009~~ 2014 Industrial Stormwater General Permit. Owners of facilities that were covered under the ~~2009~~ 2014 Industrial Stormwater General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within 90 days of the board granting coverage under this permit.

2. New facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit shall prepare and implement the SWPPP prior to submitting the registration statement.

3. New owners of existing facilities. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

4. Extensions. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

B. Contents of the ~~plan~~ SWPPP. The contents of the SWPPP shall comply with the requirements listed below and those in

the appropriate sectors of Part IV (9VAC25-151-90 et seq.). These requirements are cumulative. If a facility has colocated industrial activities that are covered in more than one sector of Part IV, that facility's ~~pollution prevention plan~~ SWPPP shall comply with the requirements listed in all applicable sectors. The following requirements are applicable to all SWPPPs developed under this general permit. The ~~plan~~ SWPPP shall include, at a minimum, the following items:

1. Pollution prevention team. The ~~plan~~ SWPPP shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. Site description. The SWPPP shall include the following:

a. ~~Activities at the facility.~~ A description ~~of the nature~~ of the industrial activities at the facility.

~~b. General location map. A general location map (e.g., USGS quadrangle or other map) with enough detail to identify the location of the facility and the receiving waters within one mile of the facility.~~

~~c. Site map.~~ b. A site map identifying the following:

(1) The boundaries of the property and the size of the property ~~(in acres)~~ in acres;

(2) The location and extent of significant structures and impervious surfaces ~~(roofs, paved areas and other impervious areas)~~;

(3) Locations of all stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow ~~(use arrows to show which ways stormwater will flow)~~ using arrows to indicate which direction stormwater will flow;

(4) Locations of all ~~existing structural and source~~ stormwater control measures, including BMPs;

(5) Locations of all surface water bodies, including wetlands;

(6) Locations of potential pollutant sources identified under Part III B 3;

(7) Locations where significant spills or leaks identified under Part III B 3 c have occurred;

~~(8) Locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and cleaning areas; loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; processing and storage areas; access roads, rail cars and tracks; transfer areas for substances in bulk; and machinery;~~

~~(9)~~ (8) Locations of stormwater outfalls ~~and an approximate outline of the area draining to each outfall, and location of municipal storm sewer systems, if the stormwater from the facility discharges to them. Outfalls shall be numbered using a unique numerical identification code for each outfall (e.g., Outfall No. 001, No. 002, etc.);~~.

~~(10)~~ (a) An approximate outline of the area draining to each outfall;

(b) The drainage area of each outfall in acres;

(c) The longitude and latitude of each outfall;

(d) The location of any MS4 conveyance receiving discharge from the facility; and

(e) Each outfall shall be identified with a unique numerical identification code. For example: Outfall Number 001, Outfall Number 002, etc.;

(9) Location and description of all nonstormwater discharges;

~~(11)~~ (10) Location of any storage piles containing salt ~~used for deicing or other commercial or industrial purposes~~;

~~(12)~~ (11) Locations and sources of suspected ~~runon~~ run-on to the site from an adjacent property~~, where~~ if the ~~runon contains~~ run-on is suspected of containing significant quantities of pollutants; and

~~(13)~~ (12) Locations of all stormwater monitoring points.

d. Receiving waters and wetlands. The name of all surface waters receiving discharges from the site, including intermittent streams, dry sloughs, and arroyos. Provide a description of wetland sites that may receive discharges from the facility. If the facility discharges through a ~~municipal separate storm sewer system (MS4)~~ an MS4, identify the MS4 operator, and the receiving water to which the MS4 discharges.

3. Summary of potential pollutant sources. The ~~plan~~ SWPPP shall identify each separate area at the facility where industrial materials or activities are exposed to stormwater. Industrial materials or activities include~~, but are not limited to~~: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities include~~, but are not limited to~~: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product or waste product. For each separate area identified, the description shall include:

a. Activities in the area. A list of the industrial activities exposed to stormwater ~~(e.g., material storage, equipment fueling and cleaning, cutting steel beams)~~.

b. Pollutants. A list of the ~~pollutant(s) or~~ pollutants, pollutant constituents ~~(e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.)~~, or industrial chemicals associated with each industrial activity that could potentially be exposed to stormwater. The pollutant list shall include all significant materials handled, treated, stored or disposed that have been exposed to stormwater in the three years prior to the date this SWPPP was prepared or amended. The list shall include any hazardous substances or oil at the facility.

c. Spills and leaks. The SWPPP shall clearly identify areas where potential spills and leaks that can contribute pollutants to stormwater discharges can occur and their corresponding outfalls. The ~~plan~~ SWPPP shall include a list of significant spills and leaks of toxic or hazardous pollutants that actually occurred at exposed areas, or that drained to a stormwater conveyance during the three-year period prior to the date this SWPPP was prepared or amended. The list shall be updated within 60 days of the incident if significant spills or leaks occur in exposed areas of the facility during the term of the permit. ~~Significant spills and leaks include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities.~~

d. Sampling data. The ~~plan~~ SWPPP shall include ~~a summary of existing~~ stormwater discharge sampling data ~~taken at the facility. The summary shall include, at a minimum, any data~~ collected during the previous ~~permit term~~ three years.

4. Stormwater controls.

a. Control measures shall be implemented for all the areas identified in Part III B 3 ~~(summary of potential pollutant sources)~~ to prevent or control pollutants in stormwater discharges from the facility. Regulated stormwater discharges from the facility include stormwater ~~runon~~ run-on that commingles with stormwater discharges associated with industrial activity at the facility. The SWPPP shall describe the type, location and implementation of all control measures for each area where industrial materials or activities are exposed to stormwater.

Selection of control measures shall take into consideration:

(1) That preventing stormwater from coming into contact with polluting materials is generally more effective, and less costly, than trying to remove pollutants from stormwater;

(2) Control measures generally shall be used in combination with each other for most effective water quality protection;

(3) Assessing the type and quantity of pollutants, including their potential to impact receiving water quality, is critical to designing effective control measures;

(4) That minimizing impervious areas at the facility can reduce runoff and improve groundwater recharge and stream base flows in local streams (however, care must be taken to avoid ~~ground water~~ groundwater contamination);

(5) Flow attenuation by use of open vegetated swales and natural depressions can reduce in-stream impacts of erosive flows;

(6) Conservation or restoration of riparian buffers will help protect streams from stormwater runoff and improve water quality; and

(7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate in some instances to minimize the discharge of pollutants.

b. Nonnumeric technology-based effluent limits. The permittee shall implement the following types of control measures to prevent and control pollutants in the stormwater discharges from the facility, unless it can be demonstrated and documented that such controls are not relevant to the discharges ~~(e.g., there are no storage piles containing salt)~~.

(1) Good housekeeping. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants to stormwater discharges. ~~Typical problem areas include areas around trash containers, storage areas, loading docks, and vehicle fueling and maintenance areas. The plan shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks and containers.~~ The permittee shall perform the following good housekeeping measures to minimize pollutant discharges:

(a) The SWPPP shall include a schedule for regular pickup and disposal of waste materials, along with routine inspections for leaks and conditions of drums, tanks, and containers;

(b) As feasible, the facility shall sweep or vacuum;

(c) Store materials in containers constructed of appropriate materials;

(d) Manage all waste containers to prevent a discharge of pollutants;

(e) Minimize the potential for waste, garbage, and floatable debris to be discharged by keeping areas exposed to stormwater free of such materials or by intercepting such materials prior to discharge; and

(f) Facilities that handle pre-production plastic or plastic waste shall implement BMPs to eliminate stormwater discharges of plastics.

(2) Eliminating and minimizing exposure. To the extent practicable, manufacturing, processing, and material storage areas (including loading and unloading, storage, disposal, cleaning, maintenance, and fueling operations) shall be located inside, or protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt, and runoff. ~~Note:~~ Eliminating exposure at all industrial areas may make the facility eligible for the "Conditional Exclusion for No Exposure" provision of 9VAC25-31-120 E, thereby eliminating the need to have a permit. Unless infeasible, facilities shall implement the following:

(a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert run-on away from potential sources of pollutants;

(b) Locate materials, equipment, and activities so that potential leaks and spills are contained, or able to be contained, or diverted before discharge;

(c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using dry methods (e.g., absorbents) to prevent the discharge of pollutants;

(d) Store leaking vehicles and equipment indoors or, if stored outdoors, use drip pans and adsorbents;

(e) Utilize appropriate spill or overflow protections equipment;

(f) Perform all vehicle maintenance or equipment cleaning operations indoors, under cover, or in bermed areas that prevent runoff and run-on and also capture any overspray; and

(g) Drain fluids from equipment and vehicles that will be decommissioned, and for any equipment and vehicles that remain unused for extended periods of time, inspect at least monthly for leaks.

(3) Preventive maintenance. The permittee shall have a preventive maintenance program that includes regular inspection, testing, maintenance and repairing of all industrial equipment and systems to avoid situations that could result in leaks, spills and other releases of pollutants in stormwater discharged from the facility. This program is in addition to the specific control measure maintenance required under Part III C ~~(Maintenance of control measures)~~ (Maintenance).

(4) Spill prevention and response procedures. The ~~plan~~ SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks, including:

(a) Preventive measures, such as barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling;

(b) Response procedures, including notification of appropriate facility personnel, emergency agencies, and regulatory agencies, and procedures for stopping, containing and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the Pollution Prevention Team;

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides," etc.) that could be susceptible to spillage or leakage to encourage proper handling and facilitate rapid response if spills or leaks occur; and

(d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP, and in other locations where it will be readily available.

(5) Salt storage piles or piles containing salt. Storage piles of salt or piles containing salt used for deicing or other commercial or industrial purposes shall be enclosed or covered to prevent exposure to precipitation. The permittee shall implement appropriate measures (e.g., good housekeeping, diversions, containment) to minimize exposure resulting from adding to or removing materials from the pile. All salt storage piles shall be located on an impervious surface. All runoff from the pile, and runoff that comes in contact with salt, including under drain systems, shall be collected and contained within a bermed basin lined with concrete or other impermeable materials, or within an underground storage tank or tanks, or within an above ground storage tank or tanks, or disposed of through a sanitary sewer (with the permission of the owner of the treatment facility). A combination of any or all of these methods may be used. In no case shall salt contaminated stormwater be allowed to discharge directly to the ground or to surface waters.

(6) Employee training. The permittee shall implement a stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training, and shall document all training sessions and the employees who received the training.

Training shall be provided at least annually for all employees who work in areas where industrial materials or activities are exposed to stormwater, and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP, and include such topics as spill response, good housekeeping, material management practices, control measure operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The ~~plan~~ SWPPP shall identify areas at the facility that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, and stabilization control measures to prevent or control on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel if the flows would otherwise create erosive conditions.

(8) Management of runoff. The ~~plan~~ SWPPP shall describe the stormwater runoff management practices (i.e., permanent structural control measures) for the facility. These types of control measures ~~are typically~~ shall be used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site.

Structural control measures may require a separate permit under § 404 of the CWA and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

(9) Dust suppression and vehicle tracking of industrial materials. The permittee shall implement control measures to minimize the generation of dust and off-site tracking of raw, final, or waste materials. Stormwater collected on-site may be used for the purposes of dust suppression or for spraying stockpiles. Potable water, well water, and uncontaminated reuse water may also be used for this purpose. There shall be no direct discharge to surface waters from dust suppression activities or as a result of spraying stockpiles.

5. Routine facility inspections. ~~Facility personnel~~ Personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of control measures shall regularly inspect all areas of the facility where industrial materials or activities are exposed to stormwater, areas where spills or leaks have occurred in the past three years, discharge points, and control measures. ~~These inspections are in addition to, or as part of, the comprehensive site evaluation required under Part III E.~~ At least one member of the pollution prevention team shall participate in the routine facility inspections.

The inspection frequency shall be specified in the ~~plan~~ SWPPP based upon a consideration of the level of industrial activity at the facility, but shall be at a minimum ~~quarterly~~ of once per calendar quarter unless more frequent intervals are specified elsewhere in the permit or written approval is received from the department for less frequent intervals. Inspections shall be performed during ~~periods when the facility is in operation~~ operating hours. At least once each calendar year, the routine facility inspection shall be conducted during a period when a stormwater discharge is occurring.

The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status. ~~Note:~~ Certain sectors in Part IV have additional inspection requirements. If the VEEP E3/E4 waiver language is not included for the sector specific inspections, these additional inspection requirements may not be waived.

Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within ~~30~~ 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP and shall include at a minimum:

a. The inspection date ~~and time~~;

b. The ~~name(s) and signature(s)~~ names of the ~~inspector(s)~~ inspectors;

c. Weather information and a description of any discharges occurring at the time of the inspection;

d. Any previously unidentified discharges of pollutants from the site;

e. Any control measures needing maintenance or repairs;

f. Any failed control measures that need replacement;

g. Any incidents of noncompliance observed; and

h. Any additional control measures needed to comply with the permit requirements.

C. Maintenance. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all control measures, and shall include a description of the back-up practices that are in place should a runoff event occur while a control measure is off-line. The effectiveness of nonstructural control measures shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

All control measures identified in the SWPPP shall be maintained in effective operating condition and shall be observed at least annually ~~during active operation (i.e., during~~

~~a stormwater runoff event)~~ when a stormwater discharge is occurring to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

If ~~site~~ routine facility inspections required by Part III B 5 ~~(Routine facility inspections) or Part III E (Comprehensive site compliance evaluation)~~ identify control measures that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of control measures, including the ~~date(s)~~ dates of regular maintenance, ~~date(s)~~ dates of discovery of areas in need of repair or replacement, ~~date(s)~~ dates for repairs, ~~date(s)~~ dates that the control ~~measure(s)~~ measures returned to full function, and the justification for any extended maintenance or repair schedules.

D. Nonstormwater discharges.

1. Discharges of certain sources of nonstormwater listed in Part I B 1 are allowable discharges under this permit ~~(see Part I B, Special Condition No. 1 Allowable nonstormwater discharges)~~. All other nonstormwater discharges are not authorized and shall be either eliminated or covered under a separate VPDES permit.

2. Annual outfall evaluation for unauthorized discharges.

a. The SWPPP shall include documentation that all stormwater outfalls associated with industrial activity have been evaluated annually for the presence of unauthorized discharges ~~(i.e., discharges other than stormwater; the authorized nonstormwater discharges described in Part I B, Special Condition No. 1; or discharges covered under a separate VPDES permit, other than this permit)~~. The documentation shall include:

(1) The date of the evaluation;

(2) A description of the evaluation criteria used;

(3) A list of the outfalls or on-site drainage points that were directly observed during the evaluation;

(4) A description of the results of the evaluation for the presence of unauthorized discharges; and

(5) The actions taken to eliminate unauthorized discharges if any were identified ~~(i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or a VPDES permit application was submitted for a cooling water discharge)~~.

b. The permittee may request in writing to the department that the facility be allowed to conduct annual outfall evaluations at 20% of the outfalls. If approved, the permittee shall evaluate at least 20% of the facility outfalls each year on a rotating basis such that all facility outfalls will be evaluated during the period of coverage under this permit.

~~E. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once each calendar year after coverage under the permit begins. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility, and who can also evaluate the effectiveness of control measures. The personnel conducting the evaluations may be either facility employees or outside personnel hired by the facility.~~

~~1. Scope of the compliance evaluation. Evaluations shall include all areas where industrial materials or activities are exposed to stormwater, as identified in Part III B 3. The personnel shall evaluate:~~

~~a. Industrial materials, residue or trash that may have or could come into contact with stormwater;~~

~~b. Leaks or spills from industrial equipment, drums, barrels, tanks or other containers that have occurred within the past three years;~~

~~c. Off site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;~~

~~d. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas;~~

~~e. Evidence of, or the potential for, pollutants entering the drainage system;~~

~~f. Evidence of pollutants discharging to surface waters at all facility outfalls, and the condition of and around the outfall, including flow dissipation measures to prevent scouring;~~

~~g. Review of stormwater related training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of control measures, including BMPs;~~

~~h. A summary of the annual outfall evaluation for unauthorized discharges required by subdivision D 2 of this section.~~

~~i. Results of both visual and any analytical monitoring done during the past year shall be taken into consideration during the evaluation.~~

~~2. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the map required by Part III B 2 c; revise the description of~~

~~controls required by Part III B 4 to include additional or modified control measures designed to correct problems identified). Revisions to the SWPPP shall be completed within 30 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing control measures need to be modified or if additional control measures are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department.~~

~~3. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation, name(s) of personnel making the evaluation, the date of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part III E 1 (a) through (i) above. Observations shall include such things as: the location(s) of discharges of pollutants from the site; location(s) of previously unidentified sources of pollutants; location(s) of control measures that need to be maintained or repaired; location(s) of failed control measures that need replacement; and location(s) where additional control measures are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part II K and maintained with the SWPPP.~~

~~4. Where compliance evaluation schedules overlap with routine inspections required under Part III B 5 the annual compliance evaluation may be used as one of the routine inspections.~~

~~F.~~ E. Signature and ~~plan~~ SWPPP review.

1. Signature and location. The SWPPP, including revisions to the SWPPP to document any corrective actions taken as required by Part I A 6, shall be signed in accordance with Part II K, dated, and retained on-site at the facility covered by this permit in accordance with Part II B 2. All other changes to the SWPPP, and other permit compliance documentation, shall be signed and dated by the person preparing the change or documentation. For inactive and unstaffed facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall retain a copy of the current SWPPP required by this permit at the facility, and it shall be immediately available to the department, EPA, or the operator of an MS4 receiving discharges from the site at the time of an on-site inspection or upon request.

3. Required modifications. The permittee shall modify the SWPPP whenever necessary to address all corrective actions required by Part I A 6 a (Data exceeding benchmark concentration values) or Part I A 6 b (Corrective actions). Changes to the SWPPP shall be made in accordance with the corrective action deadlines in Part I A 6 a and Part I A 6 b, and shall be signed and dated in accordance with Part III ~~F 1~~ E 1.

The director may notify the permittee at any time that the SWPPP, control measures, or other components of the facility's stormwater program do not meet one or more of the requirements of this permit. The notification shall identify specific provisions of the permit that are not being met, and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. The permittee shall make any required changes to the SWPPP within 60 days of receipt of such notification, unless permission for a later date is granted in writing by the director, and shall submit a written certification to the director that the requested changes have been made.

~~G.~~ F. Maintaining an updated SWPPP.

1. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance at the facility that has a significant effect on the discharge, or the potential for the discharge, of pollutants from the facility;

b. Routine inspections or compliance evaluations determine that there are deficiencies in the control measures, including BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a significant spill, leak, or other release at the facility;

e. There is an unauthorized discharge from the facility; or

f. The department notifies the permittee that a TMDL has been developed and applies to the permitted facility, consistent with Part I B~~, special condition 7 (Discharges to waters subject to TMDL wasteload allocations)~~.

2. SWPPP modifications shall be made within ~~30~~ 60 calendar days after discovery, observation or event requiring a SWPPP modification. Implementation of new or modified control measures (distinct from regular preventive maintenance of existing control measures described in Part III C) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a control measure or implement additional control measures shall be documented in the SWPPP.

3. If the SWPPP modification is based on a significant spill, leak, release, or unauthorized discharge, include a description and date of the ~~release~~ incident, the circumstances leading to the ~~release~~ incident, actions taken in response to the ~~release~~ incident, and measures to prevent the recurrence of such releases. Unauthorized ~~releases and~~ discharges are subject to the reporting requirements of Part II G of this permit.

Part IV
Sector Specific Permit Requirements

The permittee must only comply with the additional requirements of Part IV (9VAC25-151-90 et seq.) that apply to the ~~sector(s)~~ sectors of industrial activity located at the facility. These sector specific requirements are in addition to the ~~"basic"~~ requirements specified in Parts I, II and III of this permit. All numeric effluent limitations and benchmark monitoring concentration values reflect two significant digits, unless otherwise noted.

9VAC25-151-90. Sector A - Timber products facilities (including mulch, wood, and bark facilities and mulch dyeing facilities).

A. Discharges covered under this section. ~~1.~~ The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities generally classified under ~~Standard Industrial Classification (SIC) Major Group 24~~ SIC Codes 2491 and 2499 that are engaged in the following activities: ~~cutting timber and pulpwood (those that have log storage or handling areas), mills, including merchant, lath, shingle, cooperage stock, planing, plywood and veneer, and producing lumber and wood materials;~~ wood preserving~~, manufacturing wood buildings or mobile homes; and manufacturing finished articles made entirely of wood or related materials, except for wood kitchen cabinet manufacturers (SIC Code 2434), which are addressed under Sector W (9VAC25-151-300).~~ and mulch, wood, and bark facilities, including mulch dyeing operations (SIC Code 24991303).

~~2. The requirements listed under this section also apply to stormwater discharges associated with industrial activity from mulch, wood, and bark facilities, including mulch dyeing operations (SIC Code 24991303).~~

B. Special conditions.

1. Prohibition of nonstormwater discharges. Discharges of stormwater from areas where there may be contact with chemical formulations sprayed to provide surface protection are not authorized by this permit. These discharges must be covered under a separate VPDES permit. Discharge of wet dye drippings from mulch dyeing operations are also prohibited.

2. Authorized nonstormwater discharges. In addition to the discharges described in Part I B 1, the following nonstormwater discharges may be authorized by this permit provided the nonstormwater component of the discharge is in compliance with 9VAC25-151-90 C and the effluent limitations described in 9VAC25-151-90 D: discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: processing areas; treatment chemical storage areas; treated wood and residue storage areas; wet decking areas; dry decking areas; untreated wood and residue storage areas; and treatment equipment storage areas.~~

~~b. Summary of potential pollutant sources. Where information is available, facilities that have used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or wood preserving activities on site in the past shall identify in the inventory the following: areas where contaminated soils, treatment equipment, and stored materials still remain, and the management practices employed to minimize the contact of these materials with stormwater runoff.~~

~~2.~~ C. Stormwater controls. The description of stormwater management controls shall address the following areas of the site: log, lumber and wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment and vehicle maintenance, storage and repair areas. Facilities that surface protect or preserve wood products shall address specific control measures, including any BMPs, for wood surface protection and preserving activities. Facilities that dye mulch shall address specific control measures to prevent the discharge of wet dye drippings and to prevent seepage of pollutants to groundwater.

The SWPPP shall address the following minimum components:

~~a.~~ 1. Good housekeeping. Good housekeeping measures in storage areas, loading and unloading areas, and material handling areas shall be designed to:

~~(1)~~ a. Limit the discharge of wood debris;

~~(2)~~ b. Minimize the leachate generated from decaying wood materials; and

~~(3)~~ c. Minimize the generation of dust.

~~b.~~ 2. Routine facility inspections. Inspections at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities shall be performed monthly to assess the usefulness of practices in minimizing the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with stormwater discharges. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

D. Numeric effluent limitations.

In addition to the numeric effluent limitations described in Part I A 1 c, the following limitations shall be met by existing and new facilities.

Wet deck storage area runoff. Nonstormwater discharges from areas used for the storage of logs where water, without chemical additives, is intentionally sprayed or deposited on logs to deter decay or infestation by insects are required to meet the following effluent limitations: pH shall be within the range of 6.0-9.0, and there will be no discharge of debris. Chemicals are not allowed to be applied to the stored logs. The term "debris" is defined as woody material such as bark, twigs, branches, heartwood or sapwood that will not pass through a 2.54 cm (1 in.) diameter round opening and is present in the discharge from a wet deck storage area. Permittees subject to these numeric limitations shall be in compliance with these limitations through the duration of permit coverage.

Table 90-1
Sector A - Numeric Effluent Limitations

Parameter	Effluent Limitations
Wet Decking Discharges at Log Storage and Handling Areas (SIC Code 2411)	
pH	6.0 - 9.0 s.u.
Debris (woody material such as bark, twigs, branches, heartwood, or sapwood)	No discharge of debris that will not pass through a 2.54 cm (1") diameter round opening.

E. Benchmark monitoring and reporting requirements. ~~Timber product~~ Wood preserving facilities; mulch, wood, and bark facilities; and mulch dyeing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in the appropriate section of Table 90-2.

Table 90-2
Sector A - Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
~~General Sawmills and Planing Mills (SIC 2421)~~	
~~Total Suspended Solids (TSS)~~	~~100 mg/L~~
Wood Preserving Facilities (SIC Code 2491)	
Total Recoverable Arsenic[1]	50 µg/L
Total Recoverable Chromium[1]	16 µg/L
Total Recoverable Copper[1]	18 µg/L
~~Log Storage and Handling Facilities (SIC 2411)~~	
~~Total Suspended Solids (TSS)~~	~~100 mg/L~~
~~Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431-2439 (except 2434), 2441, 2448, 2449, 2451, 2452, 2493, and 2499).~~	
~~Total Suspended Solids (TSS)~~	~~100 mg/L~~
Mulch, Wood, and Bark Facilities (SIC Code 24991303)	
Total Suspended Solids (TSS)	100 mg/L
~~Biochemical Oxygen Demand (BOD_5)~~ Chemical Oxygen Demand (COD)	~~30~~ 120 mg/L
Facilities with Mulch Dyeing/Coloring Operations (SIC Code 24991303): Monitor ONLY those outfalls from the facility that collect runoff from areas where mulch dyeing/coloring activities occur, including but not limited to areas where loading, transporting, and storage of dyed/colored mulch occurs.[2]	
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD5)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Arsenic	150 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L

Total Recoverable Iron	1.0 mg/L
~~Total Recoverable Lead~~	~~120 µg/L~~
~~Total Recoverable Manganese~~	~~64 µg/L~~
~~Total Recoverable Mercury~~	~~1.4 µg/L~~
~~Total Recoverable Nickel~~	~~470 µg/L~~
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 µg/L
Total Recoverable Zinc	120 µg/L
Total Nitrogen	2.2 mg/L
Total Phosphorus	2.0 mg/L

[1]Monitoring for metals (arsenic, chromium and copper) is not required for wood preserving facilities using only oil-based preservatives.

[2]Benchmark monitoring waivers are available to facilities utilizing mulch dye or colorant products that do not contain the specified parameters provided that: (i) monitoring from samples collected during one monitoring period demonstrates that the specific parameter in question is below the quantitation level; (ii) a waiver request with attached laboratory certificate of analysis is submitted to and approved by the board ~~(The laboratory certificate of analysis must be submitted with the request. If approved, documentation of this shall be kept with the SWPPP.)~~; and (iii) a certification statement is submitted to the department annually that the facility does not use mulch dyeing products that contain any of the specifically waived parameters. Approved benchmark monitoring waivers shall be kept with the SWPPP.

9VAC25-151-100. Sector B - Paper and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to ~~storm water~~ stormwater discharges associated with industrial activity from facilities generally classified ~~under~~ as paperboard mills, SIC ~~Major Group 26 that are engaged in the following activities: the manufacture of pulps from wood and other cellulose fibers and from rags; the manufacture of paper and paperboard into converted products, such as paper coated off the paper machine, paper bags, paper boxes and envelopes; and the manufacture of bags of plastic film and sheet~~ Code 2631.

B. Benchmark monitoring and reporting requirements. Paperboard mills are required to monitor their ~~storm water~~ stormwater discharges for the ~~pollutants~~ pollutant of concern listed in Table 100.

Table 100.
Sector B – Benchmark Monitoring Requirements.

Pollutants of Concern	Benchmark Concentration
Paperboard Mills (SIC Code 2631)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L

9VAC25-151-110. Sector C - Chemical and allied products manufacturing.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities engaged in manufacturing the following products and generally described by the SIC code shown:

1. ~~Basic industrial~~ Industrial inorganic chemicals (including SIC ~~Code 281)~~ Codes 2812-2819);

2. Plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other ~~humanmade~~ synthetic fibers, except glass (including SIC ~~Code 282)~~ Codes 2821-2824);

~~3. Medicinal chemicals and pharmaceutical products, including the grading, grinding and milling of botanicals (including SIC Code 283);~~

~~4.~~ 3. Soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; and perfumes, cosmetics, and other toilet preparations (including SIC ~~Code 284)~~ Codes 2841-2844); and

~~5. Paints (in paste and ready mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint products (including SIC Code 285);~~

~~6. Industrial organic chemicals (including SIC Code 286);~~

~~7.~~ 4. Nitrogenous and phosphatic basic fertilizers, mixed fertilizer, pesticides, and other agricultural chemicals ~~(including SIC Code 287)~~ (SIC Codes 2873-2879). ~~Note: SIC Code 287 includes~~ Composting Facilities (SIC Code 2875) are included.

~~8. Industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile, and rubber cements from vegetable, animal, or synthetic plastics materials; explosives; printing ink, including gravure ink, screen process and lithographic inks; miscellaneous chemical preparations, such as fatty acids, essential oils, gelatin (except vegetable), sizes, bluing, laundry sours, and writing and stamp pad ink; industrial compounds, such as~~

~~boiler and heat insulating compounds; and chemical supplies for foundries (including SIC Code 289); and~~

~~9. Ink and paints, including china painting enamels, India ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors (SIC Code 3952, limited to those listed; for others in SIC Code 3952 not listed above, see Sector Y (9VAC25-151-320)).~~

~~B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharges are not covered by this permit: inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an on site spill, including materials collected in drip pans; washwaters from material handling and processing areas; or washwaters from drum, tank, or container rinsing and cleaning.~~

~~C.~~ B. Numeric effluent limitations. In addition to the numeric effluent limitations described in Part I A 1 c, the following effluent limitations shall be met by existing and new discharges with phosphate fertilizer manufacturing runoff. The provisions of this paragraph are applicable to stormwater discharges from the phosphate subcategory of the fertilizer manufacturing point source category (40 CFR 418.10). The term contaminated stormwater runoff shall mean precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product. The concentration of pollutants in stormwater discharges shall not exceed the effluent limitations in Table 110-1.

Table 110-1
Sector C – Numeric Effluent Limitations

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR 418.10) - applies to precipitation runoff that, during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (SIC Code 2874)		
Total Phosphorus (as P)	105 mg/L	35 mg/L
Fluoride	75 mg/L	25 mg/L

~~D.~~ C. Benchmark monitoring and reporting requirements. Agricultural chemical manufacturing facilities; industrial inorganic chemical facilities; soaps, detergents, cosmetics, and perfume manufacturing facilities; and plastics, synthetics, and resin manufacturing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 110-2 ~~below~~.

Table 110-2
Sector C – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Agricultural Chemicals (SIC Codes 2873-2879)	
Total Nitrogen	2.2 mg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Phosphorus	2.0 mg/L
Industrial Inorganic Chemicals (SIC Codes 2812-2819)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Nitrogen	2.2 mg/L
Soaps, Detergents, Cosmetics, and Perfumes (SIC Codes 2841-2844)	
Total Nitrogen	2.2 mg/L
Total Recoverable Zinc	120 µg/L
Plastics, Synthetics, and Resins (SIC Codes 2821-2824)	
Total Recoverable Zinc	120 µg/L
Composting Facilities (SIC Code 2875)	
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Chemical Oxygen Demand (COD)	120 mg/L
Ammonia	2.14 mg/L
Total Nitrogen	2.2 mg/L
Total Phosphorus	2.0 mg/L

9VAC25-151-130. Sector E - ~~Glass, clay~~ Clay, cement, concrete, and gypsum products.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities generally classified under SIC ~~Major Group 32~~ Codes 3251-3259, 3261-3269, 3274, and 3275 that are engaged in either manufacturing the following products or performing the following activities: ~~flat, pressed, or blown glass or glass containers; hydraulic cement;~~ structural clay products including tile and brick; pottery and porcelain electrical

supplies; and concrete, plaster, and gypsum products~~; nonclay refractories; minerals and earths, ground or otherwise treated; lime manufacturing; cut stone and stone products; asbestos products; and mineral wool and mineral wool insulation products~~.

Concrete block and brick facilities (SIC Code 3271), concrete products facilities, except block and brick (SIC Code 3272), and ready-mixed concrete facilities (SIC Code 3273) are not covered by this permit.

~~B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items:~~

~~1. Site description and site map. The site map shall identify the locations of the following, if applicable: bag house or other dust control device; recycle or sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.~~

~~2. Stormwater controls. Good housekeeping.~~

~~a.~~ B. Stormwater controls. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Facilities shall prevent or minimize the discharge of: spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; and other significant materials in stormwater from paved portions of the site that are exposed to stormwater. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The ~~plan~~ SWPPP shall indicate the frequency of sweeping or equivalent measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week if cement, aggregate, kiln dust; fly ash, or settled dust are being handled or processed.

~~b.~~ 2. Facilities shall prevent the exposure of fine granular solids (such as cement, fly ash, kiln dust, etc.) to stormwater. Where practicable, these materials shall be stored in enclosed silos or hoppers, buildings, or under other covering.

C. Numeric effluent limitations. In addition to the numeric effluent limitations described by Part I A 1 c, the following limitations shall be met by ~~existing and new~~ facilities~~:~~ with cement manufacturing ~~facility,~~ and material storage runoff. Any discharge composed of runoff ~~that derives~~ from the storage of materials, including raw materials, intermediate products, finished products, and waste materials ~~that are used in or derived~~ from the manufacture of cement, shall not exceed the limitations in Table 130-1. Runoff from the storage piles shall not be diluted with other stormwater runoff or flows to meet these limitations. Any untreated overflow from facilities designed, constructed and operated to treat the volume of material storage pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the TSS or pH limitations. ~~Facilities subject to these numeric effluent limitations shall be in compliance with these limits upon commencement of coverage and for the entire term of this permit.~~

Table 130-1
Sector E – Numeric Effluent Limitations

Parameter	Effluent Limitations	
	Daily Maximum	30-day Average
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.		
Total Suspended Solids (TSS)	50 mg/L	
pH	6.0 - 9.0 s.u.	

D. Benchmark monitoring and reporting requirements. Clay product manufacturers (SIC Codes 3251-3259, SIC Codes 3261-3269) and lime and gypsum product manufacturers (SIC Codes 3274, 3275) are required to monitor their stormwater discharges for the pollutants of concern listed in Table 130-2.

Table 130-2
Sector E – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Clay Product Manufacturers (SIC Codes 3251-3259, 3261-3269)	
Total Recoverable Aluminum	750 ug/L
Lime and Gypsum Product Manufacturers (SIC Codes 3274, 3275)	
Total Suspended Solids (TSS)	100 mg/L
pH	6.0 - 9.0 s.u.
Total Recoverable Iron	1.0 mg/L

9VAC25-151-140. Sector F - Primary metals.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from the following types of facilities in the primary metal industry, and generally described by the SIC ~~code~~ codes shown:

1. Steel works, blast furnaces, and rolling and finishing mills, including: steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes (SIC ~~Code 331)~~ Codes 3312-3317).

2. Iron and steel foundries, including: gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified (SIC ~~Code 332)~~ Codes 3321-3325).

~~3. Primary smelting and refining of nonferrous metals, including: primary smelting and refining of copper, and primary production of aluminum (SIC Code 333).~~

~~4. Secondary smelting and refining of nonferrous metals (SIC Code 334).~~

~~5.~~ 3. Rolling, drawing, and extruding of nonferrous metals, including: rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire (SIC ~~Code 335)~~ Codes 3351-3357).

~~6.~~ 4. Nonferrous foundries (castings), including~~:~~ aluminum die-castings, nonferrous die-castings, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum (SIC ~~Code 336)~~ Codes 3363-3369).

~~7. Miscellaneous primary metal products, not elsewhere classified, including: metal heat treating, and primary metal products, not elsewhere classified (SIC Code 339).~~

~~Activities covered include, but are not limited to, stormwater discharges associated with coking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging of all types of ferrous and nonferrous metals, scrap, and ore.~~

~~B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify where any of the following activities may be exposed to precipitation or surface runoff: storage or disposal of wastes such as spent solvents and baths, sand, slag and dross; liquid storage tanks and drums; processing areas including pollution control equipment (e.g., baghouses); and storage areas of raw materials such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. In addition, indicate sources where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal and coke handling operations, etc., and that could result in a discharge of pollutants to surface waters.~~

~~b. Summary of potential pollutant sources. The inventory of materials handled at the site that potentially may be exposed to precipitation or runoff shall include areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.~~

~~2. Stormwater controls.~~

~~a. Good housekeeping. The permittee shall implement the following measures, or equivalent measures, where applicable.~~

~~(1) Establishment of a cleaning and maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, especially areas where material loading and unloading, storage, handling, and processing occur.~~

~~(2) The paving of areas, where practicable, where vehicle traffic or material storage occur, but where vegetative or other stabilization methods are not practicable. Sweeping programs shall be instituted in these areas as well.~~

~~(3) For unstabilized areas of the facility where sweeping is not practical, the permittee shall consider using stormwater management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures, that effectively trap or remove sediment.~~

~~b. Routine facility inspections. Inspections shall be conducted quarterly. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status. Inspections shall address all potential sources of pollutants, including (if applicable):~~

~~(1) Air pollution control equipment (e.g., baghouses, electrostatic precipitators, scrubbers, and cyclones) shall be inspected for any signs of degradation (e.g., leaks, corrosion, or improper operation) that could limit their efficiency and lead to excessive emissions. The permittee shall consider monitoring air flow at inlets and outlets, or equivalent measures, to check for leaks (e.g., particulate deposition) or blockage in ducts;~~

~~(2) All process or material handling equipment (e.g., conveyors, cranes, and vehicles) shall be inspected for leaks, drips, or the potential loss of materials; and~~

~~(3) Material storage areas (e.g., piles, bins or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in tanks and drums) shall be examined for signs of material losses due to wind or stormwater runoff.~~

~~C.~~ B. Benchmark monitoring and reporting requirements. Primary metals facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 140 ~~below~~.

Table 140
Sector F – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC Codes 3312-3317)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Zinc	120 µg/L
Iron and Steel Foundries (SIC Codes 3321-3325)	
Total Recoverable Aluminum	750 µg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Rolling, Drawing, and Extruding of Nonferrous Metals (SIC Codes 3351-3357)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
Nonferrous Foundries (SIC Codes 3363-3369)	
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-150. Sector G - Metal mining (ore mining and dressing).

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities including mines abandoned on federal lands, as classified under SIC Major Group 10. Coverage is required for facilities that discharge stormwater that has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation. SIC Major Group 10 includes establishments primarily engaged in mining of ores, developing mines, or exploring for metallic minerals (ores) and also includes ore dressing and beneficiating operations, whether performed at colocated, dedicated mills or at separate mills, such as custom mills. For the purposes of this section, the term "metal mining" includes any of the separate activities listed ~~above~~ in this subsection. Covered discharges include:

1. All stormwater discharges from inactive facilities;

2. Stormwater discharges from the following areas of active and temporarily inactive metal mining facilities: waste rock and overburden piles if composed entirely of stormwater and not combining with mine drainage; topsoil piles; off-site haul and access roads; on-site haul and access roads constructed of waste rock and overburden if composed entirely of stormwater and not combining with mine drainage; on-site haul and access roads not constructed of waste rock, overburden, or spent ore except if mine drainage is used for dust control; runoff from tailings dams and dikes when not constructed of waste rock or tailings and no process fluids are present; runoff from tailings dams or dikes when constructed of waste rock or tailings and no process fluids are present if composed entirely of stormwater and not combining with mine drainage; concentration building if no contact with material piles; mill site if no contact with material piles; office or administrative building and housing if mixed with stormwater from industrial area; chemical storage area; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle and equipment maintenance area and building; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed, disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially or inadequately reclaimed areas or areas not released from reclamation bonds;

3. Stormwater discharges from exploration and development of metal mining and ore dressing facilities; and

4. Stormwater discharges from facilities at mining sites undergoing reclamation.

B. Limitations on coverage. Stormwater discharges from active metal mining facilities that are subject to the effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440) are not authorized by this permit.

~~Note:~~ Discharges that come in contact with overburden and waste rock are subject to 40 CFR Part 440, providing: the discharges drain to a point source (either naturally or as a result of intentional diversion), and they combine with mine drainage that is otherwise regulated under 40 CFR Part 440. Discharges from overburden and waste rock can be covered under this permit if they are composed entirely of stormwater

and do not combine with sources of mine drainage that are subject to 40 CFR Part 440.

C. Special Conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharge is not covered by this permit: adit drainage. Contaminated seeps and springs discharging from waste rock dumps that do not directly result from precipitation events are also not authorized by this permit.

D. Special definitions. The following definitions are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii), and are only for this section of the general permit:

"Active metal mining facility" means a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Active phase" means activities including the extraction, removal, or recovery of metal ore. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

"Construction phase" means the building of site access roads and removal of overburden and waste rock to expose mineable minerals. The construction phase is not considered part of "mining operations."

"Exploration phase" ~~entails~~ means exploration and land disturbance activities to determine the financial viability of a site. The exploration phase is not considered part of "mining operations."

"Final stabilization"~~—~~ means a site or portion of a site ~~is "finally stabilized" when~~ where all applicable federal and state reclamation requirements have been implemented.

"Inactive metal mining facility" means a site or portion of a site where metal mining or milling occurred in the past but is not an active facility as defined in this permit, and where the inactive portion is not covered by an active mining permit issued by the applicable federal or state agency. An inactive metal mining facility has an identifiable owner or operator. Sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials and sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim are not considered either active or inactive mining facilities and do not require a VPDES industrial stormwater permit.

"Mining operation" ~~consists of~~ means the active and temporarily inactive phases and the reclamation phase, but excludes the exploration and construction phases.

"Reclamation phase" means activities undertaken, in compliance with applicable mined land reclamation requirements, following the cessation of the "active phase," intended to return the land to an appropriate post-mining land use in order to meet applicable federal and state reclamation requirements. The reclamation phase is considered part of "mining operations."

"Temporarily inactive metal mining facility" means a site or portion of a site where metal mining or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable federal or state agency.

E. Clearing, grading, and excavation activities. Clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of mining activities are covered under this permit.

1. Management practices for clearing, grading, and excavation activities.

a. Selecting and installing control measures. A combination of erosion and sedimentation control measures are required to achieve maximum pollutant prevention and removal. All control measures shall be properly selected, installed, and maintained in accordance with any relevant manufacturer specifications and good engineering practices.

b. Good housekeeping. Litter, debris, and chemicals shall be prevented from becoming a pollutant source in stormwater discharges.

c. Retention and detention of stormwater runoff. For drainage locations serving more than one acre, sediment basins or temporary sediment traps should be used. At a minimum, silt fences, vegetative buffer strips, or equivalent sediment controls are required for all down slope boundaries (and for those side slope boundaries deemed appropriate as dictated by individual site conditions) of the development area unless a sediment basin providing storage for a calculated volume of runoff from a two-year, 24-hour storm or 3,600 cubic feet of storage per acre drained is provided. Sediment shall be removed from sediment traps or sedimentation ponds when the design capacity has been reduced by 50%.

d. Temporary stabilization of disturbed areas. Stabilization measures shall be initiated immediately in portions of the site where development activities have temporarily ceased, but in no case more than 14 days after the clearing, grading, and excavation activities in that portion of the site have temporarily ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after mining, exploration, or construction activity has temporarily ceased, final temporary vegetative

stabilization measures shall be initiated as soon as practicable. Until temporary vegetative stabilization is achieved, interim measures such as erosion control blankets with an appropriate seed base and tackifiers shall be employed. In areas of the site where exploration or construction has permanently ceased prior to active mining, temporary stabilization measures shall be implemented to minimize mobilization of sediment or other pollutants until such time as the active mining phase commences.

2. Requirements for inspection of clearing, grading, and excavation activities.

a. Inspection frequency. Inspections shall be conducted at least once every seven calendar days or at least once every 14 calendar days and within 24 hours of the end of a storm event of 0.5 inches or greater. Inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized, if runoff is unlikely due to winter (e.g., site is covered with snow or ice) or frozen conditions, or construction is occurring during seasonal dry periods in arid areas and semi-arid areas.

b. Location of inspections. Inspections shall include all areas of the site disturbed by clearing, grading, and excavation activities and areas used for storage of materials that are exposed to precipitation. Sedimentation and erosion control measures identified in the SWPPP shall be observed to ensure proper operation. Discharge locations shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to surface waters, where accessible. Where discharge locations are inaccessible, nearby downstream locations shall be inspected to the extent that such inspections are practicable. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site sediment tracking.

c. Inspection reports. For each inspection required ~~above~~ in this subsection, an inspection report shall be completed. At a minimum, the inspection report shall include:

(1) The inspection date;

(2) Names, titles, and qualifications of personnel making the inspection;

(3) Weather information for the period since the last inspection (or note if it is the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;

(4) Weather information and a description of any discharges occurring at the time of the inspection;

(5) ~~Location(s)~~ Locations of discharges of sediment or other pollutants from the site;

(6) ~~Location(s)~~ Locations of control measures that need to be maintained;

(7) ~~Location(s)~~ Locations of control measures that failed to operate as designed or proved inadequate for a particular location;

(8) ~~Location(s)~~ Locations where additional control measures are needed that did not exist at the time of inspection; and

(9) Corrective ~~action(s)~~ actions required, including any changes to the SWPPP necessary and implementation dates.

A record of each inspection and of any actions taken in accordance with this section shall be retained as part of the SWPPP for at least three years from the date that permit coverage expires or is terminated. The inspection reports shall identify any incidents of noncompliance with the permit conditions. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the clearing, grading, and excavation activities are in compliance with the SWPPP and this permit. ~~The report shall be signed in accordance with Part II K of the permit.~~

3. Requirements for cessation of clearing, grading, and excavation activities.

a. Inspections and maintenance. Inspections and maintenance of control measures, including BMPs, associated with clearing, grading, and excavation activities being conducted as part of the exploration and construction phase of a mining operation shall continue until final stabilization has been achieved on all portions of the disturbed area, or until the commencement of the active mining phase for those areas that have been temporarily stabilized as a precursor to mining.

b. Final stabilization. Stabilization measures shall be initiated immediately in portions of the site where exploration or construction activities have permanently ceased, but in no case more than 14 days after the exploration or construction activity in that portion of the site has permanently ceased. In arid, semi-arid, and drought-stricken areas, or in areas subject to snow or freezing conditions, where initiating perennial vegetative stabilization measures is not possible within 14 days after exploration or construction activity has permanently ceased, final vegetative stabilization measures shall be initiated as soon as possible. Until final stabilization is achieved temporary stabilization measures, such as erosion control blankets with an appropriate seed base and tackifiers, shall be used.

F. ~~Stormwater pollution prevention plan~~ SWPPP requirements for active, inactive, and temporarily inactive metal mining facilities and sites undergoing reclamation. In addition to the requirements of Part III, the ~~plan~~ SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Activities at the facility. A description of the mining and associated activities taking place at the site that can potentially affect stormwater discharges covered by this permit. The description shall include a general description of the location of the site relative to major transportation routes and communities.

b. Site map. The site map shall identify the locations of the following, as appropriate: mining and milling site boundaries; access and haul roads; an outline of the drainage areas of each stormwater outfall within the facility, and an indication of the types of discharges from the drainage areas; ~~location(s)~~ locations of all permitted discharges covered under an individual VPDES permit; outdoor equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; outdoor storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles and ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage and process water; surface waters; boundary of tributary areas that are subject to effluent limitations guidelines; and ~~location(s)~~ locations of reclaimed areas.

2. Summary of potential pollutant sources. For each area of the mine or mill site where stormwater discharges associated with industrial activities occur, the ~~plan~~ SWPPP shall identify the types of pollutants likely to be present in significant amounts (e.g., heavy metals, sediment). The following factors shall be considered: the mineralogy of the ore and waste rock (e.g., acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood of contact with stormwater; vegetation of site, if any; and history of significant leaks and spills of toxic or hazardous pollutants. A summary of any existing ore or waste rock and overburden characterization data and test results for potential generation of acid rock shall also be included. If the ore or waste rock and overburden characterization data are updated due to a change in the ore type being mined, the SWPPP shall be updated with the new data.

3. Stormwater controls.

a. Routine facility inspections. Except for areas subject to clearing, grading, and excavation activities subject to subdivision E 2 of this section, sites shall be inspected at least quarterly unless adverse weather conditions make the site inaccessible. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

b. Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites. All employee training shall be documented in the SWPPP.

c. Structural control measures. In addition to the control measures required by Part III B 4, each of the following control measures shall be ~~considered~~ documented in the SWPPP. The potential pollutants identified in subdivision ~~1 b~~ 2 of this subsection shall determine the priority and appropriateness of the control measures selected. If control measures are implemented or planned but are not listed here (e.g., substituting a less toxic chemical for a more toxic one), descriptions of them shall be included in the SWPPP.

(1) Stormwater diversion. A description of how and where stormwater will be diverted away from potential pollutant sources to prevent stormwater contamination. Control ~~measure options may~~ measures shall include one or more of the following: ~~interceptor dikes and swales; diversion dikes, curbs and berms; pipe slope drains; subsurface drains; drainage and stormwater conveyance systems (channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector and culverts) or equivalent measures.~~

(a) Interceptor dikes and swales;

(b) Diversion dikes, curbs, and berms;

(c) Pipe slope drains;

(d) Subsurface drains;

(e) Drainage and stormwater conveyance systems; or

(f) Equivalent measures.

(2) Capping. When capping of a contaminant source is necessary, the source being capped and materials and procedures used to cap the contaminant source shall be identified.

(3) Treatment. If treatment of a stormwater discharge is necessary to protect water quality, include a description of the type and location of stormwater treatment that will be used. Stormwater treatments include the following: chemical or physical systems~~;~~, oil and water separators~~;~~, artificial wetlands~~;~~, etc. The permittee is encouraged to use both passive and active treatment of stormwater runoff. Treated runoff may be discharged as a stormwater source regulated under this permit provided the discharge is not combined with discharges subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR Part 440).

(4) Certification of discharge testing. The permittee shall test or evaluate all outfalls covered under this permit for the presence of specific mining-related nonstormwater discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines (e.g., 40 CFR Part 440), such as mine drainage or process water. ~~Alternatively (if applicable), the~~ The permittee may certify in the SWPPP that a particular discharge composed of commingled stormwater and nonstormwater is covered under a separate VPDES permit; and that permit subjects the nonstormwater portion to effluent limitations prior to any commingling. This certification shall identify the nonstormwater discharges, the applicable VPDES ~~permit(s)~~ permits, the effluent limitations placed on the nonstormwater discharge by the ~~permit(s)~~ permits, and the points at which the limitations are applied.

G. Termination of permit coverage.

1. Termination of permit coverage for sites reclaimed after December 17, 1990. A site or a portion of a site that has been released from applicable state or federal reclamation requirements after December 17, 1990, is no longer required to maintain coverage under this permit. If the site or portion of a site reclaimed after December 17, 1990, was not subject to reclamation requirements, the site or portion of the site is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed as defined in subdivision 2 of this subsection.

2. Termination of permit coverage for sites reclaimed before December 17, 1990. A site or portion of a site that was released from applicable state or federal reclamation requirements before December 17, 1990, or that was otherwise reclaimed before December 17, 1990, is no longer required to maintain coverage under this permit if the site or portion of the site has been reclaimed. A site or portion of a site is considered to have been reclaimed if: (i) stormwater runoff that comes into contact with raw materials, intermediate byproducts, finished products, and waste products does not have the potential to cause or contribute to violations of state water quality standards, (ii) soil-disturbing activities related to mining at the sites or portion of the site have been completed, (iii) the site or portion of the site has been stabilized to minimize soil erosion, and (iv) as appropriate depending on location, size, and the potential to contribute pollutants to stormwater discharges, the site or portion of the site has been revegetated, will be amenable to natural revegetation, or will be left in a condition consistent with the post-mining land use.

H. Inactive and unstaffed sites. Permittees in Sector G seeking to exercise a waiver from the quarterly visual ~~assessment~~ monitoring and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites) are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Part I A 4.

This exemption is conditioned on the following:

1. If circumstances change and the facility becomes active or staffed, this exception no longer applies and the permittee shall immediately begin complying with the quarterly visual assessment and routine facility inspection requirements; and

2. The board retains the authority to revoke this exemption and the monitoring waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions in subdivisions 1 and 2 of this subsection, if a facility is inactive and unstaffed, the permittee is waived from the requirement to conduct quarterly visual ~~assessments~~ monitoring and routine facility inspections. The permittee is not waived from conducting ~~the Part III E comprehensive site inspection~~ at least one routine facility inspection per calendar year. The board encourages the permittee to inspect the site more frequently when there is reason to believe that severe weather or natural disasters may have damaged control measures.

I. Benchmark monitoring and reporting requirements. ~~Note:~~ There are no benchmark monitoring requirements for inactive and unstaffed sites that have received a waiver in accordance with Part I A 4 (Inactive and unstaffed sites).

1. Copper ore mining and dressing facilities. Active copper ore mining and dressing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 150-1 below.

2. Discharges from waste rock and overburden piles at active sites. Discharges from waste rock and overburden piles at active sites shall be analyzed for the parameters listed in Table 150-2. Facilities shall also monitor for the parameters listed in Table 150-3. The director may also notify the facility that additional monitoring must be performed to accurately characterize the quality and quantity of pollutants discharged from the waste rock or overburden piles.

Table 150-1
Sector G – Benchmark Monitoring Requirements - Copper Ore Mining and Dressing Facilities

Pollutants of Concern	Benchmark Concentration
Active Copper Ore Mining and Dressing Facilities (SIC Code 1021)	
Total Suspended Solids (TSS)	100 mg/L

Table 150-2
Sector G – Benchmark Monitoring Requirements - Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities

Pollutants of Concern	Benchmark Concentration
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021, 1031, 1041, 1044, 1061, 1081, 1094, 1099)	
Total Suspended Solids (TSS)	100 mg/L
Turbidity (NTUs)	50 NTU
pH	6.0 - 9.0 s.u.
Hardness (as $CaCO_3$)	no benchmark value
Total Recoverable Antimony	640 µg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Beryllium	130 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Nickel	470 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 µg/L
Total Recoverable Zinc	120 µg/L

Table 150-3
Sector G – Additional Monitoring Requirements for Discharges from Waste Rock and Overburden Piles from Active Ore Mining or Dressing Facilities

Type of Ore Mined	Pollutants of Concern		
	TSS (mg/L)	pH	Metals, Total Recoverable
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total Recoverable), Uranium, Zinc (H).
Note: (H) indicates that hardness shall also be measured when this pollutant is measured.			

9VAC25-151-160. Sector H - Coal mines and coal mining-related facilities.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from coal mining-related areas (SIC Major Group 12) if (i) they are not subject to effluent limitations guidelines under 40 CFR Part 434 or (ii) they are not subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (30 USC § 1201 et seq.) and the Virginia Department of Mines, Minerals and Energy's individual permit requirements.

The requirements of this section shall apply to stormwater discharges from coal mining-related activities exempt from SMCRA, including the public financed exemption, the 16-2/3% exemption, the private use exemption, the under 250 tons exemption, the nonincidental tipple exemption, and the

exemption for coal piles and preparation plants associated with the end user. Stormwater discharges from the following portions of eligible coal mines and coal mining related facilities may be eligible for this permit: haul roads (nonpublic roads on which coal or coal refuse is conveyed), access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways), railroad spurs, sidings, and internal haulage lines (rail lines used for hauling coal within the facility property and to off-site commercial railroad lines or loading areas); conveyor belts, chutes, and aerial tramway haulage areas (areas under and around coal or refuse conveyor areas, including transfer stations); and equipment storage and maintenance yards, coal handling buildings and structures, coal tipples, coal loading facilities and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharges are not covered by this permit: discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

C. ~~Stormwater pollution prevention plan~~ SWPPP requirements. In addition to the requirements of Part III, the SWPPP shall include at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff:

(1) Haul and access roads;

(2) Railroad spurs, sliding, and internal hauling lines;

(3) Conveyor belts, chutes, and aerial tramways;

(4) Equipment storage and maintenance yards;

(5) Coal handling buildings and structures;

(6) Inactive mines and related areas;

(7) Acidic spoil, refuse or unreclaimed disturbed areas; and

(8) Liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.

b. Summary of potential pollutant sources. A description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse or spoil.

2. Stormwater controls.

a. Good housekeeping. As part of the facility's good housekeeping program required by Part III B 4 b (1), the permittee shall consider the following: using sweepers, covered storage, and watering of haul roads to minimize dust generation; and conservation of vegetation (where possible) to minimize erosion.

b. Preventive maintenance. The permittee shall also perform inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

c. Routine facility inspections. Sites shall be inspected at least quarterly unless adverse weather conditions make the site inaccessible. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

~~3. Comprehensive site compliance evaluation. The evaluation program shall also include inspections for pollutants entering the drainage system from activities located on or near coal mining related areas. Among the areas to be inspected: haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings and structures; and inactive mines and related areas.~~

D. Inactive and unstaffed sites. Permittees in Sector H seeking to exercise a waiver from the quarterly visual ~~assessment~~ monitoring and routine facility inspection requirements for inactive and unstaffed sites (including temporarily inactive sites) are conditionally exempt from the requirement to certify that "there are no industrial materials or activities exposed to stormwater" in Part I A 4.

This exemption is conditioned on the following:

1. If circumstances change and the facility becomes active or staffed, this exception no longer applies and the permittee shall immediately begin complying with the quarterly visual ~~assessment~~ monitoring requirements and routine facility inspection requirements; and

2. The board retains the authority to revoke this exemption and the monitoring waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

Subject to the two conditions in subdivisions 1 and 2 of this subsection, if a facility is inactive and unstaffed, the permittee is waived from the requirement to conduct quarterly visual ~~assessments~~ monitoring and routine facility inspections. The

permittee is not waived from conducting ~~the Part III E comprehensive~~ a minimum of one annual site inspection. The board encourages the permittee to inspect the site more frequently when there is reason to believe that severe weather or natural disasters may have damaged control measures.

E. Benchmark monitoring and reporting requirements. Coal mining facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 160. ~~Note:~~ There are no benchmark monitoring requirements for inactive and unstaffed sites that have received a waiver in accordance with Part I A 4 (Inactive and unstaffed sites).

Table 160
Sector H - Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Coal Mines and Related Areas (SIC Codes 1221-1241)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-170. ~~Sector I - Oil and gas extraction and refining.~~ (Repealed)

~~A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from oil and gas extraction and refining facilities listed under SIC Major Group 13 which have had a discharge of a reportable quantity (RQ) of oil or a hazardous substance for which notification is required under 40 CFR 110.6, 40 CFR 117.21 or 40 CFR 302.6. These include oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater contaminated by contact with or that has come into contact with any overburden raw material, intermediate products, finished products, by products or waste products located on the site of such operations. Industries in SIC Major Group 13 include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oilfield service, supply and repair industries. This section also covers petroleum refineries listed under SIC Code 2911.~~

~~Contaminated stormwater discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR Part 419 and 40 CFR Part 435 respectively are not authorized by this permit.~~

~~Note: most contaminated discharges from petroleum refining and drilling facilities are subject to these effluent guidelines and are not eligible for coverage under this permit.~~

~~B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharges are not covered by this permit: discharges of vehicle and equipment washwater, including tank cleaning operations. Alternatively, washwater discharges must be authorized under a separate VPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.~~

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: reportable quantity (RQ) releases; locations used for the treatment, storage or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirement of "No Discharge" in accordance with 40 CFR 435.32 and the structural controls to achieve compliance with the "No Discharge" requirement.~~

~~b. Summary of potential pollutant sources.~~

~~(1) The plan shall also include a description of the potential pollutant sources from the following activities: chemical, cement, mud or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities.~~

~~(2) The plan shall include information about the RQ release which triggered the permit application requirements, including: the nature of the release (e.g., spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (e.g., poor handling techniques and lack of containment in the area); areas affected by the release, including land and waters; procedure to cleanup release; actions or procedures implemented to prevent or improve response to a release; and remaining potential contamination of stormwater from release (taking into account human health risks, the control of drinking water intakes, and the designated uses of the receiving water).~~

~~2. Stormwater controls: Sediment and erosion control. The sediment and erosion control additional documentation requirements for well drillings and sand or shale mining areas are as follows:~~

~~a. Site description. Each plan shall provide a description of the following:~~

~~(1) A description of the nature of the exploration activity;~~

~~(2) Estimates of the total area of the site and the area of the site that is expected to be disturbed due to the exploration activity;~~

~~(3) An estimate of the runoff coefficient of the site;~~

~~(4) A site map indicating drainage patterns and approximate slopes; and~~

~~(5) The name of all receiving water(s).~~

~~b. Vegetative controls. The SWPPP shall include a description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grade drilling. Such practices may include: temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, tree protection practices. The permittee shall initiate appropriate vegetative practices on all disturbed areas within 14 calendar days of the last activity at that area.~~

~~c. Procedures in the plan shall provide that all erosion and sedimentation controls on the site are inspected at least once every seven calendar days.~~

~~Sector J – Mineral Mining and Dressing (SIC 1411-1499). Facilities described by this sector are not covered by this general permit. Facilities with stormwater discharges that fall under this sector should apply for coverage under the VPDES Nonmetallic Mineral Mining General Permit (VAG 84).~~

9VAC25-151-180. Sector K - Hazardous waste treatment, storage, or disposal facilities.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of ~~RCRA~~ the Resource Conservation and Recovery Act (RCRA) (Industrial Activity Code "HZ"). Disposal facilities that have been properly closed and capped, or clean closed, and have no significant materials exposed to stormwater, do not require this permit.

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general prohibition of nonstormwater discharges in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated stormwater" means stormwater that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in this section. Some specific areas of a landfill that may produce contaminated stormwater include~~, but are not limited to:~~ the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Landfill" means an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2, 40 CFR 258.2 and 40 CFR 260.10.

"Landfill wastewater," as defined in 40 CFR Part 445 (Landfills Point Source Category), means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated stormwater, contaminated ground water, and wastewater from recovery pumping wells. Landfill wastewater includes~~, but is not limited to,~~ leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated stormwater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated stormwater" means stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated stormwater includes stormwater that flows off the cap, cover, intermediate cover, daily cover, or final cover of the landfill.

D. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart A, the numeric limitations in Table 180-1 apply to contaminated stormwater discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR Parts 264 (Subpart N) and 265 (Subpart N) except for any of the following facilities:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or

commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with ~~Centralized Waste Treatment~~ centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 180-1
Sector K – Numeric Effluent Limitations

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ") Subject to the Provisions of 40 CFR Part 445 Subpart A.		
Biochemical Oxygen Demand (BOD_5)	220 mg/L	56 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.042 mg/L	0.019 mg/L
Aniline	0.024 mg/L	0.015 mg/L
Benzoic Acid	0.119 mg/L*	0.073 mg/L
Naphthalene	0.059 mg/L	0.022 mg/L
p-Cresol	0.024 mg/L	0.015 mg/L
Phenol	0.048 mg/L	0.029 mg/L
Pyridine	0.072 mg/L	0.025 mg/L
Arsenic (Total)	1.1 mg/L	0.54 mg/L
Chromium (Total)	1.1 mg/L	0.46 mg/L
Zinc (Total)	0.535 mg/L*	0.296 mg/L*
pH	Within the range of 6.0 - 9.0 s.u.	
*These effluent limitations are three significant digits for reporting purposes.		

E. Benchmark monitoring and reporting requirements. Permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) are required to monitor their stormwater discharges for the pollutants of concern listed in Table 180-2. These benchmark monitoring ~~cutoff~~ concentrations apply to stormwater discharges associated with industrial activity other than contaminated stormwater discharges from landfills subject to the numeric effluent limitations set forth in Table 180-1.

Table 180-2
Sector K – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Hazardous Waste Treatment, Storage, or Disposal Facilities (Industrial Activity Code "HZ")	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Organic Carbon (TOC)	110 mg/L
Total Recoverable Arsenic	50 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Cyanide	22 µg/L
Total Recoverable Lead	120 µg/L
Total Magnesium	64 µg/L
Total Recoverable Mercury	1.4 µg/L
Total Recoverable Selenium	5.0 µg/L
Total Recoverable Silver	3.8 µg/L

9VAC25-151-190. Sector L - Landfills, land application sites and open dumps.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from waste disposal at landfills, land application sites, and open dumps that receive or have received industrial wastes (Industrial Activity Code "LF"), including sites subject to regulation under Subtitle D of ~~RCRA~~ the Resource Conservation and Recovery Act (RCRA). Landfills, land application sites, and open dumps that have stormwater discharges from other types of industrial activities such as vehicle maintenance, truck washing, and recycling may be subject to additional requirements specified elsewhere in this permit. This permit does not cover discharges from landfills that receive only municipal wastes. Landfills (including landfills in "post-closure care") that have been properly closed and capped in accordance with 9VAC20-81-160 and 9VAC20-81-170 and have no significant materials exposed to stormwater do not require this permit. Landfills closed in accordance with regulations or

permits in effect prior to December 21, 1988, do not require this permit, unless significant materials are exposed to stormwater.

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

C. Definitions.

"Contaminated stormwater" means stormwater that comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some areas of a landfill that may produce contaminated stormwater include, but are not limited to, the working face of an active landfill; the areas around wastewater treatment operations; trucks, equipment, or machinery that has been in direct contact with the waste; and waste dumping areas.

"Drained free liquids" means aqueous wastes drained from waste containers (e.g., drums, etc.) prior to landfilling.

"Landfill wastewater," as defined in 40 CFR Part 445 (Landfills Point Source Category), means all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, noncontaminated stormwater, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes~~, but is not limited to,~~ leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated stormwater and contact washwater from washing truck, equipment, and railcar exteriors and surface areas that have come in direct contact with solid waste at the landfill facility.

"Leachate" means liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

"Noncontaminated stormwater" means stormwater that does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined above. Noncontaminated stormwater includes stormwater that flows off the cap, intermediate cover, or final cover of the landfill.

"Open dump" means a site on which any solid waste is placed, discharged, deposited, injected, dumped, or spilled so as to present a threat of a release of harmful substances into the environment or present a hazard to human health. Such a site is subject to the open dump criteria in 9VAC20-81-45.

~~D. Stormwater pollution prevention plan requirements. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: active and closed landfill cells or trenches; active and closed land application areas; locations where open dumping is occurring or has occurred; locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff; and leachate collection and handling systems.~~

~~b. Summary of potential pollutant sources. The SWPPP shall also include a description of potential pollutant sources associated with any of the following: fertilizer, herbicide, and pesticide application; earth and soil moving; waste hauling and loading and unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; and failure or leaks from leachate collection and treatment systems.~~

~~2. Stormwater controls.~~

D. Stormwater controls. In addition to the requirements in Part III, the SWPPP shall include, at a minimum, the following items:

~~a.~~ 1. Preventive maintenance program. As part of the preventive maintenance program, the permittee shall maintain~~:~~ all elements of leachate collection and treatment systems to prevent commingling of leachate with stormwater and the integrity and effectiveness of any intermediate or final cover (including making repairs to the cover as necessary), to minimize the effects of settlement, sinking, and erosion.

~~b.~~ 2. Routine facility inspections.

~~(1)~~ a. Inspections of active sites. Operating landfills, open dumps, and land application sites shall be inspected at least once every seven days. Qualified personnel shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of materials or wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Erosion and sediment control measures shall be observed to ensure they are operating correctly. For stabilized sites and areas where land application has been completed~~, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches)~~, inspections shall be conducted at least once every month.

~~(2)~~ b. Inspections of inactive sites. Inactive landfills, open dumps, and land application sites shall be inspected at least quarterly. Qualified personnel shall inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems~~,~~ and all closed land application areas.

~~c.~~ 3. Recordkeeping and internal reporting procedures. Landfill and open dump owners shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. Land application site owners shall track the types and quantities of wastes applied in specific areas.

~~d.~~ 4. Annual outfall evaluation for unauthorized discharges. The evaluation shall also be conducted for the presence of leachate and vehicle washwater.

~~e.~~ 5. Sediment and erosion control plan. Landfill and open dump owners shall provide for temporary stabilization of materials stockpiled for daily, intermediate, and final cover. Stabilization practices to consider include~~, but are not limited to,~~ temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles. Landfill and open dump owners shall provide for temporary stabilization of inactive areas of the landfill or open dump which have an intermediate cover but no final cover. Landfill and open dump owners shall provide for temporary stabilization of any landfill or open dumping areas which have received a final cover until vegetation has established itself. Land application site owners shall also stabilize areas where waste application has been completed until vegetation has been established.

~~f. Comprehensive site compliance evaluation. Areas contributing to a stormwater discharge associated with industrial activities at landfills, open dumps and land application sites shall be evaluated for evidence of, or the potential for, pollutants entering the drainage system.~~

E. Numeric effluent limitations. As set forth at 40 CFR Part 445 Subpart B, the numeric limitations in Table 190-1 apply to contaminated stormwater discharges from municipal solid waste landfills (MSWLFs) that have not been closed in accordance with 40 CFR 258.60, and contaminated stormwater discharges from those landfills that are subject to the provisions of 40 CFR Part 257 (these include ~~CDD landfills (also known as C&D landfills),~~ construction and debris landfills and industrial landfills) except for discharges from any of the following facilities:

1. Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

2. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

3. Landfills operated in conjunction with centralized waste treatment (CWT) facilities subject to 40 CFR Part 437 so long as the CWT facility commingles the landfill wastewater with other nonlandfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

4. Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

Table 190-1
Sector L – Numeric Effluent Limitations

Parameter	Effluent Limitations	
	Maximum Daily	Maximum Monthly Average
Landfills (Industrial Activity Code "LF") that are Subject to the Requirements of 40 CFR Part 445 Subpart B.		
Biochemical Oxygen Demand (BOD_5)	140 mg/L	37 mg/L
Total Suspended Solids (TSS)	88 mg/L	27 mg/L
Ammonia	10 mg/L	4.9 mg/L
Alpha Terpineol	0.033 mg/L	0.016 mg/L
Benzoic Acid	0.12 mg/L	0.071 mg/L
p-Cresol	0.025 mg/L	0.014 mg/L
Phenol	0.026 mg/L	0.015 mg/L
Zinc (Total)	0.20 mg/L	0.11 mg/L
pH	Within the range of 6.0 - 9.0 s.u.	

F. Benchmark monitoring and reporting requirements. Landfill, land application, and open dump sites are required to monitor their stormwater discharges for the pollutants of concern listed in Table 190-2. These benchmark monitoring ~~cutoff~~ concentrations apply to stormwater discharges

associated with industrial activity other than contaminated stormwater discharges from landfills subject to the numeric effluent limitations set forth in Table 190-1.

Table 190-2
Sector L – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Landfills, Land Application Sites and Open Dumps (Industrial Activity Code "LF").	
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-200. Sector M - Automobile salvage yards.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities engaged in dismantling or wrecking used motor vehicles for parts recycling or resale, and for scrap (SIC Code 5015).

~~B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:~~

~~1. Site description.~~

~~a. Site map. The map shall include the location of each monitoring point, and an estimation (in acres) of the total area used for industrial activity including, but not limited to, dismantling, storage, and maintenance of used motor vehicle parts. The site map shall also identify where any of the following may be exposed to precipitation or surface runoff: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, hoods, mufflers); and liquid storage tanks and drums for fuel and other fluids.~~

~~b. Summary of potential pollutant sources. The permittee shall assess the potential for the following activities to contribute pollutants to stormwater discharges: vehicle storage areas; dismantling areas; parts storage areas (e.g., engine blocks, tires, hub caps, batteries, and hoods); fueling stations.~~

~~2.~~ B. Stormwater controls. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

~~a.~~ 1. Spill and leak prevention procedures. All vehicles that are intended to be dismantled shall be properly drained of all fluids prior to being dismantled or crushed, or other equivalent means shall be taken to prevent leaks or spills of fluids upon arrival at the site, or as soon thereafter as feasible. All drained fluids shall be managed to minimize leaks or spills.

~~b.~~ 2. Inspections. Upon arrival at the site, or as soon thereafter as feasible, vehicles shall be inspected for leaks. Any equipment containing oily parts, hydraulic fluids, any other types of fluids, or mercury switches shall be inspected at least quarterly (four times per year) for signs of leaks. All vessels, containers, or tanks and areas where hazardous materials and general automotive fluids are stored, including~~, but not limited to,~~ mercury switches, brake fluid, transmission fluid, radiator water, and antifreeze, shall be inspected at least quarterly for leaks. Quarterly inspection records shall be maintained with the SWPPP.

~~c.~~ 3. Employee training. Employee training shall, at a minimum, address the following areas when applicable to a facility: proper handling (collection, storage, and disposal) of oil, used mineral spirits, ~~anti-freeze~~ antifreeze, mercury switches, and solvents.

~~d.~~ 4. Management of runoff. The permittee shall implement control measures to divert, infiltrate, reuse, contain, or otherwise reduce stormwater runoff to minimize pollutants in discharges from the facility. The following management practices shall be ~~considered~~ used to prevent or reduce the discharge of pollutants to surface waters: berms or drainage ditches on the property line, to help prevent ~~runon~~ run-on from neighboring properties; berms for uncovered outdoor storage of oily parts, engine blocks, and aboveground liquid storage; and the installation of detention ponds, filtering devices, and oil/water separators.

a. Berms or drainage ditches on the property line used to help prevent run-on from neighboring properties;

b. Berms for uncovered outdoor storage of oily parts and engine blocks;

c. Aboveground liquid storage;

d. The installation of detention ponds, filtering devices, or oil/water separators; and

e. Another control measure used to prevent or reduce the discharge of pollutants to surface waters.

C. Benchmark monitoring and reporting requirements. Automobile salvage yards are required to monitor their stormwater discharges for the pollutants of concern listed in Table 200.

Table 200
Sector M – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Automobile Salvage Yards (SIC Code 5015)	
Total Suspended Solids (TSS)	100 mg/L

Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L

9VAC25-151-210. Sector N - Scrap recycling and waste recycling facilities and material recovery facilities (MRF).

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides (these types of activities are typically identified as SIC Code 5093), and facilities that are engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits, and industrial solvents (also identified as SIC Code 5093). Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from nonindustrial and residential sources (also identified as SIC Code 5093) (e.g., common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans).

Separate permit requirements have also been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking - ships for scrap (SIC Code 4499, limited to those listed; for others in SIC Code 4499 not listed ~~above~~ in this subsection, see Sector Q (9VAC25-151-240)).

B. Special conditions. Prohibition of nonstormwater discharges. ~~In addition to the general nonstormwater prohibition in Part I B 1, nonstormwater discharges from turnings containment areas are not covered by this permit (see also subdivision C 2 c of this section).~~ Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate VPDES permit.

C. ~~Stormwater pollution prevention plan~~ SWPPP requirements. In addition to the requirements of Part III, ~~all facilities are required to comply with the general SWPPP requirement in subdivision 1 of this subsection.~~ the following items are applicable:

~~Subdivisions 2 through 5 of this subsection have SWPPP requirements for specific types of recycling facilities. The permittee shall implement and describe in the SWPPP a program to address those items that apply. Included are lists of control measure options that, along with any functional equivalents, shall be considered for implementation.~~

~~1. Site description. Site map. The site map shall identify the locations where any of the following activities or sources may be exposed to precipitation or surface runoff: scrap and waste material storage, outdoor scrap and waste processing equipment, and containment areas for turnings exposed to cutting fluids.~~

~~2.~~ 1. Scrap recycling and waste recycling facilities (nonsource-separated, nonliquid recyclable materials). The following SWPPP special conditions have been established for facilities that receive, process and do wholesale distribution of nonliquid recyclable wastes (e.g., ferrous and nonferrous metals, plastics, glass, cardboard and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that only accept recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable and waste material control program. The ~~plan~~ SWPPP shall include a recyclable and waste material inspection program to minimize the likelihood of receiving materials that may be significant pollutant sources to stormwater discharges. Control ~~measure options~~ measures shall include one or more of the following:

(1) Provide information and education flyers, brochures and pamphlets to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids prior to delivery to the facility (e.g., from vehicles and equipment engines, radiators, and transmissions, oil-filled transformers, and individual containers or drums), and on removal of mercury switches prior to delivery to the facility;

(2) Establish procedures to minimize the potential of any residual fluids from coming in contact with precipitation or runoff;

(3) Establish procedures for accepting scrap lead-acid batteries. Additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in subdivision 2 f of this subsection;

(4) Provide training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials; ~~and~~ or

(5) Establish procedures to ensure that liquid wastes, including used oil, are stored in materially compatible and nonleaking containers and disposed or recycled in accordance with all requirements under the Resource ~~Recovery and~~ Conservation and Recovery Act (RCRA), and other state or local requirements.

b. Scrap and waste material stockpiles and storage (outdoor). The ~~plan~~ SWPPP shall describe measures and controls to minimize contact of stormwater runoff with stockpiled materials, processed materials and nonrecyclable wastes. Control ~~measure options~~ measures shall include one or more of the following:

(1) Permanent or semipermanent covers;

(2) The use of sediment traps, vegetated swales and strips, catch basin filters, and sand filters to facilitate settling or filtering of pollutants;

(3) Diversion of runoff away from storage areas via dikes, berms, containment trenches, culverts, and surface grading;

(4) Silt fencing; ~~and~~

(5) Oil/water separators, sumps, and dry adsorbents for areas where potential sources of residual fluids are stockpiled (e.g., automotive engine storage areas); or

(6) Another control measure used to prevent or reduce the discharge of pollutants to surface waters.

c. Stockpiling of turnings exposed to cutting fluids (outdoor storage). The ~~plan~~ SWPPP shall implement measures necessary to minimize contact of surface runoff with residual cutting fluids. Control ~~measure options (use singularly or in combination)~~ measures shall include one or more of the following:

(1) Storage of all turnings exposed to cutting fluids under some form of permanent or semipermanent cover. Stormwater discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Procedures to collect, handle, and dispose or recycle residual fluids that may be present shall be identified in the ~~plan~~ SWPPP; or

(2) Establish dedicated containment areas for all turnings that have been exposed to cutting fluids. Stormwater runoff from these areas can be discharged provided:

(a) The containment areas are constructed of either concrete, asphalt or other equivalent type of impermeable material;

(b) There is a barrier around the perimeter of the containment areas to prevent contact with stormwater ~~runon~~ run-on (e.g., berms, curbing, elevated pads, etc.);

(c) There is a drainage collection system for runoff generated from containment areas;

(d) There is a schedule to maintain the oil/water separator (or its equivalent); and

(e) Procedures are identified for the proper disposal or recycling of collected residual fluids.

d. Scrap and waste material stockpiles and storage (covered or indoor storage). The ~~plan~~ SWPPP shall address measures and controls to minimize contact of residual liquids and particulate matter from materials stored indoors or under cover from coming in contact with surface runoff. Control ~~measure options~~ measures shall include one or more of the following:

(1) Good housekeeping measures, including the use of dry absorbent or wet vacuum cleanup methods, to contain, dispose, or recycle residual liquids originating from recyclable containers, or mercury spill kits from storage of mercury switches;

(2) Prohibiting the practice of allowing washwater from tipping floors or other processing areas from discharging ~~to the storm sewer system~~; ~~and~~

(3) Disconnecting or sealing off all floor drains ~~connected to the storm sewer system.~~ if necessary to prevent a discharge; or

(4) Another control measure used to prevent or reduce the discharge of pollutants to surface waters.

e. Scrap and recyclable waste processing areas. The ~~plan~~ SWPPP shall include measures and controls to minimize surface runoff from coming in contact with scrap processing equipment. In the case of processing equipment that generate visible amounts of particulate residue (e.g., shredding facilities), the ~~plan~~ SWPPP shall describe measures to minimize the contact of residual fluids and accumulated particulate matter with runoff (i.e., through good housekeeping, preventive maintenance, etc.). Control ~~measure options~~ measures shall include one or more of the following:

(1) A schedule of regular inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;

(2) A preventive maintenance program for processing equipment;

(3) Removal of mercury switches from the hood and trunk lighting units, and removal of anti-lock brake system units containing mercury switches;

(4) Use of dry-absorbents or other cleanup practices to collect and to dispose of or recycle spilled or leaking fluids, or use of mercury spill kits for spills from storage of mercury switches;

(5) Installation of low-level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity. Alternatively, provide secondary containment with sufficient volume to contain the entire volume of the reservoir;

(6) Containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, and grading to minimize contact of stormwater runoff with outdoor processing equipment or stored materials;

(7) Oil/water separators or sumps;

(8) Permanent or semipermanent covers in processing areas where there are residual fluids and grease;

(9) Retention and detention basins or ponds, sediment traps, vegetated swales or strips, to facilitate pollutant settling and filtration; ~~and~~

(10) Catch basin filters or sand filters; or

(11) Another control measure used to prevent or reduce the discharge of pollutants to surface waters.

f. Scrap lead-acid battery program. The ~~plan~~ SWPPP shall address measures and controls for the proper handling, storage and disposal of scrap lead-acid batteries. Control ~~measure options~~ measures shall include one or more of the following:

(1) Segregate scrap lead-acid batteries from other scrap materials and store under cover;

(2) A description of procedures and measures for the proper handling, storage and disposal of cracked or broken batteries;

(3) A description of measures to collect and dispose of leaking lead-acid battery fluid;

(4) A description of measures to minimize and, whenever possible, eliminate exposure of scrap lead-acid batteries to precipitation or runoff; ~~and~~ or

(5) A description of employee training for the management of scrap batteries.

g. Spill prevention and response procedures. The SWPPP shall include measures to minimize stormwater contamination at loading and unloading areas, and from equipment or container failures. Control ~~measure options~~ measures shall include one or more of the following:

(1) Description of spill prevention and response measures to address areas that are potential sources of fluid leaks or spills;

(2) Immediate containment and clean up of spills and leaks. If malfunctioning equipment is responsible for the spill or leak, repairs shall also be conducted as soon as possible;

(3) Cleanup procedures shall be identified in the ~~plan~~ SWPPP, including the use of dry absorbents. Where dry absorbent cleanup methods are used, an adequate supply of dry absorbent material shall be maintained on-site. Used absorbent material shall be disposed of properly;

(4) Drums containing liquids, especially oil and lubricants, shall be stored~~:~~ indoors~~;~~, in a bermed area~~;~~, in overpack containers or spill pallets~~;~~, or in similar containment devices;

(5) Overfill prevention devices shall be installed on all fuel pumps or tanks;

(6) Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans shall be inspected for leaks and potential overflow and all liquids properly disposed of in accordance with RCRA requirements; ~~and~~ or

(7) An alarm or pump shut off system shall be installed on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining the tank contents in the event of a line break. Alternatively, the equipment may have a secondary containment system capable of containing the contents of the hydraulic reservoir plus adequate freeboard for precipitation. A mercury spill kit shall be used for any release of mercury from switches, anti-lock brake systems, and switch storage areas.

h. Inspection program. All designated areas of the facility and equipment identified in the ~~plan~~ SWPPP shall be inspected at least quarterly. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

i. Supplier notification program. The ~~plan~~ SWPPP shall include a program to notify major suppliers which scrap materials will not be accepted at the facility or are only accepted under certain conditions.

~~3.~~ 2. Waste recycling facilities (liquid recyclable materials).

a. Waste material storage (indoor). The ~~plan~~ SWPPP shall include measures and controls to ~~minimize or~~ eliminate contact between residual liquids from waste materials stored indoors and surface runoff. The ~~plan~~ SWPPP may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. Control ~~measure options~~ measures shall include one or more of the following:

(1) Procedures for material handling (including labeling and marking);

(2) A sufficient supply of dry-absorbent materials or a wet vacuum system to collect spilled or leaked materials ~~(note:~~ (spilled or leaking mercury should never be vacuumed);

(3) An appropriate containment structure, such as trenches, curbing, gutters or other equivalent measures; ~~and~~ or

(4) A drainage system, including appurtenances (e.g., pumps or ejectors, or manually operated valves), to handle discharges from diked or bermed areas. Drainage shall be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. Discharges from these areas may require coverage under a separate VPDES permit or industrial user permit under the pretreatment program.

b. Waste material storage (outdoor). The ~~plan~~ SWPPP shall describe measures and controls to minimize contact between stored residual liquids and precipitation or runoff. The ~~plan~~ SWPPP may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. Discharges of precipitation from containment areas containing used oil shall also be in accordance with applicable sections of 40 CFR Part 112. Control ~~measure options~~ measures shall include one or more of the following:

(1) Appropriate containment structures (e.g., dikes, berms, curbing, pits) to store the volume of the largest single tank, with sufficient extra capacity for precipitation;

(2) Drainage control and other diversionary structures;

(3) For storage tanks, provide corrosion protection or leak detection systems; ~~and~~ or

(4) Dry-absorbent materials or a wet vacuum system to collect spills.

c. Truck and rail car waste transfer areas. The ~~plan~~ SWPPP shall describe measures and controls to minimize pollutants in discharges from truck and rail car loading and unloading areas. The ~~plan~~ SWPPP shall also address measures to clean up minor spills and leaks resulting from the transfer of liquid wastes. Control ~~measure options~~ measures shall include one or more of the following:

(1) Containment and diversionary structures to minimize contact with precipitation or runoff; ~~and~~

(2) Use of dry cleanup methods, wet vacuuming, roof coverings, or runoff controls; or

(3) Another control measure used to prevent or reduce the discharge of pollutants to surface waters.

d. Inspections. Inspections shall be made quarterly and shall also include all areas where waste is generated, received, stored, treated or disposed that are exposed to either precipitation or stormwater runoff. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

~~4.~~ 3. Recycling facilities (source separated materials). The following SWPPP special conditions have been established for facilities that receive only source-separated recyclable materials primarily from nonindustrial and residential sources.

a. Inbound recyclable material control. The ~~plan~~ SWPPP shall include an inbound materials inspection program to minimize the likelihood of receiving nonrecyclable materials (e.g., hazardous materials) that may be a significant source of pollutants in surface runoff. Control ~~measure options~~ measures shall include one or more of the following:

(1) Provide information and education measures to inform suppliers of recyclable materials on the types of materials that are acceptable and those that are not acceptable;

(2) A description of training measures for drivers responsible for pickup of recyclable materials;

(3) Clearly mark public drop-off containers regarding which materials can be accepted;

(4) Rejecting nonrecyclable wastes or household hazardous wastes at the source; ~~and~~ or

(5) Establish procedures for the handling and disposal of nonrecyclable materials.

b. Outdoor storage. The ~~plan~~ SWPPP shall include procedures to minimize the exposure of recyclable materials to surface runoff and precipitation. The ~~plan~~ SWPPP shall include good housekeeping measures to prevent the accumulation of particulate matter and fluids, particularly in high traffic areas. Control ~~measure options~~ measures shall include one or more of the following:

(1) Provide totally-enclosed drop-off containers for the public;

(2) Install a sump and pump with each containment pit, and treat or discharge collected fluids to a sanitary sewer system;

(3) Provide dikes and curbs for secondary containment (e.g., around bales of recyclable waste paper);

(4) Divert surface runoff away from outside material storage areas;

(5) Provide covers over containment bins, dumpsters, roll-off boxes; ~~and~~ or

(6) Store the equivalent one day's volume of recyclable materials indoors.

c. Indoor storage and material processing. The ~~plan~~ SWPPP shall include measures to minimize the release of pollutants from indoor storage and processing areas. Control ~~measure options~~ measures shall include one or more of the following:

(1) Schedule routine good housekeeping measures for all storage and processing areas;

(2) Prohibit a practice of allowing tipping floor washwaters from draining to any portion of the storm sewer system; ~~and~~ or

(3) Provide employee training on pollution prevention practices.

d. Vehicle and equipment maintenance. The ~~plan~~ SWPPP shall also provide for control measures in those areas where vehicle and equipment maintenance is occurring outdoors. Control ~~measure options~~ measures shall include one or more of the following:

(1) Prohibit vehicle and equipment washwater ~~from discharging to the storm sewer system~~ discharges;

(2) Minimize or eliminate outdoor maintenance areas, wherever possible;

(3) Establish spill prevention and clean-up procedures in fueling areas;

(4) Avoid topping off fuel tanks;

(5) Divert runoff from fueling areas;

(6) Store lubricants and hydraulic fluids indoors; ~~and~~ or

(7) Provide employee training on proper, handling, storage of hydraulic fluids and lubricants.

~~5.~~ 4. Facilities engaged in dismantling ships, marine salvaging, and marine wrecking - ships for scrap. The following SWPPP special conditions have been established for facilities that are engaged in dismantling ships, marine salvaging, and marine wrecking - ships for scrap.

Vessel breaking and scrapping activities. Scrapping of vessels shall be accomplished ashore beyond the range of mean high tide, whenever practicable. If this activity must be conducted while a vessel is afloat or grounded in state waters, then the permittee shall employ control measures to reduce the amount of pollutants released. The following control measures shall be implemented during those periods when vessels (ships, barges, yachts, etc.) are brought to the facility's site for recycling, scrapping and storage prior to scrapping.

a. Fixed or floating platforms sufficiently sized and constructed to catch and prevent scrap materials and pollutants from entering surface waters (or equivalent measures approved by the board) shall be used as work surfaces when working on or near the water surface. These platforms shall be cleaned as required to prevent pollutants from entering surface waters and at the end of each work shift. All scrap metals and pollutants shall be collected in a manner to prevent releases ~~(containerization is recommended)~~.

b. There shall be no discharge of oil or oily wastewater at the facility. Drip pans and other protective devices shall be required for all oil and oily waste transfer operations to catch incidental spillage and drips from hose nozzles, hose racks, drums or barrels. Drip pans and other protective devices shall be inspected and maintained to prevent releases. Oil and oily waste shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

c. During the storage, breaking, and scrapping period, oil containment ~~boom(s)~~ booms shall be deployed either around the vessel being scrapped, or across the mouth of the facility's wetslip, to contain pollutants in the event of a spill. Booms shall be inspected, maintained, and repaired as needed. Oil, grease and fuel spills shall be prevented from reaching surface waters. Cleanup shall be carried out ~~promptly~~ immediately after an oil, grease, or fuel spill is detected.

d. Paint and solvent spills shall be immediately, upon discovery of the spills, cleaned up to prevent pollutants from reaching storm drains, deck drains, and surface waters.

e. Contaminated bilge and ballast water shall not be discharged to surface waters. If it becomes necessary to dispose of contaminated bilge and ballast waters during a vessel breaking activity, the wastewater shall be disposed at a permitted facility and adequate documentation of off-site disposition shall be retained for review by the board upon request.

D. Benchmark monitoring and reporting requirements. Scrap recycling and waste recycling facilities (both source-separated and nonsource-separated facilities), and facilities engaged in dismantling ships, marine salvaging, and marine wrecking - ships for scrap are required to monitor their stormwater discharges for the pollutants of concern listed in Table 210.

Table 210
Sector N – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Scrap Recycling and Waste Recycling Facilities (nonsource-separated facilities only) (SIC Code 5093)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Scrap Recycling and Waste Recycling Facilities (source-separated facilities) (SIC Code 5093)	

Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Aluminum[1]	750 µg/L
Total Recoverable Cadmium[1]	2.1 µg/L
Total Recoverable Chromium[1]	16 µg/L
Total Recoverable Copper[1]	18 µg/L
Total Recoverable Iron[1]	1.0 mg/L
Total Recoverable Lead[1]	120 µg/L
Total Recoverable Zinc[1]	120 µg/L
[1]Metals monitoring is only required at source-separated facilities for the specific metals listed above that are received at the facility.	
Facilities Engaged in Dismantling Ships, Marine Salvaging, and Marine Wrecking - Ships for Scrap (SIC Code 4499, limited to list)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Cadmium	2.1 µg/L
Total Recoverable Chromium	16 µg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Lead	120 µg/L
Total Recoverable Zinc	120 µg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-220. Sector O - Steam electric generating facilities.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from steam electric power generating facilities using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas (Industrial Activity Code "SE").

Stormwater discharges from coal pile runoff subject to numeric effluent limitations are eligible for coverage under this permit, but are subject to the limitations established by Part I A 1 c (2).

Stormwater discharges from ancillary facilities (e.g., fleet centers, gas turbine stations, and substations) that are not contiguous to a steam electric power generating facility are not covered by this permit. Heat capture and heat recovery combined cycle generation facilities are also not covered by this permit; however, dual fuel co-generation facilities that generate electric power are included.

~~B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, nonstormwater discharges subject to effluent limitation guidelines are also not covered by this permit.~~

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the plan shall include, at a minimum, the following items.~~

~~1. Site description. Site map. The site map shall identify the locations of any of the following activities or sources that may be exposed to precipitation or surface runoff: storage tanks, scrap yards, general refuse areas; short and long term storage of general materials (including, but not limited to: supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer, and pesticides); landfills; construction sites; and stock pile areas (such as coal or limestone piles).~~

~~2. Stormwater controls.~~

~~a. Good housekeeping measures.~~

B. Stormwater controls. Good housekeeping measures.

~~(1)~~ 1. Fugitive dust emissions. The permittee shall describe and implement measures that prevent or minimize fugitive dust emissions from coal and ash handling areas. The permittee shall minimize off-site tracking of coal dust and ash. Control measures to consider include installing specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

~~(2)~~ 2. Delivery vehicles. The ~~plan~~ SWPPP shall describe measures that prevent or minimize contamination of stormwater runoff from delivery vehicles arriving on the plant site. At a minimum the permittee shall consider the following:

~~(a)~~ a. Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container; and

~~(b)~~ b. Develop procedures to deal with leakage and spillage from vehicles or containers.

~~(3)~~ 3. Fuel oil unloading areas. The ~~plan~~ SWPPP shall describe measures that prevent or minimize contamination of precipitation or surface runoff from fuel oil unloading areas. At a minimum the permittee shall consider using the following measures, or an equivalent:

~~(a)~~ a. Use of containment curbs in unloading areas;

~~(b)~~ b. During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any leaks and spills are immediately contained and cleaned up; and

~~(c)~~ c. Use of spill and overflow protection ~~(e.g., drip.~~ Drip pans, drip diapers, or other containment devices may be placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the ~~connectors)~~ connectors.

~~(4)~~ 4. Chemical loading and unloading areas. The permittee shall describe and implement measures that prevent or minimize the contamination of precipitation or surface runoff from chemical loading and unloading areas. At a minimum the permittee shall consider using the following measures (or their equivalents):

~~(a)~~ a. Use of containment curbs at chemical loading and unloading areas to contain spills;

~~(b)~~ b. During deliveries, having station personnel familiar with spill prevention and response procedures present to ensure that any leaks or spills are immediately contained and cleaned up; and

~~(c)~~ c. Covering chemical loading and unloading areas, and storing chemicals indoors.

~~(5)~~ 5. Miscellaneous loading and unloading areas. The permittee shall describe and implement measures that prevent or minimize the contamination of stormwater runoff from loading and unloading areas. The permittee shall consider the following, at a minimum (or their equivalents):

~~(a)~~ a. Covering the loading area;

~~(b)~~ b. Grading, berming, or curbing around the loading area to divert ~~runon~~ run-on; or

~~(c)~~ c. Locating the loading and unloading equipment and vehicles so that leaks are contained in existing containment and flow diversion systems.

~~(6)~~ 6. Liquid storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from aboveground liquid storage tanks. At a minimum the permittee shall consider employing the following measures (or their equivalents):

~~(a)~~ a. Use of protective guards around tanks;

~~(b)~~ b. Use of containment curbs;

~~(c)~~ c. Use of spill and overflow protection; and

~~(d)~~ d. Use of dry cleanup methods.

~~(7)~~ 7. Large bulk fuel storage tanks. The permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from large bulk fuel storage tanks. At a minimum the permittee shall consider employing containment berms (or its equivalent). The permittee shall also comply with applicable state and federal laws, including Spill Prevention Control and Countermeasures (SPCC).

~~(8)~~ 8. Spill reduction measures. The permittee shall describe and implement measures to reduce the potential for an oil or chemical spill, or reference the appropriate section of their SPCC plan. The structural integrity of all aboveground tanks, pipelines, pumps and other related equipment shall be visually inspected as part of the routine facility inspection. All repairs deemed necessary based on the findings of the inspections shall be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

~~(9)~~ 9. Oil bearing equipment in switchyards. The permittee shall describe and implement measures to prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. The permittee shall consider the use of level grades and gravel surfaces to retard flows and limit the spread of spills, and the collection of stormwater runoff in perimeter ditches.

~~(10)~~ 10. Residue hauling vehicles. All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing and overall integrity of the container body. Vehicles without load coverings or adequate gate sealing, or with leaking containers or beds shall be repaired as soon as practicable.

~~(11)~~ 11. Ash loading areas. The permittee shall describe and implement procedures to reduce or control the tracking of ash and residue from ash loading areas. Where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before departure of each loaded vehicle.

~~(12)~~ 12. Areas adjacent to disposal ponds or landfills. The permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from areas adjacent to disposal ponds or landfills. The permittee shall develop procedures to:

~~(a)~~ a. Reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles; and

~~(b)~~ b. Reduce ash residue on exit roads leading into and out of residue handling areas.

~~(13)~~ 13. Landfills, scrapyards, surface impoundments, open dumps, general refuse sites. The ~~plan~~ SWPPP shall address and include appropriate control measures to minimize the potential for contamination of runoff from landfills, scrapyards, surface impoundments, open dumps and general refuse sites.

~~b. Comprehensive site compliance evaluation. As part of the evaluation, qualified facility personnel shall inspect the following areas on a monthly basis: coal handling areas, loading and unloading areas, switchyards, fueling~~

~~areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.~~

~~D.~~ C. Numeric effluent limitations. Permittees with point sources of coal pile runoff associated with steam electric power generation shall monitor these stormwater discharges for the presence of TSS and for pH at least annually ~~(one time per year)~~ in accordance with Part I A 1 c (2).

~~E.~~ D. Benchmark monitoring and reporting requirements. Steam electric power generating facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 220.

Table 220
Sector O – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Steam Electric Generating Facilities (Industrial Activity Code "SE")	
Total Recoverable Iron	1.0 mg/L

9VAC25-151-230. ~~Sector P – Land transportation and warehousing.~~ (Repealed)

~~A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from ground transportation facilities and rail transportation facilities (generally identified by SIC Codes 40, 41, 42, 43, and 5171), that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) or equipment cleaning operations. Also covered under this section are facilities found under SIC Codes 4221 through 4225 (public warehousing and storage) that do not have vehicle and equipment maintenance shops or equipment cleaning operations.~~

~~B. Special conditions. Prohibition of nonstormwater discharges. This permit does not authorize the discharge of vehicle, equipment, or surface washwater, including tank cleaning operations. Such discharges must be authorized under a separate VPDES permit, discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements, or recycled on site.~~

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description. Site map. The site map shall identify the locations of any of the following activities and indicate whether the activities may be exposed to precipitation or surface runoff: fueling stations; vehicle and equipment maintenance or cleaning areas; storage areas for vehicle and equipment with actual or potential fluid leaks; loading and unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; and storage areas.~~

~~2. Summary of potential pollutant sources. The plan shall describe and assess the potential for the following to contribute pollutants to stormwater discharges: on site waste storage or disposal; dirt or gravel parking areas for vehicles awaiting maintenance; plumbing connections between shop floor drains and the stormwater conveyance system; and fueling areas.~~

~~3. Stormwater controls.~~

~~a. Good housekeeping.~~

~~(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks shall be confined to designated areas (delineated on the site map). The permittee shall consider the following measures (or their equivalents): the use of drip pans under vehicles and equipment; indoor storage of vehicles and equipment; installation of berms or dikes; use of absorbents; roofing or covering storage areas; and cleaning pavement surface to remove oil and grease.~~

~~(2) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection and cleanup equipment; minimizing stormwater runon and runoff to the fueling area; using dry cleanup methods; and treating or recycling collected stormwater runoff.~~

~~(3) Material storage areas. Storage vessels of all materials (e.g., for used oil or oil filters, spent solvents, paint wastes, hydraulic fluids) shall be maintained in good condition, so as to prevent contamination of stormwater, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The permittee shall consider the following measures (or their equivalents): indoor storage of the materials; installation of berms and dikes around the areas, minimizing runoff of stormwater to the areas; using dry cleanup methods; and treating or recycling the collected stormwater runoff.~~

~~(4) Vehicle and equipment cleaning areas. The permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle and equipment cleaning. The permittee shall consider the following measures (or their equivalents): performing all cleaning operations indoors; covering the cleaning operation; ensuring that all washwaters drain to a proper collection system (i.e., not the stormwater drainage system unless VPDES~~

permitted); and treating or recycling the collected stormwater runoff.

(5) Vehicle and equipment maintenance areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle and equipment maintenance. The permittee shall consider the following measures (or their equivalents): performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting wet clean up practices where the practices would result in the discharge of pollutants to stormwater drainage systems; using dry cleanup methods; treating or recycling collected stormwater runoff; and minimizing runon and runoff of stormwater to maintenance areas.

(6) Locomotive sanding (loading sand for traction) areas. The plan shall describe measures that prevent or minimize contamination of the stormwater runoff from areas used for locomotive sanding. The permittee shall consider the following measures (or their equivalents): covering sanding areas; minimizing stormwater runon and runoff; or appropriate sediment removal practices to minimize the off site transport of sanding material by stormwater.

b. Routine facility inspections. The following areas and activities shall be included in all inspections: storage area for vehicles and equipment awaiting maintenance; fueling areas; indoor and outdoor vehicle and equipment maintenance areas; material storage areas; vehicle and equipment cleaning areas; and loading and unloading areas.

c. Employee training. Employee training shall take place, at a minimum, annually (once per calendar year). Employee training shall address the following as applicable: used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

D. Benchmark monitoring and reporting requirements. Land transportation and warehousing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 230.

Table 230
Sector P - Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Land Transportation and Warehousing Facilities (SIC 4011, 4013, 4111-4173, 4212-4231, 4311, and 5171)	
Total Petroleum Hydrocarbons (TPH) *	15.0 mg/L
Total Suspended Solids (TSS)	100 mg/L

*Total Petroleum Hydrocarbons (TPH) is the sum of individual gasoline range organics and diesel range organics (TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.

9VAC25-151-240. Sector Q - Water transportation and ship and boat building or repairing yards.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with the following industrial activity from water transportation facilities (generally identified by SIC Major Group 44), that have vehicle (vessel) maintenance shops or equipment cleaning operations. The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters; marine cargo handling operations; ferry operations; towing and tugboat services; and marinas. activities:

1. Water transportation facilities identified by SIC Codes 4412-4499 (except SIC Code 4499 facilities as specified in Sector N - 9VAC25-151-210). The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters, marine cargo handling operations, ferry operations, towing and tugboat services, and marinas.

2. Ship building and repairing and boat building and repairing facilities identified by SIC Codes 3731 and 3732. The U.S. Coast Guard refers to a vessel 65 feet or greater in length as a "ship" and a vessel smaller than 65 feet as a "boat."

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, sanitary wastes, pressure wash water, and cooling water originating from vessels.

C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the locations where any of the following activities may be exposed to precipitation or surface runoff: fueling; engine maintenance or repair; vessel maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage or disposal of wastes;

~~liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).~~

~~b. Summary of potential pollutant sources. The plan shall describe the following additional sources and activities that have potential pollutants associated with them: outdoor manufacturing or processing activities (i.e., welding, metal fabricating); and significant dust or particulate generating processes (e.g., abrasive blasting, sanding, painting).~~

~~2.~~ C. Stormwater controls.

~~a.~~ 1. Good housekeeping.

~~(1)~~ a. Pressure washing area. As defined by this permit, process wastewater related to hull work at ~~water transportation~~ facilities shall be any water used on a vessel's hull for any purpose, regardless of application pressure, including ~~but not limited to~~ the activities of removing marine salts, sediments, marine growth and paint, or other hull, weather deck, or superstructure cleaning activities using water, such as preparing those areas for inspection or work (cutting, welding, grinding, coating, etc.). The discharge water shall be permitted as a process wastewater by a separate VPDES permit.

~~(2)~~ b. Blasting and painting areas. The permittee shall describe and implement measures to prevent spent abrasives, paint chips, and overspray from discharging into the receiving water or the storm sewer system. The permittee ~~may consider containing~~ shall contain all blasting or painting activities~~,~~ or ~~the~~ use ~~of~~ other measures to prevent or minimize the discharge of contaminants (e.g., hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Stormwater conveyances shall be regularly cleaned to remove deposits of abrasive blasting debris and paint chips. The ~~plan~~ SWPPP shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained blasting or painting over open water, or the prohibition of blasting or painting during windy conditions which can render containment ineffective.

~~(3)~~ c. Material storage areas. All containerized materials ~~(e.g., fuels, paints, solvents, waste oil, antifreeze, batteries)~~ shall be plainly labeled and stored in a protected, secure location away from drains. The permittee shall describe and implement measures to prevent or minimize the contamination of precipitation or surface runoff from the storage areas. The ~~plan~~ SWPPP shall specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. The permittee shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on-site. Where abrasive blasting is performed, the ~~plan~~ SWPPP shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

~~(4)~~ d. Engine maintenance and repair areas. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors~~;~~, maintaining an organized inventory of materials used in the shop~~;~~, draining all parts of fluids prior to disposal~~;~~, prohibiting the practice of hosing down the shop floor using dry cleanup methods~~;~~, and treating or recycling stormwater runoff collected from the maintenance area.

~~(5)~~ e. Material handling areas. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following measures (or their equivalents): covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing ~~runon~~ run-on of stormwater to material handling areas.

~~(6)~~ f. Drydock activities. The ~~plan~~ SWPPP shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the stormwater runoff. The ~~plan~~ SWPPP shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock shall also be included within the ~~plan~~ SWPPP. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to flooding; and having absorbent materials and oil containment booms readily available to contain or cleanup any spills.

~~(7)~~ g. General yard area. The ~~plan~~ SWPPP shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc.~~,~~ shall be routinely removed from the general yard area.

~~b.~~ (1) Preventative ~~Maintenance~~ maintenance. As part of the facility's preventive maintenance program, stormwater management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives,

paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

~~c.~~ (2) Routine facility inspections. The following areas shall be included in all quarterly inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

~~d.~~ (3) Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management~~;~~, spent solvent management~~;~~, disposal of spent abrasives~~;~~, disposal of vessel wastewaters~~;~~, spill prevention and control~~;~~, fueling procedures~~;~~, general good housekeeping practices~~;~~, painting and blasting procedures~~;~~, and used battery management.

D. Benchmark monitoring and reporting requirements. ~~Water transportation~~ These facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 240.

Table 240
Sector Q – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Water Transportation Facilities (SIC 4412-4499) and Ship and Boat Building or Repairing Yards (SIC Codes 3731 and 3732)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-250. ~~Sector R – Ship and boat building or repair yards.~~ (Repealed)

~~A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities engaged in ship building and repairing and boat building and repairing (SIC Code 373). (According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship and a vessel smaller than 65 feet is a boat.)~~

~~B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels.~~

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify the locations where any of the following activities may be exposed to precipitation or surface runoff: fueling; engine maintenance or repair; vessel maintenance or repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading and unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (e.g., paint, solvents, resins); and material storage areas (e.g., blasting media, aluminum, steel, scrap iron).~~

~~b. Potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them (if applicable): outdoor manufacturing and processing activities (e.g., welding, metal fabricating); and significant dust and particulate generating processes (e.g., abrasive blasting, sanding, painting).~~

~~2. Stormwater controls.~~

~~a. Good housekeeping measures.~~

~~(1) Pressure washing area. As defined by this permit, process wastewater related to hull work at ship and boat building or repair yard facilities shall be any water used on a vessel's hull for any purpose, regardless of application pressure, including but not limited to the activities of removing marine salts, sediments, marine growth and paint, or other hull, weather deck, or superstructure cleaning activities using water, such as preparing those areas for inspection or work (cutting, welding, grinding, coating, etc.). The discharge water shall be permitted as a process wastewater by a separate VPDES permit.~~

~~(2) Blasting and painting areas. The permittee shall describe and implement measures to prevent spent abrasives, paint chips and overspray from discharging into the receiving waterbody or the storm sewer system. To prevent the discharge of contaminants, the permittee shall consider containing all blasting and painting activities or using other methods, such as hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. The plan shall include a schedule for regularly cleaning storm systems to remove deposits of abrasive blasting debris and paint chips. The plan shall include any standard operating practices with regard to blasting and painting activities, such as the prohibition of uncontained blasting or painting over open~~

water or the prohibition of blasting or painting during windy conditions that can render containment ineffective.

(3) Material storage areas. All containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) shall be plainly labeled and stored in a protected, secure location away from drains. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from the storage areas. The permittee shall consider implementing an inventory control plan to limit the presence of potentially hazardous materials on site. Where abrasive blasting is performed, the plan shall specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(4) Engine maintenance and repair areas. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from all areas used for engine maintenance and repair. The permittee shall consider the following measures (or their equivalent): performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluids prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating or recycling stormwater runoff collected from the maintenance area.

(5) Material handling areas. The permittee shall describe and implement measures to prevent or minimize contamination of precipitation or surface runoff from material handling operations and areas (e.g., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The permittee shall consider the following methods (or their equivalents): covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimizing runon of stormwater to material handling areas.

(6) Drydock activities. The plan shall address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the stormwater runoff. The plan shall describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock shall also be included within the plan. The permittee shall consider the following measures (or their equivalents): sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain or cleanup any spills.

(7) General yard area. The plan shall include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., shall be routinely removed from the general yard area.

b. Preventative maintenance. As part of the facility's preventive maintenance program, stormwater management devices shall be inspected and maintained in a timely manner (e.g., oil/water separators and sediment traps cleaned to ensure that spent abrasives, paint chips and solids are intercepted and retained prior to entering the storm drainage system). Facility equipment and systems shall also be inspected and tested to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

c. Routine facility inspections. The following areas shall be included in all quarterly routine facility inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance or repair areas; material handling areas; drydock area; and general yard area. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

d. Employee training. Training shall address, at a minimum, the following activities (as applicable): used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

D. Benchmark monitoring and reporting requirements. Ship and boat building or repairing yards are required to monitor their stormwater discharges for the pollutants of concern listed in Table 250.

Table 250
Sector R – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Ship and Boat Building or Repairing Yards (SIC 3731, 3732)	
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L

9VAC25-151-260. Sector S – Air transportation. (Repealed)

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from air transportation

facilities including airports, airport terminal services, air transportation (scheduled and nonscheduled), flying fields, air courier services, and establishments engaged in operating and maintaining airports, and servicing, repairing or maintaining aircraft (generally classified under SIC Code 45), which have vehicle maintenance shops, material handling facilities, equipment cleaning operations, or airport or aircraft deicing or anti-icing operations. For the purpose of this section, the term "deicing" is defined as the process to remove frost, snow, or ice and "anti-icing" is the process which prevents the accumulation of frost, snow, or ice. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or deicing or anti-icing operations are addressed under this section.

B. Special definitions. The following definitions are only for this section of the general permit:

"Aircraft deicing fluid" or "ADF" means a fluid (other than hot water) applied to aircraft to remove or prevent any accumulation of snow or ice on the aircraft. This includes deicing and anti-icing fluids.

"Airfield pavement" means all paved surfaces on the airside of an airport.

"Airside" means the part of an airport directly involved in the arrival and departure of aircraft, including runways, taxiways, aprons, and ramps.

"Annual non-propeller aircraft departures" means the average number of commercial turbine engine aircraft that are propelled by jet (i.e., turbojet or turbofan) that take off from an airport on an annual basis, as tabulated by the Federal Aviation Administration (FAA).

"Available ADF" means 75% of the normalized Type I aircraft deicing fluid and 10% of the normalized Type IV aircraft deicing fluid, excluding aircraft deicing fluids used for defrosting or deicing for safe taxiing.

"Collection requirement" means, for new sources, the requirement for permittee to collect available ADF.

"Defrosting" means the removal of frost contamination from an aircraft when there has been no active precipitation.

"Deicing" mean procedures and practices to remove or prevent any accumulation of snow or ice on:

1. An aircraft; or

2. Airfield pavement.

"Normalized Type I or Type IV aircraft deicing fluid" means ADF less any water added by the manufacturer or customer before ADF application.

"Primary airport" means an airport defined at 49 USC § 47102 (15).

C. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: aircraft, ground vehicle, runway and equipment washwaters, and dry weather discharges of deicing or anti-icing chemicals. These discharges must be covered by a separate VPDES permit. Note: Discharge resulting from snowmelt is not a dry weather discharge.

D. Stormwater pollution prevention plan requirements. SWPPPs developed for areas of the facility occupied by tenants of the airport shall be integrated with the plan for the entire airport. For the purposes of this permit, tenants of the airport facility include airline passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in stormwater discharges associated with industrial activity. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify the location of the following activities and indicate any of the activities that may be exposed to precipitation or surface runoff: aircraft and runway deicing or anti-icing operations; fueling stations; aircraft, ground vehicle and equipment maintenance and cleaning areas; and storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

b. Summary of potential pollutant sources. The plan shall include a narrative description of the potential pollutant sources from the following activities: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing or anti-icing operations (including apron and centralized aircraft deicing or anti-icing stations, runways, taxiways, and ramps). Facilities which conduct deicing or anti-icing operations shall maintain a record of the types (including the safety data sheets (SDS)) and monthly quantities of deicing or anti-icing chemicals used, either as measured amounts, or in the absence of metering, as estimated amounts. This includes all deicing or anti-icing chemicals, not just glycols and urea (e.g., potassium acetate). Tenants and fixed base operators who conduct deicing or anti-icing operations shall provide the above information to the airport authority for inclusion in the stormwater pollution prevention plan for the entire facility.

c. Deicing season. The SWPPP shall define the average seasonal timeframe (e.g., December-February, October-March, etc.) during which deicing activities typically occur at the facility. Implementation of control measures, including any BMPs, facility inspections, and effluent limitation monitoring shall be conducted with particular emphasis throughout the defined deicing season.

2. Stormwater controls.

a. Good housekeeping.

(1) Aircraft, ground vehicle and equipment maintenance areas. The permittee shall describe and implement measures that prevent or minimize the contamination of stormwater runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangars). Appropriate control measures (or their equivalents) shall be implemented, such as the following practices: performing maintenance activities indoors; maintaining an organized inventory of materials used in the maintenance areas; draining all parts of fluids prior to disposal; preventing the practice of hosing down the apron or hangar floor; using dry cleanup methods; and collecting the stormwater runoff from the maintenance area and providing treatment or recycling.

(2) Aircraft, ground vehicle and equipment cleaning areas. Permittees shall ensure that cleaning of equipment is conducted in designated areas only and clearly identify these areas on the ground and delineate them on the site map. The permittee shall describe and implement measures that prevent or minimize the contamination of the stormwater runoff from cleaning areas.

(3) Aircraft, ground vehicle and equipment storage areas. The storage of aircraft, ground vehicles and equipment awaiting maintenance shall be confined to designated areas (delineated on the site map). Appropriate control measures, including any BMPs (or their equivalents) shall be implemented, such as the following practices: indoor storage of aircraft and ground vehicles; the use of drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding storage areas.

(4) Material storage areas. Storage vessels of all materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) shall be maintained in good condition, so as to prevent or minimize contamination of stormwater, and plainly labeled (e.g., "used oil," "Contaminated Jet A," etc.). The permittee shall describe and implement measures that prevent or minimize contamination of precipitation or runoff from storage areas. Appropriate control measures (or their equivalents) shall be implemented, such as the following practices: indoor storage of materials; centralized storage areas for waste materials; and installation of berms and dikes around storage areas.

(5) Airport fuel system and fueling areas. The permittee shall describe and implement measures that prevent or minimize the discharge of fuels to the storm sewer or surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Appropriate control measures (or their equivalents) shall be implemented, such as the following practices: implementing spill and overflow practices (e.g., placing absorptive materials beneath aircraft during fueling operations); using dry cleanup methods; and collecting the stormwater runoff.

b. Source reduction. The permittee shall minimize, and where practicable eliminate, the use of urea and glycol-based deicing or anti-icing chemicals in order to reduce the aggregate amount of deicing or anti-icing chemicals used and lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: potassium acetate; magnesium acetate; calcium acetate; anhydrous sodium acetate.

(1) Runway deicing operations. The permittee shall minimize contamination of stormwater runoff from runways as a result of deicing operations. The permittee shall evaluate present application rates to ensure against excessive over-application by analyzing application rates and adjusting as necessary, consistent with considerations of flight safety. Appropriate control measures, (or their equivalents) shall be implemented, such as the following practices: metered application of chemicals; prewetting dry chemical constituents prior to application; installation of runway ice detection systems; implementing anti-icing operations as a preventive measure against ice buildup.

(2) Aircraft deicing operations. The permittee shall minimize contamination of stormwater runoff from aircraft deicing operations. The permittee shall determine whether excessive application of deicing chemicals occurs, and adjust as necessary, consistent with considerations of flight safety. This evaluation shall be carried out by the personnel most familiar with the particular aircraft and flight operations in question (versus an outside entity such as the airport authority). The use of alternative deicing or anti-icing agents as well as containment measures for all applied chemicals shall be considered. Appropriate control measures (or their equivalents) shall be implemented for reducing deicing fluid use, such as the following practices: forced air deicing systems; computer-controlled fixed gantry systems; infrared technology; hot water; varying glycol content to air temperature; enclosed basket deicing trucks; mechanical methods; solar radiation; hangar storage; aircraft covers; and thermal blankets for MD-80s and DC-9s. The use of ice detection systems and airport traffic flow strategies and departure slot allocation systems shall also be considered where practicable.

c. Management of runoff. Where deicing operations occur, the permittee shall implement a program to control or manage contaminated runoff to minimize the amount of pollutants being discharged from the site. The plan shall describe the controls used for collecting or

containing contaminated melt water from collection areas used for disposal of contaminated snow. The following control measure options (or their equivalents) shall be considered: establishing a dedicated deicing facility with a runoff collection and recovery system; using vacuum or collection trucks; storing contaminated stormwater water or deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. The plan shall consider the recovery of deicing and anti-icing materials when these materials are applied during nonprecipitation events (e.g., covering storm sewer inlets, using booms, installing absorptive interceptors in the drains, etc.) to prevent these materials from later becoming a source of stormwater contamination. Used deicing fluid shall be recycled whenever possible.

d. Routine facility inspections. The inspection frequency shall be specified in the plan. At a minimum, inspections shall be conducted once per month during deicing and anti-icing season (e.g., October through April for most airports). If deicing occurs before or after this period, the inspections shall be expanded to include all months during which deicing chemicals may be used.

e. Comprehensive site compliance evaluation. The annual site compliance evaluations shall be conducted by qualified facility personnel during periods of actual deicing operations, if possible. If not practicable during active deicing or if the weather is too inclement, the evaluations shall be conducted when deicing operations are likely to occur and the materials and equipment for deicing are in place.

E. Numeric effluent limitations. The average deicing season identified in the SWPPP is the time frame during which any effluent limitation monitoring samples shall be obtained.

1. Airfield pavement deicing. Existing primary airports and primary airports meeting the definition of a new source (new primary airports) with at least 1,000 annual jet departures (non-propeller aircraft) that discharge wastewater associated with airport pavement deicing comingled with stormwater shall either use deicing products that do not contain urea or alternatively, airfield pavement discharges at every discharge point shall achieve the numeric limitations for ammonia in Table 260-1, prior to any dilution or commingling with any non-deicing discharge. Primary airports that only use deicing products that do not contain urea shall certify this fact annually to the board. The certification shall be signed in accordance with Part II K, and a copy of the certification shall be kept with the SWPPP.

Table 260-1
Sector S – Numeric Effluent Limitations, Existing and New Primary Airports

Airfield Pavement Deicing	
Parameter	Effluent Limitations – Daily Maximum
Ammonia as Nitrogen	14.7 mg/L

2. Aircraft deicing. Airports meeting the definition of a new source (new airports) with 10,000 annual departures, and located in cold climate zones, shall collect at least 60% of available ADF after deicing. New airports shall achieve the performance standards in Table 260-2 for available ADF collected. The limitation shall be met at the location where the effluent leaves the on-site treatment system utilized for meeting these requirements and before commingling with any non-deicing discharge.

Table 260-2
Sector S – Numeric Effluent Limitations, New Primary Airports

Aircraft Deicing		
Parameter	Effluent Limitations	
	Daily Maximum	Weekly Average
Chemical Oxygen Demand (COD)	271 mg/L	154 mg/L

3. Monitoring, reporting, and recordkeeping requirements.

a. Demonstrating compliance with the ADF collection requirement for dischargers subject to the requirements in subdivision 2 of this subsection.

(1) The permittee shall maintain records with the SWPPP to demonstrate that the airport is operating and maintaining one or more centralized deicing pads and shall certify this annually to the board. The certification shall be signed in accordance with Part II K, and a copy of the certification shall be kept with the SWPPP.

The centralized deicing pad technology shall be operated and maintained according to the technical specifications set forth in subdivisions 3 a (1) (a) through (d) of this subsection. The demonstration and valid certification are sufficient to meet the applicable collection requirement without the permittee having to determine the numeric percentage of available ADF collected.

(a) Each centralized deicing pad shall be sized and sited in accordance with all applicable Federal Aviation Administration advisory circulars.

(b) Drainage valves associated with the centralized deicing pad shall be activated before deicing activities commence to collect available ADF.

(c) The centralized deicing pad and associated collection equipment shall be installed and maintained per any applicable manufacturers' instructions and shall be inspected, at a minimum, at the beginning of each deicing season to ensure that the pad and associated equipment are in working condition.

(d) All aircraft deicing shall take place on a centralized deicing pad, with the exception of defrosting and deicing for safe taxiing.

(2) The permittee shall maintain records with the SWPPP on the volume of ADF sprayed and the amount of available ADF collected in order to determine compliance with the collection requirement and shall report this information annually to the department.

b. Monitoring requirements.

(1) COD limitation. Permittees subject to the ADF collection and discharge requirements specified in subdivision 2 of this subsection shall conduct effluent monitoring to demonstrate compliance with the COD limitation for all ADF that is collected.

Compliance shall be demonstrated at the location where the effluent leaves the on site treatment system utilized for meeting these requirements and before commingling with any non deicing discharge. Effluent samples shall be collected following the grab sample protocol in 40 CFR 449, Appendix A.

(2) Ammonia limitation. If a permittee chooses to comply with the compliance alternative specified in subdivision 1 of this subsection, the permittee shall conduct effluent monitoring at all locations where pavement deicing with a product that contains urea is occurring, prior to any dilution or commingling with any non deicing discharge.

c. Recordkeeping.

(1) The permittee shall maintain records with the SWPPP documenting compliance with subdivisions 3 a and 3 b of this subsection. These records include, but are not limited to, documentation of wastewater samples collected and analyzed, certifications, and equipment maintenance schedules and agreements.

(2) The permittee shall collect and maintain data with the SWPPP on the annual volume of ADF used.

F. Benchmark monitoring and reporting requirements. Stormwater discharges from those portions of air transportation facilities where vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) and equipment cleaning is performed shall be sampled for the parameters listed in Table 260-3. Note: The benchmark monitoring requirements apply year round and are not limited to the deicing season.

Table 260-3
Sector S – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Air Transportation Facilities (SIC 45).	
Total Suspended Solids (TSS)	100 mg/L
Total Petroleum Hydrocarbons (TPH)*	15.0 mg/L
*Total Petroleum Hydrocarbons (TPH) is the sum of individual gasoline range organics and diesel range organics (TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.	

9VAC25-151-270. Sector T – Treatment works. (Repealed)

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 9VAC25-31-730 (Industrial Activity Code "TW"). Farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located within the facility, or areas that are in compliance with § 405 of the CWA are not required to have permit coverage.

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: sanitary and industrial wastewater; and equipment and vehicle washwaters.

C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.

1. Site description.

a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process

~~chemicals, petroleum products, solvents, fertilizers, herbicides, and pesticides.~~

~~b. Summary of potential pollutant sources. The plan shall include a description of the potential pollutant sources from the following activities, as applicable: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads and rail lines.~~

~~2. Stormwater controls.~~

~~a. Control measures. In addition to the other control measures required by Part III B 4, the following measures shall be considered: routing stormwater to the treatment works; or covering exposed materials (i.e., from the following areas: grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station).~~

~~b. Inspections. The following areas shall be included in all inspections: access roads and rail lines, grit, screenings, and other solids handling, storage, or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station areas.~~

~~c. Employee training. Employee training shall, at a minimum, address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and control; fueling procedures; general good housekeeping practices; proper procedures for using fertilizers, herbicides and pesticides.~~

9VAC25-151-280. Sector U - Food and kindred products.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from food and kindred products processing facilities ~~(commonly identified by SIC Code 20)~~, including~~: meat products;~~ dairy products SIC Codes 2021-2026; ~~canned, frozen and preserved fruits, vegetables, and food specialties;~~ grain mill products SIC Codes 2041-2048; ~~bakery products; sugar and confectionery products;~~ and fats and oils~~; beverages; and miscellaneous food preparations and kindred products and tobacco products manufacturing (SIC Code 21)~~ SIC Codes 2074-2079.

B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing and clean-out operations.

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify the locations of the following activities if they are exposed to precipitation or surface runoff: vents and stacks from cooking, drying, and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.~~

~~b. Summary of potential pollutant sources. In addition to food and kindred products processing related industrial activities, the plan shall also describe application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, etc.) used on plant grounds.~~

~~2. Stormwater controls.~~

~~a. Routine facility inspections. At a minimum, the following areas, where the potential for exposure to stormwater exists, shall be inspected on a quarterly basis: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.~~

~~b. Employee training. The employee training program shall also address pest control.~~

~~D.~~ C. Benchmark monitoring and reporting requirements. Dairy products, grain mills and fats and oils products facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 280.

Table 280
Sector U – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Dairy Products (SIC Codes 2021-2026)	
Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Suspended Solids (TSS)	100 mg/L
Grain Mill Products (SIC Codes 2041-2048)	
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Suspended Solids (TSS)	100 mg/L
Fats and Oils Products (SIC Codes 2074-2079)	

Biochemical Oxygen Demand (BOD_5)	30 mg/L
Total Nitrogen	2.2 mg/L
Total Suspended Solids (TSS)	100 mg/L

9VAC25-151-290. ~~Sector V - Textile mills, apparel, and other fabric products.~~ (Repealed)

~~A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from textile mills, apparel and other fabric product manufacturing, generally described by SIC 22 and 23. This section also covers facilities engaged in manufacturing finished leather and artificial leather products (SIC 31, except 3111). Facilities in this sector are primarily engaged in the following activities: textile mill products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broad woven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics, miscellaneous textiles, and other apparel products.~~

~~B. Special conditions. Prohibition of nonstormwater discharges. In addition to the general nonstormwater prohibition in Part I B 1, the following discharges are not covered by this permit: discharges of wastewater (e.g., wastewater as a result of wet processing or from any processes relating to the production process); reused or recycled water; and waters used in cooling towers. These discharges must be covered under a separate VPDES permit.~~

~~C. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description. Summary of potential pollutant sources. The plan shall include a description of the potential pollutant sources from the following activities: industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing, bonding carbonizing, carding, cut and sew operations, desizing, drawing, dyeing, flocking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).~~

~~2. Stormwater controls.~~

~~a. Good housekeeping measures.~~

~~(1) Material storage areas. All containerized materials (e.g., fuels, petroleum products, solvents, dyes, etc.) shall be clearly labeled and stored in a protected area, away from drains. The permittee shall describe and implement measures that prevent or minimize contamination of stormwater runoff from such storage areas, and shall include a description of the containment area or enclosure for those materials that are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. The permittee shall ensure that empty chemical drums and containers are clean (triple rinsing shall be considered) and residuals are not subject to contact with precipitation or runoff. Washwater from these cleanings shall be collected and disposed of properly.~~

~~(2) Material handling area. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from materials handling operations and areas. The permittee shall consider the following measures (or their equivalents): use of spill and overflow protection; covering fueling areas; and covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes, or wastewater.~~

~~(3) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runon of stormwater to the fueling areas; using dry cleanup methods; and treating or recycling stormwater runoff collected from the fueling area.~~

~~(4) Aboveground storage tank areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular cleanup of these areas; preparation of a spill prevention control and countermeasure program (SPCC) to provide spill and overflow protection; minimizing runon of stormwater from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.~~

~~b. Routine facility inspections. Inspections shall be conducted at least monthly, and shall include the following activities and areas (at a minimum): transfer~~

and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and nonstructural management practices. The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

c. Employee training. Employee training shall, at a minimum address, the following areas when applicable to a facility: use of reused or recycled waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices.

9VAC25-151-300. Sector W - Furniture and fixtures. (Repealed)

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities involved in the manufacturing of wood kitchen cabinets (generally described by SIC Code 2434), and furniture and fixtures (generally classified under SIC Major Group 25), including: household furniture (SIC 251); office furniture (SIC 252); public buildings and related furniture (SIC 253); partitions, shelving, lockers, and office and store fixtures (SIC 254); and miscellaneous furniture and fixtures (SIC 259).

B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following item:

Site Map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: material storage areas (including tanks or other vessels used for liquid or waste storage); outdoor material processing areas; areas where wastes are treated, stored or disposed; access roads; and rail spurs.

9VAC25-151-310. Sector X - Printing and publishing. (Repealed)

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from printing and publishing facilities (generally classified under SIC Major Group 27), and include the following types of facilities: newspaper, periodical, and book publishing and printing (SIC Codes 271 through 273); miscellaneous publishing (SIC Code 274); commercial printing (SIC Code 275); manifold business forms, greeting cards, bankbooks, looseleaf binders and book binding and related work (SIC Codes 276 through 278); and service industries for the printing trade (SIC 279).

B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Summary of potential pollutant sources. The plan shall include a description of the following additional sources and activities that have potential pollutants associated with them, as applicable: loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and on-site waste disposal practices (e.g., blanket wash). Also, the pollutant or pollutant parameter (e.g., oil and grease, scrap metal, etc.) associated with each pollutant source shall be identified.

2. Stormwater controls.

a. Good housekeeping measures.

(1) Material storage areas. All containerized materials (skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, portable or mobile containers of plant debris, wood crates, steel racks, fuel oil, etc.) shall be properly labeled and stored in a protected area, away from drains. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from such storage areas and shall include a description of the containment area or enclosure for those materials which are stored outdoors. The permittee may consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

(2) Material handling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from material handling operations and areas (e.g., blanket wash, mixing solvents, loading and unloading materials). The permittee shall consider the following measures (or their equivalents): the use of spill and overflow protection; covering fuel areas; and covering or enclosing areas where the transfer of materials may occur. When applicable, the plan shall address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, or wastewater.

(3) Fueling areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from fueling areas. The permittee shall consider the following measures (or their equivalents): covering the fueling area; using spill and overflow protection; minimizing runon of stormwater to the fueling area; using dry cleanup methods; and treating or recycling stormwater runoff collected from the fueling areas.

(4) Aboveground storage tank areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from aboveground storage tank areas, including the associated piping and valves. The permittee shall consider the following measures (or their equivalents): regular

~~cleanup of these areas; preparation of a spill prevention control and countermeasure program (SPCC) to provide spill and overflow protection; minimizing runon of stormwater from adjacent facilities and properties; restricting access to the area; insertion of filters in adjacent catch basins; absorbent booms in unbermed fueling areas; use of dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.~~

~~b. Employee training. Employee training shall, at a minimum, address the following areas when applicable to a facility: spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices.~~

9VAC25-151-320. Sector Y - Rubber, miscellaneous plastic products, and miscellaneous manufacturing industries.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from rubber and miscellaneous plastic products manufacturing facilities ~~(SIC Major Group 30) and miscellaneous manufacturing industries, except jewelry, silverware, and plated ware (SIC Major Group 39, except 391)~~, SIC Codes 3011, 3021, 3052, 3061, and 3069.

B. ~~Stormwater pollution prevention plan~~ SWPPP requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items:

1. Site description. Summary of potential pollutant sources. Rubber manufacturing facilities shall review the use of zinc at the facility and the possible pathways through which zinc may be discharged in stormwater runoff.

2. Stormwater controls.

a. Controls for rubber manufacturers. Rubber manufacturing facilities shall describe and implement specific controls to minimize the discharge of zinc in stormwater discharges from the facility. Listed below are possible sources of zinc. These shall be reviewed and the accompanying control measures (or their equivalents) shall be ~~considered~~ documented in the SWPPP. Also, some general control measure options to consider include: using chemicals that are purchased in pre-weighed, sealed polyethylene bags; storing materials that are in use in sealable containers; ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

(1) Zinc bags. All permittees shall review the handling and storage of zinc bags at their facilities. Following are some control measure options: employee training regarding the handling and storage of zinc bags; indoor storage of zinc bags; cleanup of zinc spills without washing the zinc into the storm drain; and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

(2) Dumpsters. The permittee shall minimize discharges of zinc from dumpsters. Following are some control measure options: provide a cover for the dumpster; move the dumpster to an indoor location; or provide a lining for the dumpster.

(3) Dust collectors or baghouses. Permittees shall minimize contributions of zinc to stormwater from dust collectors and baghouses. Improperly operating dust collectors and baghouses shall be replaced or repaired as appropriate.

(4) Grinding operations. Permittees shall minimize contamination of stormwater as a result of dust generation from rubber grinding operations. One control measure option is to install a dust collection system.

(5) Zinc stearate coating operations. Permittees shall minimize the potential for stormwater contamination from drips and spills of zinc stearate slurry that may be released to the storm drain. One control measure option is to use alternative compounds to zinc stearate.

b. Controls for plastic products manufacturers. Plastic products manufacturing facilities shall describe and implement specific controls to minimize the discharge of plastic resin pellets in stormwater discharges from the facility. The following control measures (or their equivalents) shall be ~~considered~~ documented in the SWPPP: minimizing spills; cleaning up of spills ~~promptly~~ immediately and thoroughly; sweeping thoroughly; pellet capturing; employee education; and disposal precautions.

C. Benchmark monitoring and reporting requirements. Rubber product manufacturing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 320.

Table 320
Sector Y – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC Codes 3011-3069).	
Total Recoverable Zinc	120 µg/L

9VAC25-151-330. ~~Sector Z - Leather tanning and finishing.~~ (Repealed)

~~A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges~~

~~associated with industrial activity from leather tanning, currying and finishing (commonly identified by SIC Code 3111).~~

~~B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: processing and storage areas of the beamhouse, tanyard, retan wet finishing and dry finishing operations.~~

~~b. Summary of potential pollutant sources. A description of potential pollutant sources including (as appropriate): temporary or permanent storage of fresh and brine cured hides; leather dust, scraps, trimmings and shavings; and extraneous hide substances and hair.~~

~~2. Stormwater controls.~~

~~a. Good housekeeping.~~

~~(1) Storage areas for raw, semiprocessed, or finished tannery by products. Pallets and bales of raw, semiprocessed or finished tannery by products (e.g., splits, trimmings, shavings, etc.) shall be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage area or other suitable means. Materials shall be placed on an impermeable surface, the area shall be enclosed or bermed, or other equivalent measures shall be employed to prevent runon or runoff of stormwater.~~

~~(2) Material storage areas. Storage units of all materials should be labeled (e.g., specific chemicals, hazardous materials, spent solvents, waste materials). The permittee shall describe and implement measures that prevent or minimize contact with stormwater.~~

~~(3) Buffing and shaving areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff with leather dust from buffing and shaving areas. The permittee may consider dust collection enclosures, preventive inspection and maintenance programs or other appropriate preventive measures.~~

~~(4) Receiving, unloading, and storage areas. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from receiving, unloading, and storage areas. The following measures (or their equivalents) shall be considered for exposed receiving, unloading and storage areas: hides and chemical supplies protected by a suitable cover; diversion of drainage to the process sewer; and grade berming or curbing area to prevent runoff of stormwater.~~

~~(5) Outdoor storage of contaminated equipment. The permittee shall describe and implement measures that prevent or minimize contact of stormwater with contaminated equipment. The following measures (or their equivalents) shall be considered: equipment protected by suitable cover; diversion of drainage to the process sewer; thorough cleaning prior to storage.~~

~~(6) Waste management. The permittee shall describe and implement measures that prevent or minimize contamination of the stormwater runoff from waste storage areas. The permittee shall consider the following measures (or their equivalents): inspection and maintenance programs for leaking containers or spills; covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing stormwater runoff by enclosing the area or building berms around the area.~~

~~C. Benchmark monitoring and reporting requirements. Leather tanning and finishing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 330.~~

~~Table 330~~
~~Sector Z – Benchmark Monitoring Requirements~~

~~Pollutants of Concern~~	~~Benchmark Concentration~~
~~Leather Tanning and Finishing (SIC 3111)~~	
~~Total Kjeldahl Nitrogen (TKN)~~	~~1.5 mg/L~~

9VAC25-151-340. Sector AA - Fabricated metal products.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from the following fabricated metals industry ~~listed below~~, except for electrical related industries: fabricated metal products, except machinery and transportation equipment ~~(SIC Code 34);~~, SIC Codes 3411-3471, 3471, and 3482-3499; and jewelry, silverware, and plated ware ~~(SIC Code 391)~~, SIC Codes 3911-3915.

~~B. Stormwater pollution prevention plan requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following items.~~

~~1. Site description.~~

~~a. Site Map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary or permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps or barriers;~~

~~processing areas including outside painting areas; wood preparation; recycling; and raw material storage.~~

~~b. Spills and Leaks. When listing significant spills and leaks, the permittee shall pay attention to the following materials, at a minimum: chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes.~~

~~c. Summary of potential pollutant sources. The plan shall include a description of the potential pollutant sources from the following activities: loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc.; and on site waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles.~~

~~2. Stormwater controls.~~

~~a. Good housekeeping.~~

~~(1) Raw steel handling storage. The permittee shall describe and implement measures for managing or recovering scrap metals, fines, and iron dust, including measures for containing materials within storage handling areas.~~

~~(2) Paints and painting equipment. The permittee shall describe and implement measures to prevent or minimize exposure of paint and painting equipment from exposure to stormwater.~~

~~b. Spill prevention and response procedures. The permittee shall ensure that the necessary equipment to implement a cleanup is available to personnel. The following areas shall be addressed:~~

~~(1) Metal fabricating areas. The permittee shall describe and implement measures for maintaining clean, dry, orderly conditions in these areas. Use of dry clean up techniques shall be considered in the plan.~~

~~(2) Storage areas for raw metal. The permittee shall describe and implement measures to keep these areas free of conditions that could cause, or impede appropriate timely response to, spills or leakage of materials. The following measures (or their equivalents) shall be considered: storage areas maintained such that there is easy access in the event of a spill; stored materials labeled to aid in identifying spill contents.~~

~~(3) Metal working fluid storage areas. The permittee shall describe and implement measures for storage of metal working fluids.~~

~~(4) Cleaners and rinse water. The permittee shall describe and implement measures to control and clean up spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand blasting operations; and prevent exposure of recyclable wastes. Environmentally benign cleaners shall be substituted when possible.~~

~~(5) Lubricating oil and hydraulic fluid operations. The permittee shall describe and implement measures to minimize the potential for stormwater contamination from lubricating oil and hydraulic fluid operations. The permittee shall consider using devices or monitoring equipment or other devices to detect and control leaks and overflows. The installation of perimeter controls such as dikes, curbs, grass filter strips, or other equivalent measures shall also be considered.~~

~~(6) Chemical storage areas. The permittee shall describe and implement proper storage methods that prevent stormwater contamination and accidental spillage. The plan shall include a program to inspect containers, and identify proper disposal methods.~~

~~c. Inspections. Metal fabricators shall at a minimum include the following areas for inspection: raw metal storage areas; finished product storage areas; material and chemical storage areas; recycling areas; loading and unloading areas; equipment storage areas; paint areas; and vehicle fueling and maintenance areas.~~

~~d. Comprehensive site compliance evaluation. The site compliance evaluation shall also include inspections of: areas associated with the storage of raw metals; storage of spent solvents and chemicals; outdoor paint areas; and roof drainage. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel and other related materials.~~

~~C.~~ B. Benchmark monitoring and reporting requirements. Metal fabricating facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 340.

Table 340
Sector AA – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Fabricated Metal Products Except Coating (SIC Codes 3411-3471, 3482-3499, 3911-3915)	
Total Recoverable Aluminum	750 µg/L
Total Recoverable Iron	1.0 mg/L
Total Recoverable Zinc	120 µg/L
Total Recoverable Copper	18 µg/L
Fabricated Metal Coating and Engraving (SIC Code 3479)	
Total Recoverable Zinc	120 µg/L

9VAC25-151-350. Sector AB - Transportation equipment, industrial, or commercial machinery.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from transportation equipment~~,~~ and industrial or commercial machinery manufacturing facilities ~~(commonly described by SIC Major Group 35 (except SIC Code 357), and SIC Major Group 37 (except SIC Code 373))~~ commonly described by SIC Codes 3511-3599, except SIC Codes 3571-3579.

B. ~~Stormwater pollution prevention plan~~ SWPPP requirements. In addition to the requirements of Part III, the SWPPP shall include, at a minimum, the following item:

Site description. Site map. The site map shall identify where any of the following may be exposed to precipitation or surface runoff: vents and stacks from metal processing and similar operations.

C. Benchmark monitoring and reporting requirements. Transportation equipment manufacturing facilities are required to monitor their stormwater discharges for the pollutants of concern listed in Table 350.

Table 350
Sector AB – Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Transportation equipment manufacturing facilities ~~(SIC 35, except 357, and SIC 37, except 373)~~ (SIC Codes 3511-3599 except SIC Codes 3571-3579)	
Total Petroleum Hydrocarbons (TPH)*	15.0 mg/L
Total Suspended Solids (TSS)	100 mg/L
Total Recoverable Copper	18 µg/L
Total Recoverable Zinc	120 µg/L
*Total Petroleum Hydrocarbons (TPH) is the sum of individual gasoline range organics and diesel range organics (TPH-GRO and TPH-DRO) to be measured by EPA SW 846 Method 8015 for gasoline and diesel range organics, or by EPA SW 846 Methods 8260 Extended and 8270 Extended.	

9VAC25-151-360. Sector AC - ~~Electronic, electrical equipment and components, photographic and optical goods.~~ (Repealed)

~~A. Discharges covered under this section. The requirements listed under this section apply to storm water discharges associated with industrial activity from facilities that manufacture: electronic and other electrical equipment and components, except computer equipment (SIC Major Group 36); measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks (SIC Major Group 38) and computer and office equipment (SIC Code 357).~~

~~B. Additional requirements. No additional sector specific requirements apply to this sector.~~

9VAC25-151-370. Sector AD - Nonclassified facilities/stormwater discharges designated by the board as requiring permits.

A. Discharges covered under this section. Sector AD is used to provide permit coverage for facilities designated by the board as needing a stormwater permit under the provisions of 9VAC25-31-120 A 1 c or under 9VAC25-31-120 A 7 a (1) or (2) of the VPDES Permit Regulation. Therefore, almost any type of stormwater discharge ~~could~~ may be covered under this sector. Permittees shall be assigned to Sector AD by the board and may not choose Sector AD as the sector describing the facility's activities.

~~B. Additional requirements. No additional sector specific requirements apply to this sector.~~

~~C.~~ B. Benchmark monitoring and reporting requirements. ~~Nonclassified facilities/stormwater discharges designated by the board as requiring permits are required to monitor their stormwater discharges for the pollutants of concern listed in Table 370.~~ The board shall establish any additional monitoring requirements for your facility prior to authorizing coverage under this permit.

~~Table 370~~
~~Sector AD - Benchmark Monitoring Requirements~~

~~Pollutants of Concern~~	~~Benchmark Concentration~~
~~Nonclassified Facilities/Stormwater Discharges Designated By the Board As Requiring Permits~~	
~~Total Suspended Solids (TSS)~~	~~100 mg/L~~

9VAC25-151-380. Sector AE - Facilities with no analytical benchmark monitoring requirements.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities with SIC Codes 2611, 2621, 2652-2657, 2833-2836, 2851, 2861-2869, 2891-2899, 3952, 2992, 2999, 3211, 3221, 3229, 3231, 3241, 3281, 3291-3299, 3331-3339, 3398, 3399, 3341, 1311, 1321, 1381-1389, 2911, 4512-4581, Treatment Works (TW), 2011-2015, 2032-2038, 2051-2053, 2061-2068, 2082-2087, 2091-2099, 2111-2141, 2211-2299, 2311-2399, 3131-3199, 2434, 2511-2599, 2711-2796, 3081-3089, 3931, 3942-3949, 3951-3955 (except 3952 facilities as specified in Sector C), 3961, 3965, 3991-3999, 3111, 3711-3799 (except 3731 and 3732 as identified in Sector Q), 3571-3579, 3612-3699, and 3812-3873.

B. No additional sector-specific requirements apply to this sector.

9VAC25-151-390. Sector AF- Facilities limited to total suspended solids benchmark monitoring requirements.

A. Discharges covered under this section. The requirements listed under this section apply to stormwater discharges associated with industrial activity from facilities with SIC Codes 2411, 2421, 2426, 2429, 2431-2433, 2435-2439, 2441, 2448, 2449, 2451, 2452, 2493, 4011, 4013, 4111-4173, 4212-4231, 4311, and 5171.

B. Benchmark monitoring and reporting requirements. Facilities or stormwater discharges included in this sector are required to monitor their stormwater discharges for the pollutants of concern listed in Table 390.

Table 390

Sector AF- Benchmark Monitoring Requirements

Pollutants of Concern	Benchmark Concentration
Facilities Limited to Total Suspended Solids Benchmark Monitoring Requirements	
Total Suspended Solids (TSS)	100 mg/L

VA.R. Doc. No. R18-5397; Filed October 9, 2018, 2:47 p.m.

Proposed Regulation

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

Title of Regulation: **9VAC25-190. Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining (amending 9VAC25-190-10, 9VAC25-190-15, 9VAC25-190-20, 9VAC25-190-50, 9VAC25-190-60, 9VAC25-190-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Public Hearing Information:

November 27, 2018 - 9 a.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060

Public Comment Deadline: December 28, 2018.

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

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

Summary:

The Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nonmetallic Mineral Mining has existed since 1994. This general permit contains effluent limitations, monitoring requirements, and special conditions for discharges of process wastewater, which may be commingled with stormwater, and stormwater associated with industrial activity to surface waters. The proposed changes to the regulation are being made to reissue this general permit.

Proposed changes:

• Remove monitoring for total petroleum hydrocarbons for outfalls that contain process wastewater from vehicle or equipment degreasing activities based on low levels in reported data;

• Add a requirement to include with the registration statement safety data sheet information and dosing rate treatment chemicals added to wastewater or stormwater that could be discharged;

• Add a new provision that restricts permit coverage for the use of cationic flocculants unless approved by the department based on a demonstration of no aquatic toxicity;

• Remove the special condition addressing special water quality standards in the Chickahominy watershed based on revisions to the applicability of those standards;

• *Add best management practices requirements for blasting;*

• *Add a list of authorized nonstormwater discharges;*

• *Merge the comprehensive site compliance evaluation with the routine inspection provisions;*

• *Waive routine facility inspection requirements for Virginia Environmental Excellence Program E3 and E4 facilities; and*

• *Make other changes to clarify and update the general permit.*

9VAC25-190-10. Definitions.

The words and terms used in this chapter shall have the meanings defined in the State Water Control Law Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Code of Virginia and the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) unless the context clearly indicates otherwise. Additionally, for the purposes of this chapter:

"Best management practices" or "BMPs" means schedules of activities, practices (and prohibitions of practices), structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Colocated facility" means an industrial activity other than mineral mining operating on a site where the primary industrial activity is mineral mining. Such an activity must have wastewater characteristics similar to those of the mineral mine and be located within the permitted mining area. The term refers to activities that are commonly found at mining sites such as manufacturing of ready-mix concrete (SIC Code ~~3273)~~ 3273, NAICS Code 327320), concrete products (SIC Codes ~~3271 and 3272)~~ 3271 and 3272, NAICS Codes 327331, 327332, and 327390), and asphalt paving materials (SIC Code ~~2951)~~ 2951, NAICS Code 324121) except asphalt emulsion manufacturing. It does not mean industrial activity that is specifically excluded from this permit.

"Control measure" means any best management practice or other method (including effluent limitations) used to prevent or reduce the discharge of pollutants to surface waters.

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

"Industrial activity" means activity associated with mineral mining facilities generally identified by SIC Major Group 14 including active or inactive mining operations that discharge stormwater that has come into contact with any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations. This includes activity at facilities or those portions of a facility where the primary purpose is classified as:

1. North American Industry Classification System (NAICS) Code 212311 - Dimension Stone Mining and Quarrying, and Standard Industrial Classification (SIC) Code 1411 - Dimension Stone;

2. NAICS Code 212312 - Crushed and Broken Limestone Mining and Quarrying, and SIC Code 1422 Crushed and Broken Limestone;

3. NAICS Code 212313 - Crushed and Broken Granite Mining and Quarrying, and SIC Code 1423 -Crushed and Broken Granite;

4. NAICS Code 212319 - Crushed and Broken Stone not elsewhere classified (NEC), and SIC Code 1429 Crushed and Broken Stone NEC;

5. NAICS Code 212321 - Construction Sand and Gravel, and SIC Code 1442 - Construction Sand and Gravel;

6. NAICS Code 212324 - Kaolin and Ball Clay Mining, and SIC Code 1455 - Kaolin and Ball Clay;

7. NAICS Code 212325 - Clay and Ceramic and Refractory Minerals Mining, and SIC Code 1459 -Clay and Related Minerals, NEC (excluding for purposes of both NAICS and SIC bentonite and magnesite mines);

8. NAICS Code 212392 - Phosphate Rock Mining, and SIC Code 1475 - Phosphate Rock; and

9. NAICS Codes 212399 - All Other Nonmetallic Mineral Mining, and SIC Code 1499 - Miscellaneous Nonmetallic Minerals, except fuels (excluding for purposes of both NAICS and SIC gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, Tripoli, or asphaltic mineral mines).

(Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable ~~owner/operator~~ owner or operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim.) Industrial activity also includes facilities classified under other SIC codes that may be colocated within the mineral mine permit area, unless they are expressly excluded by this general permit.

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances, including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act that discharges to surface waters of the state; (ii) designed or used for collecting or conveying stormwater; (iii) that is not a combined sewer; and (iv) that is not part of a publicly owned treatment works (POTW).

"NAICS" means North American Industry Classification System, U.S. Office of Management and Budget, 2017.

"Permittee" means the owner of a nonmetallic mineral mine covered under this general permit.

"Process wastewater" means any wastewater used in the slurry transport of mined material, air emissions control, or processing exclusive of mining, and any other water that becomes commingled with such wastewater in a pit, pond, lagoon, mine, or other facility used for treatment of such wastewater. It includes mine pit dewatering, water used in the process of washing stone, noncontact cooling water, wastewater from vehicle or equipment degreasing activities, vehicle washing and return water from operations where mined material is dredged and miscellaneous plant cleanup wastewaters.

"Run-off coefficient" means the fraction of total rainfall that will appear at the conveyance as run-off.

"SIC" means the Standard Industrial Classification Code or Industrial Grouping from the U.S. Office of Management and Budget Standard Industrial Classification Manual, 1987 Edition.

"Significant materials" includes~~, but is not limited to,~~ raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.); any chemical the owner is required to report pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 USC § 11001 et seq.); fertilizers; pesticides; and waste products such as ashes, slag and sludge (including pond sediments) that have the potential to be released with stormwater discharges.

"Significant spills" includes~~, but is not limited to,~~ releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

"Stormwater" means stormwater run-off, snow melt run-off, and surface run-off and drainage.

"Stormwater discharge associated with industrial activity" means the discharge from any conveyance that is used for collecting and conveying stormwater and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the VPDES program under 9VAC25-31. For the categories of industries identified in the "industrial activity" definition, the term includes~~, but is not limited to,~~ stormwater discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the mineral mine; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters; sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with stormwater drained from the above described areas.

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges, and load allocations (LAs) for nonpoint sources or natural background or both, and must include a margin of safety (MOS) and account for seasonal variations.

"Twenty-five-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

~~"Vehicle or equipment degreasing" means the washing or steam cleaning of engines of a vehicle or piece of equipment and other drive components in which the purpose is to clean and degrease and clean petroleum products from the equipment for maintenance. Washing the vehicle exterior for~~

~~the purpose of removing sediment is not considered vehicle or equipment degreasing.~~

"Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.

9VAC25-190-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted ~~herein~~ in this chapter and incorporated by reference that regulation shall be as it exists and has been published as of July 1, ~~2013~~ 2018.

9VAC25-190-20. Purpose; delegation of authority; effective date of permit.

A. The purpose of this chapter is to establish General Permit Number VAG84 to regulate wastewater ~~discharge~~ and stormwater discharges to surface waters from nonmetallic mineral mines as follows:

1. For active and inactive nonmetallic mineral mining facilities in SIC Major Group 14, this general permit covers discharges composed entirely of stormwater associated with industrial activity.

2. This general permit authorizes the discharge of process wastewater as well as stormwater associated with industrial activity from active and inactive mineral mines classified under:

a. SIC ~~Codes~~ Code 1411 - NAICS Code 212311,

b. SIC Code 1422 - NAICS Code 21312,

c. SIC Code 1423 - NAICS Code 212313,

d. SIC Code 1429 - NAICS Code 212319,

e. SIC Code 1442 - NAICS Code 212421,

f. SIC Code 1455 - NAICS Code 212324,

g. SIC Code 1459 - NAICS Code 212325, excluding bentonite and magnesite mines,

h. SIC Code 1475 - NACIS Code 212392, and

i. SIC Code 1499 - NAICS Code 212399, excluding gypsum, graphite, asbestos, diatomite, jade, novaculite, wollastonite, tripoli or asphaltic mineral mines.

3. Coal mining, metal mining, and oil and gas extraction are not covered by this general permit.

B. The director, or an authorized representative, may perform any act of the board provided under this chapter, except as limited by § 62.1-44.14 of the Code of Virginia.

C. This general permit will become effective on July 1, ~~2014~~ 2019, and will expire June 30, ~~2019~~ 2024. For any covered owner, this general permit is effective upon compliance with all the provisions of 9VAC25-190-50 and the receipt of this general permit.

9VAC25-190-50. Authorization to discharge.

A. Any owner governed by this general permit is authorized to discharge process wastewater and stormwater as described in 9VAC25-190-20 A 1 and 2 to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-190-60, and that registration statement is accepted by the board;

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-190-70;

4. The owner has and maintains during such authorization a mineral mining permit for the operation to be covered by this general permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or an associated waivered program, locality, or state agency) under provisions and requirements of Title 45.1 of the Code of Virginia. Mineral mines located in bordering states with discharges in Virginia shall provide documentation that they have a mining permit from the appropriate state authority. Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement; and

5. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge violates or would violate the antidegradation policy in the water quality standards at 9VAC25-260-30; or

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance for purposes of enforcement with §§ 301, 302, 306, 307, 318, 403, and 405(b) of the federal Clean Water Act and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the nonmetallic mineral mining general permit issued in 2009 and that submits a complete registration statement before July 1, 2014, is authorized to continue to discharge under the terms of the 2009 general permit~~ Permit coverage shall expire at the end of the applicable permit term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal date established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon ~~coverage under the 2009~~ the general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued coverage ~~under the 2009 continued general permit~~ or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-190-60. Registration statement.

A. ~~The~~ Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the VPDES general ~~VPDES~~ permit for nonmetallic mineral mining facilities.

1. New facilities. Any owner proposing a discharge shall submit a complete registration statement at least ~~45~~ 60 days prior to the date planned for commencement of the discharge or a later submittal date established by the board.

2. Existing facilities.

a. Any owner covered by an VPDES individual ~~VPDES~~ permit that is proposing to be covered by this general permit shall submit a complete registration statement at least ~~210~~ 240 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the expiring VPDES general permit for nonmetallic mineral mining ~~that became effective on July 1, 2009,~~ and that intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~on or before April 1, 2014~~ at least 60 days prior to the expiration of the existing permit or a later submittal date established by the board.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after ~~June 30, 2014~~ the expiration date of this permit, but authorization to discharge will not be retroactive. ~~Owners described in subdivision A 2 b of this section that submit registration statements after April 1, 2014, are authorized to discharge under the provisions of 9VAC25-190-50 D if a complete registration statement is submitted before July 1, 2014.~~

C. The required registration statement shall contain the following information:

1. Facility owner and operator or other contact name, address, email address, and telephone number;

2. Facility name, county, location, latitude, and longitude;

3. Description of mining activity;

4. Primary and secondary SIC codes;

5. Discharge information including:

a. A list of outfalls identified by outfall numbers;

b. Characterization of the type of each listed outfall's discharge as either process wastewater, stormwater, or process wastewater commingled with stormwater;

c. Characterization of the source of each listed outfall's discharge as either mine pit dewatering, stormwater associated with industrial activity (see definition in 9VAC25-190-10), stormwater not associated with industrial activity, ~~ground water~~ groundwater infiltration,

wastewater from vehicle or equipment degreasing activities, vehicle washing and return water from operations where mined material is dredged, mined material washing, noncontact cooling water, miscellaneous plant cleanup wastewater, colocated facility discharges (identify the colocated facility), other discharges not listed here (describe), or any combination of the above;

d. The receiving stream, including wetlands for each outfall listed;

e. The latitude and longitude for each outfall listed; and

f. Indicate which stormwater outfalls will be representative outfalls that require a single discharge monitoring report (DMR). For stormwater outfalls that are to be represented by other outfall discharges, provide a description of the activities associated with those outfalls and explain why they are substantially the same as the representative outfall to be sampled;

6. Indicate if the facility has a current VPDES permit and the permit number if it does;

7. Description of wastewater treatment ~~or reuse/recycle,~~ reuse or recycle systems, or both;

8. List of any treatment chemicals added to ~~water~~ wastewater or stormwater that could be discharged. Include safety data sheets and the maximum proposed dosing rates;

9. List of colocated facilities;

10. Indicate if the facility is a hazardous waste treatment, storage, or disposal facility;

11. Schematic drawing showing water flow from source to water-using industrial operations to waste treatment and disposal, and disposal of any solids removed from wastewater;

12. Aerial photo or scale map that clearly shows the property boundaries, plant site, drainage areas associated with each outfall, locations of all mine pit dewatering, existing, significant sources of materials exposed to precipitation, stormwater or process wastewater outfalls and the receiving streams;

13. Evidence, such as the permit-license to operate a mine page, that the operation to be covered by this general permit has a mining permit that has been approved by the Virginia Department of Mines, Minerals and Energy, Division of Mineral Mining (or associated waivered program) under the provisions and requirements of Title 45.1 of the Code of Virginia (or appropriate bordering state authorization). Mineral mines owned and operated by governmental bodies not subject to the provisions and requirements of Title 45.1 of the Code of Virginia are exempt from this requirement;

14. Mining permit number;

15. Whether the permitted outfall will discharge to a municipal separate storm sewer system (MS4). If ~~so, provide the name of the MS4 owner. The~~ yes, the facility owner ~~of the facility~~ shall notify the MS4 owner ~~in writing~~ of the existence of the discharge ~~within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification~~ at the time of registration under this permit and include that notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and ~~phone number~~ contact information, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number;

16. Indicate if there are vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities;

17. ~~Monitoring data to determine compliance with 9VAC25-260-310 m (Chickahominy special standards) as per Part I B 14 of this permit;~~

~~18.~~ Provide certification that the process ~~water~~ wastewater system is designed to operate as "no discharge" if special condition Part I B ~~17~~ 15 is to apply to the facility. Identify the emergency outfall number;

18. For applicants other than a sole proprietor, the State Corporation Commission entity identification number; and

19. The following certification:

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

D. The registration statement shall be signed in accordance with 9VAC25-31-110.

E. Where to submit. The registration statement ~~may~~ shall be delivered to the department by either postal or electronic mail and shall be submitted to the DEQ regional office serving the area where the industrial facility is located.

9VAC25-190-70. General permit.

Any owner whose registration statement is accepted by the board will receive coverage under the following general permit and shall comply with the requirements in ~~it~~ the

general permit and be subject to all requirements of ~~the VPDES permit regulation, 9VAC25-31~~ 9VAC25-31-190.

General Permit No.: VAG84
Effective date: July 1, ~~2014~~ 2019
Expiration date: June 30, ~~2019~~ 2024

GENERAL PERMIT FOR NONMETALLIC MINERAL MINING

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant to it, owners of nonmetallic mineral mines are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I - Effluent Limitations, Monitoring Requirements, and Special Conditions, Part II - Stormwater Management, and Part III - Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this permit.

Part I
Effluent Limitations, Monitoring Requirements, and Special Conditions

A. Effluent limitations and monitoring requirements.

1. During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater and commingled stormwater associated with industrial activity from ~~outfall(s)~~ outfalls.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency (1)	Sample Type
Flow (MGD)	NL	NA	NL	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	NA	60	1/3 Months	Grab
pH (standard units)(2)	NA	6.0	9.0	1/3 Months	Grab
~~Total Petroleum Hydrocarbons (mg/l) (3)~~	~~NA~~	~~NA~~	~~NL~~	~~1/3 Months~~	~~Grab~~

NL = No Limitation, monitoring required

NA = Not Applicable

(1)1/3 Months equals the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December. Discharge Monitoring Reports (DMRs) of quarterly monitoring shall be submitted to the DEQ regional office no later than the 10th day of April, July, October, and January.

(2)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH, those standards shall be the minimum and maximum pH effluent limits.

~~(3)Monitoring for total petroleum hydrocarbons is only required for outfalls that contain process wastewater from vehicle or equipment degreasing activities. Total petroleum hydrocarbons shall be analyzed using EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics, or EPA 40 CFR 136.~~

2. During the period beginning with the permittee's coverage under the general permit and lasting until the permit's expiration date, the permittee is authorized to discharge stormwater associated with industrial activity that does not combine with other wastewaters prior to discharge from ~~outfall(s)~~ outfalls.

a. Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Monthly Average	Daily Minimum	Daily Maximum	Frequency [1]	Sample Type
Flow (MG)	NA	NA	NL	1/Year	Estimate[2]
Total Suspended Solids (mg/l)	NA	NA	NL[3]	1/Year	Grab
pH (standard units)	NA	NL	NL	1/Year	Grab

NL = No Limitation, monitoring required

NA = Not applicable

[1]Discharge Monitoring Reports (DMRs) of yearly monitoring (January 1 to December 31) shall be submitted to the DEQ regional office no later than the 10th day of January.

[2] Estimate of the total volume of the discharge during the storm event.

[3]~~Refer to Part I B 12 should the TSS evaluation monitoring exceed 100 mg/l daily maximum.~~ Permittees shall review the results of the TSS monitoring required by Part I A 2 a to determine if changes to the stormwater pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform the a routine facility inspection within five days of becoming aware of the exceedance and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected within 60 days of being identified.

b. The permittee shall conduct calendar quarterly visual monitoring of stormwater discharges associated with industrial activity. The monitoring shall include examination of stormwater samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution. Documentation of visual monitoring of stormwater shall be maintained onsite in the SWPPP and include the examination date and time, examination personnel, outfall location, the nature of the discharge, visual quality of the stormwater discharge and probable sources of any observed stormwater contamination. Part II A regarding monitoring instructions, Part II B regarding representative outfalls, and Part II C regarding sampling waivers shall apply to the taking of samples for visual monitoring except that the documentation required by these sections shall be retained with the SWPPP visual monitoring records rather than submitted to the department. Calendar quarters equal the following three-month periods each year of permit coverage: January through March, April through June, July through September, and October through December.

B. Special conditions.

1. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to prevent the potential or actual point source pollution of the surface or groundwaters of the state. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or groundwaters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up and disposed of in a manner so as not to allow their entry into the surface or groundwaters of the state.

2. No sewage shall be discharged from this mineral mining activity except under the provisions of another VPDES permit specifically issued for that purpose.

3. There shall be no chemicals added to the discharge, other than those listed on the owner's approved registration statement, unless prior approval of the chemical is granted by the board. The use of cationic chemicals is ineligible for coverage under this permit unless such use is approved by the board based on a demonstration that the application or use will not result in aquatic toxicity.

4. The permittee shall submit a new registration statement if the mining permit approved by the Division of Mineral Mining (or associated waivered program, or bordering state mine authority) is modified or reissued in any way that would affect the outfall location or the characteristics of a discharge covered by this general permit. Government owned and operated mines without mining permits shall submit the registration statement whenever outfall location or characteristics are altered. The new registration statement shall be filed within 30 days of the outfall relocation or change in the characteristics of the discharge.

5. The permittee shall notify the department as soon as they know or have reason to believe:

a. That any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of any toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board.

b. That any activity has occurred or will occur that would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant that is not limited in this permit, if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

6. ~~Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product or wastes, shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters.~~ Any and all product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, by-product, or wastes shall be handled, disposed of, or stored in such a manner and consistent with best management practices, so as not to permit a discharge of such product, materials, industrial wastes, or other wastes to state waters, except as expressly authorized.

7. There shall be no discharge of process wastewater pollutants from colocated asphalt paving materials operations. For the purposes of this special condition, process wastewater pollutants are any pollutants present in water used in asphalt paving materials manufacturing that come into direct contact with any raw materials, intermediate product, by-product or product related to the asphalt paving materials manufacturing process.

8. Process water may be used on site for the purpose of dust suppression. Dust suppression shall be carried out as a best management practice but not as a wastewater disposal method provided that ponding or direct run-off from the site does not occur during or immediately following its application. Dust suppression shall not occur during a storm event that results in an actual discharge from the site.

9. Process water from mine dewatering may be provided to local property owners for beneficial agricultural use.

10. There shall be no ~~discharge:~~

a. Discharge of floating solids or visible foam in other than trace amounts from process water discharges~~. There shall be no solids~~;

b. Solids deposition to surface water as a result of industrial activity; or

~~oil~~ c. Oil sheen resulting from petroleum products discharged to surface water as a result of the industrial activity.

11. The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e., five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

12. ~~Stormwater monitoring total suspended solids (TSS) evaluation. Permittees that monitor stormwater associated with industrial activity that does not combine with other wastewaters prior to discharge shall review the results of the TSS monitoring required by Part I A 2 to determine if changes to the stormwater pollution prevention plan (SWPPP) may be necessary. If the TSS monitoring results are greater than the evaluation value of 100 mg/l, then the permittee shall perform the inspection and maintain documentation as described in Part II H 3 d for that outfall. Any deficiencies noted during the inspection shall be corrected in a timely manner.~~

~~13.~~ Discharges to waters subject to TMDL wasteload allocations. Owners of facilities that are a source of the specified pollutant of concern to waters for which a total maximum daily load (TMDL) wasteload allocation has been approved prior to the term of this permit shall incorporate measures and controls into the SWPPP required by Part II that are consistent with the assumptions and requirements of the TMDL. The department will provide written notification to the owner that a facility is subject to the TMDL requirements. If the TMDL establishes a numeric wasteload allocation that applies to discharges from the facility, the owner shall perform any

required monitoring in accordance with Part I A and implement measures necessary to meet that allocation.

~~14. Discharges in the entire Chickahominy watershed above Walker's Dam (excluding discharges consisting solely of stormwater) shall also meet the effluent limitations in 9VAC25-260-310 m (special standards and requirements) of the January 6, 2011, water quality standards regulation. These limitations are BOD_5 (6.0 mg/l average and 8.0 mg/l maximum), total suspended solids (TSS) (5.0 mg/l average and 7.5 mg/l maximum), total phosphorus (0.10 mg/l average), ammonia as nitrogen (2.0 mg/l average), and settleable solids (0.1 mg/l average). These parameters, except for TSS, shall be monitored once per calendar year and the data submitted with the next registration statement (for the 2019 reissuance). TSS data shall be monitored and submitted with the Part I A DMR.~~

~~15.~~ 13. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

~~16.~~ 14. Inactive and unstaffed facilities (including temporarily inactive sites).

a. A waiver of the process and stormwater monitoring and routine inspections may be exercised by the board at a facility that is both inactive and unstaffed as long as the facility remains inactive and unstaffed. Such a facility is required to conduct an annual ~~comprehensive~~ site inspection in accordance with the requirements in Part II H 4 d 3. No DMR reports will be required to be submitted when a facility is approved as inactive and unstaffed.

b. An inactive and unstaffed sites waiver request shall be submitted to the board for approval and shall include the name of the facility; the facility's VPDES general permit registration number; a contact person, phone number, and email address (if available); the reason for the request; and the date the facility became or will become inactive and unstaffed. The waiver request shall be signed and certified in accordance with Part III K. If this waiver is granted, a copy of the request and the board's written approval of the waiver shall be maintained with the SWPPP.

c. To reactivate the site the permittee shall notify the department within 30 days or an alternate timeframe if written approval is received in advance from the board, and all process and stormwater monitoring and routine inspections shall be resumed immediately. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

d. The board retains the authority to revoke this waiver when it is determined that the discharge causes, has a reasonable potential to cause, or contributes to a water quality standards violation.

~~17.~~ 15. Process ~~water~~ wastewater systems designed to operate as "no discharge" shall have no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. These discharges shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law. Any other discharge from this type of system is prohibited, and shall be reported as an unauthorized discharge per Part III G of this permit.

~~18.~~ 16. Best management practices for blasting. The permittee shall utilize best management practices to ensure that contaminants do not enter surface water as a result of blasting at the site.

17. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility and there are no longer discharges of process wastewater or stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility ~~(NOTE:~~. A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement Form has been ~~submitted)~~ submitted;

(3) All discharges associated with this facility have been covered by an VPDES individual ~~VPDES~~ permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, ~~a closure plan has been implemented according to the O & M Manual,~~ and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an VPDES individual ~~VPDES~~ permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification:

"I certify under penalty of law that all wastewater and stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge nonmetallic mineral mining wastewater or stormwater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be submitted to the ~~department~~ DEQ regional office serving the area where the facility discharge is located and signed in accordance with Part III K.

Part II
Stormwater Management

A. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall-by-outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. When and how to sample.

a. In the case of snowmelt or a discharge from a stormwater management structure ~~(a series of settling lagoons)~~, a representative sample shall be taken at the time the discharge occurs.

b. For all other types of stormwater discharges, a minimum of one grab sample shall be taken resulting from a storm event that results in ~~an actual~~ a discharge from the site (defined as a "measurable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the discharge monitoring report (DMR) that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first three hours of discharge provided that the permittee explains with the DMR why a grab sample during the first 30 minutes was impracticable and maintains that documentation with the SWPPP.

B. Representative ~~discharge~~ outfalls. ~~When a~~ If a facility has two or more exclusively stormwater outfalls that ~~the permittee reasonably believes~~ discharge substantially identical effluents, based on ~~a consideration of~~ similarity of industrial activity, significant materials, size of the drainage areas, frequency of discharges, and management practices and activities within the area drained by the outfalls, then the permittee may submit information with the registration statement substantiating the request for only one DMR to be issued for the outfall to be sampled that represents one or more substantially identical outfalls. ~~Also the~~ The permittee ~~must~~ shall document representative outfalls in the SWPPP and list on the DMR of the outfall to be sampled all outfall locations that are represented by the discharge. The representative outfall monitoring provisions apply to Part I A 2 a monitoring and quarterly visual monitoring.

The permittee must include the following information in the SWPPP:

1. The locations of the outfalls;

2. An evaluation, including available monitoring data, indicating why the outfalls are expected to discharge substantially identical effluents; and

3. An estimate of the size of the drainage area in acres.

C. Sampling waivers. When a permittee is unable to conduct quarterly stormwater monitoring required under Part I A 2 b within the specified sampling period due to no measurable storm event or adverse weather conditions, documentation shall be submitted explaining the permittee's inability to conduct the stormwater monitoring. The documentation must include the dates and times that the outfalls were viewed and sampling was attempted. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Acceptable documentation includes ~~but is not limited to~~ National Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP. This waiver is not applicable to annual monitoring required under Part I A 2 a.

D. Stormwater pollution prevention plans (SWPPP). An SWPPP shall be developed and implemented for the facility. The plan shall include best management practices (BMPs) that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all stormwater discharges from the facility. The SWPPP shall also include all control measures necessary for the stormwater discharges to meet applicable water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control plan, a mine drainage plan as required by the Virginia Division of Mineral Mining, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the federal Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the ~~plan~~ SWPPP requirements of Part II H (contents of ~~plan)~~ SWPPP). All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all of the required elements of Part II H, the permittee must develop the missing SWPPP elements and include them in the required ~~plan~~ SWPPP.

E. Deadlines for ~~plan~~ SWPPP preparation and compliance.

1. Owners of existing facilities that were covered under the ~~2009~~ 2014 Nonmetallic Mineral Mining General Permit that are continuing coverage under this general permit shall update and implement any revisions to the SWPPP within ~~90~~ 60 days of the board granting coverage under this permit.

2. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit that elect to be covered under this general permit shall prepare and implement the SWPPP prior to submitting the registration statement.

3. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of ownership change.

4. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

F. Signature and ~~plan~~ SWPPP review.

1. The SWPPP shall be signed in accordance with Part III K (signatory requirements), and be retained on site at the facility covered by this permit in accordance with Part III B (records) of this permit. When there are no on-site buildings or offices in which to store the plan, it shall be kept at the nearest company office.

2. The permittee shall make the SWPPP, ~~annual site compliance~~ routine inspection ~~report~~ documentation, or other information available to the department upon request.

3. The director, or an authorized representative, may notify the permittee at any time that the SWPPP, BMPs, or other components of the facility's stormwater program do not meet one or more of the requirements of this part. Such notification shall identify specific provisions of the permit that are not being met and may include required modifications to the stormwater program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, or an authorized representative, the permittee shall make the required changes to the plan and shall submit to the department a written certification that the requested changes have been made.

G. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

1. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;

2. Routine inspections ~~or compliance evaluations~~ determine that there are deficiencies in the BMPs;

3. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

4. There is a spill, leak, or other release at the facility; or

5. There is an unauthorized discharge from the facility.

SWPPP modifications shall be made within ~~30~~ 60 calendar days after discovery, observation, or an event requiring an SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II H 3 b (preventative maintenance) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

H. Contents of ~~plan~~ SWPPP. The ~~plan~~ SWPPP shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify the staff individuals by name or title who comprise the facility's stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

2. Summary of potential pollutant sources. The ~~plan~~ SWPPP shall identify where industrial materials or activities at the facility are exposed to stormwater. The description shall include:

a. Site map. The site map shall document:

(1) An outline of the drainage area of each stormwater outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in stormwater run-off, surface water bodies, locations where materials are exposed to precipitation, locations where major spills or leaks identified under Part II H 2 c (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle or equipment degreasing, cleaning areas, ~~loading/unloading areas~~ loading or unloading, locations used for the treatment, storage or disposal of wastes and wastewaters, liquid storage tanks, processing areas, and storage areas. The map must indicate all outfall locations. The types of discharges contained in the drainage areas of the outfalls must be indicated either on the map or in an attached narrative.

(2) For each area of the facility that generates stormwater discharges associated with industrial activity ~~with a potential for containing significant amounts of pollutants~~, locations of stormwater conveyances, including ditches, pipes, swales, and inlets, and the directions of stormwater flow and an identification of the types of pollutants that are likely to be present in stormwater discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with stormwater; and history of significant spills or leaks of toxic or hazardous pollutants. Flows with a potential for causing erosion shall be identified.

b. Inventory of exposed materials. A list of the industrial materials or activities, including ~~but not limited to~~ material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, by-products, final products, and waste products. Material handling activities include ~~but are not limited~~ to the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product.

c. Spills and leaks. A list of significant spills and leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a stormwater conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

d. Sampling data. A summary of existing stormwater sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous three years.

3. Stormwater controls. ~~BMPs~~ Control measures shall be implemented for all areas identified in Part II H 2 b (inventory of exposed materials) to prevent or control pollutants in stormwater discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to stormwater. The BMPs shall also address the following minimum components, including a schedule for implementing such controls:

a. Good housekeeping. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to stormwater discharges ~~in a clean, orderly manner~~. The ~~plan~~ SWPPP shall describe procedures performed to minimize contact of materials with stormwater run-off. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, ~~and loading/unloading~~ loading or unloading areas, and vehicle entrance and exits. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in stormwater. The permittee shall sweep or vacuum paved surfaces of the site that are exposed to stormwater at regular intervals or use other equivalent measures to minimize the potential discharge of these materials in stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other equivalent measures.

b. Preventive maintenance. A preventive maintenance program shall involve regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spills, and other releases. All BMPs identified in the SWPPP shall be maintained in effective operating condition. The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance and observation of all BMPs and shall include a description of the back-up practices that are in place should a run-off event occur while a BMP is

off line or not operating effectively. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained). If site inspections required by Part II H 3 d (routine facility inspections) ~~or Part II H 4 (comprehensive site compliance evaluation)~~ identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the ~~date(s)~~ dates of regular maintenance, ~~date(s)~~ dates of discovery of areas in need of repair or replacement, ~~date(s)~~ dates for repairs, ~~date(s)~~ dates that the ~~BMP(s)~~ BMPs returned to full function, and the justification for an extended maintenance or repair schedules. The maintenance program shall require periodic removal of debris from discharge diversions and conveyance systems. Permittees using settling basins to control their effluents must provide maintenance schedules for such basins in the ~~pollution prevention plan~~ SWPPP.

c. Spill prevention and response procedures. The ~~plan~~ SWPPP shall describe the procedures that will be followed for preventing and responding to spills and leaks, including barriers between material storage and traffic areas, secondary containment provisions, procedures for material storage and handling, response procedures for notification of appropriate facility personnel, emergency agencies, and regulatory agencies and procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team. Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

d. Routine facility inspections.

(1) ~~Facility personnel~~ Personnel who are familiar with the mining activity, the best management practices, and the ~~stormwater pollution prevention plan~~ SWPPP shall be identified to ~~inspect~~ conduct routine facility inspections. Such inspections must include all areas where industrial materials or activities are exposed to stormwater as identified in Part II H 2 b (inventory of exposed materials), including material storage and handling areas, ~~including but not limited to~~ areas where aggregate is stockpiled outdoors, liquid storage tanks, hoppers or silos, material handling vehicles, equipment, and processing areas; off-site tracking of industrial or waste materials or sediment where vehicles enter or exit the site; ~~to inspect~~ vehicle and equipment maintenance areas and cleaning and fueling areas; ~~to inspect~~ best management practices; and ~~to conduct visual examinations of stormwater associated with industrial activity~~ discharge points.

(2) The inspection frequency shall be specified in the ~~plan~~ SWPPP based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of quarterly. Inspections of best management practices shall include inspection of stormwater discharge diversions, conveyance systems, sediment control and collection systems, containment structures, vegetation, serrated slopes, and benched slopes to determine their adequacy and effectiveness, the integrity of control structures, if soil erosion has occurred, or if there is evidence of actual or potential discharge of contaminated stormwater.

(3) ~~Quarterly visual examinations of stormwater discharges associated with industrial activity shall include examination of stormwater samples representative of storm event discharges from the facility and observation of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of stormwater pollution.~~

~~(4)~~ Site inspection~~,~~ and best management practices inspection ~~and visual examination~~ results must be documented and maintained on-site with the SWPPP. ~~Documentation for visual examinations of stormwater shall include the examination date and time, examination personnel, outfall location, the nature of the discharge, visual quality of the stormwater discharge and probable sources of any observed stormwater contamination. Part II A regarding monitoring instructions, Part II B regarding representative discharges, and Part II C regarding sampling waivers shall apply to the taking of samples for visual examination except that (i) the documentation required by these sections shall be retained with the SWPPP visual examination records rather than submitted to the department, and (ii) substitute sampling for waivered sampling is not required if the proper documentation is maintained.~~

~~(5)~~ (4) A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Such actions must include updating pollution sources, updating pollution prevention measures and controls, and updating the SWPPP as appropriate based on information developed during the inspections.

(5) The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.

e. Employee training. Employee training shall be conducted at least annually at active mining and temporarily inactive sites. Employee training programs shall inform personnel responsible for implementing activities identified in the ~~stormwater pollution prevention plan~~ SWPPP or otherwise responsible for stormwater management at all levels of responsibility of the components and goals of the stormwater pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. ~~A pollution prevention plan shall identify periodic dates for such training.~~ All employee training shall be documented in the SWPPP.

f. Recordkeeping and internal reporting procedures. A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of stormwater discharges shall be included in the ~~plan~~ SWPPP required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the ~~plan~~ SWPPP. Ineffective best management practices must be recorded and the date of their corrective action noted in the SWPPP.

g. Sediment and erosion control. The plan shall identify areas that, due to topography, land disturbance (e.g., construction, landscaping, site grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, or stabilization BMPs to prevent or control on-site and off-site erosion and sedimentation.

h. Management of run-off. The ~~plan~~ SWPPP shall describe the stormwater run-off management practices (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in stormwater discharges from the site. Appropriate measures may include: vegetative swales and practices, reuse of collected stormwater (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet ~~detention/retention~~ detention or retention devices.

~~4. Comprehensive site compliance evaluation. Facility personnel who are familiar with the mining activity, the BMPs, and the SWPPP shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less frequently than once a year. Evaluations shall include all areas where industrial materials or activities are exposed to stormwater as identified in Part II H 2 b (inventory exposed materials). Such evaluations shall include the following:~~

~~a. Areas contributing to a stormwater discharge associated with industrial activity, including material storage and handling areas (e.g., areas where aggregate is stockpiled outdoors, liquid storage tanks, hoppers or silos, material handling vehicles, equipment, and processing areas); vehicle and equipment maintenance areas and cleaning and fueling areas; off site tracking of industrial or waste materials or sediment where vehicles enter or exit the site; tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas; and residue or trash shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural stormwater management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made. A review of training performed, routine inspections completed, visual examinations completed, maintenance performed, and effective operation of BMPs, shall be made.~~

~~b. Based on the results of the evaluation, the summary of potential pollutant sources identified in the plan in accordance with Part II H 2 (summary of potential pollutant sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with Part II H 3 (stormwater controls) of this permit shall be revised as appropriate within 14 days of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 90 days after the inspection.~~

~~c. A report summarizing the scope of the inspection, personnel making the inspection, the dates of the inspection, observations relating to the implementation of the SWPPP, including the elements stipulated in Part II H 4 a, and actions taken in accordance with Part II H 4 b of this permit shall be made and retained as required in Part III B (records). The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K (signatory requirements) of this permit and retained as required in Part III B.~~

~~d. Where compliance evaluation schedules overlap with inspections required under Part II H 3 d (inspections), the~~

~~compliance evaluation may be conducted in place of one such inspection.~~

I. Authorized nonstormwater discharges. The following nonstormwater discharges are authorized by this permit:

1. Discharges from emergency firefighting activities;

2. Fire hydrant flushing, managed in a manner to avoid an instream impact;

3. Potable water, including water line flushing, managed in a manner to avoid instream impact;

4. Uncontaminated condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

5. Irrigation drainage;

6. Landscape watering, provided all pesticides, herbicides, and fertilizers have been applied in accordance with approved labeling;

7. Routine external building washdown that does not use detergents or hazardous cleaning products;

8. Pavement wash waters where no detergents or hazardous cleaning products are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed). Pavement wash waters shall be managed to prevent the discharge of pollutants;

9. Uncontaminated groundwater or spring water;

10. Foundation or footing drains where flows are not contaminated with process materials; and

11. Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

Part III
Conditions Applicable to All VPDES Permits

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

B. Records.

1. Records of monitoring information shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

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

2. Monitoring results shall be reported on a discharge monitoring report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.

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

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

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

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

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

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

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

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

I. Reports of noncompliance.

1. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.

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

~~a.~~ (1) Any unanticipated bypass; and

~~b.~~ (2) Any upset that causes a discharge to surface waters.

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

~~a.~~ (1) A description of the noncompliance and its cause;

~~b.~~ (2) The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

~~c.~~ (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

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

NOTE: The immediate (within 24 hours) reports required in ~~Parts~~ Part III G, H and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24-hour telephone service at 1-800-468-8892.

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of the federal Clean Water Act that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of the federal Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit ~~application~~ registration process or not reported pursuant to an approved land application plan.

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

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purposes of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit ~~application~~ registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly

authorized representative may thus be either a named individual or any individual occupying a named position; and

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

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

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is grounds for enforcement action~~;~~, for permit coverage termination, ~~revocation and reissuance, or modification;~~ or for denial of permit coverage.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with currently effective permit coverage shall submit a new registration statement at least ~~210~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.

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

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

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

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

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

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I (reports of noncompliance).

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the permittee can identify the ~~cause(s)~~ cause of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance or as otherwise authorized by the federal Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. ~~Permits~~ Permit coverage may be ~~modified, revoked and reissued, or~~ terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage.

~~Permits are~~ 1. Permit coverage is not transferable to any person except after notice to the department.

2. Coverage under this permit may be automatically transferred to a new permittee if:

~~1.~~ a. The current permittee notifies the department at least 30 days in advance of the proposed transfer of the title to the facility or property unless permission for a later date has been granted by the department;

~~2.~~ b. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

~~3.~~ c. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

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

VA.R. Doc. No. R18-5446; Filed October 9, 2018, 2:45 p.m.

Final Regulation

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

Title of Regulation: **9VAC25-193. General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Concrete Products Facilities (amending 9VAC25-193-10, 9VAC25-193-15, 9VAC25-193-20, 9VAC25-193-40 through 9VAC25-193-70).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 402 of the Clean Water Act; 40 CFR Parts 122, 123, and 124.

Effective Date: January 1, 2019.

Agency Contact: Elleanore M. Daub, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4032, or email elleanore.daub@deq.virginia.gov.

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

Summary:

The action amends and reissues the existing Virginia Pollutant Discharge Elimination System general permit that expires on September 30, 2018. The general permit contains limitations and monitoring requirements for point source discharge of treated wastewaters from concrete products facilities to surface waters. The permit also contains stormwater management requirements. The general permit regulation is being reissued to continue making discharge available for these facilities.

Substantive changes to the existing regulation include:

• Moving the effective and expiration dates ahead because permit coverage will be administratively continued past the current expiration date;

• Requiring municipal separate storm sewer owner notification with the registration statement;

• Requiring a State Corporation Commission identification number to attain the proper legal owner name of the company for permitting and enforcement purposes;

• Removing the limits and requirements for noncontact cooling water as this industry does not use these systems;

• Clarifying that any waste concrete and any dredged solids from the settling basins are two different types of waste, and any associated wastewater or stormwater must be collected for recycle or treated prior to discharge;

• Clarifying that the operation and maintenance manual requirements for wastewater treatment process units do not apply to facilities that do not operate such units;

• Removing the one-foot freeboard log reporting requirement for the settling basins;

• Requiring reports of an unusual or extraordinary discharge for facilities designed to operate as "no discharge" when or if they discharge during 25-year, 24-hour storm events and reporting of unauthorized discharge if a discharge occurs outside of a 25-year, 24-hour storm event. This provides some type of notification for discharge since discharge monitoring reports are not required for these systems;

• Adding that dust suppression spraying shall not occur during measureable rain events as it is unnecessary and more likely to result in a discharge from the site;

• Adding a requirement to conduct an annual routine facility inspection at inactive sites in accordance with the U.S. Environmental Protection Agency (EPA) Multisector General Permit (MSGP);

• Removing sampling waivers for benchmark monitoring as it was generally agreed upon in the technical advisory committee that one annual stormwater sample can easily be collected during a calendar year with proper planning. The sampling waivers for quarterly visual examinations were moved. Deleting this waiver also removes the requirement for a substitute sample the following period;

• Clarifying that when visual assessments indicate stormwater pollution, stormwater controls must be updated;

• Removing the requirement to collect and treat pavement wash water because it is an allowable nonstormwater discharge. However, a requirement was added to the allowable nonstormwater discharges that pavement wash waters shall be managed to prevent the discharge of pollutants and to control solids discharges and deposition off site;

• Adding documentation of routine facility inspections;

• Removing the requirement for a signed certification for routine facility inspections;

• Adding a waiver for routine facility inspections for facilities that maintain an active Virginia Environmental Excellence Program E3/E4 status to be consistent with the VPDES Industrial Stormwater General Permit;

• Removing comprehensive annual inspections to correspond with the EPA MSGP;

• Where appropriate, changing language to match the EPA MSGP for Stormwater Discharges Associated with Industrial Activity; and

• Throughout the regulation, where appropriate, making due dates for various requirements 60 days (registration, outfall changes, and stormwater plan updates and corrections) for consistency.

CHAPTER 193
~~GENERAL~~ VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM (VPDES) GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES

9VAC25-193-10. Definitions.

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

"Best management practices" or "BMPs" means schedules of activities, practices and prohibitions of practices, structures, vegetation, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to surface waters. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

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

"Industrial activity" means facilities or those portions of a facility where the primary purpose is classified as:

1. North American Industry Classification System (NAICS) Code 327331 - Concrete Block and Brick Manufacturing, (Executive Office of the President, Office of Management and Budget, United States, 2017) and Standard Industrial Classification (SIC) Code 3271 - Concrete Block and Brick (Office of Management and Budget (OMB) SIC Manual, 1987);

2. NAICS Code 327332 Concrete Pipe Manufacturing, NAICS Code 327390 Other Concrete Product Manufacturing, NAICS Code 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing (dry mix concrete manufacturing only) and SIC Code 3272 - Concrete Products, Except Block and Brick; or

3. NAICS Code 327320 Ready-Mix Concrete Manufacturing and SIC Code 3273 - Ready-Mixed Concrete, including both permanent and portable plants.

These facilities are collectively defined as "Concrete Products Facilities."

~~"Municipal separate storm sewer system" or "MS4" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man made channels, or storm drains): (i) owned or operated by a state, city, town, county, district, association, or other public body (created by or pursuant to state law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under state law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under § 208 of the Clean Water Act (CWA) (33 USC § 1251 et seq.) that discharges to surface waters of the state; (ii) designed or used for collecting or conveying storm water; (iii) which is not a combined sewer; and (iv) which is not part of a Publicly Owned Treatment Works (POTW).~~

"Minimize" means reduce or eliminate to the extent achievable using control measures, including best management practices, that are technologically available and economically practicable and achievable in light of best industry practice.

"No discharge system" means process, commingled, or stormwater systems designed to operate so that there is no discharge of wastewater or pollutants, except in storm events greater than a 25-year, 24-hour storm event.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Significant spills" includes~~, but is not limited to,~~ releases of oil or hazardous substances in excess of reportable quantities under § 311 of the Clean Water Act (see 40 CFR 110.10 and 40 CFR 117.21) or § 102 of the Comprehensive

Environmental Response, Compensation and Liability Act (CERCLA) (42 USC § 9601 et seq.) (see 40 CFR 302.4).

"Total maximum daily load" or "TMDL" means a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards and an allocation of that amount to the pollutant's sources. A TMDL includes wasteload allocations (WLAs) for point source discharges and load allocations (LAs) for nonpoint sources or natural background, or both, and must include a margin of safety (MOS) and account for seasonal variations.

"25-year, 24-hour storm event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years as established by the National Weather Service or appropriate regional or state rainfall probability information.

"Vehicle or equipment degreasing" means the washing or steam cleaning of engines or other drive components of a vehicle or piece of equipment in which the purpose is to degrease and clean petroleum products from the equipment for maintenance purposes. Removing sediment and concrete residue is not considered vehicle or equipment degreasing.

["Virginia Environmental Excellence Program" or "VEEP" means a voluntary program established by the department to provide public recognition and regulatory incentives to encourage higher levels of environmental performance for program participants that develop and implement environmental management systems (EMSs). The program is based on the use of EMSs that improve compliance, prevent pollution, and utilize other measures to improve environmental performance.]

9VAC25-193-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in Title 40 of the Code of Federal Regulations is referenced or adopted ~~herein~~ in this chapter and incorporated by reference, that regulation shall be as it exists and has been published as of July 1, ~~2012~~ [~~2017~~ 2018].

9VAC25-193-20. Purpose.

This general permit regulation governs the discharge of process ~~waste water, noncontact cooling water,~~ wastewater and ~~storm water~~ stormwater associated with industrial activity from concrete products facilities classified as NAICS Codes 327331, 327332, 327390, 327320, 327999 (dry mix concrete manufacturing only) and Standard Industrial Classification Codes 3271, 3272 and 3273, provided that the discharge is through a point source to surface waters.

9VAC25-193-40. Effective date of the permit.

This general VPDES permit will become effective on [~~October 1,~~] ~~2013~~ [~~2018~~ January 1, 2019], and it will expire on [~~September 30,~~] ~~2018~~ [December 31,] 2023. This general permit is effective for any covered owner upon compliance with all the provisions of 9VAC25-193-50.

9VAC25-193-50. Authorization to discharge.

A. Any owner governed by this general permit is hereby authorized to discharge process water, ~~storm water~~ stormwater associated with this industrial activity [~~, cooling water,~~] or commingled discharges of these types to surface waters of the Commonwealth of Virginia provided that:

1. The owner submits a registration statement in accordance with 9VAC25-193-60 and that registration statement is accepted by the board;

2. The owner submits the required permit fee;

3. The owner complies with the applicable effluent limitations and other requirements of 9VAC25-193-70; and

4. The board has not notified the owner that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an owner that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The owner is required to obtain an individual permit in accordance with 9VAC25-31-170 B 3 of the VPDES Permit Regulation;

2. The owner is proposing to discharge to state waters specifically named in other board regulations that prohibit such discharges;

3. The discharge ~~violates or~~ would violate the antidegradation policy in the Water Quality Standards at 9VAC25-260-30; or

4. The discharge is not consistent with the assumptions and requirements of an approved TMDL.

C. Compliance with this general permit constitutes compliance, for purposes of enforcement, with §§ 301, 302, 306, 307, 318, 403, and 405(a) through 405(b) of the federal Clean Water Act (33 USC § 1251 et seq.) and the State Water Control Law, with the exceptions stated in 9VAC25-31-60 of the VPDES Permit Regulation. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

D. Continuation of permit coverage.

1. ~~Any owner that was authorized to discharge under the concrete products general permit issued in 2008 and that submits a complete registration statement on or before October 1, 2013, is authorized to continue to discharge under the terms of the 2008 general permit until such time as the board either~~ Permit coverage shall expire at the end

of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete registration statement at least 60 days prior to the expiration date of the permit, or a later submittal established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge until such time as the board either:

a. Issues coverage to the owner under this general permit; or

b. Notifies the owner that the discharge is not eligible for coverage under this general permit.

2. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the reissued general permit. If the general permit coverage is denied, the owner would then be required to cease the discharges authorized by the continued [~~coverage under the terms of the~~] general permit [coverage] or be subject to enforcement action for discharging without a permit;

c. Issue an individual permit with appropriate conditions; or

d. Take other actions authorized by the VPDES Permit Regulation (9VAC25-31).

9VAC25-193-60. Registration statement.

A. Deadlines for submitting registration statement. ~~The~~ Any owner seeking coverage under this general permit shall submit a complete VPDES general permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for concrete products facilities.

1. New facilities. Any owner proposing a new discharge shall submit a complete registration statement at least ~~30~~ 60 days prior to the date planned for commencement of the ~~new~~ discharge or a later submittal established by the board.

2. Existing facilities.

a. Any owner covered by an individual VPDES permit ~~who~~ that is proposing to be covered by this general permit shall submit a complete registration statement at least ~~210~~ 240 days prior to the expiration date of the individual VPDES permit.

b. Any owner that was authorized to discharge under the expiring [~~or expired~~] general VPDES permit ~~that became effective on October 1, 2008,~~ and who intends to continue coverage under this general permit shall submit a complete registration statement to the board ~~on or before July 1, 2013~~ at least 60 days prior to the expiration date of the existing permit or a later submittal established by the board.

B. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 b of this section will be accepted after ~~October 1, 2013~~ the expiration date of this permit, but authorization to discharge will not be retroactive. ~~Owners described in subdivision A 2 b of this section that submit registration statements after July 1, 2013, are authorized to discharge under the provisions of 9VAC25-193-50 D if a complete registration statement is submitted on or before October 1, 2013.~~

C. The required registration statement shall contain the following information:

1. Facility name and address, owner name, mailing address, telephone number, and email address (if available);

2. Operator or other contact name, mailing address, telephone number, and email address (if available) if different from owner;

3. Facility's Standard Industrial Classification (SIC) ~~Code(s)~~ Codes;

4. Nature of business at facility;

[5. Indicate if the facility is proposed or existing; if the facility has a current VPDES] ~~and/or~~ [or VPA Permit; and Permit] ~~Number(s)~~ [Numbers for any current VPDES] ~~and/or~~ [or VPA Permits;

6. ~~5.~~] Description of the wastewater treatment or ~~reuse/recycle system(s);~~ reuse or recycle systems;

~~indicate~~

[~~6.~~ 7.] Indicate if there are any ~~system(s) which~~ [~~process wastewater systems, which may be commingled with stormwater, or stormwater designed to~~ process wastewater, commingled process wastewater, and stormwater or stormwater treatment units designed to] operate ~~in a~~ as "no discharge" ~~mode~~;

[~~7.~~ 8.] If settling basins are used for treatment and control of [~~process wastewater~~] ~~and commingled storm water~~ [~~, which may be commingled with stormwater systems,~~ process wastewater or commingled process wastewater and stormwater,] indicate the original date of construction, and ~~whether these basins are lined with concrete or any other impermeable materials~~ describe the materials lining the process or commingled settling basins;

[~~8.~~ 9.] Indicate if there are vehicle or equipment degreasing activities performed on site. If yes, indicate if there is any process wastewater generated from these activities;

~~9. Indicate if a noncontact cooling water system is in use and if this facility discharges noncontact cooling water from a geothermal unit or other system. If yes, provide the following:~~

~~a. Describe the source of noncontact cooling water; and~~

~~b. If applicable, list chemical additives employed and their purpose, proposed schedule and quantity of chemical usage, estimated concentration in the discharge, description of any wastewater treatment or retention during the use of the additives, and a (Material) Safety Data Sheet (SDS) and available aquatic toxicity information for each additive proposed for use;~~

[10. ~~9.~~] Description of any measures employed to reclaim, reuse, or [~~disposal~~ dispose] of the residual concrete materials;

[11. ~~10.~~] A schematic drawing ~~which~~ that shows the ~~source(s)~~ sources of water used on the property, the industrial operations contributing to or using water, the conceptual design of the methods of treatment and disposal of wastewater and solids, and the ~~storm water~~ stormwater pollution prevention plan site map (see 9VAC25-193-70 Part II ~~G~~ F 6 c);

[12. ~~11.~~] A USGS 7.5 minute topographic map or equivalent computer generated map, extending to at least one mile beyond property boundary, which shows the property boundary, the location of each of its existing and proposed intake and discharge points, and the locations of any wells, springs, and other surface water bodies;

[13. ~~12.~~] Discharge outfall information, including outfall ~~number(s)~~ numbers, description of wastewater discharged from each outfall, estimated flow (gallons per day), receiving water bodies, duration and frequency of each discharge (hours per day and days per week), and latitude and longitude of outfall location;

[14. ~~13.~~] Indicate which ~~storm water~~ stormwater outfalls will be representative outfalls (if any). For ~~storm water~~ stormwater outfalls that are to be represented by other outfall discharges, provide the following:

a. The locations of the outfalls;

b. Why the outfalls are expected to discharge substantially identical effluents including, where available, evaluation of monitoring data;

c. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

d. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%);

[15. ~~14.~~] Indicate if a ~~Storm Water~~ Stormwater Pollution Prevention Plan has been prepared;

[16. ~~15.~~] Whether the facility will discharge to a municipal separate storm sewer system (MS4). If ~~so, provide the name of the~~ MS4 owner. The "yes," the facility owner ~~of the facility~~ shall notify the MS4 owner ~~in writing~~ of the existence of the discharge ~~within 30 days of coverage under the general permit and shall copy the DEQ regional office with the notification~~ at the time of registration under this permit and include that notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and ~~phone number~~ contact information, the location of the discharge, the nature of the discharge, and the facility's VPDES general permit number [(if assigned by DEQ)];

[17. ~~16.~~] For portable concrete products operations, submit a closure plan and include the requirements specified by the operation and maintenance manual in ~~9VAC25-193 Part I B 9 a (4)~~ 9VAC25-193-70 Part I B 8 a (4) of the permit;

[~~17.~~ 18.] For applicants other than a sole proprietor, the State Corporation Commission entity identification number; and

[~~18.~~ 19.] The following certification: "I hereby grant to duly authorized agents of the Department of Environmental Quality, upon presentation of credentials, permission to enter the property where the treatment works is located for the purpose of determining compliance with or the suitability of coverage under the General Permit. I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

D. The registration statement shall be signed in accordance with the requirements of 9VAC25-31-110 of the VPDES Permit Regulation.

E. Where to submit. The registration statement shall be delivered by either postal or electronic mail to the DEQ regional office serving the area where the facility is located.

9VAC25-193-70. General permit.

Any owner whose registration statement is accepted by the board will receive coverage under the following general permit and shall comply with the requirements ~~contained therein~~ in the general permit and be subject to all

requirements of ~~9VAC25-31~~ 9VAC25-31-170 of the VPDES Permit Regulation.

General Permit No: VAG11
Effective Date: [~~October 1,~~] ~~2013~~ [~~2018~~ January 1, 2019]

Expiration Date: [~~September 30,~~] ~~2018~~ [December 31,] 2023

GENERAL PERMIT FOR CONCRETE PRODUCTS FACILITIES AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the State Water Control Law and regulations adopted pursuant thereto, owners of concrete products facilities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in board regulations ~~which~~ that prohibit such discharges.

The authorized discharge shall be in accordance with the information submitted with the registration statement, this cover page, Part I-Effluent Limitations, Monitoring Requirements, and Special Conditions, ~~Part II Storm Water~~ Part II-Stormwater Management, and Part III-Conditions Applicable to All VPDES Permits, as set forth ~~herein~~ in this permit.

Part I
Effluent Limitations, Monitoring Requirements, and Special Conditions.

A. Effluent limitations and monitoring requirements.

1. Process wastewater.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge process wastewater ~~which~~ that may contain input from vehicle wash water, or vehicle or equipment degreasing activities, and may be commingled with ~~noncontact cooling water, storm water~~ stormwater associated with industrial activity, or both. Samples taken in compliance with the monitoring requirements specified below shall be taken at ~~outfall(s)~~ outfalls [~~.~~:]

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS			MONITORING REQUIREMENTS	
	Average	Maximum	Minimum	Frequency[(6)] [(3)]	Sample Type
Flow (MGD)	NL	NL	NA	1/3 Months	Estimate
Total Suspended Solids (mg/l)	30	60	NA	1/3 Months	Grab
pH (standard units)	NA	9.0[(1)]	6.0[(1)]	1/3 Months	Grab
Total Petroleum Hydrocarbons[(2)] (mg/l)	NA	15	NA	1/3 Months	Grab
~~Total Residual Chlorine[(3)] (mg/l)~~	~~0.016~~	~~0.016~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Ammonia N[(3)] (mg/l)~~	~~NA~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Temperature[(4)] (°C)~~	~~NA~~	~~[(5)]~~	~~NA~~	~~1/3 Months~~	~~Immersion Stabilization~~

NL = No limitation, monitoring required
NA = Not applicable
[(1)]Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.
[(2)]Total Petroleum Hydrocarbons limitation and monitoring are only required where a discharge contains process wastewater generated from the vehicle or equipment degreasing activities. Total Petroleum Hydrocarbons shall be analyzed using EPA SW-846 Method 8015 B (1996), 8015C (2000), 8015C (2007), 8015 D (2003) for diesel range organics or EPA 40 CFR Part 136.
~~[(3)]Chlorine limitation and monitoring are only required where the discharge contains cooling water that is chlorinated. Ammonia monitoring is only required where the discharge contains cooling water that is disinfected using chloramines.~~
~~[(4)]Temperature limitation and monitoring are only required where a discharge contains cooling water.~~
~~[(5)]The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters.~~

~~For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C.~~
~~Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.~~
~~(6)~~ ~~(3)~~1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.

~~2. Noncontact cooling water.~~

~~During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge noncontact cooling water. Samples taken in compliance with the monitoring requirements specified below shall be taken at outfall(s).~~

~~Such discharges shall be limited and monitored by the permittee as specified below:~~

~~EFFLUENT CHARACTERISTICS~~	~~DISCHARGE LIMITATIONS~~			~~MONITORING REQUIREMENTS~~	
	~~Average~~	~~Maximum~~	~~Minimum~~	~~Frequency~~[4]	~~Sample Type~~
~~Flow (MGD)~~	~~NL~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Estimate~~
~~pH (standard units)~~	~~NA~~	~~9.0~~[1]	~~6.0~~[1]	~~1/3 Months~~	~~Grab~~
~~Total Residual Chlorine~~[2] ~~(mg/l)~~	~~0.016~~	~~0.016~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Ammonia N~~[2] ~~(mg/l)~~	~~NA~~	~~NL~~	~~NA~~	~~1/3 Months~~	~~Grab~~
~~Temperature (°C)~~	~~NA~~	[3]	~~NA~~	~~1/3 Months~~	~~Immersion Stabilization~~

~~NL = No limitation, monitoring required~~
~~NA = Not applicable~~
~~(1)Where the Water Quality Standards (9VAC25-260) establish alternate standards for pH in the waters receiving the discharge, those standards shall be the maximum and minimum effluent limitations.~~
~~(2)Chlorine limitation and monitoring are only required where the source of cooling water is chlorinated. Ammonia monitoring is only required where cooling water is disinfected using chloramines.~~
~~(3)The effluent temperature shall not exceed a maximum 32°C for discharges to nontidal coastal and piedmont waters, 31°C for mountain and upper piedmont waters, 21°C for put and take trout waters, or 20°C for natural trout waters. No maximum temperature limit applies to discharges to estuarine waters. For estuarine waters, nontidal coastal and piedmont waters, mountain and upper piedmont waters, and put and take trout waters, the effluent shall not cause an increase in temperature of the receiving stream of more than 3°C above the natural water temperature. For natural trout waters, the temperature of the effluent shall not cause an increase of 1°C above natural water temperature. The effluent shall not cause the temperature in the receiving stream to change more than 2°C per hour, except in the case of natural trout waters where the hourly temperature change shall not exceed 0.5°C. Natural temperature is defined as that temperature of a body of water (measured as the arithmetic average over one hour) due solely to natural conditions without the influence of any point source discharge.~~
~~(4)1/3 months means one sample collected per calendar quarter with reports due to the DEQ regional office no later than the 10th day of April, July, October, and January.~~

~~3. Storm water~~ 2. Stormwater associated with ~~industrial activity – storm event benchmark monitoring~~ industrial activity from concrete products facilities.

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge ~~storm water~~ stormwater associated with industrial activity ~~which~~ that does not combine with other process wastewaters ~~or noncontact cooling water~~ prior to discharge. Samples taken in compliance with the monitoring requirements specified below shall be taken at ~~outfall(s)~~ outfalls[~~:~~]

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	DISCHARGE LIMITATIONS BENCHMARK MONITORING		MONITORING REQUIREMENTS[3], [5]	
	Maximum	Minimum	Frequency[4]	Sample Type
Flow (MG)	NL	NA	1/Year	Estimate[1]
Total Suspended Solids (mg/l)	NL[2]	NA	1/Year	Grab[2]
pH (standard units)	NL[2]	NL[2]	1/Year	Grab[2]

NL = No limitation, monitoring required
NA = Not applicable
[1]Estimate of the total volume of the discharge during the storm event in accordance with the ~~Operation~~ operation and ~~Maintenance Manual~~ maintenance manual.
[2]~~Should~~ If the benchmark monitoring for TSS ~~exceed~~ exceeds 100 mg/l maximum or the pH ~~fall~~ falls outside of the range of 6.0-9.0 standard units, the permittee shall evaluate the overall effectiveness of the ~~SWPPP~~ stormwater pollution prevention plan (SWPPP) in controlling the discharge of pollutants to receiving waters. Benchmark concentration values are not effluent limitations. Exceedance of a benchmark concentration does not constitute a violation of this permit and does not indicate that violation of a water quality standard has occurred; however, it does signal that modifications to the SWPPP are necessary, unless justification is provided in the routine facility inspection [~~or comprehensive site compliance evaluation~~].
[3]Specific storm event data shall be reported with the Discharge Monitoring Report (DMR) in accordance with Part II A.
[4]1/year means one sample taken per calendar year with the annual DMR due to the DEQ regional office no later than the 10th day of January of each year.
[5]Quarterly visual monitoring shall be performed and recorded in accordance with Part II ~~D~~ C.

B. Special conditions.

1. There shall be no discharge of floating solids or visible foam in other than trace amounts. There shall be no solids deposition or oil sheen from petroleum products in surface water as a result of the industrial activity in the vicinity of the outfall.

2. Except as expressly authorized by this permit, no product, materials, industrial wastes, or other wastes resulting from the purchase, sale, mining, extraction, transport, preparation, or storage of raw or intermediate materials, final product, byproduct or wastes~~,~~ shall be handled, disposed of, or stored so as to permit a discharge of such product, materials, industrial wastes, or other wastes to surface waters.

3. Vehicles and equipment utilized during the industrial activity on a site must be operated and maintained in such a manner as to minimize the potential or actual point source pollution of surface waters. Fuels, lubricants, coolants, and hydraulic fluids, or any other petroleum products, shall not be disposed of by discharging on the ground or into surface waters. Spent fluids shall be disposed of in a manner so as not to enter the surface or ground waters of the state and in accordance with the applicable state and federal disposal regulations. Any spilled fluids shall be cleaned up and disposed of in a manner so as not to allow their entry into the surface or ground waters of the state.

4. All washdown and washout of trucks, mixers, transport buckets, forms or other equipment shall be conducted within designated washdown and washout areas. All washdown and washout water shall be collected for recycle or collected and treated to meet the limits in Part I A prior to discharge to the receiving stream.

5. Any waste concrete and any dredged solids from the settling basins shall be managed within a designated area, and any wastewaters including ~~storm water~~ stormwater generated from these activities shall be collected for recycle or treated prior to discharge.

6. Wastewater should be reused or recycled whenever feasible.

7. No sewage discharges to surface waters are permitted under this general permit.

~~8. For geothermal or other system which discharges noncontact cooling water, the use of any chemical additives, except chlorine, without prior approval is prohibited under this general permit. Prior approval shall be obtained from the DEQ Regional Office before any changes are made to the chemical usage in the geothermal or other system. Requests for approval of chemical use shall be made in writing and shall include the following information:~~

~~a. The chemical additive to be employed and its purpose;~~

~~b. The proposed schedule and quantity of chemical usage, and the estimated concentration in the discharge;~~

~~c. The wastewater treatment or retention (if any) to be provided during the use of the additive; and~~

~~d. A (Material) Safety Data Sheet (SDS) and any of the manufacturer's aquatic toxicity information for each additive proposed for use.~~

~~9. Operations~~ 8. Operation and ~~Maintenance~~ maintenance (O&M) ~~Manual~~ manual.

a. Within 180 days after the date of coverage under this general permit, the permittee shall develop or review and update, as appropriate, an ~~Operations and Maintenance~~ [~~operation and maintenance (O&M)~~ O&M] ~~Manual~~ manual for the permitted facility. The O&M ~~Manual~~ manual shall include procedures and practices for the mitigation of pollutant discharges for the protection of state waters from the facility's operations and to ensure compliance with the requirements of the permit. The manual shall address, at a minimum:

(1) ~~Operations~~ [~~Operation and maintenance~~ O&M] practices for the [process] wastewater treatment [~~process~~] units [, if applicable,] and chemical and material storage areas;

(2) Methods for estimating process wastewater flows [, if applicable];

(3) [~~Solids management~~ Management] and disposal procedures [of process wastewater solids, if applicable];

(4) Temporary and long-term facility closure plans that shall include (i) treatment, removal, and final disposition of residual wastewater, [if applicable,] contaminated ~~storm water~~ stormwater held at the facility, and solids; (ii) fate of structures; (iii) a removal plan for all exposed industrial materials; and (iv) description of the stabilization of land in which they were stored or placed;

(5) Testing requirements and procedures;

(6) Recordkeeping and reporting requirements; and

(7) Duties and roles of responsible officials.

b. The permittee shall operate the treatment works in accordance with the O&M manual. The O&M manual shall be reviewed and updated at least annually and shall be signed and certified in accordance with Part III K of this permit. The O&M manual shall be made available for review by department personnel upon request.

[c. For facilities that do not operate process wastewater treatment units, O&M requirements included in Part I 8 a (4) through 8 a (7) shall be included in either the O&M manual or the SWPPP.]

~~10.~~ 9. If the concrete products facility discharges through a municipal separate storm sewer system to surface waters, the permittee shall~~, within 30 days of coverage under this general permit,~~ notify the owner of the municipal separate storm sewer system of the existence of the discharge ~~and provide~~ and include that notification with the registration statement. The notification shall include the following information: the name of the facility, a contact person and ~~phone number~~ contact information, the ~~nature~~ location of the discharge, the ~~location~~ nature of the discharge, and the facility's VPDES general permit number. ~~A copy of such notification shall be provided to the department.~~

~~11.~~ 10. The permittee shall ensure that all [process wastewater] basins and lagoons maintain a minimum freeboard of one foot at all times except during a 72-hour transition period after a measurable rainfall event. During the 72-hour transition period, no discharge from the basins and lagoons shall occur unless it is in accordance with this permit. Within 72 hours after a measurable rainfall event, the freeboard in all basins and lagoons shall be returned to the minimum freeboard of one foot. Where basins are operated in a series mode of operation, the one-foot freeboard requirement for the upper basins may be waived provided the final basin will maintain the freeboard requirements of this special condition. [A description of how the permittee will manage the facility to adhere to one foot of freeboard shall be included in the O&M manual required in Part I B 8 a (1).] Should the one-foot freeboard not be [~~maintained~~ restored by the end of the 72-hour transition period], the permittee shall ~~immediately notify the DEQ Regional Office, describe the problem and corrective measures taken~~ take measures to correct the problem before the next rain event. [In addition, the permittee shall immediately begin to monitor and document the freeboard on a daily basis until the freeboard is returned to the minimum of one foot.] ~~Within five days of notification, the permittee shall submit a written statement to the DEQ Regional Office with an explanation of the problem and corrective measures taken.~~ [~~In order to demonstrate compliance with this special condition, the permittee shall conduct daily inspections~~] ~~while~~ [~~when the facility is in operation during normal operating hours and maintain an inspection log. The inspection log shall include at least the date and time of inspection, the weather data including the occurrence of a measurable rainfall event,~~] ~~the printed name and the handwritten signature [the initials of the inspector,] the [if one foot minimum freeboard] measurement in inches, a notation of observation made, [was maintained, and any corrective measures] , if appropriate, [taken. The log shall be kept onsite and be made available to the department upon request.]~~

~~12. For~~ 11. [~~Process wastewater, which may be commingled with stormwater, treatment systems~~] ~~which [or stormwater systems designed to~~ Process wastewater, commingled process wastewater, and stormwater or stormwater treatment units designed to] operate ~~only in a~~ as "no discharge" ~~mode, there~~ shall ~~be~~ have no discharge of wastewater or pollutants ~~to surface waters from these systems~~ except in ~~the case of a storm event which is~~

~~greater than a 25 year 24 hour~~ storm events greater than a 25-year, 24-hour storm event. In the event of such a discharge, the permittee shall report an unusual or extraordinary discharge per Part III H of this permit. No sampling or DMR is required for these discharges as they are considered to be discharging in emergency discharge conditions. All other conditions in Part I B, Part II, and Part III apply. Any other discharge from this type of system is prohibited and shall be reported as an unauthorized discharge per Part III G of this permit. The operation of these systems shall not contravene the Water Quality Standards (9VAC25-260), as adopted and amended by the board, or any provision of the State Water Control Law.

~~13.~~ 12. The permittee shall notify the department as soon as he knows or has reason to believe:

a. That any activity has occurred or will occur ~~which~~ that would result in the discharge, on a routine or frequent basis, of any toxic pollutant ~~which~~ that is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

(2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(3) Five times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

b. That any activity has occurred or will occur which would result in any discharge, on a nonroutine or infrequent basis, of a toxic pollutant which is not limited in this permit if that discharge will exceed the highest of the following notification levels:

(1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;

(2) One milligram per liter (1 mg/l) for antimony;

(3) Ten times the maximum concentration value reported for that pollutant in the permit application; or

(4) The level established by the board in accordance with 9VAC25-31-220 F.

~~14.~~ 13. All settling basins used for treatment and control of process wastewater or process wastewater commingled with ~~storm water~~ stormwater that were constructed on or after February 2, 1998, shall be lined with concrete or any other impermeable materials. Regardless of date of construction, all settling basins used for treatment and control of process wastewater or process wastewater commingled with ~~storm water~~ stormwater that are expanded or dewatered for major structural repairs shall be lined with concrete or any other impermeable materials.

~~15.~~ 14. Settled wastewater may be used on site for the purposes of dust suppression or for spraying stockpiles. ~~These activities shall be carried out as a best management practice but not a wastewater disposal method. There shall be no direct discharge to surface waters from dust suppression or as a result of spraying stockpiles.~~ Dust suppression shall be carried out as a best management practice but not as a wastewater disposal method provided that ponding or direct run-off from the site does not occur during or immediately following its application. Dust suppression shall not occur during a "measurable" rain event (a storm event that results in an actual discharge from the site).

~~16.~~ 15. Compliance reporting under Part I A.

a. The quantification levels (QL) shall be ~~as follows~~ less than or equal to the following concentrations:

Effluent Characteristic	Quantification Level
TSS	1.0 mg/l
TPH	5.0 mg/l
~~Chlorine~~	~~0.10 mg/l~~
~~Ammonia-N~~	~~0.20 mg/l~~

The QL is defined as the lowest concentration used to calibrate a measurement system in accordance with the procedures published for the test method.

b. Reporting.

(1) Monthly ~~Average~~ average. Compliance with the monthly average limitations ~~and/or~~ or reporting requirements for the parameters listed in Part I A shall be determined as follows: All concentration data below the QL listed in subdivision ~~16~~ 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL listed shall be treated as it is reported. An arithmetic average shall be calculated using all reported data, including the defined zeros, for the month. This arithmetic average shall be reported on the DMR as calculated. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(2) Daily ~~Maximum~~ maximum. Compliance with the daily maximum limitations ~~and/or~~ or reporting requirements for the parameters listed in Part I A shall be

determined as follows: All concentration data below the QL listed in subdivision ~~16~~ 15 a of this subsection shall be treated as zero. All concentration data equal to or above the QL shall be treated as reported. An arithmetic average of the values shall be calculated using all reported data, including the defined zeros, collected for each day during the reporting month. The maximum value of these daily averages thus determined shall be reported on the DMR as the ~~Daily Maximum~~ daily maximum. If all data are below the QL then the average shall be reported as "<QL." If reporting for quantity is required on the DMR and the calculated concentration is <QL then report "<QL" for the quantity, otherwise use the calculated concentration.

(3) Any single datum required shall be reported as "<QL" if it less than the QL listed in subdivision ~~16~~ 15 a of this subsection. Otherwise the numerical value shall be reported. The QL must be less than or equal to the QL in subdivision 15 a of this subsection.

(4) The permittee shall report at least two significant digits for a given parameter. Regardless of the rounding convention used (i.e., five always rounding up or to the nearest even number) by the permittee, the permittee shall use the convention consistently and shall ensure that consulting laboratories employed by the permittee use the same convention.

~~17.~~ 16. Discharges to waters with an approved total maximum daily load (TMDL). Owners of facilities that are a source of the specified pollutant of concern to waters where an approved TMDL has been established shall implement measures and controls that are consistent with the assumptions and requirements of the TMDL.

~~18.~~ 17. Adding or deleting outfalls. The permittee may add new or delete existing outfalls at the facility as necessary and appropriate. The permittee shall update the O&M manual and ~~storm water pollution prevention plan (SWPPP)~~ SWPPP and notify the department of all outfall changes within ~~30~~ 60 days of the change. ~~New outfalls require a new or~~ The permittee shall submit an updated registration statement including an updated SWPPP site map.

~~19.~~ 18. Notice of termination.

a. The owner may terminate coverage under this general permit by filing a complete notice of termination with the department. The notice of termination may be filed after one or more of the following conditions have been met:

(1) Operations have ceased at the facility, and there are no longer discharges of process wastewater~~, noncontact cooling water,~~ or ~~storm water~~ stormwater associated with the industrial activity;

(2) A new owner has assumed responsibility for the facility ~~(NOTE: A notice of termination does not have to be submitted if a VPDES Change of Ownership Agreement form has been submitted)~~ submitted;

(3) All discharges associated with this facility have been covered by an individual VPDES permit or an alternative VPDES permit; or

(4) Termination of coverage is being requested for another reason, provided the board agrees that coverage under this general permit is no longer needed.

b. The notice of termination shall contain the following information:

(1) Owner's name, mailing address, telephone number, and email address (if available);

(2) Facility name and location;

(3) VPDES general permit registration number for the facility; and

(4) The basis for submitting the notice of termination, including:

(a) A statement indicating that a new owner has assumed responsibility for the facility;

(b) A statement indicating that operations have ceased at the facility, a closure plan has been implemented according to the O&M manual, and there are no longer discharges from the facility;

(c) A statement indicating that all discharges have been covered by an individual VPDES permit; or

(d) A statement indicating that termination of coverage is being requested for another reason (state the reason).

c. The following certification: "I certify under penalty of law that all concrete products waste water and ~~storm water~~ stormwater discharges from the identified facility that are authorized by this VPDES general permit have been eliminated, or covered under a VPDES individual or alternative permit, or that I am no longer the owner of the facility, or permit coverage should be terminated for another reason listed above. I understand that by submitting this notice of termination, that I am no longer authorized to discharge concrete products waste water or ~~storm water~~ stormwater in accordance with the general permit, and that discharging pollutants to surface waters is unlawful where the discharge is not authorized by a VPDES permit. I also understand that the submittal of this notice of termination does not release an owner from liability for any violations of this permit or the Clean Water Act."

d. The notice of termination shall be ~~submitted to the department and~~ signed in accordance with Part III K.

e. The notice of termination shall be submitted to the DEQ regional office serving the area where the concrete products facility discharge is located.

~~20.~~ 19. Temporary closure at inactive and unstaffed sites waiver.

a. [~~When the permittee is unable to conduct~~ A waiver of the] effluent monitoring, benchmark monitoring, [~~or~~] ~~storm water~~ [~~stormwater management requirements at an~~ visual monitoring, and routine facility inspections may be granted by the board at a facility that is both] inactive and unstaffed [~~site, a waiver of these requirements may be exercised by the board as long as the facility remains inactive and unstaffed,~~] and there are no industrial materials or activities exposed to ~~storm water~~ stormwater. The waiver request shall be submitted to the board for approval and shall include the information in the temporary closure plan specified in Part I B ~~9~~ 8 a (4), the facility's VPDES general permit registration number; a contact person, telephone number, and email address (if available); the reason for the request; the date the facility became or will become inactive and unstaffed; and the date the closure plan will be completed. The waiver shall be signed and certified in accordance with Part III K. If this waiver is granted, the permittee must retain a copy of the request and the board's written approval of the waiver in ~~accordance with Part III B~~ the SWPPP. [The permittee is required to conduct an annual routine facility inspection in accordance with Part II F 6 f (5). A stormwater discharge is not required at the time of this annual routine facility inspection.]

b. To reactivate the site the permittee must notify the department [within] 30 days [~~prior to~~ of] reopening the facility and commencing any point source discharges of either treated process wastewater or ~~storm water~~ stormwater runoff associated with industrial activities. Upon [~~this notification~~ reactivation] all effluent monitoring, benchmark monitoring, [~~or~~ visual monitoring, and routine facility inspections] ~~storm water~~ [~~stormwater management requirements of this permit shall be required~~ shall resume immediately]. This notification must be submitted to the department, signed in accordance with Part III K, and retained on site at the facility covered by this permit in accordance with Part III B.

c. The board retains the right to revoke this waiver when it is determined that the discharge is causing, has a reasonable potential to cause, or contributes to a water quality standards violation.

~~21.~~ 20. The discharges authorized by this permit shall be controlled as necessary to meet applicable water quality standards.

~~22.~~ 21. Approval for coverage under this general permit does not relieve any owner of the responsibility to comply with any other applicable federal, state, or local statute, ordinance, or regulation.

Part II

~~Storm Water~~ Stormwater Management.

A. Monitoring instructions.

1. Collection and analysis of samples. Sampling requirements shall be assessed on an outfall by outfall basis. Samples shall be collected and analyzed in accordance with the requirements of Part III A.

2. When and how to sample. A minimum of one grab sample shall be taken resulting from a storm event that results in an actual discharge from the site (defined as a "measureable storm event"), providing the interval from the preceding measurable storm event is at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document with the ~~discharge monitoring report (DMR)~~ DMR that less than a 72-hour interval is representative for local storm events during the sampling period. The grab sample shall be taken during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, the sample may be taken during the first ~~hour~~ three hours of discharge provided that the permittee explains with the ~~DMR~~ SWPPP why a grab sample during the first 30 minutes was impractical.

3. Recording of results. For each discharge measurement or sample taken pursuant to the storm event monitoring requirements of this permit, the permittee shall record and report with the ~~Discharge Monitoring Reports (DMRs)~~ DMR the following information:

a. Date and duration (in hours) of the storm ~~event(s)~~ events sampled;

b. Rainfall measurements or estimates (in inches) of the storm event ~~which~~ that generated the sampled discharge; and

c. Duration between the storm event sampled and the end of the previous measurable storm event.

B. Representative ~~discharge~~ outfalls - substantially identical outfalls. If a facility has two or more exclusively ~~storm water~~ stormwater outfalls that discharge substantially identical effluents, based on similarities of the industrial activities, significant materials, size of drainage areas, and ~~storm water~~ stormwater management practices occurring within the drainage areas of the outfalls, the permittee may monitor the effluent of just one of the outfalls and report that the observations also apply to the substantially identical outfall. Representative outfalls must be identified in the registration statement submitted for coverage under this permit. Substantially identical ~~outfalls~~ outfall monitoring can apply to

quarterly visual and benchmark monitoring. The permittee must include the following information in the ~~storm water pollution prevention plan (SWPPP)~~ SWPPP:

1. The locations of the outfalls;

2. Why the outfalls are expected to discharge substantially identical effluents, including evaluation of monitoring data where available;

3. Estimates of the size of the drainage area (in square feet) for each of the outfalls; and

4. An estimate of the runoff coefficient of the drainage areas (low: under 40%; medium: 40% to 65%; high: above 65%).

~~C. Sampling waivers.~~

~~1. When a permittee is unable to conduct benchmark monitoring or visual examinations within the specified sampling period due to no "measureable" storm event or adverse weather conditions, the permittee shall collect a substitute sample from the next separate qualifying event and submit these data along with documentation explaining a facility's inability to conduct benchmark monitoring or visual examinations (including dates and times the outfalls were viewed and sampling was attempted) of no "measureable" storm event or of adverse weather conditions with the DMR to the DEQ. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Acceptable documentation includes, but is not limited to National Climatic Data Center weather station data, local weather station data, facility rainfall logs, and other appropriate supporting data. All documentation shall also be maintained with the SWPPP.~~

~~2. Sampling waiver for inactive and unstaffed sites. See Part I B 20.~~

~~D.~~ C. Quarterly visual [~~examination~~ monitoring] of ~~storm water~~ stormwater quality. The permittee shall perform and document [~~a~~] visual [~~examination~~ monitoring] of [~~a~~] ~~storm water~~ stormwater [~~discharge~~ discharges] associated with industrial activity from each outfall, except discharges waived in [~~subdivision~~] ~~D 1 and subsection~~ [Part II C] 4 [~~of this~~] ~~section~~ [~~subsection~~]. The visual ~~examination(s)~~ [~~examinations~~ monitoring] must be made during ~~daylight hours (e.g.,~~ normal working ~~hours)~~ hours, at least once in each of the following three-month periods: January through March, April through June, July through September, and October through December.

1. ~~Examinations shall be made of samples~~ Samples will be in a clean, colorless glass or plastic container and examined in a well-lit area;

2. Samples will be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed ~~one hour)~~ three hours, provided that the permittee explains in the SWPPP why an examination during the first 30 minutes was impractical) of when the runoff or snowmelt begins discharging. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72-hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour storm event interval may also be waived where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted.

3. The examination shall ~~document observations of~~ observe color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of ~~storm water~~ stormwater pollution. ~~The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that results in an actual discharge from the site (defined as a "measurable storm event") providing the interval from the preceding measurable storm event is at least 72 hours. The required 72 hour storm event interval is waived where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72 hour storm event interval may also be waived where the permittee documents that less than a 72 hour interval is representative for local storm events during the season when sampling is being conducted.~~

4. If no qualifying storm event resulted in discharge from the facility during a monitoring period, or adverse weather conditions create dangerous conditions for personnel during each measurable storm event during a monitoring period, visual monitoring is exempted provided ~~that the permittee documents that no qualifying storm event occurred that resulted in a storm water discharge during that quarter. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term~~ this is documented in the SWPPP.

~~2.~~ 5. Visual [~~examination~~ monitoring] reports ~~must~~ shall be maintained onsite with the SWPPP. The report shall include the outfall location, the [~~examination~~ monitoring] date and time, [~~examination~~ monitoring] personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the ~~storm water~~ stormwater discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of ~~storm water~~ stormwater pollution),

[visual quality of the receiving stream (including observations of solids deposition and oil sheen from the industrial activity) in the vicinity of the outfall (including ditches and conveyances),] and probable sources of any observed storm water stormwater contamination.

6. Whenever the visual [assessment monitoring] shows obvious indicators of stormwater pollution, the SWPPP and stormwater controls shall be updated per Part II F.

E. D. Allowable nonstorm water nonstormwater discharges. [1.] The following nonstorm water nonstormwater discharges are authorized by this [permit provided the] nonstorm water [nonstormwater component of the discharge is in compliance with Part II E D 2] below [permit].

[a. 1.] Discharges from fire fighting [emergency] firefighting activities;

[b. 2.] Fire hydrant flushings;

[c. 3.] Potable water including water line flushings;

[d. 4.] Uncontaminated air conditioning or compressor condensate from air conditioners, coolers, and other compressors and from the outside storage of refrigerated gases or liquids;

[e. 5.] Irrigation drainage;

[f. 6.] Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions the approved labeling;

[g. 7.] Pavement wash waters where no detergents [or hazardous cleaning products] are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed) [. Pavement wash waters shall be managed to prevent the discharge of pollutants];

[h. 8.] Routine external building wash down which washdown that does not use detergents [or hazardous cleaning products];

[i. 9.] Uncontaminated ground water or spring water;

[j. 10.] Foundation or footing drains where flows are not contaminated with process materials; and

[k. 11.] Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of the facility, but NOT not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

[2. Except for flows from] fire fighting [firefighting activities, the SWPPP must include:

a. Identification of each allowable nonstorm water nonstormwater source;

b. The location where it is likely to be discharged; and

c. Descriptions of appropriate best management practices (BMPs) for each source.

3. If mist blown from cooling towers is included as one of the allowable nonstorm water nonstormwater discharges, the permittee shall specifically evaluate the discharge for the presence of chemicals used in the cooling tower. This evaluation shall be included in the SWPPP.]

F. E. Releases of hazardous substances or oil in excess of reportable quantities. The discharge of hazardous substances or oil in the storm water discharge(s) stormwater discharges from this facility shall be prevented or minimized in accordance with the SWPPP for the facility. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of Virginia.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, or 40 CFR Part 302 occurs during a 24-hour period;

1. The permittee is required to notify the department in accordance with the requirements of Part III G as soon as he has knowledge of the discharge;

2. Where a release enters a municipal separate storm sewer system (MS4), the permittee shall also notify the owner of the MS4; and

3. The SWPPP required by this permit shall be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate.

G. Storm water F. Stormwater pollution prevention plans (SWPPP). A SWPPP shall be developed and implemented for the facility. The [plan SWPPP] shall include [BMPs best management practices (BMPs)] that are reasonable, economically practicable, and appropriate in light of current industry practices. The BMPs shall be selected, designed, installed, implemented, and maintained in accordance with good engineering practices to eliminate or reduce the pollutants in all storm water stormwater discharges from the facility. The SWPPP shall also include any control measures necessary for the storm water stormwater discharges to meet applicable water quality standards.

The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by reference other plans or documents such as an erosion and sediment control plan, a spill prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the Clean Water Act or BMP programs otherwise required for the facility provided that the incorporated plan meets or exceeds the [plan SWPPP] requirements of Part II G F 6 (Contents of Plan)

[~~plan)~~ SWPPP)]. All plans incorporated by reference into the SWPPP become enforceable under this permit. If a plan incorporated by reference does not contain all the requirements of Part II ~~G~~ F 6, the permittee shall develop the missing SWPPP elements and include them in the required plan.

1. Deadlines for [~~plan~~ SWPPP] preparation and compliance.

a. Owners of facilities that were covered under the ~~2008~~ 2013 Concrete Products General Permit who are continuing coverage under this general permit shall update and implement any revisions to the SWPPP ~~not later than January 1, 2014~~ within 60 days of the board granting coverage under this permit.

b. Owners of new facilities, facilities previously covered by an expiring individual permit, and existing facilities not currently covered by a VPDES permit who elect to be covered under this general permit shall prepare and implement the SWPPP prior to commencing operations.

c. Where the owner of an existing facility that is covered by this permit changes, the new owner of the facility shall update and implement any revisions to the SWPPP within 60 days of the ownership change.

d. Upon a showing of good cause, the director may establish a later date in writing for the preparation and compliance with the SWPPP.

2. Signature and [~~plan~~ SWPPP] review.

a. The SWPPP shall be signed in accordance with Part III K~~,~~ and be retained on-site at the facility covered by this permit in accordance with Part III B. For inactive sites, the [~~plan~~ SWPPP] may be kept at the nearest office of the permittee.

b. The permittee shall make the SWPPP [~~, annual site compliance inspection report,~~] or other information available to the department upon request.

c. The director, or his designee, may notify the permittee in writing at any time that the SWPPP, BMPs, or other components of the facility's ~~storm water~~ stormwater program do not meet one or more of the requirements of this part. Such notification shall identify specific provisions of the permit that are not being met and may include required modifications to the ~~storm water~~ stormwater program, additional monitoring requirements, and special reporting requirements. Within 60 days of such notification from the director, or as otherwise provided by the director, the permittee shall make the required changes to the [~~plan~~ SWPPP] and shall submit to the department a written certification that the requested changes have been made.

3. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP as appropriate whenever:

a. There is construction or a change in design, operation, or maintenance that has a significant effect on the discharge or the potential for the discharge of pollutants to surface waters;

b. Routine inspections or ~~compliance evaluations~~ visual [~~examinations~~ monitoring] determine that there are deficiencies in the BMPs;

c. Inspections by local, state, or federal officials determine that modifications to the SWPPP are necessary;

d. There is a spill, leak, or other release at the facility; or

e. There is an unauthorized discharge from the facility.

4. SWPPP modifications shall be made within ~~30~~ 60 calendar days after discovery, observation, or event requiring a SWPPP modification. Implementation of new or modified BMPs (distinct from regular preventive maintenance of existing BMPs described in Part II ~~G~~ F 7) shall be initiated before the next storm event if possible, but no later than 60 days after discovery, or as otherwise provided or approved by the director. The amount of time taken to modify a BMP or implement additional BMPs shall be documented in the SWPPP.

5. If the SWPPP modification is based on a release or unauthorized discharge, include a description and date of the release, the circumstances leading to the release, actions taken in response to the release, and measures to prevent the recurrence of such releases. Unauthorized releases and discharges are subject to the reporting requirements of Part III G of this permit.

6. Contents of [~~plan~~ SWPPP]. The [~~plan~~ SWPPP] shall include, at a minimum, the following items:

a. Pollution prevention team. Each [~~plan~~ SWPPP] shall identify the staff individuals by name or title that comprise the facility's ~~storm water~~ stormwater pollution prevention team. The pollution prevention team is responsible for assisting the facility or plant manager in developing, implementing, maintaining, revising, and ensuring compliance with the facility's SWPPP. Specific responsibilities of each staff individual on the team shall be identified and listed.

b. Summary of potential pollutant sources. The plan shall identify where industrial materials or activities at the facility are exposed to ~~storm water~~ stormwater. Industrial materials or activities include~~, but are not limited to~~: material handling equipment or activities, industrial machinery, raw materials, industrial production and processes, intermediate products, byproducts, final products, and waste products. Material handling activities

include~~, but are not limited to~~: the storage, loading and unloading, transportation, disposal, or conveyance of any raw material, intermediate product, final product, or waste product. The description shall include:

(1) A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steel beams); and

(2) A list of the associated ~~pollutant(s) or pollutant~~ pollutants [~~constituents (e.g., crankcase oil, zinc, sulfuric acid, cleaning solvents, etc.),~~ pollutant constituents, or industrial chemicals] for each activity. The pollutant list shall include all significant materials handled, treated, stored, or disposed that have been exposed to ~~storm water~~ stormwater in the three years prior to the date this SWPPP was prepared or amended. This list shall include any hazardous substances or oil at the facility.

c. Site map. The site map shall document:

(1) An outline of the drainage area of each ~~storm water~~ stormwater outfall that are within the facility boundaries;

(2) Each existing structural control measure to reduce pollutants in ~~storm water~~ stormwater runoff;

(3) Surface water bodies;

(4) Locations where materials are exposed to precipitation;

(5) Locations where major spills or leaks identified under Part II ~~G~~ F 6 d have occurred;

(6) Locations of fueling stations, vehicle or equipment degreasing activities, maintenance areas, loading or unloading areas, vehicle wash down areas, vehicle wash out areas, bag house or other dust control device, recycle ponds, sedimentation ponds, or clarifiers or other devices used for the treatment of process wastewater (and the areas that drain to the treatment device);

(7) Locations used for the storage or disposal of wastes; liquid storage tanks; processing areas; and storage areas;

(8) Outfall locations, designation (e.g., 001) and the types of discharges contained in the drainage areas of the outfalls;

(9) For each area of the facility that generates ~~storm water~~ stormwater discharges associated with industrial activity with a potential for containing significant amounts of pollutants, locations of ~~storm water~~ stormwater conveyances including ditches, pipes, swales, and inlets, and the directions of ~~storm water~~ stormwater flow and an identification of the types of pollutants ~~which~~ that are likely to be present in ~~storm water~~ stormwater discharges associated with industrial activity. Factors to consider include the toxicity of the chemicals; quantity of chemicals used, produced, or discharged; the likelihood of contact with ~~storm water~~ stormwater; and history of leaks or spills of toxic or hazardous pollutants; and

(10) Flows with a potential for causing erosion shall be identified.

d. Spills and leaks. A list of significant spills and leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a ~~storm water~~ stormwater conveyance at the facility after the date of three years prior to the date of coverage under this general permit. Such list shall be updated as appropriate during the term of the permit.

e. Sampling data. The plan shall include a summary of existing ~~storm water~~ stormwater discharge sampling data taken at the facility. The summary shall include, at a minimum, any data collected during the previous three years.

f. ~~Storm water~~ Stormwater controls.

(1) BMPs shall be implemented for all areas identified in Part II ~~G~~ F 6 b to prevent or control pollutants in ~~storm water~~ stormwater discharges from the facility. All reasonable steps shall be taken to control or address the quality of discharges from the site that may not originate at the facility. The SWPPP shall describe the type, location, and implementation of all BMPs for each area where industrial materials or activities are exposed to ~~storm water~~ stormwater.

(2) Good housekeeping measures. Good housekeeping requires the clean and orderly maintenance of areas that may contribute pollutants to ~~storm waters~~ stormwater discharges. The permittee shall keep clean all exposed areas of the facility that are potential sources of pollutants in ~~storm water~~ stormwater. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, vehicle fueling and maintenance areas, and ~~loading/unloading~~ loading or unloading areas. The [~~plan~~ SWPPP] shall describe procedures performed to prevent or minimize the discharge of: spilled cement, aggregate (including sand and gravel), kiln dust, fly ash, settled dust, or other significant material in ~~storm water~~ stormwater from paved portions of the site that are exposed to ~~storm water~~ stormwater. ~~Regular sweeping of impervious areas or other equivalent measures to minimize the presence of these materials shall be employed. The frequency of sweeping or equivalent measures shall be specified in the plan based upon a consideration of the amount of industrial activity occurring in the areas and the frequency of precipitation, but it shall be a minimum of once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. Efforts must be made to prevent~~ Sweep or vacuum paved surfaces of the site that are

exposed to stormwater at regular intervals or use other equivalent measures [~~, including washing down the area and collecting or treating and properly disposing of the washdown water,~~] to minimize the potential discharge of these materials in stormwater. Indicate in the SWPPP the frequency of sweeping, vacuuming, or other equivalent measures. Determine the frequency based on the amount of industrial activity occurring in the area and the frequency of precipitation, but sweeping, vacuuming, or other equivalent measures shall be performed at least once a week in areas where cement, aggregate, kiln dust, fly ash, or settled dust are being handled or processed. Prevent the exposure of fine granular solids ~~(cement, fly ash, etc.) to storm water~~ (including cement, fly ash and kiln dust) to stormwater, where practicable, by storing these materials in enclosed ~~silos/hoppers~~ silos, hoppers, or buildings or under other covering. ~~The introduction of raw, final, or waste materials to exposed areas of the facility shall be minimized to the maximum extent practicable.~~ The generation of dust~~, along with~~ and off-site vehicle tracking of raw, final or waste materials, or sediments~~,~~ shall be minimized ~~to the maximum extent practicable~~.

(3) Preventive maintenance. A preventive maintenance program shall involve regular inspection, testing, maintenance, and repairing of all industrial equipment and systems to avoid breakdowns or failures that could result in leaks, spills and other releases. This program is in addition to the specific BMP maintenance required under Part II ~~G~~ F 7 (Maintenance of BMPs).

(4) Spill prevention and response procedures. The [~~plan~~ SWPPP] shall describe the procedures that will be followed for preventing and responding to spills and leaks.

(a) Preventive measures include barriers between material storage and traffic areas, secondary containment provisions, and procedures for material storage and handling.

(b) Response procedures shall include (i) notification of appropriate facility personnel, emergency agencies, and regulatory agencies and (ii) procedures for stopping, containing, and cleaning up spills. Measures for cleaning up hazardous material spills or leaks shall be consistent with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause, detect, or respond to a spill or leak shall be trained in these procedures and have necessary spill response equipment available. If possible, one of these individuals shall be a member of the pollution prevention team.

(c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," "fertilizers and pesticides," etc.) to encourage proper handling and facilitate rapid response if spills or leaks occur; and

(d) Contact information for individuals and agencies that must be notified in the event of a spill shall be included in the SWPPP and in other locations where it will be readily available.

(5) Routine facility inspections.

~~Facility personnel who possess the knowledge and skills to assess conditions and activities that could impact storm water quality at the facility and who can also evaluate the effectiveness of BMPs shall regularly inspect designated equipment and areas of the facility. Inspections shall be conducted while the facility is in operation and include, but are not limited to, the following areas exposed to storm water:~~ (a) During normal facility operating hours inspections of areas of the facility covered by the requirements in this permit must be conducted and shall include observations of the following:

(i) Areas where industrial materials or activities are exposed to stormwater, including material handling areas, above ground storage tanks, hoppers or silos, ~~dust collection/containment systems~~ dust collection or containment systems, and ~~truck wash down/equipment~~ truck wash down or equipment cleaning areas~~.~~;

(ii) Discharge points; and

(iii) Best management practices.

~~The inspection frequency~~ (b) Inspections shall ~~be specified in the plan based on a consideration of the level of industrial activity at the facility, but it shall be a minimum of~~ be conducted at least quarterly ~~unless more frequent intervals are specified elsewhere in the permit. When practical,~~. At least once each calendar year, the routine facility inspection should be conducted ~~once each calendar year~~ during a period when a ~~storm water~~ stormwater discharge is occurring.

(c) Inspections shall be performed by personnel who possess the knowledge and skills to assess conditions and activities that could impact stormwater quality at the facility and who can also evaluate the effectiveness of BMPs. At least one member of the stormwater pollution prevention team shall participate.

(d) Routine facility inspections shall be documented and maintained with the SWPPP. Document all findings including:

(i) Inspection date [~~and time~~];

(ii) [~~Name and initials of inspector~~ Names of the inspectors]; and

(iii) Observations of any discharges; the physical condition of and around all outfalls (e.g., concrete product in the stream or turbidity); leaks or spills from industrial equipment, drums, tanks or other containers;

offsite tracking of industrial materials or sediment; any additional best management practices that need to be repaired, maintained, or added; [and] any incidents of noncompliance [~~; and a signed certification~~].

(e) A set of tracking or followup procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained with the ~~pollution prevention plan~~ SWPPP. ~~These inspections are in addition to, or as part of, the comprehensive site compliance evaluation required under Part II G 8. At least one member of the pollution prevention team shall participate in the routine facility inspections.~~ Any deficiencies in the implementation of the SWPPP that are found shall be corrected as soon as practicable, but not later than within ~~30~~ 60 days of the inspection, unless permission for a later date is granted in writing by the director. The results of the inspections shall be documented in the SWPPP, along with the ~~date(s)~~ dates and ~~description(s)~~ descriptions of any corrective actions that were taken in response to any deficiencies or opportunities for improvement that were identified.

[(f) The requirement for routine facility inspections is waived for facilities that have maintained an active VEEP E3/E4 status.]

(6) Employee training. The permittee shall implement a ~~storm water~~ stormwater employee training program for the facility. The SWPPP shall include a schedule for all types of necessary training~~,~~ and shall document all training sessions and the employees who received the training. Training shall be provided for all employees who work in areas where industrial materials or activities are exposed to ~~storm water~~ stormwater and for employees who are responsible for implementing activities identified in the SWPPP (e.g., inspectors, maintenance personnel, etc.). The training shall cover the components and goals of the SWPPP and include such topics as spill response, good housekeeping, material management practices, BMP operation and maintenance, etc. The SWPPP shall include a summary of any training performed.

(7) Sediment and erosion control. The [~~plan~~ SWPPP] shall identify areas that, due to topography, land disturbance (e.g., construction, landscaping, sit grading), or other factors, have a potential for soil erosion. The permittee shall identify and implement structural, vegetative, ~~and/or~~ or stabilization BMPs to prevent or control on-site and off-site erosion and sedimentation.

(8) Management of runoff. The [~~plan~~ SWPPP] shall describe the ~~storm water~~ stormwater run-off management practices (i.e., permanent structural BMPs) for the facility. These types of BMPs are typically used to divert, infiltrate, reuse, or otherwise reduce pollutants in ~~storm water~~ stormwater discharges from the site. Appropriate measures may include: vegetative swales and practices, reuse of collected ~~storm water~~ stormwater (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, wet detention/retention devices; or other equivalent measures. Some structural BMPs may require a separate permit under § 404 of the Clean Water Act and the Virginia Water Protection Permit Program Regulation (9VAC25-210) before installation begins.

7. Maintenance of BMPs. All BMPs identified in the SWPPP shall be maintained in effective operating condition. ~~Storm water~~ Stormwater BMPs identified in the SWPPP ~~should~~ shall be observed during active operation where feasible (i.e., during a ~~storm water~~ stormwater runoff event) to ensure that they are functioning correctly. Where discharge locations are inaccessible, nearby downstream locations shall be observed. The observations shall be documented in the SWPPP.

The SWPPP shall include a description of procedures and a regular schedule for preventive maintenance of all BMPs and shall include a description of the back-up practices that are in place should a runoff event occur while a BMP is off line. The effectiveness of nonstructural BMPs shall also be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

If site inspections required by Part II ~~G~~ F 6 f (5) (Routine facility inspections) [~~or Part II G F 8 (Comprehensive site compliance evaluation)~~] identify BMPs that are not operating effectively, repairs or maintenance shall be performed before the next anticipated storm event. If maintenance prior to the next anticipated storm event is not possible, maintenance shall be scheduled and accomplished as soon as practicable. In the interim, back-up measures shall be employed and documented in the SWPPP until repairs or maintenance is complete. Documentation shall be kept with the SWPPP of maintenance and repairs of BMPs, including the ~~date(s)~~ dates of regular maintenance, ~~date(s)~~ dates of discovery of areas in need of repair or replacement, and for repairs, ~~date(s)~~ dates that the ~~BMP(s)~~ BMPs returned to full function, and the justification for any extended maintenance or repair schedules.

[~~8. Comprehensive site compliance evaluation. The permittee shall conduct comprehensive site compliance evaluations at least once a year. The evaluations shall be done by qualified personnel who possess the knowledge and skills to assess conditions and activities that could impact~~] ~~storm water~~ [~~stormwater quality at the facility and who can also evaluate the effectiveness of BMPs. The personnel conducting the evaluations may be either facility employees or outside constituents hired by the facility. Such evaluations shall include the following:~~

a. Industrial materials, residue, or trash that may have or could come into contact with] storm water [stormwater;

b. Leaks or spills from industrial equipment, drums, barrels, tanks, or other containers that have occurred within the past three years;

c. Off site tracking of industrial or waste materials or sediment where vehicles enter or exit the site;

d. Evidence of or the potential for pollutants entering the drainage system;

e. Evidence of pollutants discharging to surface waters at all facility outfalls and the condition of and around the outfall, including flow dissipation measures to prevent scouring;

f. Review of training performed, inspections completed, maintenance performed, quarterly visual examinations, and effective operation of BMPs;

g. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than] storm water [stormwater; the authorized] nonstorm water [nonstormwater discharges described in Part II] E [D; or discharges covered under a separate VPDES permit, other than this permit). The documentation shall include:

(1) The date of the evaluation;

(2) A description of the evaluation criteria used;

(3) A list of the outfalls or on site drainage points that were directly observed during the evaluation;

(4) A description of the results of the evaluation for the presence of unauthorized discharges; and

(5) The actions taken to eliminate unauthorized discharges, if any were identified (i.e., a floor drain was sealed, a sink drain was rerouted to sanitary, or a VPDES permit application was submitted for a cooling water discharge);

h. Results of both visual and any analytical monitoring done during the past year shall be taken into consideration during the evaluation;

i. Based on the results of the evaluation, the SWPPP shall be modified as necessary (e.g., show additional controls on the site map required by Part II] G [F 6 c; revise the description of] storm water [stormwater controls required by Part II] G [F 6 f to include additional or modified BMPs designed to correct problems identified). Revisions to the SWPPP shall be completed within] 30 [60 days following the evaluation, unless permission for a later date is granted in writing by the director. If existing BMPs need to be modified or if additional BMPs are necessary, implementation shall be completed before the next anticipated storm event, if practicable, but not more than 60 days after completion of the comprehensive site evaluation, unless permission for a later date is granted in writing by the department;

j. Compliance evaluation report. A report shall be written summarizing the scope of the evaluation,] names(s) [names of personnel making the evaluation, the date of the evaluation, and all observations relating to the implementation of the SWPPP, including elements stipulated in Part II] G [F 8 a through e above. Observations shall include such things as: the] location(s) [locations of discharges of pollutants from the site;] locations(s) [locations of previously unidentified sources of pollutants;] location(s) [locations of BMPs that need to be maintained or repaired;] locations(s) [locations of failed BMPs that need replacement; and] location(s) [locations where additional BMPs are needed. The report shall identify any incidents of noncompliance that were observed. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the SWPPP and this permit. The report shall be signed in accordance with Part III K and maintained with the SWPPP; and

k. Where compliance evaluation schedules overlap with routine inspections required under Part II] G [F 6 f (5), the annual compliance evaluation may be used as one of the routine inspections.

8. Nonstormwater discharges.

a. Except for flows from emergency firefighting activities, the SWPPP must include:

(1) Identification of each allowable nonstormwater source;

(2) The location where it is likely to be discharged; and

(3) Descriptions of appropriate BMPs for each source.

b. Documentation that all outfalls have been evaluated annually for the presence of unauthorized discharges (i.e., discharges other than stormwater, the authorized nonstormwater discharges described in Part II D, or discharges covered under a separate VPDES permit or this permit). The documentation shall include:

(1) The date of the evaluation;

(2) A description of the evaluation criteria used;

(3) A list of the outfalls or onsite drainage points that were directly observed during the evaluation;

(4) A description of the results of the evaluation for the presence of unauthorized discharges; and

(5) The actions taken to eliminate identified unauthorized discharges.]

Part III
Conditions Applicable ~~To~~ to All VPDES Permits.

A. Monitoring.

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

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency unless other procedures have been specified in this permit.

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

4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).

B. Records.

1. Records of monitoring information shall include:

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

b. The individuals who performed the sampling or measurements;

c. The dates and times analyses were performed;

d. The individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. [~~Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the~~ The] permittee shall retain (i) records of all monitoring information including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, (ii) copies of all reports required by this permit, and (iii) records of all data used to complete the registration statement for this permit for a period of at least three years from the date that coverage under this permit expires or is terminated. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.

C. Reporting monitoring results.

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

2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.

3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information ~~which~~ that the board may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from its discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department upon request copies of records required to be kept by this permit.

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

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

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

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

G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F;

or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department, within five days of discovery of the discharge. The written report shall contain:

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I [~~2~~ 1 b]. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

I. Reports of noncompliance.

[1.] The permittee shall report any noncompliance ~~which~~ that may adversely affect state waters or may endanger public health.

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

[~~a.~~ (1)] Any unanticipated bypass; and

[~~b.~~ (2)] Any upset ~~which~~ that causes a discharge to surface waters.

[~~2.~~ b.] A written report shall be submitted within five days and shall contain:

[~~a.~~ (1)] A description of the noncompliance and its cause;

[~~b.~~ (2)] The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

[~~c.~~ (3)] Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

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

[~~3.~~ 2.] The permittee shall report all instances of noncompliance not reported under ~~Parts~~ Part III I 1 [a] or [~~2~~ 1 b], in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I [~~2~~ 1 b].

NOTE: The immediate (within 24 hours) reports required in ~~Parts~~ Part III G, H and I may be made to the department's regional office by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, leave a message and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Services maintains a 24 hour telephone service at 1-800-468-8892.

[3. Where the permittee becomes aware that it failed to submit any relevant facts in a permit registration statement, or submitted incorrect information in a permit registration statement or in any report to the department, it shall promptly submit such facts or information.]

J. Notice of planned changes.

1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:

(1) After promulgation of standards of performance under § 306 of Clean Water Act ~~which~~ that are applicable to such source; or

(2) After proposal of standards of performance in accordance with § 306 of Clean Water Act ~~which~~ that are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal;

b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants ~~which~~ that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or

c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit ~~application~~ registration process or not reported pursuant to an approved land application plan.

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

K. Signatory requirements.

1. Registration statements. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means (i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation or (ii) the manager of one or more manufacturing, production, or operating facilities provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations~~,~~ and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit ~~application~~ registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

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

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

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

c. The written authorization is submitted to the department.

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

4. Certification. Any person signing a document under ~~Parts~~ Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information,

including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit coverage termination~~, revocation and reissuance, or modification~~; or denial of a permit renewal ~~application~~ registration.

The permittee shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under § 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall apply for and obtain coverage under a new permit. All permittees with ~~a~~ currently effective permit coverage shall submit a new application at least ~~90~~ 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

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

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

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

Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) ~~which~~ that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems ~~which~~ that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.

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

S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit ~~which~~ that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

U. Bypass.

1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur ~~which~~ that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of ~~Parts~~ Part III U 2 and U 3.

2. Notice.

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:

(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have

been installed in the exercise of reasonable engineering judgment to prevent a bypass ~~which~~ that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under Part III U 2.

b. The board may approve an anticipated bypass, after considering its adverse effects, if the board determines that it will meet the three conditions listed ~~above~~ in Part III U 3 a.

V. Upset.

1. An upset constitutes an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the causes of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required in Part III I; and

d. The permittee complied with any remedial measures required under Part III S.

3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The permittee shall allow the director, or his designee, upon presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy at reasonable times any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.

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

X. Permit actions. ~~Permits~~ Permit coverage may be ~~modified, revoked and reissued, or~~ terminated for cause. The filing of a request by the permittee for a permit ~~modification, revocation and reissuance, or~~ termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

Y. Transfer of ~~permits~~ permit coverage.

[1.] Permits are not transferable to any person except after notice to the department.

~~This~~ [2.] Coverage under this permit may be automatically transferred to a new permittee if:

[~~1.~~ a.] The current permittee notifies the department ~~at least~~ within 30 days ~~in advance~~ of the ~~proposed~~ transfer of the title to the facility or property unless permission for a later date has been granted by the board;

[~~2.~~ b.] The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and

[~~3.~~ c.] The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 [b].

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

VA.R. Doc. No. R17-5019; Filed October 5, 2018, 8:14 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Water Control Board is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The State Water Control Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **9VAC25-200. Water Withdrawal Reporting (amending 9VAC25-200-10).**

Statutory Authority: §§ 62.1-44.15 and 62.1-44.38 of the Code of Virginia.

Effective Date: November 28, 2018.

Agency Contact: Melissa Porterfield, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (803) 698-4238, or email melissa.porterfield@deq.virginia.gov.

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

Summary:

The amendment corrects the citation of a referenced regulation.

9VAC25-200-10. Definitions.

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

"Board" means the State Water Control Board.

"Crop" means a living or once-living plant or part of it which is or could be harvested for value. The term includes~~, but is not limited to,~~ conventional farm crops, hay, pasture, nursery and forest crops. Permanent turf and landscapings are not crops and are subject to the 10,000 gallons per day reporting threshold.

"Daily average withdrawal" shall be calculated by dividing the total quantity of water withdrawn in each calendar month by the number of days in that month.

"Gage" means a device or methodology for measuring cumulative volume of water withdrawn. For users subject to the Virginia Department of Health Waterworks Regulations, the gage shall satisfy the provisions of those regulations and shall produce volume determinations within ± 10% of truth. For all other users, the gage shall be consistent with sound generally-accepted engineering practice and shall produce volume determinations within ± 10% of truth.

"Person" means the Commonwealth or any of its political subdivisions; or an individual, corporation, partnership, association, authority, interstate body, or a state; or an agency, municipality, commission, or political subdivision of a state.

"User" means any person making a withdrawal of surface water or groundwater from an original source (e.g., a river, stream, lake, aquifer, or reservoir fed by any such water body), regardless of whether the user himself uses the water thus withdrawn or transfers it to another for use. The purchase of water from a waterworks by a customer of it does not constitute a withdrawal.

"VPDES" means the Virginia Pollutant Discharge Elimination System, which is the Virginia system for the issuance of permits pursuant to the Permit Regulation ~~(9VAC25-30-10 et seq.)~~ (9VAC25-31-10), the State Water Control Law and § 402 of the Clean Water Act (33 USC § 1342), authorizing the discharge of pollutants from a point source to surface waters.

VA.R. Doc. No. R19-5438; Filed October 5, 2018, 8:04 a.m.

Proposed Regulation

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

Title of Regulation: **9VAC25-880. General VPDES Permit for Discharges of Stormwater from Construction Activities (amending 9VAC25-880-1, 9VAC25-880-15, 9VAC25-880-20, 9VAC25-880-30, 9VAC25-880-50, 9VAC25-880-60, 9VAC25-880-70; adding 9VAC25-880-45).**

Statutory Authority: § 62.1-44.15:24 of the Code of Virginia.

Public Hearing Information:

November 27, 2018 - 1:30 p.m. - Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060

November 28, 2018 - 1:30 p.m. - Department of Environmental Quality, Blue Ridge Regional Office, 3019 Peters Creek Road, Roanoke, VA 24019

Public Comment Deadline: December 28, 2018.

Agency Contact: Jaime Bauer, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4416, FAX (804) 698-4032, or email jaime.bauer@deq.virginia.gov.

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

Summary:

The proposed action amends and reissues the existing Virginia Pollutant Discharge Elimination System (VPDES) general permit for discharges of stormwater from construction activities, which expires on June 30, 2019. The general permit regulates stormwater discharges from construction activities, which are defined as "...any clearing, grading or excavation associated with large construction activity or associated with small construction activity." This general permit authorizes discharges of stormwater from regulated construction activities to surface waters and includes enhanced criteria for impaired and exceptional waters. Construction activities that disturb one acre or greater, or less than one acre but are part of a common plan of development, are required to obtain coverage under this general permit prior to commencing land-disturbing activities.

The proposed changes:

• Add 9VAC25-880-45, Applicability of technical criteria for land-disturbing activities, to clarify to operators of construction sites applying for permit coverage which stormwater management technical design criteria from the Virginia Storm Management Program Regulation (9VAC25-870) apply to a given project;

• Require that when nutrient credits are proposed to demonstrate compliance with water quality requirements, a letter of availability shall be provided with the registration statement and that prior to permit issuance, an affidavit of sale be submitted by the operator;

• Prohibit the discharge of stormwater from construction activities associated with the demolition of a structure greater than 10,000 square feet of floor space built or renovated prior to July 1980 to surface water identified as impaired for polychlorinated biphenyls (PCBs) and for which a total maximum daily load (TMDL) for PCBs has been developed prior to July 1, 2019, unless the stormwater pollution prevention plan (SWPPP) includes controls to minimize the exposure of building materials containing PCBs. This change is for consistency with the U.S. Environmental Protection Administration (EPA) 2017 Construction General Permit;

• Require waste containers be closed during precipitation events and at the end of the business day to minimize the discharge of pollutants in stormwater coming in contact with building materials in containers. This change is for consistency with the EPA 2017 Construction General Permit;

• Revise the SWPPP inspection frequency performed by the permittee to once every 10 days and no later than 24 hours following a storm event, which only applies if the operator does not opt to perform a SWPPP inspection at a frequency of once every five business days or is required to conduct inspection more frequently because of discharging to an impaired, TMDL, or exceptional water; and

• Provide that if adverse weather causes concern for the safety of the operator's inspection staff, the inspection can be delayed until the next business day on which it is safe to perform the inspection, which is similar to conditions in other VPDES stormwater permits for adverse weather events.

9VAC25-880-1. Definitions.

The words and terms used in this chapter shall have the meanings defined in the Virginia Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia), this chapter, and 9VAC25-870 unless the context clearly indicates otherwise, except as otherwise specified in this section. Terms not defined in the Act, this chapter, or 9VAC25-870 shall have the meaning attributed to them in the federal Clean Water Act (33 USC § 1251 et seq.) (CWA). For the purposes of this chapter:

"Business day" means Monday through Friday excluding state holidays.

"Commencement of land disturbance" means the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities (e.g., stockpiling of fill material).

"Construction site" means the land where any land-disturbing activity is physically located or conducted, including any adjacent land used or preserved in connection with the land-disturbing activity.

"Final stabilization" means that one of the following situations has occurred:

1. All soil disturbing activities at the site have been completed and a permanent vegetative cover has been established on denuded areas not otherwise permanently stabilized. Permanent vegetation shall not be considered established until a ground cover is achieved that is uniform (e.g., evenly distributed), mature enough to survive, and will inhibit erosion.

2. For individual lots in residential construction, final stabilization can occur by either:

a. The homebuilder completing final stabilization as specified in subdivision 1 of this definition; or

b. The homebuilder establishing temporary soil stabilization, including perimeter controls for an individual lot prior to occupation of the home by the homeowner, and informing the homeowner of the need for, and benefits of, final stabilization.

3. For construction projects on land used for agricultural purposes, final stabilization may be accomplished by

returning the disturbed land to its preconstruction agricultural use. Areas disturbed that were not previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters, and areas that are not being returned to their preconstruction agricultural use ~~must~~ shall meet the final stabilization criteria specified in subdivision 1 or 2 of this definition.

"Immediately" means as soon as practicable, but no later than the end of the next business day, following the day when the land-disturbing activities have temporarily or permanently ceased. In the context of this general permit, "immediately" is used to define the deadline for initiating stabilization measures.

"Impaired waters" means surface waters identified as impaired on the ~~2012~~ 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report.

"Infeasible" means not technologically possible or not economically practicable and achievable in light of best industry practices.

"Initiation of stabilization activities" means:

1. Prepping the soil for vegetative or nonvegetative stabilization;

2. Applying mulch or other nonvegetative product to the exposed area;

3. Seeding or planting the exposed area;

4. Starting any of the above activities on a portion of the area to be stabilized, but not on the entire area; or

5. Finalizing arrangements to have the stabilization product fully installed in compliance with the applicable deadline for completing stabilization.

This list is not exhaustive.

"Measurable storm event" means a rainfall event producing 0.25 inches of rain or greater over 24 hours.

"Stabilized" means land that has been treated to withstand normal exposure to natural forces without incurring erosion damage.

9VAC25-880-15. Applicability of incorporated references based on the dates that they became effective.

Except as noted, when a regulation of the United States set forth in the Code of Federal Regulations is referenced and incorporated herein, that regulation shall be as it exists and has been published in the July 1, ~~2013~~ 2018, update.

9VAC25-880-20. Effective date of general permit.

This general permit is effective on July 1, ~~2014~~ 2019. The general permit will expire on June 30, ~~2019~~ 2024. This general permit is effective for any covered operator upon compliance with all provisions of 9VAC25-880-30.

9VAC25-880-30. Authorization to discharge.

A. Any operator governed by this general permit is authorized to discharge to surface waters of the Commonwealth of Virginia provided that:

1. The operator submits a complete and accurate registration statement~~, if required to do so,~~ in accordance with 9VAC25-880-50, unless not required, and receives acceptance of the registration by the board;

2. The operator submits any permit fees, ~~if required to do so~~ unless not required, in accordance with 9VAC25-870-700 et seq.;

3. The operator complies with the applicable requirements of 9VAC25-880-70;

4. The operator obtains approval of:

a. An erosion and sediment control plan from the appropriate Virginia Erosion and Sediment Control Program (VESCP) authority as authorized under the Erosion and Sediment Control Regulations (9VAC25-840), unless the operator receives from the VESCP authority an "agreement in lieu of a plan" as defined in 9VAC25-840-10 or prepares the erosion and sediment control plan in accordance with annual standards and specifications approved by the department. ~~The operator of any land-disturbing activity that is not required to obtain erosion and sediment control plan approval from a VESCP authority or is not required to adopt department-approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval~~; and

b. A stormwater management plan from the appropriate ~~VSMP authority as authorized under the~~ Virginia Stormwater Management Program (VSMP) authority as authorized under the VSMP Regulation (9VAC25-870), unless the operator receives from the VSMP authority an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 or prepares the stormwater management plan in accordance with annual standards and specifications approved by the department. ~~The operator of any land-disturbing activity that is not required to obtain stormwater management plan approval from a VSMP authority or is not required to adopt department-approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval~~; and

5. The board has not notified the operator that the discharge is not eligible for coverage in accordance with subsection B of this section.

B. The board will notify an operator that the discharge is not eligible for coverage under this general permit in the event of any of the following:

1. The operator is required to obtain an individual permit in accordance with 9VAC25-870-410 B;

2. The operator is proposing discharges to surface waters specifically named in other board regulations that prohibit such discharges;

3. The discharge causes, may reasonably be expected to cause, or contributes to a violation of water quality standards (9VAC25-260);

4. The discharge violates or would violate the antidegradation policy in the Water Quality Standards (9VAC25-260-30); or

5. The discharge is not consistent with the assumptions and requirements of an applicable TMDL approved prior to the term of this general permit.

C. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

1. The support activity is directly related to a construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;

2. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;

3. The support activity does not operate beyond the completion of the last construction activity it supports;

4. The support activity is identified in the registration statement at the time of general permit coverage;

5. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and

6. All applicable, state, federal, and local approvals are obtained for the support activity.

D. Support activities located off-site are not required to be covered under this general permit. Discharges of stormwater from off-site support activities may be authorized under another state or VPDES permit. Where stormwater discharges from off-site support activities are not authorized under this general permit, the land area of the off-site support activity need not be included in determining the total land disturbance acreage of the construction activity seeking general permit coverage.

E. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

F. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit:

1. Discharges from firefighting activities;

2. Fire hydrant flushings;

3. Water used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;

4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;

5. Potable water source, including uncontaminated waterline flushings managed in a manner to avoid an instream impact;

6. Routine external building wash down where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;

7. Pavement wash water where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;

8. Uncontaminated air conditioning or compressor condensate;

9. Uncontaminated groundwater or spring water;

10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

11. Uncontaminated, excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and

12. Landscape irrigations.

G. Approval for coverage under this general permit does not relieve any operator of the responsibility to comply with any other applicable federal, state or local statute, ordinance or regulation.

H. Continuation of general permit coverage.

1. ~~Any operator that was authorized to discharge under the general permit issued in 2009 and that submits~~ Permit coverage shall expire at the end of its term. However, expiring permit coverages are automatically continued if the owner has submitted a complete ~~and accurate~~ registration statement ~~on or before June 30, 2014~~ at least 60 days prior to the expiration date of the permit, or a later

submittal date established by the board, which cannot extend beyond the expiration date of the permit. The permittee is authorized to continue to discharge ~~under the terms of the 2009 general permit~~ until such time as the board either:

a. Issues coverage to the operator under this general permit; or

b. Notifies the operator that the discharge is not eligible for coverage under this general permit.

2. When the operator ~~is not in compliance with the conditions of~~ that was covered under the expiring or expired general permit has violated the conditions of that permit, the board may choose to do any or all of the following:

a. Initiate enforcement action based upon the ~~2009~~ general permit coverage that has been continued;

b. Issue a notice of intent to deny coverage under the ~~new~~ reissued general permit. If the general permit coverage is denied, the ~~owner or~~ operator would then be required to cease ~~the activities~~ discharges authorized by the continued general permit coverage or be subject to enforcement action for operating without a state permit;

c. Issue ~~a new state~~ an individual permit with appropriate conditions; or

d. Take other actions authorized by the VSMP Regulation (9VAC25-870).

9VAC25-880-45. Applicability of technical design criteria for land-disturbing activities.

Any operator seeking coverage under this general permit shall comply with the technical design criteria of the VSMP Regulation (9VAC25-870) as described in this section:

1. New construction activities. Any operator proposing a new stormwater discharge from construction activities and obtaining initial permit coverage under the general permit effective July 1, 2019, shall be subject to the technical design criteria requirements of Part II B (9VAC25-870-62 et seq.) of the VSMP regulations. The operator shall continue to be subject to the requirements of Part II B of the VSMP Regulation for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

2. Existing construction activities.

a. Time limits on applicability of approved technical design criteria. Any operator that obtained authorization to discharge under the general permits effective July 1, 2009, and July 1, 2014, for projects meeting the requirements of 9VAC25-870-47 B, has maintained continuous permit coverage since initial permit coverage was approved, and obtains coverage under the general permit effective July 1, 2019, shall conduct land disturbance in accordance with the requirements of Part II C (9VAC25-870-93 et seq.) of the VSMP Regulation or to more stringent standards at the operator's discretion. Portions of the project not under construction as of June 30, 2024, shall no longer be eligible to use the technical design criteria in Part II C of the VSMP Regulation.

b. Grandfathering.

(1) Any operator that obtained initial permit authorization to discharge under the general permit effective July 1, 2014, for projects meeting the requirements of 9VAC25-870-48 A, has maintained continuous permit coverage since initial permit coverage was approved, and obtains coverage under the general permit effective July 1, 2019, shall conduct land disturbance in accordance with Part II C (9VAC25-870-93 et seq.) of the VSMP Regulation or more stringent standards at the operator's discretion. Portions of the project not under construction as of June 30, 2019, shall no longer be eligible to use the technical design criteria in Part II C of the VSMP Regulation.

(2) For locality, state, and federal projects, any operator that obtained initial permit authorization to discharge under the general permit effective July 1, 2014, for projects meeting the requirements of 9VAC25-870-48 B, has maintained continuous permit coverage since initial permit coverage was approved, and obtains coverage under the general permit effective July 1, 2019, shall conduct land disturbance in accordance with Part II C (9VAC25-870-93 et seq.) of the VSMP Regulation or more stringent standards at the operator's discretion. Portions of the project not under construction as of June 30, 2019, shall no longer be eligible to use the technical design criteria in Part II C of the VSMP Regulation.

(3) Projects in which government bonding or public debt financing has been issued prior to July 1, 2012, shall be subject to the technical design criteria of Part II C (9VAC25-870-93 et seq.) of the VSMP Regulation or a more stringent standards at its discretion.

c. Any operator that obtained authorization to discharge under the general permit effective on July 1, 2014, and obtained stormwater management plan approval consistent with Part II B (9VAC25-870-62 et seq.) of the VSMP Regulation shall continue to be subject to the requirements of Part II B of the VSMP Regulation for two additional permit cycles. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.

d. For purposes of subdivision 2 of this section, "portions of a project not under construction" means:

(1) Any construction activity permitted as described in subdivisions 2 a and 2 b of this section and included on an approved stormwater management plan for which land disturbance has not commenced for any activities on the approved stormwater management plan; or

(2) For locality, state, and federal projects permitted as described in subdivision 2 b (2) of this section, those projects that obtained initial state permit coverage under the general permit effective July 1, 2014, and for which a contract award for construction is not issued by December 31, 2020.

9VAC25-880-50. ~~General permit application (registration statement)~~ Registration statement.

A. Deadlines for submitting registration statement. Any operator seeking coverage under this general permit, and that is required to submit a registration statement, shall submit a complete and accurate general VPDES permit registration statement in accordance with this section, which shall serve as a notice of intent for coverage under the general VPDES permit for discharges of stormwater from construction activities.

1. New construction activities.

a. Any operator proposing a new stormwater discharge from construction activities shall submit a complete and accurate registration statement to the VSMP authority prior to the commencement of land disturbance.

b. Any operator proposing a new stormwater discharge from construction activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment is authorized to discharge under this general permit, provided that:

(1) The operator submits a complete and accurate registration statement to the VSMP authority no later than 30 days after commencing land disturbance; and

(2) Documentation to substantiate the occurrence of the public emergency is provided with the registration statement.

c. Any operator proposing a new stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee.

2. Existing construction activities.

a. Any operator ~~that~~ who was authorized to discharge under the expiring or expired general permit ~~issued in 2009~~ and ~~that~~ who intends to continue coverage under this general permit shall:

(1) Submit a complete and accurate registration statement to the VSMP authority ~~on or before June 1, 2014~~ at least 60 days prior to the expiration date of the existing permit or a later submittal date established by the board; and

(2) Update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

b. Any operator with an existing stormwater discharge associated with the construction of a single-family detached residential structure, within or outside a common plan of development or sale that intends to continue coverage under this general permit, is authorized to discharge under this general permit and is not required to submit a registration statement or the department portion of the permit fee, provided that the operator updates its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

3. For stormwater discharges from construction activities where the operator changes, the new operator ~~must~~ shall submit a complete and accurate registration statement or transfer agreement form and any other documents deemed necessary by the VSMP authority to the VSMP authority to demonstrate transfer of ownership and long-term maintenance responsibilities for stormwater management facilities, as required, has occurred prior to assuming operational control over site specifications or commencing work on-site.

4. Late notifications. Operators are not prohibited from submitting registration statements after commencing land disturbance. When a late registration statement is submitted, authorization for discharges shall not occur until coverage under the general permit is issued. The VSMP authority, department, board, and the EPA reserve the right to take enforcement action for any unpermitted discharges that occur between the commencement of land disturbance and discharge authorization.

5. Late registration statements. Registration statements for existing facilities covered under subdivision A 2 a of this section will be accepted after the expiration date of this permit, but authorization to discharge will not be retroactive.

B. Registration statement. The operator shall submit a registration statement to the VSMP authority that ~~shall contain~~ contains the following information:

1. Name, contact, mailing address, telephone number, and email address if available of the construction activity operator. No more than one operator may receive coverage under each registration statement;

NOTE: General permit coverage will be issued to this operator, and the certification in subdivision ~~11~~ 19 of this subsection ~~must~~ shall be signed by the appropriate person associated with this operator as described in Part III K of 9VAC25-880-70.

2. Name and physical location ~~if available~~ address of the construction ~~activity and all off-site support activities~~ activity, when available, to be covered under this general permit, including city or county, and latitude and longitude in decimal degrees (six digits - ten-thousandths place);

3. A site map in a format specified by the VSMP authority showing the location of the existing or proposed land-disturbing activities, the limits of land disturbance, construction entrances, and all water bodies receiving stormwater discharges from the site;

4. If offsite support activities will be used, the name and physical location address, when available, of those offsite support activities, including city or county; latitude and longitude in decimal degrees (six digits - ten-thousandths place); and whether or not the offsite support activity will be covered under this general permit or a separate VPDES permit;

5. Status of the construction activity: federal, state, public, or private;

~~4.~~ 6. Nature of the construction activity (e.g., commercial, industrial, residential, agricultural, oil and gas, etc.);

7. If stormwater management plans for the construction activity have been approved by an entity with department approved annual standards and specifications, the name of the entity with the department approved annual standards and specifications. A copy of the annual standard and specification entity form shall be submitted with the registration statement;

8. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, the dates of erosion and sediment control plan approval;

9. If the construction activity was previously authorized to discharge under the general permit effective July 1, 2014, whether land disturbance has commenced;

~~5.~~ 10. Name of the receiving ~~water(s)~~ waters and sixth order Hydrologic Unit Code (HUC);

~~6.~~ 11. If the discharge is through a municipal separate storm sewer system (MS4), the name of the ~~municipal separate storm sewer system~~ MS4 operator;

~~7.~~ 12. Estimated project start date and completion date;

~~8.~~ 13. Total land area of development and estimated area to be disturbed by the construction activity (to the nearest one-hundredth of an acre);

~~9.~~ 14. Whether the area to be disturbed by the construction activity is part of a larger common plan of development or sale;

15. For cases of development on prior developed lands, whether the area disturbed by the construction activity results in the demolition of structures equal to or greater than 10,000 square feet of floor space built or renovated prior to January 1, 1980;

16. Where applicable, a stormwater management maintenance agreement in accordance with 9VAC25-870-112 A;

17. If nutrient credits are to be used to demonstrate compliance with the water quality technical criteria as allowed in 9VAC25-870-65 F, a letter of availability from an appropriate nutrient bank that nonpoint source nutrient credits are available. Prior to issuance of state permit coverage, an affidavit of sale documenting that nonpoint source nutrient credits have been obtained shall be submitted;

~~10.~~ 18. A stormwater pollution prevention plan (SWPPP) ~~must~~ shall be prepared in accordance with the requirements of the General VPDES Permit for Stormwater Discharges from Construction Activities prior to submitting the registration statement. By signing the registration statement the operator certifies that the SWPPP has been prepared; and

~~11.~~ 19. The following certification: "I certify under penalty of law that I have read and understand this registration statement and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

C. The registration statement shall be signed in accordance with 9VAC25-880-70, Part III K.

9VAC25-880-60. Termination of general permit coverage.

A. Requirements. The operator of the construction activity shall submit a complete and accurate notice of termination to the VSMP authority after one or more of the following conditions have been met:

1. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator ~~is responsible~~ has operational control. When applicable, long-term

responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination;

2. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;

3. Coverage under an alternative VPDES or state permit has been obtained; or

4. For individual lots in residential construction only, ~~temporary soil~~ final stabilization as defined in 9VAC25-880-1 has been completed and the residence has been transferred to the homeowner.

B. Notice of termination due date and effective date.

1. The notice of termination ~~should~~ shall be submitted no later than 30 days after one of the ~~above~~ conditions in subsection A of this section is met.

2. Termination of authorizations to discharge for the conditions set forth in subdivision A 1 of this section shall become effective upon notification from the department that the provisions of subdivision A 1 of this section have been met or 60 days after submittal of a complete and accurate notice of termination, whichever occurs first.

3. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions A 2 through A 4 of this ~~subsection~~ section unless otherwise notified by the VSMP authority or the department. ~~Termination of authorizations to discharge for the conditions set forth in subdivision 1 of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 of this subsection have been met or 60 days after submittal of the notice of terminations, whichever occurs first.~~

~~B.~~ C. Notice of termination. The complete notice of termination shall contain the following information:

1. Name, contact, mailing address, telephone number, and email address, if available, of the construction activity operator~~.~~;

2. Name and physical location ~~if available~~ address of the construction activity, when available, covered under this general permit, including city or county, and latitude and longitude in decimal degrees~~.~~ (six digits - ten-thousandths place);

3. The general permit registration number~~.~~;

4. The basis for submission of the notice of termination, pursuant to subsection A of this section~~.~~;

5. Where applicable, a list of the on-site and off-site permanent control measures (both structural and nonstructural) that were installed to comply with the stormwater management water quality and water quantity technical criteria. For each permanent control measure that was installed, the following information shall be included:

a. The type of permanent control measure installed and the date that it became functional as a permanent control measure;

b. The location ~~if available~~ of the permanent control measure, including city or county, and latitude and longitude in decimal degrees;

c. The receiving water ~~of~~ to which the permanent control measures discharge; and

d. The number of total and impervious acres treated by the permanent control ~~measure~~ measures to the nearest ~~one tenth~~ one-hundredth of an acre)~~.~~;

6. Where applicable, the following information related to participation in a regional stormwater management plan. For each regional stormwater management facility, the following information shall be included:

a. The type of regional facility to which the site contributes;

b. The location ~~if available~~ of the regional facility, including city or county, and latitude and longitude in decimal degrees; and

c. The number of total and impervious site acres treated by the regional facility (to the nearest ~~one tenth~~ one-hundredth of an acre)~~.~~;

~~7. Where applicable, the following information related to perpetual nutrient credits that were acquired in accordance with § 62.1-44.15:35 of the Code of Virginia:~~

~~a. The name of the nonpoint nutrient credit generating entity from which perpetual nutrient credits were acquired; and~~

~~b. The number of perpetual nutrient credits acquired (lbs. per acre per year).~~

7. A construction record drawing in a format as specified by the VSMP authority for permanent stormwater management facilities in accordance with 9VAC25-870-55 D appropriately sealed and signed by a professional registered in the Commonwealth of Virginia, certifying that the stormwater management facilities have been constructed in accordance with the approved plan;

8. Where applicable, evidence that the signed Stormwater Management Maintenance Agreement has been recorded;

9. For individual lots in residential construction only, a signed statement from the permittee that the new owner, if not the same as the permittee, has been notified of the final stabilization requirements; and

~~8.~~ 10. The following certification: "I certify under penalty of law that I have read and understand this notice of termination and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false information including the possibility of fine and imprisonment for knowing violations."

~~C.~~ D. The notice of termination shall be signed in accordance with 9VAC25-880-70 Part III K.

~~D.~~ E. Termination by the board. The board may terminate coverage under this general permit during its term and require application for an individual permit or deny a general permit renewal application on its own initiative in accordance with the Act, this chapter, and the VSMP Regulation, 9VAC25-870.

9VAC25-880-70. General permit.

Any operator whose registration statement is accepted by the board will receive the following general permit and shall comply with the requirements contained therein and be subject to all requirements of 9VAC25-870.

General Permit No.: VAR10

Effective Date: July 1, ~~2014~~ 2019

Expiration Date: June 30, ~~2019~~ 2024

GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM CONSTRUCTION ACTIVITIES

AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT PROGRAM AND THE VIRGINIA STORMWATER MANAGEMENT ACT

In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the Virginia Stormwater Management Act and regulations adopted pursuant thereto, operators of construction activities are authorized to discharge to surface waters within the boundaries of the Commonwealth of Virginia, except those specifically named in State Water Control Board regulations that prohibit such discharges.

The authorized discharge shall be in accordance with the registration statement filed with the Department of Environmental Quality, this cover page, Part I - Discharge Authorization and Special Conditions, Part II - Stormwater Pollution Prevention Plan, and Part III - Conditions Applicable to All VPDES Permits as set forth ~~herein~~ in this general permit.

PART I
DISCHARGE AUTHORIZATION AND SPECIAL CONDITIONS

A. Coverage under this general permit.

1. During the period beginning with the date of coverage under this general permit and lasting until the general permit's expiration date, the operator is authorized to discharge stormwater from construction activities.

2. This general permit also authorizes stormwater discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) located on-site or off-site provided that:

a. The support activity is directly related to the construction activity that is required to have general permit coverage for discharges of stormwater from construction activities;

b. The support activity is not a commercial operation, nor does it serve multiple unrelated construction activities by different operators;

c. The support activity does not operate beyond the completion of the last construction activity it supports;

d. The support activity is identified in the registration statement at the time of general permit coverage;

e. Appropriate control measures are identified in a stormwater pollution prevention plan and implemented to address the discharges from the support activity areas; and

f. All applicable state, federal, and local approvals are obtained for the support activity.

B. Limitations on coverage.

1. Post-construction discharges. This general permit does not authorize stormwater discharges that originate from the site after construction activities have been completed and the site, including any support activity sites covered under the general permit registration, has undergone final stabilization. Post-construction industrial stormwater discharges may need to be covered by a separate VPDES permit.

2. Discharges mixed with nonstormwater. This general permit does not authorize discharges that are mixed with sources of nonstormwater, other than those discharges that are identified in Part I E (Authorized nonstormwater discharges) and are in compliance with this general permit.

3. Discharges covered by another state permit. This general permit does not authorize discharges of stormwater from construction activities that have been covered under an individual permit or required to obtain coverage under an alternative general permit.

4. Impaired waters and ~~TMDL~~ total maximum daily load (TMDL) limitation.

a. Nutrient and sediment impaired waters. Discharges of stormwater from construction activities to surface waters identified as impaired in the ~~2012~~ 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for (i) sediment or a sediment-related parameter (i.e., total suspended solids or turbidity) or (ii) nutrients (i.e., nitrogen or phosphorus) are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a ~~SWPPP~~ stormwater pollution prevention plan (SWPPP) in accordance with Part II B 5 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload ~~allocations. In addition, the operator shall implement the following items:~~ allocations and implements an inspection frequency consistent with Part II G 2 a.

~~a. The impaired water(s), approved TMDL(s), and pollutant(s) of concern, when applicable, shall be identified in the SWPPP;~~

~~b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;~~

~~c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and~~

~~d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:~~

~~(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and~~

~~(2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to surface waters identified as impaired or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit.~~

b. Polychlorinated biphenyl (PCB) impaired waters. Discharges of stormwater from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or for which a TMDL wasteload allocation has been established and approved prior to the term of this general permit for PCB are not eligible for coverage under this general permit unless the operator develops, implements, and maintains a SWPPP in accordance with Part II B 6 of this permit that minimizes the pollutants of concern and, when applicable, is consistent with the assumptions and requirements of the approved TMDL wasteload allocations, and implements an inspection frequency consistent with Part II G 2 a.

5. Exceptional waters limitation. Discharges of stormwater from construction activities not previously covered under the general permit ~~issued in 2009~~ effective on July 1, 2014, to exceptional waters identified in 9VAC25-260-30 A 3 c are not eligible for coverage under this general permit unless the operator ~~implements the following:~~ develops, implements, and maintains a SWPPP in accordance with Part II B 7 of this permit and implements an inspection frequency consistent with Part II G 2 a.

~~a. The exceptional water(s) shall be identified in the SWPPP;~~

~~b. Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;~~

~~c. Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and~~

~~d. The applicable SWPPP inspection requirements specified in Part II F 2 shall be amended as follows:~~

~~(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 48 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 48 hours between business days, the inspection shall be conducted on the next business day; and~~

~~(2) Representative inspections used by utility line installation, pipeline construction, or other similar linear construction activities shall inspect all outfalls discharging to exceptional waters.~~

6. There shall be no discharge of floating solids or visible foam in other than trace amounts.

C. Commingled discharges. Discharges authorized by this general permit may be commingled with other sources of stormwater that are not required to be covered under a state permit, so long as the commingled discharge is in compliance with this general permit. Discharges authorized by a separate

state or VPDES permit may be commingled with discharges authorized by this general permit so long as all such discharges comply with all applicable state and VPDES permit requirements.

D. Prohibition of nonstormwater discharges. Except as provided in Parts I A 2, I C, and I E, all discharges covered by this general permit shall be composed entirely of stormwater associated with construction activities. All other discharges including the following are prohibited:

1. Wastewater from washout of concrete;

2. Wastewater from the washout and cleanout of stucco, paint, form release oils, curing compounds, and other construction materials;

3. Fuels, oils, or other pollutants used in vehicle and equipment operation and maintenance;

4. Oils, toxic substances, or hazardous substances from spills or other releases; and

5. Soaps, solvents, or detergents used in equipment and vehicle washing.

E. Authorized nonstormwater discharges. The following nonstormwater discharges from construction activities are authorized by this general permit when discharged in compliance with this general permit:

1. Discharges from firefighting activities;

2. Fire hydrant flushings;

3. Waters used to wash vehicles or equipment where soaps, solvents, or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;

4. Water used to control dust that has been filtered, settled, or similarly treated prior to discharge;

5. Potable water sources, including uncontaminated waterline flushings managed in a manner to avoid an instream impact;

6. Routine external building wash down where soaps, solvents or detergents have not been used and the wash water has been filtered, settled, or similarly treated prior to discharge;

7. Pavement wash waters where spills or leaks of toxic or hazardous materials have not occurred (or where all spilled or leaked material has been removed prior to washing); where soaps, solvents, or detergents have not been used; and where the wash water has been filtered, settled, or similarly treated prior to discharge;

8. Uncontaminated air conditioning or compressor condensate;

9. Uncontaminated ground water or spring water;

10. Foundation or footing drains where flows are not contaminated with process materials such as solvents;

11. Uncontaminated excavation dewatering, including dewatering of trenches and excavations that have been filtered, settled, or similarly treated prior to discharge; and

12. Landscape irrigation.

F. Termination of general permit coverage.

1. The operator of the construction activity shall submit a notice of termination in accordance with 9VAC25-880-60 to the VSMP authority after one or more of the following conditions have been met:

a. Necessary permanent control measures included in the SWPPP for the site are in place and functioning effectively and final stabilization has been achieved on all portions of the site for which the operator ~~is responsible~~ has operational control. When applicable, long term responsibility and maintenance requirements for permanent control measures shall be recorded in the local land records prior to the submission of a complete and accurate notice of termination and the construction record drawing prepared;

b. Another operator has assumed control over all areas of the site that have not been finally stabilized and obtained coverage for the ongoing discharge;

c. Coverage under an alternative VPDES or state permit has been obtained; or

d. For individual lots in residential construction only, ~~temporary soil~~ final stabilization as defined in 9VAC25-880-1 has been completed and the residence has been transferred to the homeowner.

2. The notice of termination ~~should~~ shall be submitted no later than 30 days after one of the above conditions in subdivision 1 of this subsection is met. ~~Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection.~~

3. Termination of authorizations to discharge for the conditions set forth in subdivision 1 a of this subsection shall be effective upon notification from the department that the provisions of subdivision 1 a of this subsection have been met or 60 days after submittal of ~~the~~ a complete and accurate notice of termination in accordance with 9VAC25-880-60 C, whichever occurs first.

4. Authorization to discharge terminates at midnight on the date that the notice of termination is submitted for the conditions set forth in subdivisions 1 b through 1 d of this subsection unless otherwise notified by the VSMP authority or department.

~~3.~~ 5. The notice of termination shall be signed in accordance with Part III K of this general permit.

G. Water quality protection.

1. The operator ~~must~~ shall select, install, implement and maintain control measures as identified in the SWPPP at the construction site that minimize pollutants in the discharge as necessary to ensure that the operator's discharge does not cause or contribute to an excursion above any applicable water quality standard.

2. If it is determined by the department that the operator's discharges are causing, have reasonable potential to cause, or are contributing to an excursion above any applicable water quality standard, the department, in consultation with the VSMP authority, may take appropriate enforcement action and require the operator to:

a. Modify or implement additional control measures in accordance with Part II ~~B~~ C to adequately address the identified water quality concerns;

b. Submit valid and verifiable data and information that are representative of ambient conditions and indicate that the receiving water is attaining water quality standards; or

c. Submit an individual permit application in accordance with 9VAC25-870-410 B 3.

All written responses required under this chapter ~~must~~ shall include a signed certification consistent with Part III K.

PART II
STORMWATER POLLUTION PREVENTION PLAN

A. Stormwater pollution prevent plan.

1. A stormwater pollution prevention plan (SWPPP) shall be developed prior to the submission of a registration statement and implemented for the construction activity, including any support activity, covered by this general permit. SWPPPs shall be prepared in accordance with good engineering practices. Construction activities that are part of a larger common plan of development or sale and disturb less than one acre may utilize a SWPPP template provided by the department and need not provide a separate stormwater management plan if one has been prepared and implemented for the larger common plan of development or sale.

2. The SWPPP requirements of this general permit may be fulfilled by incorporating by reference other plans such as a spill prevention control and countermeasure (SPCC) plan developed for the site under § 311 of the federal Clean Water Act or best management practices (BMP) programs otherwise required for the facility provided that the incorporated plan meets or exceeds the SWPPP requirements of Part II ~~A~~ B. All plans incorporated by reference into the SWPPP become enforceable under this general permit. If a plan incorporated by reference does not contain all of the required elements of the SWPPP, the operator ~~must~~ shall develop the missing elements and include them in the SWPPP.

3. Any operator that was authorized to discharge under the general permit ~~issued in 2009~~ effective July 1, 2014, and that intends to continue coverage under this general permit, shall update its stormwater pollution prevention plan to comply with the requirements of this general permit no later than 60 days after the date of coverage under this general permit.

~~A. Stormwater pollution prevention plan contents~~ B. Contents. The SWPPP shall include the following items:

1. General information.

a. A signed copy of the registration statement, if required, for coverage under the general VPDES permit for discharges of stormwater from construction activities;

b. Upon receipt, a copy of the notice of coverage under the general VPDES permit for discharges of stormwater from construction activities (i.e., notice of coverage letter);

c. Upon receipt, a copy of the general VPDES permit for discharges of stormwater from construction activities;

d. A narrative description of the nature of the construction activity, including the function of the project (e.g., low density residential, shopping mall, highway, etc.);

e. A legible site plan identifying:

(1) Directions of stormwater flow and approximate slopes anticipated after major grading activities;

(2) Limits of land disturbance including steep slopes and natural buffers around surface waters that will not be disturbed;

(3) Locations of major structural and nonstructural control measures, including sediment basins and traps, perimeter dikes, sediment barriers, and other measures intended to filter, settle, or similarly treat sediment, that will be installed between disturbed areas and the undisturbed vegetated areas in order to increase sediment removal and maximize stormwater infiltration;

(4) Locations of surface waters;

(5) Locations where concentrated stormwater is discharged;

(6) Locations of any support activities, ~~when applicable and when required by the VSMP authority,~~ including ~~but not limited to~~ (i) areas where equipment and vehicle washing, wheel wash water, and other wash water is to occur; (ii) storage areas for chemicals such as acids,

fuels, fertilizers, and other lawn care chemicals; (iii) concrete wash out areas; (iv) vehicle fueling and maintenance areas; (v) sanitary waste facilities, including those temporarily placed on the construction site; and (vi) construction waste storage; and

(7) When applicable, the location of the on-site rain gauge or the methodology established in consultation with the VSMP authority used to identify measurable storm events for inspection ~~purposes~~ as allowed by Part II F 2 b (2).

2. Erosion and sediment control plan.

a. An erosion and sediment control plan designed and approved ~~by the VESCP authority as authorized under~~ in accordance with the Virginia Erosion and Sediment Control Regulations (9VAC25-840), an "agreement in lieu of a plan" as defined in 9VAC25-840-10 from the VESCP authority, or an erosion and sediment control plan prepared in accordance with annual standards and specifications approved by the department. ~~Any operator proposing a new stormwater discharge from construction activities that is not required to obtain erosion and sediment control plan approval from a VESCP authority or does not adopt department approved annual standards and specifications shall submit the erosion and sediment control plan to the department for review and approval.~~

b. All erosion and sediment control plans shall include a statement describing the maintenance responsibilities required for the erosion and sediment controls used.

c. ~~A properly implemented~~ An approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications, ~~adequately~~ implemented to:

(1) ~~Controls~~ Control the volume and velocity of stormwater runoff within the site to minimize soil erosion;

(2) ~~Controls~~ Control stormwater discharges, including peak flow rates and total stormwater volume, to minimize erosion at outlets and to minimize downstream channel and stream bank erosion;

(3) ~~Minimizes~~ Minimize the amount of soil exposed during the construction activity;

(4) ~~Minimizes~~ Minimize the disturbance of steep slopes;

(5) ~~Minimizes~~ Minimize sediment discharges from the site in a manner that addresses (i) the amount, frequency, intensity, and duration of precipitation; (ii) the nature of resulting stormwater runoff; and (iii) soil characteristics, including the range of soil particle sizes present on the site;

(6) ~~Provides~~ Provide and ~~maintains~~ maintain natural buffers around surface waters, directs stormwater to vegetated areas to increase sediment removal, and maximizes stormwater infiltration, unless infeasible;

(7) ~~Minimizes~~ Minimize soil compaction and, unless infeasible, preserves topsoil;

(8) ~~Ensures that~~ Ensure initiation of stabilization activities, as defined in 9VAC25-880-1, of disturbed areas ~~will be initiated~~ immediately whenever any clearing, grading, excavating, or other land-disturbing activities have permanently ceased on any portion of the site, or temporarily ceased on any portion of the site and will not resume for a period exceeding 14 days; and

(9) ~~Utilizes~~ Utilize outlet structures that withdraw stormwater from the surface (i.e., above the permanent pool or wet storage water surface elevation), unless infeasible, when discharging from sediment basins or sediment traps.

3. Stormwater management plan.

a. ~~New construction activities. A~~ Except for those projects identified in Part II B 3 b and 3 a stormwater management plan approved by the VSMP authority as authorized under the Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870), or an "agreement in lieu of a stormwater management plan" as defined in 9VAC25-870-10 from the VSMP authority, or a stormwater management plan prepared in accordance with annual standards and specifications approved by the department. ~~Any operator proposing a new stormwater discharge from construction activities that is not required to obtain stormwater management plan approval from a VSMP authority or does not adopt department approved annual standards and specifications shall submit the stormwater management plan to the department for review and approval.~~

b. ~~Existing construction activities. Any~~ For any operator that was authorized to discharge under the general ~~permit issued in 2009, and that intends to continue coverage under this general permit, shall ensure compliance with~~ permits effective July 1, 2009, and July 1, 2014, for projects meeting the requirements of ~~9VAC25-870-93 through 9VAC25-870-99 of the VSMP Regulation, including but not limited to the water quality and quantity requirements. The~~ 9VAC25-870-47 B, an approved stormwater management plan is not required. In lieu of an approved stormwater management plan, the SWPPP shall include a description of, and all necessary calculations supporting, all post-construction stormwater management measures that will be installed prior to the completion of the construction process to control pollutants in stormwater discharges after construction operations have been completed. Structural measures

should be placed on upland soils to the degree possible. Such measures must be designed and installed in accordance with applicable VESCP authority, VSMP authority, state, and federal requirements, and any necessary permits must be obtained.

4. Pollution prevention plan. A pollution prevention plan that addresses potential pollutant-generating activities that may reasonably be expected to affect the quality of stormwater discharges from the construction activity, including any support activity. The pollution prevention plan shall:

a. Identify the potential pollutant-generating activities and the pollutant that is expected to be exposed to stormwater;

b. Describe the location where the potential pollutant-generating activities will occur, or if identified on the site plan, reference the site plan;

c. Identify all nonstormwater discharges, as authorized in Part I E of this general permit, that are or will be commingled with stormwater discharges from the construction activity, including any applicable support activity;

d. Identify the person responsible for implementing the pollution prevention practice or practices for each pollutant-generating activity (if other than the person listed as the qualified personnel);

e. Describe the pollution prevention practices and procedures that will be implemented to:

(1) Prevent and respond to leaks, spills, and other releases including (i) procedures for expeditiously stopping, containing, and cleaning up spills, leaks, and other releases; and (ii) procedures for reporting leaks, spills, and other releases in accordance with Part III G;

(2) Prevent the discharge of spilled and leaked fuels and chemicals from vehicle fueling and maintenance activities (e.g., providing secondary containment such as spill berms, decks, spill containment pallets, providing cover where appropriate, and having spill kits readily available);

(3) Prevent the discharge of soaps, solvents, detergents, and wash water from construction materials, including the clean-up of stucco, paint, form release oils, and curing compounds (e.g., providing (i) cover (e.g., plastic sheeting or temporary roofs) to prevent contact with stormwater; (ii) collection and proper disposal in a manner to prevent contact with stormwater; and (iii) a similarly effective means designed to prevent discharge of these pollutants);

(4) Minimize the discharge of pollutants from vehicle and equipment washing, wheel wash water, and other types of washing (e.g., locating activities away from surface waters and stormwater inlets or conveyance and directing wash waters to sediment basins or traps, using filtration devices such as filter bags or sand filters, or using similarly effective controls);

(5) Direct concrete wash water into a leak-proof container or leak-proof settling basin. The container or basin shall be designed so that no overflows can occur due to inadequate sizing or precipitation. Hardened concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wastes. Liquid concrete wastes shall be removed and disposed of in a manner consistent with the handling of other construction wash waters and shall not be discharged to surface waters;

(6) Minimize the discharge of pollutants from storage, handling, and disposal of construction products, materials, and wastes including (i) building products such as asphalt sealants, copper flashing, roofing materials, adhesives, and concrete admixtures; (ii) pesticides, herbicides, insecticides, fertilizers, and landscape materials; and (iii) construction and domestic wastes such as packaging materials, scrap construction materials, masonry products, timber, pipe and electrical cuttings, plastics, Styrofoam, concrete, and other trash or building materials;

(7) Prevent the discharge of fuels, oils, and other petroleum products, hazardous or toxic wastes, excess concrete, and sanitary wastes; ~~and~~

(8) Address any other discharge from the potential pollutant-generating activities not addressed above; and

(9) Minimize the exposure of waste materials to precipitation by closing or covering waste containers during precipitation events and at the end of the business day, or implementing other similarly effective practices. Minimization of exposure is not required in cases where the exposure to precipitation will not result in a discharge of pollutants; and

f. Describe procedures for providing pollution prevention awareness of all applicable wastes, including any wash water, disposal practices, and applicable disposal locations of such wastes, to personnel in order to comply with the conditions of this general permit. The operator shall implement the procedures described in the SWPPP.

5. SWPPP requirements for discharges to ~~impaired waters, surface waters with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit, and exceptional waters. The SWPPP shall:~~ nutrient and sediment impaired waters. For discharges to surface waters (i) identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL

wasteload allocation established and approved prior to the term of this general permit for sediment for a sediment-related parameter (i.e., total suspended solids or turbidity) or nutrients (i.e., nitrogen or phosphorus), the operator shall:

a. Identify the impaired ~~water(s)~~ waters, approved ~~TMDL(s)~~ TMDLs, ~~pollutant(s)~~ and pollutants of concern~~, and exceptional waters identified in 9VAC25-260-30 A 3 c, when applicable;~~ in the SWPPP; and

b. Provide clear direction in the SWPPP that:

(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

(2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

(3) A modified inspection schedule shall be implemented in accordance with ~~Part I B 4 or~~ Part ~~I B 5~~ II G 2 a.

6. SWPPP requirements for discharges to polychlorinated biphenyl (PCB) impaired waters. For discharges from construction activities that include the demolition of any structure with at least 10,000 square feet of floor space built or renovated before January 1, 1980, to surface waters (i) identified as impaired in the 2016 § 305(b)/303(d) Water Quality Assessment Integrated Report or (ii) with an applicable TMDL wasteload allocation established and approved prior to the term of this general permit for PCBs, the operator shall:

a. Identify the impaired waters, approved TMDLs, and pollutant of concern in the SWPPP; and

b. Include procedures in the SWPPP for:

(1) Implementation of controls to minimize the exposure of PCB-containing building materials, including paint, caulk, and pre-1980 fluorescent lighting fixtures, to precipitation and to stormwater such as separating work areas from nonwork areas and selecting appropriate personal protective equipment and tools, constructing a containment area so that all dust or debris generated by the work remains within the protected area, using tools that minimize dust and heat (<212°F);

(2) Disposal of such materials is performed in compliance with applicable state, federal, and local requirements; and

(3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

7. SWPPP requirements for discharges to exceptional waters. For discharges to surface waters identified in 9VAC25-260-30 A 3 c as an exceptional water, the operator shall:

a. Identify the exceptional surface waters in the SWPPP; and

b. Provide clear direction in the SWPPP that:

(1) Permanent or temporary soil stabilization shall be applied to denuded areas within seven days after final grade is reached on any portion of the site;

(2) Nutrients shall be applied in accordance with manufacturer's recommendations or an approved nutrient management plan and shall not be applied during rainfall events; and

(3) A modified inspection schedule shall be implemented in accordance with Part II G 2 a.

~~6. Qualified~~ 8. Identification of qualified personnel. The name, phone number, and qualifications of the qualified personnel conducting inspections required by this general permit.

~~7.~~ 9. Delegation of authority. The individuals or positions with delegated authority, in accordance with Part III K, to sign inspection reports or modify the SWPPP.

~~8.~~ 10. SWPPP signature. The SWPPP shall be signed and dated in accordance with Part III K.

~~B.~~ C. SWPPP amendments, modification, and updates.

1. The operator shall amend the SWPPP whenever there is a change in the design, construction, operation, or maintenance that has a significant effect on the discharge of pollutants to surface waters and that has not been previously addressed in the SWPPP.

2. The SWPPP ~~must~~ shall be amended if, during inspections or investigations by the operator's qualified personnel, or by local, state, or federal officials, it is determined that the existing control measures are ineffective in minimizing pollutants in discharges from the construction activity. Revisions to the SWPPP shall include additional or modified control measures designed and implemented to correct problems identified. If approval by the VESCP authority, VSMP authority, or department is necessary for the control measure, revisions to the SWPPP shall be completed no later than seven calendar days following approval. Implementation of these additional or modified control measures ~~must~~ shall be accomplished as described in Part II ~~G~~ H.

3. The SWPPP ~~must~~ shall clearly identify the ~~contractor(s)~~ contractors that will implement and maintain each control measure identified in the SWPPP. The SWPPP shall be amended to identify any new contractor that will implement and maintain a control measure.

4. The operator shall update the SWPPP as soon as possible but no later than seven days following any modification to its implementation. All modifications or updates to the SWPPP shall be noted and shall include the following items:

a. A record of dates when:

(1) Major grading activities occur;

(2) Construction activities temporarily or permanently cease on a portion of the site; and

(3) Stabilization measures are initiated;

b. Documentation of replaced or modified controls where periodic inspections or other information have indicated that the controls have been used inappropriately or incorrectly and ~~where~~ were modified ~~as soon as possible~~;

c. Areas that have reached final stabilization and where no further SWPPP or inspection requirements apply;

d. All properties that are no longer under the legal control of the operator and the dates on which the operator no longer had legal control over each property;

e. The date of any prohibited discharges, the discharge volume released, and what actions were taken to minimize the impact of the release;

f. Measures taken to prevent the reoccurrence of any prohibited discharge; and

g. Measures taken to address any evidence identified as a result of an inspection required under Part II ~~F~~ G.

5. Amendments, modifications, or updates to the SWPPP shall be signed in accordance with Part III K.

~~C.~~ D. Public ~~Notification~~ notification. Upon commencement of land disturbance, the operator shall post conspicuously a copy of the notice of coverage letter near the main entrance of the construction activity. For linear projects, the operator shall post the notice of coverage letter at a publicly accessible location near an active part of the construction project (e.g., where a pipeline crosses a public road). The operator shall maintain the posted information until termination of general permit coverage as specified in Part I F.

~~D.~~ E. SWPPP availability.

1. Operators with day-to-day operational control over SWPPP implementation shall have a copy of the SWPPP available at a central location on-site for use by those identified as having responsibilities under the SWPPP whenever they are on the construction site.

2. The operator shall make the SWPPP and all amendments, modifications, and updates available upon request to the department, the VSMP authority, the EPA, the VESCP authority, local government officials, or the operator of a municipal separate storm sewer system receiving discharges from the construction activity. If an on-site location is unavailable to store the SWPPP when no personnel are present, notice of the SWPPP's location ~~must~~ shall be posted near the main entrance of the construction site.

3. The operator shall make the SWPPP available for public review in an electronic format or in hard copy. Information for public access to the SWPPP shall be posted and maintained in accordance with Part II ~~C~~ D. If not provided electronically, public access to the SWPPP may be arranged upon request at a time and at a publicly accessible location convenient to the operator or his designee but shall be no less than once per month and shall be during normal business hours. Information not required to be contained within the SWPPP by this general permit is not required to be released.

~~E.~~ F. SWPPP implementation. The operator shall implement the SWPPP and subsequent amendments, modifications, and updates from commencement of land disturbance until termination of general permit coverage as specified in Part I F.

1. All control measures ~~must~~ shall be properly maintained in effective operating condition in accordance with good engineering practices and, where applicable, manufacturer specifications. If a site inspection required by Part II ~~F~~ G identifies a control measure that is not operating effectively, corrective ~~action(s)~~ actions shall be completed as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority, to maintain the continued effectiveness of the control measures.

2. If site inspections required by Part II ~~F~~ G identify an existing control measure that needs to be modified or if an additional or alternative control measure is necessary for any reason, implementation shall be completed prior to the next anticipated measurable storm event. If implementation prior to the next anticipated measurable storm event is impracticable, then additional or alternative control measures shall be implemented as soon as practicable, but no later than seven days after discovery or a longer period as established by the VSMP authority.

~~F.~~ G. SWPPP Inspections.

1. Personnel responsible for on-site and off-site inspections. Inspections required by this general permit shall be conducted by the qualified personnel identified by the operator in the SWPPP. The operator is responsible for ~~insuring~~ ensuring that the qualified personnel conduct the inspection.

2. Inspection schedule.

a. ~~Inspections shall be conducted at a frequency of~~ For construction activities that discharge to a surface water

identified in Part II B 5 and B 6 as impaired or having an approved TMDL or Part I B 5 as exceptional, the following inspection schedule requirements apply:

(1) Inspections shall be conducted at a frequency of (i) at least once every four business days or (ii) at least once every five business days and no later than 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than 24 hours between business days, the inspection shall be conducted on the next business day; and

(2) Representative inspections as allowed in Part II G 2 d shall not be allowed.

b. Except as specified in Part II G 2 a, inspections shall be conducted at a frequency of:

(1) At least once every five business days; or

(2) At least once every 10 business days and no later than ~~48~~ 24 hours following a measurable storm event. In the event that a measurable storm event occurs when there are more than ~~48~~ 24 hours between business days, the inspection shall be conducted ~~no later than~~ on the next business day.

~~b.~~ c. Where areas have been temporarily stabilized or land-disturbing activities will be suspended due to continuous frozen ground conditions and stormwater discharges are unlikely, the inspection frequency described in Part II G 2 b and 2 c may be reduced to once per month. If weather conditions (such as above freezing temperatures or rain or snow events) make discharges likely, the operator shall immediately resume the regular inspection frequency.

~~c. Representative~~ d. Except as prohibited in Part II G 2 a (2), representative inspections may be utilized for utility line installation, pipeline construction, or other similar linear construction activities provided that:

(1) Temporary or permanent soil stabilization has been installed and vehicle access may compromise the temporary or permanent soil stabilization and potentially cause additional land disturbance increasing the potential for erosion;

(2) Inspections occur on the same frequency as other construction activities;

(3) Control measures are inspected along the construction site 0.25 miles above and below each access point (i.e., where a roadway, undisturbed right-of-way, or other similar feature intersects the construction activity and access does not compromise temporary or permanent soil stabilization); and

(4) Inspection locations are provided in the inspection report required by Part II ~~F~~ G.

e. If adverse weather causes the safety of the inspection personnel to be in jeopardy, the inspection may be delayed until the next business day on which it is safe to perform the inspection. Any time inspections are delayed due to adverse weather conditions, evidence of the adverse weather conditions shall be included in the SWPPP with the dates of occurrence.

3. Inspection requirements.

a. As part of the inspection, the qualified personnel shall:

(1) Record the date and time of the inspection and when applicable the date and rainfall amount of the last measurable storm event;

(2) Record the information and a description of any discharges occurring at the time of the inspection or evidence of discharges occurring prior to the inspection;

(3) Record any land-disturbing activities that have occurred outside of the approved erosion and sediment control plan;

(4) Inspect the following for installation in accordance with the approved erosion and sediment control plan, identification of any maintenance needs, and evaluation of effectiveness in minimizing sediment discharge, including whether the control has been inappropriately or incorrectly used:

(a) All perimeter erosion and sediment controls, such as silt fence;

(b) Soil stockpiles, when applicable, and borrow areas for stabilization or sediment trapping measures;

(c) Completed earthen structures, such as dams, dikes, ditches, and diversions for stabilization and effective impoundment or flow control;

(d) Cut and fill slopes;

(e) Sediment basins and traps, sediment barriers, and other measures installed to control sediment discharge from stormwater;

(f) Temporary or permanent ~~channel, flume,~~ channels, flumes, or other slope drain structures installed to convey concentrated runoff down cut and fill slopes;

(g) Storm inlets that have been made operational to ensure that sediment laden stormwater does not enter without first being filtered or similarly treated; and

(h) Construction vehicle access routes that intersect or access paved or public roads for minimizing sediment tracking;

(5) Inspect areas that have reached final grade or that will remain dormant for more than 14 days ~~for initiation of stabilization activities;~~ to ensure:

(a) Initiation of stabilization activities have occurred immediately, as defined in 9VAC25-880-1; and

(b) Stabilization activities have been completed within seven days of reaching grade or stopping work;

~~(6) Inspect areas that have reached final grade or that will remain dormant for more than 14 days for completion of stabilization activities within seven days of reaching grade or stopping work;~~

~~(7)~~ (6) Inspect for evidence that the approved erosion and sediment control plan, "agreement in lieu of a plan," or erosion and sediment control plan prepared in accordance with department-approved annual standards and specifications has not been properly implemented. This includes ~~but is not limited to~~:

(a) Concentrated flows of stormwater in conveyances such as rills, rivulets or channels that have not been filtered, settled, or similarly treated prior to discharge, or evidence thereof;

(b) Sediment laden or turbid flows of stormwater that have not been filtered or settled to remove sediments prior to discharge;

(c) Sediment deposition in areas that drain to unprotected stormwater inlets or catch basins that discharge to surface waters. Inlets and catch basins with failing sediments controls due to improper installation, lack of maintenance, or inadequate design are considered unprotected;

(d) Sediment deposition on any property (including public and private streets) outside of the construction activity covered by this general permit;

(e) Required stabilization has not been initiated or completed or is not effective on portions of the site;

(f) Sediment basins without adequate wet or dry storage volume or sediment basins that allow the discharge of stormwater from below the surface of the wet storage portion of the basin;

(g) Sediment traps without adequate wet or dry storage or sediment traps that allow the discharge of stormwater from below the surface of the wet storage portion of the trap; and

(h) Land disturbance or sediment deposition outside of the approved area to be disturbed;

~~(8)~~ (7) Inspect pollutant generating activities identified in the pollution prevention plan for the proper implementation, maintenance and effectiveness of the procedures and practices;

~~(9)~~ (8) Identify any pollutant generating activities not identified in the pollution prevention plan; and

~~(10)~~ (9) Identify and document the presence of any evidence of the discharge of pollutants prohibited by this general permit.

4. Inspection report. Each inspection report shall include the following items:

a. The date and time of the inspection and when applicable, the date and rainfall amount of the last measurable storm event;

b. Summarized findings of the inspection;

c. The ~~location(s)~~ locations of prohibited discharges;

d. The ~~location(s)~~ locations of control measures that require maintenance;

e. The ~~location(s)~~ locations of control measures that failed to operate as designed or proved inadequate or inappropriate for a particular location;

f. The ~~location(s)~~ locations where any evidence identified under Part II ~~F~~ G 3 a (7) exists;

g. The ~~location(s)~~ locations where any additional control measure is needed ~~that did not exist at the time of inspection~~;

h. A list of corrective actions required (including any changes to the SWPPP that are necessary) as a result of the inspection or to maintain permit compliance;

i. Documentation of any corrective actions required from a previous inspection that have not been implemented; and

j. The date and signature of the qualified personnel and the operator or its duly authorized representative.

5. The inspection report shall be included into the SWPPP no later than four business days after the inspection is complete.

The inspection report and any actions taken in accordance with Part II ~~must~~ shall be retained by the operator as part of the SWPPP for at least three years from the date that general permit coverage expires or is terminated. The inspection report shall identify any incidents of noncompliance. Where an inspection report does not identify any incidents of noncompliance, the report shall contain a certification that the construction activity is in compliance with the SWPPP and this general permit. The report shall be signed in accordance with Part III K of this general permit.

~~G.~~ H. Corrective actions.

1. The operator shall implement the corrective ~~action(s)~~ actions identified as a result of an inspection as soon as practicable but no later than seven days after discovery or a longer period as approved by the VSMP authority. If approval of a corrective action by a regulatory authority

(e.g., VSMP authority, VESCP authority, or the department) is necessary, additional control measures shall be implemented to minimize pollutants in stormwater discharges until such approvals can be obtained.

2. The operator may be required to remove accumulated sediment deposits located outside of the construction activity covered by this general permit as soon as practicable in order to minimize environmental impacts. The operator shall notify the VSMP authority and the department as well as obtain all applicable federal, state, and local authorizations, approvals, and permits prior to the removal of sediments accumulated in surface waters including wetlands.

PART III
CONDITIONS APPLICABLE TO ALL VPDES PERMITS

NOTE: Discharge monitoring is not required for this general permit. If the operator chooses to monitor stormwater discharges or control measures, the operator ~~must~~ shall comply with the requirements of subsections A, B, and C, as appropriate.

A. Monitoring.

1. Samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity.

2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this general permit. Analyses performed according to test procedures approved under 40 CFR Part 136 shall be performed by an environmental laboratory certified under regulations adopted by the Department of General Services (1VAC30-45 or 1VAC30-46).

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

B. Records.

1. Monitoring records and reports shall include:

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

b. The ~~individual(s)~~ individuals who performed the sampling or measurements;

c. The ~~date(s)~~ dates and ~~time(s)~~ times analyses were performed;

d. The ~~individual(s)~~ individuals who performed the analyses;

e. The analytical techniques or methods used; and

f. The results of such analyses.

2. The operator shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this general permit, and records of all data used to complete the registration statement for this general permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the operator, or as requested by the board.

C. Reporting monitoring results.

1. The operator shall update the SWPPP to include the results of the monitoring as may be performed in accordance with this general permit, unless another reporting schedule is specified elsewhere in this general permit.

2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms provided, approved or specified by the department; or in any format provided that the date, location, parameter, method, and result of the monitoring activity are included.

3. If the operator monitors any pollutant specifically addressed by this general permit more frequently than required by this general permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this general permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or reporting form specified by the department.

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

D. Duty to provide information. The operator shall furnish, within a reasonable time, any information which the board may request to determine whether cause exists for ~~modifying, revoking and reissuing, or~~ terminating this general permit coverage or to determine compliance with this general permit. The board, department, EPA, or VSMP authority may require the operator to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from his discharge on the quality of surface waters, or such other information as may be necessary to accomplish the purposes of the CWA and the Virginia Stormwater Management Act. The operator shall also furnish to the board, department, EPA, or VSMP authority, upon request, copies of records required to be kept by this general permit.

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

F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia, except in compliance with a state permit issued by the department, it shall be unlawful to cause a stormwater discharge from a construction activity.

G. Reports of unauthorized discharges. Any operator who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance or a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters or who discharges or causes or allows a discharge that may reasonably be expected to enter surface waters, shall notify the Department of Environmental Quality of the discharge immediately upon discovery of the discharge, but in no case later than within 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department and the VSMP authority within five days of discovery of the discharge. The written report shall contain:

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

2. The cause of the discharge;

3. The date on which the discharge occurred;

4. The length of time that the discharge continued;

5. The volume of the discharge;

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

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

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

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

H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a "bypass" or "upset," as defined ~~herein~~ in this general permit, should occur from a facility and the discharge enters or could be expected to enter surface waters, the operator shall promptly notify, in no case later than within 24 hours, the department and the VSMP authority by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The operator shall reduce the report to writing and shall submit it to the department and the VSMP authority within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include ~~but are not limited to~~ any discharge resulting from:

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

2. Breakdown of processing or accessory equipment;

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

4. Flooding or other acts of nature.

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

1. An oral report to the department and the VSMP authority shall be provided within 24 hours from the time the operator becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this subdivision:

a. Any unanticipated bypass; and

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

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

a. A description of the noncompliance and its cause;

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

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

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

3. The operator shall report all instances of noncompliance not reported under Part III I 1 or 2 in writing as part of the SWPPP. The reports shall contain the information listed in Part III I 2.

NOTE: The reports required in Part III G, H and I shall be made to the department and the VSMP authority. Reports may be made by telephone, email, or by fax. For reports outside normal working hours, leaving a recorded message shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal of incorrect information in any report, including a registration statement, to the department or the VSMP authority, the operator shall promptly submit such facts or correct information.

J. Notice of planned changes.

1. The operator shall give notice to the department and the VSMP authority as soon as possible of any planned physical alterations or additions to the permitted facility or activity. Notice is required only when:

a. The operator plans an alteration or addition to any building, structure, facility, or installation that may meet one of the criteria for determining whether a facility is a new source in 9VAC25-870-420;

b. The operator plans an alteration or addition that would significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are not subject to effluent limitations in this general permit; or

2. The operator shall give advance notice to the department and VSMP authority of any planned changes in the permitted facility or activity, which may result in noncompliance with state permit requirements.

K. Signatory requirements.

1. Registration statement. All registration statements shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this chapter, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions that govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long-term compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for state permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

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

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

2. Reports~~, etc~~ and other information. All reports required by this general permit, including SWPPPs, and other information requested by the board or the department shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:

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

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

c. The signed and dated written authorization is included in the SWPPP. A copy ~~must~~ shall be provided to the department and VSMP authority, if requested.

3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the construction activity, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the VSMP authority as the administering entity for the board prior to or together with any reports or information to be signed by an authorized representative.

4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:

"I certify under penalty of law that I have read and understand this document and that this document and all attachments were prepared in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

L. Duty to comply. The operator shall comply with all conditions of this general permit. Any state permit noncompliance constitutes a violation of the Virginia

Stormwater Management Act and the Clean Water Act, except that noncompliance with certain provisions of this general permit may constitute a violation of the Virginia Stormwater Management Act but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for state permit coverage, termination, revocation and reissuance, or modification; or denial of a state permit renewal application.

The operator shall comply with effluent standards or prohibitions established under § 307(a) of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this general permit has not yet been modified to incorporate the requirement.

M. Duty to reapply. If the operator wishes to continue an activity regulated by this general permit after the expiration date of this general permit, the operator shall submit a new registration statement at least ~~90~~ 60 days before the expiration date of the existing general permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing general permit.

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

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

P. Oil and hazardous substance liability. Nothing in this general permit shall be construed to preclude the institution of any legal action or relieve the operator from any responsibilities, liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

Q. Proper operation and maintenance. The operator shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances), which are installed or used by the operator to achieve compliance with the conditions of this general permit. Proper operation and maintenance also includes effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems, which are installed by the operator only when the operation is necessary to achieve compliance with the conditions of this general permit.

R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering surface waters and in compliance with all applicable state and federal laws and regulations.

S. Duty to mitigate. The operator shall take all steps to minimize or prevent any discharge in violation of this general permit that has a reasonable likelihood of adversely affecting human health or the environment.

T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this general permit.

U. Bypass.

1. "Bypass," as defined in 9VAC25-870-10, means the intentional diversion of waste streams from any portion of a treatment facility. The operator may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Part III U 2 and 3.

2. Notice.

a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the operator shall submit prior notice to the department, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass as required in Part III I.

3. Prohibition of bypass.

a. Except as provided in Part III U 1, bypass is prohibited, and the board or department may take enforcement action against an operator for bypass unless:

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

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The operator submitted notices as required under Part III U 2.

b. The department may approve an anticipated bypass, after considering its adverse effects, if the department determines that it will meet the three conditions listed in Part III U 3 a.

V. Upset.

1. An "upset," as defined in 9VAC25-870-10, means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based state permit effluent limitations because of factors beyond the reasonable control of the operator. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

2. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based state permit effluent limitations if the requirements of Part III V 4 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.

3. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventative maintenance, or careless or improper operation.

4. An operator who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs or other relevant evidence that:

a. An upset occurred and that the operator can identify the ~~cause(s)~~ cause of the upset;

b. The permitted facility was at the time being properly operated;

c. The operator submitted notice of the upset as required in Part III I; and

d. The operator complied with any remedial measures required under Part III S.

5. In any enforcement proceeding, the operator seeking to establish the occurrence of an upset has the burden of proof.

W. Inspection and entry. The operator shall allow the department as the board's designee, the VSMP authority, EPA, or an authorized representative of either entity (including an authorized contractor), upon presentation of credentials and other documents as may be required by law to:

1. Enter upon the operator's premises where a regulated facility or activity is located or conducted, or where records ~~must~~ shall be kept under the conditions of this general permit;

2. Have access to and copy, at reasonable times, any records that ~~must~~ shall be kept under the conditions of this general permit;

3. Inspect and photograph at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this general permit; and

4. Sample or monitor at reasonable times, for the purposes of ensuring state permit compliance or as otherwise authorized by the Clean Water Act or the Virginia Stormwater Management Act, any substances or parameters at any location.

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

X. State permit actions. State ~~permits~~ permit coverage may be modified, revoked and reissued, or terminated for cause. The filing of a request by the operator for a state permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any state permit condition.

Y. Transfer of state ~~permits~~ permit coverage.

1. State permits are not transferable to any person except after notice to the department. Except as provided in Part III Y 2, a state permit may be transferred by the operator to a new operator only if the state permit has been modified or revoked and reissued, or a minor modification made, to identify the new operator and incorporate such other requirements as may be necessary under the Virginia Stormwater Management Act and the Clean Water Act.

2. As an alternative to transfers under Part III Y 1, this state permit may be automatically transferred to a new operator if:

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

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

c. The department does not notify the existing operator and the proposed new operator of its intent to modify or revoke and reissue the state permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2 b.

3. For ongoing construction activity involving a change of operator, the new operator shall accept and maintain the existing SWPPP, or prepare and implement a new SWPPP prior to taking over operations at the site.

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

VA.R. Doc. No. R18-5296; Filed October 9, 2018, 2:47 p.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Emergency Regulation

Title of Regulation: **11VAC10-47. Historical Horse Racing (adding 11VAC10-47-10 through 11VAC10-47-200).**

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Dates: October 5, 2018, through April 4, 2020.

Agency Contact: Kimberly Mackey, Regulatory Coordinator, Virginia Racing Commission, 5707 Huntsman Road, Suite 201-B, Richmond, VA 23250, telephone (804) 966-7406, or email kimberly.mackey@vrc.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia.

The action establishes regulations to implement the provisions of Chapter 811 of the 2018 Acts of Assembly, which authorizes Historical Horse Racing at facilities licensed by the Virginia Racing Commission throughout the Commonwealth of Virginia.

CHAPTER 47
HISTORICAL HORSE RACING

11VAC10-47-10. Definitions.

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

"Act" means Chapter 29 (§ 59.1-364 et seq.) of Title 59.1 of the Code of Virginia.

"Applicant" means an individual who has submitted an application to obtain a license to offer pari-mutuel wagering on historical horse racing from the commission.

"Commission" means the Virginia Racing Commission.

"Historical horse racing" means a form of horse racing that creates pari-mutuel pools from wagers placed on previously conducted horse races and is hosted at (i) a racetrack owned or operated by a significant infrastructure limited licensee or (ii) a satellite facility that is owned or operated by (a) a significant infrastructure limited licensee or (b) the nonprofit industry stakeholder organization recognized by the commission and licensed to own or operate such satellite facility.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with this chapter and to otherwise perform the functions assigned to it by this chapter. An independent testing laboratory shall not be owned or controlled by a licensee, the state, or any manufacturer, supplier, or operator of historical horse racing terminals.

"Integrity auditor" means a company that conducts periodic and regular tests on the validity of pari-mutuel wagering, deductions, and payouts for the applicable historical horse racing event, including the legitimacy of the event itself, and tests that the order of finish of the race selected in the game is valid, match to the order of finish that occurred empirically, and that all runners that were listed as entered into the race for the purposes of the game, legitimately ran in the race.

"Licensee" means any person holding an owner's or operator's license under Article 2 (§ 59.1-375 et seq.) of Chapter 29 of the Code of Virginia who is granted a license by the commission under this chapter to conduct pari-mutuel wagering on historical horse racing.

"Satellite facility" means all areas of the property at which simulcast horse racing is received for the purposes of pari-mutuel wagering and any additional areas designated by the commission for conducting pari-mutuel wagering on historical horse racing.

11VAC10-47-20. Pari-mutuel wagering; generally.

The commission is authorized to issue licenses to (i) holders of a significant infrastructure limited license or (ii) holders of a satellite facility license to conduct pari-mutuel wagering on historical horse racing for the promotion, sustenance, and growth of a native industry, in a manner consistent with the health, safety, and welfare of the people. Pari-mutuel wagering on historical horse racing shall be conducted so as to maintain horse racing in the Commonwealth of Virginia of the highest quality and free of any corrupt, incompetent, dishonest, or unprincipled practices and to maintain in horse racing complete honesty and integrity. This chapter shall exclusively govern all matters related to pari-mutuel wagering on historical horse racing.

11VAC10-47-30. Observance of regulations.

A licensee shall be charged with the observance and compliance with the act and the regulations of the commission.

11VAC10-47-40. Requirements for wagering on historical horse racing.

A. In accordance with the act, wagering on a historical horse race shall only be conducted by:

1. A significant infrastructure limited licensee; or

2. A satellite facility licensee.

B. Wagering on historical horse racing may only take place at a licensed significant infrastructure facility or a licensed satellite facility.

C. A licensee may conduct wagering on historical horse races of any horse breed regardless of the type of breed that primarily races in live meets conducted by the licensee.

D. The minimum wager to be accepted by any licensee on the outcome of a historical horse race shall be $.10. The minimum payout on any wager shall not be less than the amount wagered.

E. Any wager placed on a historical horse race is a multiple wager.

F. The terminal may display the wager and its outcome as part of an entertaining display or game, provided the wager functions according to the pari-mutuel wagering pool specifications provided by the licensee to and approved by the commission. A licensee may not offer a new display or game without prior approval of the commission as set forth in this chapter.

G. All wagering on a historical horse race shall incorporate the following elements:

1. A patron may only wager on a historical horse race on a terminal approved by the commission;

2. A licensee shall at all times maintain at least two terminals offering wagering on historical horse races for each pool and minimum wager denomination;

3. Prior to the patron making wager selections, the terminal shall not display any information that would allow the patron to identify the historical race on which the patron is wagering, including the location of the race, the date on which the race was run, the names of the horses in the race, or the names of the jockeys who rode the horses in the race;

4. The terminal shall make available true and accurate past performance information on the historical horse race to the patron prior to the patron making wager selections. The information shall be current as of the day the historical horse race was actually run. The information provided to the patron shall be displayed on the terminal in data or graphical form; and

5. After a patron finalizes wager selections, the terminal shall display the official results of the race and a replay of the race, or a portion thereof, whether by digital, animated, or graphical depiction or by way of a video recording. The identity of the race shall be revealed to the patron after the patron has placed a wager.

11VAC10-47-50. Location and hours of operation of terminals used for wagering on historical horse racing.

A. Pari-mutuel wagering on historical horse races shall only be permitted in designated areas that have the prior written approval of the commission and are on the premises of a significant infrastructure limited licensee or satellite facility licensee.

B. A licensee shall request permission from the commission to alter the physical layout of the area permitted for historical horse racing.

C. Designated areas shall be established in such a way as to control access by the general public and prevent entry by any patron who is younger than 18 years of age or is otherwise not permitted to place wagers.

D. The designated area shall provide terminals that are accessible to handicapped persons.

E. A licensee may conduct pari-mutuel wagering on historical horse races on days and hours approved by the commission.

11VAC10-47-60. Payouts from pari-mutuel pools generated by wagering on historical horse racing.

A. A wager on a historical horse race, less deductions permitted by the act, shall be placed in pari-mutuel pools approved by the commission.

B. A licensee shall provide guaranteed funding for all historical horse race pools offered by the licensee. This

guarantee shall be in the form of a letter of credit, bond with surety, or other instrument of financial security in an amount and form approved by the commission sufficient to cover outstanding vouchers together with any indebtedness incurred by the licensee to the Commonwealth.

C. A licensee offering wagering on a historical horse race shall maintain pari-mutuel pools for each wager in a manner and method approved by the commission. The pari-mutuel pools shall be maintained and funded in a method approved by the commission to ensure that the amount available in the pari-mutuel pools at any given time is sufficient to ensure that a patron will be paid the minimum amount required on a winning wager.

D. All prizes awarded from a historical horse race wager shall be awarded from an existing pari-mutuel pool. The money in the pool shall only consist of money wagered by patrons or allocated to the pari-mutuel pool. Wagers made on a historical horse race shall not constitute a wager against the licensee. Wagers shall not be conducted in a manner in which the amount retained by the licensee is dependent upon the outcome of any particular race or the success of any particular wager.

E. The rules for the mathematical model, configuration of pools, and pool payout methodology shall be described in game specification documentation, which shall be provided by the licensee to the commission.

F. Controls shall be in place to ensure that depletion of a pari-mutuel pool below an amount required to pay all winning tickets shall be detected at the time of depletion, and depletion shall result in the automatic suspension of any wagering activity related to that pool. The commission shall be notified immediately in the event of the suspension of wagering activity of any historical horse racing pool.

11VAC10-47-70. Commission approval of historical horse racing games and displays.

A. A licensee shall submit a written request to the commission for permission to offer a multiple wager on a historical horse race. The written request shall include a detailed description of the rules that apply to the pari-mutuel wager, the method of calculating payouts, and the method by which money will be allocated to the pari-mutuel pool, if applicable. This documentation shall fully and accurately describe:

1. The method of determining a game outcome;

2. Available wagering denominations;

3. Minimum wager amount;

4. Maximum wager amount;

5. The allocation of wagers into the pari-mutuel pool;

6. The amount of takeout for each wager;

7. The method of calculating winning payouts and breakage, where applicable;

8. Payout calculations set forth in sufficient detail to audit a payout through manual calculation;

9. The minimum payouts and the method of guaranteeing minimum payouts;

10. The method of mapping payouts to an entertaining display on the wagering terminal; and

11. Any other information provided to an independent testing laboratory for use in the testing of the pari-mutuel wagers.

B. For wagering on historical horse racing, approximate odds or payouts for each pool shall be available on each respective terminal for viewing by patrons.

C. In conspicuous places in the designated area, each licensee shall post (i) a general explanation of pari-mutuel wagering offered on historical horse races and (ii) an explanation of each betting pool offered in the terminal menus. The explanation shall be submitted to the commission for approval prior to its posting.

11VAC10-47-80. Equipment required for pari-mutuel wagering on historical horse races.

A. Wagering on historical horse races shall be offered on terminals that include a cabinet in which the electronics and other operating components are located. All terminals and other equipment shall be subject to inspection by the commission.

B. The terminal shall:

1. Protect against electrostatic interference by being grounded so that static discharge energy shall not permanently damage or inhibit the normal operation of the electronics or other components within the wagering terminal. In the event that a temporary disruption of the normal operation of a wagering terminal occurs as a result of an electrostatic discharge, the wagering terminal shall have the capacity to recover and complete any interrupted wager without loss or corruption of any control or critical data information. Each terminal shall be tested to a maximum discharge severity level of 27 kV air discharge;

2. Not be adversely affected, other than during resets, by surges or dips of up to 20% of the supply voltage. If a wagering terminal is designed such that a surge or dip of up to 20% of the supply voltage causes a reset, the terminal shall also be designed so that a surge or dip shall not result in damage to the equipment or loss or corruption of data. Upon reset, the game shall return to its previous state or return to a game completion state, provided the game history and all credit and accounting meters comprehend a completed game;

3. Have an on/off switch that controls the electrical current installed in a readily accessible location within the interior of the terminal so that power cannot be disconnected from outside of the terminal using the on/off switch. The on/off positions of the switch shall be labeled;

4. Be designed so that power and data cables into and out of the terminal can be routed so that they are not accessible to the general public. Security-related wires and cables that are routed into a logic area shall be securely fastened within the interior of the terminal;

5. Have an identification badge affixed to the exterior of the terminal by the manufacturer that is not removable without leaving evidence of tampering. This badge shall include the following information:

a. The name of the manufacturer;

b. A unique serial number;

c. The terminal model number; and

d. The date of manufacture;

6. Have an external tower light located conspicuously on the top of the terminal that automatically illuminates when a patron has won an amount that the terminal cannot automatically pay or when an error condition has occurred;

7. Be constructed of materials that are designed to allow only authorized access to the inside of the terminal. The terminal and its locks, doors, and associated hinges shall be capable of withstanding determined and unauthorized efforts to gain access to the inside of the terminal and shall be designed to leave evidence of tampering if such an entry is made;

8. Have seals between the terminal and the doors of a locked area that are designed to resist the use of tools or other objects used to breach the locked area by physical force;

9. Have external doors that shall be locked and monitored by door access sensors. When the external doors are opened, the door access sensors shall (i) cause game wagering activity to cease, (ii) disable all currency acceptance, (iii) enter an error condition, (iv) illuminate the tower light at a minimum, and (v) record the error condition. The requirements of this subsection do not apply to the drop box door;

10. Have external doors designed so that it shall not be possible to insert a device into the terminal that will disable a "door open" sensor without leaving evidence of tampering when the door of the terminal is shut;

11. Have a sensor system that shall provide notification that an external door is open when the door is moved from its fully closed and locked position, provided power is supplied to the device;

12. Have a logic area, which is a separately locked cabinet area with its own monitored, locked door or other monitored, locked covering that houses electronic components that have the potential to significantly influence the operation of the terminal. There may be more than one such logic area in a terminal. The electronic components housed in the logic area shall include:

a. A central processing unit and any program storage device that contains software that may affect the integrity of wagering, including the game accounting, system communication, and peripheral firmware devices involved in or that significantly influence the operation and calculation of game play, game display, game result determination, or game accounting, revenue, or security;

b. Communication controller electronics and components housing the communication program storage device; and

c. The nonvolatile memory backup device, which if located in the logic area, shall be kept within a locked logic area; and

13. Have a currency storage area that is separately keyed and fitted with sensors that indicate "door open/close" or "stacker receptacle removed," provided power is supplied to the device. Access to the currency storage area shall be secured by two locks before the currency can be removed. The locks shall be located on the relevant outer door and on at least one other door.

C. Critical memory storage shall be maintained by a methodology that enables errors to be identified. This methodology shall include signatures, checksums, partial checksums, multiple copies, timestamps, effective use of validity codes, or any combination of these methods.

D. Comprehensive checks of critical memory shall be made following game initiation but prior to display of game outcome to the patron.

E. An unrecoverable corruption of critical memory shall result in an error state. The memory error shall not be cleared automatically and shall cause the terminal to cease further functioning. The critical memory error shall also cause any communication external to the terminal to immediately cease. An unrecoverable critical memory error shall require restoration or clearing of software state by an authorized person.

F. If critical memory is maintained in nonvolatile memory on the terminal and not by the server based system, then:

1. The terminal shall have the ability to retain data for all critical memory as defined in this section and shall be capable of maintaining the accuracy of the data for 30 days after power is discontinued from the terminal;

2. For rechargeable battery types only, if the battery backup is used as an off-chip battery source, it shall

recharge itself to its full potential in a maximum of 24 hours. The shelf life of the battery shall be at least five years;

3. Nonvolatile memory that uses an off-chip backup power source to retain its contents when the main power is switched off shall have a detection system that will provide a method for software to interpret and act upon a low battery condition before the battery reaches a level where it is no longer capable of maintaining the memory in question. Clearing nonvolatile memory shall require access to the locked logic area or other secure method, provided that the method is approved by the commission; and

4. Following the initiation of a nonvolatile memory reset procedure, the game program shall execute a routine that initializes all bits in critical nonvolatile memory to the default state. All memory locations intended to be cleared as per the nonvolatile memory clear process shall be fully reset in all cases.

G. Critical memory of a server-based game may be maintained by the server, terminal, or some combination thereof. The critical memory related to each terminal shall:

1. Be kept independent to all other wagering terminals. If corruption occurs in any single terminal's critical memory no other terminal shall be effected by the terminal's corrupt memory state; and

2. Be clearly identified as to which physical terminal the critical memory represents, through unique identification, such as serial number or other unique terminal hardware identifier.

H. All terminals shall be equipped with a device, mechanism, or method for retaining the value of the meter information specified in 11VAC10-47-10 in the event of a loss of power to the terminal. Storage and retrieval of the accounting meters from a server is an acceptable method of retrieval.

I. Configuration setting changes shall not cause an obstruction to the meters.

J. If the terminal is in a test, diagnostic, or demonstration mode, any test that incorporates credits entering or leaving the terminal shall be completed prior to resumption of normal operation. In addition, there shall not be any mode other than normal wagering operation that debits or credits any of the electronic meters. Any wagering credits on the terminal that were accrued during the test, diagnostic, or demonstration mode shall be cleared before the mode is exited. Specific meters are permissible for these types of modes, provided the meters are clearly identified.

K. Terminals shall not allow any information contained in a communication to or from the online monitoring system that is intended to be protected, including validation information, secure PINs, credentials, or secure seeds and keys, to be viewable through any display mechanism supported by the terminal.

L. All program storage devices shall:

1. Be housed within a fully enclosed and locked logic compartment;

2. Validate themselves during each processor reset; and

3. Validate themselves the first time they are used.

M. Program storage devices that do not have the ability to be modified while installed in the terminal during normal operation shall be clearly marked with information to identify the software and revision level of the information stored in the devices.

N. Terminals shall have the ability to allow for an independent integrity check of all software that may affect the integrity of the game. The integrity check shall be by an independent testing laboratory approved by the commission.

1. The independent testing laboratory's software may be embedded within the game software, utilize an interface port to communicate with the terminal, or require the removal of terminal media for external verification.

2. Each terminal used for wagering on historical horse races shall be tested by the independent testing laboratory to ensure its integrity and proper working order. This evaluation shall include a review of installed software prior to implementation and periodically within a timeframe established by the commission.

3. The licensee shall pay the cost of the independent testing laboratory's review and testing, and the reports of the same shall be delivered to the licensee and the commission.

4. To ensure the integrity of pari-mutuel wagering and validity of the race results, the licensee shall permit an integrity auditor, selected and paid for by the commission, complete access to review and monitor the integrity, security, and operation, including all race and handicapping data used in order to detect any compromise of or anomalies that would allow a player to have an unfair advantage.

5. The integrity auditor shall be in a position to extract actual data and use a statistically significant portion of this data applied to quality assurance testing and assess the validity of the vendor's management reporting by cross-referencing to a body of raw source information to determine correctness. The integrity auditor shall have experience and expertise involving all components of pari-mutuel wagering and totalizator systems.

6. The integrity auditor will collect and provide wagering data and reports from the licensee's vendor. This shall include pari-mutuel commission and liability reports for analysis and verification of the amounts wagered, payouts,

takeout, and taxes in addition to all transactional data logs and reports daily as specified by the integrity auditor.

7. The licensee shall provide access to the integrity auditor to conduct periodic onsite inspections and terminal audits at licensed racetracks and satellite wagering facilities with assistance from the vendor. The licensee shall supply advanced notification, when possible, of at least 30 calendar days of all new game products, changes in the composition of the historic horse races in the library, any changes to reporting or the method of provision of those reports, and any adverse or unusual occurrences relating to the operation of play or payouts to the integrity auditor.

O. Winning pari-mutuel wagers shall be processed according to U.S. Internal Revenue Service reporting requirements for the taxation of pari-mutuel horse racing. If a winning amount is in excess of the thresholds established in the Internal Revenue Service reporting requirements, the terminal shall cease operation and require attendant interaction to proceed.

P. Terminals shall be capable of detecting and displaying the following errors:

1. Open door conditions;

2. Nonvolatile memory errors;

3. Low nonvolatile memory battery for batteries external to the nonvolatile memory itself for low power source;

4. Program error or authentication mismatch;

5. Display device errors; and

6. The identification of an invalid bill or voucher.

Q. Detection of terminal error conditions must result in actions to protect the integrity of the game. Following detection of an error condition:

1. The terminal shall secure itself and it shall:

a. Cause the terminal to cease play and require attendant intervention prior to returning to normal play;

b. Cause the terminal to display an appropriate error message;

c. Disable bill and voucher acceptance;

d. Sound an alarm, illuminate the tower light, display the error on screen, or any combination of the three;

e. Be communicated to an online monitoring and control system;

f. Be displayed on a terminal; and

g. Cause the terminal to remain in error mode if the terminal is powered down with an unresolved error condition, unless power down is used as a part of the error reset procedure.

2. Upon resolution of an error condition, a terminal may return to a wager completion state, provided the game history, wagering credits, and other meters display the completed wager properly.

R. Terminals shall not be adversely affected by the simultaneous or sequential activation of various terminal inputs and outputs.

S. Test, diagnostic, or demonstration modes on a terminal shall:

1. Be entered only from an attendant following appropriate instructions;

2. Not be accessible to a patron; and

3. Be indicated on the terminal via an appropriate message.

T. Upon exiting from test, diagnostic, or demonstration mode, a terminal shall return to its previous state.

U. Video monitor touch screens on terminals shall:

1. Be accurate within one millimeter of the center of a physical input;

2. Be able to be calibrated without access to the terminal cabinet other than opening the main door, and once calibrated shall maintain accuracy for at least the video touch screen manufacturer's recommended maintenance period; and

3. Have no hidden or undocumented buttons or touch points anywhere on the screen that affect wagering or that impact the outcome of the game, except as provided by the game rules.

V. Paper currency acceptors used in a terminal shall:

1. Be electronically based;

2. Detect the entry of bills or vouchers inserted into the paper currency acceptor and provide a method to enable the terminal software to interpret and act appropriately upon a valid or invalid input;

3. Be configured to ensure the acceptance of only valid bills or vouchers and reject all other items;

4. Return to the patron all rejected bills or vouchers, and any other item inserted into the acceptor;

5. Be constructed in a manner that protects against vandalism, abuse, or fraudulent activity;

6. Register the actual monetary value or appropriate number of wagering credits received for the denomination used on the patron's credit meter for each valid bill or voucher;

7. Register wagering credits only when the bill or other note has passed the point where it is accepted or stacked

and the acceptor has sent an "irrevocably stacked" message to the terminal;

8. Be designed to prevent the use of fraudulent crediting, the insertion of foreign objects, and any other fraudulent technique;

9. Implement a method of detecting counterfeit bills;

10. Only accept bills or vouchers when the terminal is enabled for play;

11. Have the capability of detecting and displaying any supported error conditions;

12. Shall communicate with the terminal using a bi-directional protocol;

13. Be located in a locked area of the terminal that requires the opening of the main door for access. The paper currency acceptor shall not be located in the logic area. Only the bill or voucher insertion area shall be accessible by the patron;

14. Have a secure stacker that shall:

a. Deposit into the stacker all accepted items;

b. Be attached to the terminal in such a manner that it cannot be easily removed by physical force; and

c. Have a separate keyed lock to access the stacker area. The keyed lock shall be separate from the main door, and a separate keyed lock shall be required to remove the bills from the stacker; and

15. Have a bill validator that shall:

a. Retain in its memory and have the ability to display the information required of the last 25 items accepted by the bill validator;

b. Have a recall log that may be combined or maintained separately by item type. If combined, the type of item accepted shall be recorded with the respective timestamp; and

c. Give proper credit or return the bill or note if power failure occurs during acceptance of a bill or note.

W. Available wagering credit may be collected from the terminal by the patron at any time other than during:

1. A game being wagered;

2. Audit mode;

3. Test mode;

4. A credit meter or win meter increment; or

5. An error condition.

X. Each terminal shall be equipped with a printer that:

1. Is used to make payments to the patron by issuing a printed voucher. The terminal shall transmit the following data to an online system that records the following information regarding each payout ticket or voucher printed:

a. The value of credits in local monetary units in numerical form;

b. The time of day the ticket or voucher was printed in 24-hour format, showing hours and minutes;

c. The date, in format approved by the commission, indicating the day, month, and year that the ticket or voucher was issued;

d. The terminal number; and

e. A unique ticket or voucher validation number.

2. Prints only one copy to the patron and retains information on the last 25 printed vouchers;

3. Is housed in a locked area of the terminal but shall not be located within the logic area or the drop box; and

4. Allows control program software to interpret and act upon all error conditions.

Y. Terminals shall be capable of displaying wager recall, which shall:

1. Include the last 50 wagers on the terminal;

2. Be retrievable on the terminal via an external key-switch or other secure method not available to the patron; and

3. Provide all information required to fully reconstruct the wagers, including:

a. Initial credits or ending credits associated with the wager;

b. Credits wagered;

c. Credits won;

d. Entertaining game display symbol combinations and credits paid whether the outcome resulted in a win or a loss;

e. Representation in a graphical or text format;

f. Final wager outcome, including all patron choices and all bonus features; and

g. As an optional feature, display of values as currency in place of wagering credits.

Z. Server-stored information shall be backed up no less often than once per day to an offsite storage facility controlled by the licensee. Offsite storage may include storage through a cloud service provider if approved by the commission. The server and offsite backup storage shall be accessible to the commission and subject to third-party

checks and validation as provided in subsection N of this section.

11VAC10-47-90. Requirements for tickets or vouchers used in historical horse racing.

A. Terminals shall not dispense currency. Payment to patrons shall only be accomplished by means of a printed voucher.

B. All vouchers shall contain the following printed information at a minimum:

1. Licensee name and site identifier, which may be contained on the ticket stock itself;

2. Terminal number or cashier booth location;

3. Date and time stated in a 24-hour format according to the local time zone;

4. Alpha and numeric dollar amount;

5. Ticket or voucher sequence number;

6. Validation number;

7. Bar code or any machine-readable code representing the validation number;

8. Type of transaction or other method of differentiating voucher types. If the voucher is a noncashable item, the ticket shall explicitly express that it has "no cash value"; and

9. The expiration period from date of issue, or date and time the ticket or voucher will expire in a 24-hour format according to the local time zone. This information may be contained on the ticket stock itself. Payment on valid pari-mutuel tickets, including tickets where refunds are ordered, shall be made only upon presentation and surrender of valid pari-mutuel tickets to the licensee within 180 days after the purchase of the ticket. Failure to present any valid pari-mutuel ticket to the licensee within 180 days after the purchase of the ticket shall constitute a waiver of the right to payment.

C. A system approved by the commission shall be used to validate the payout ticket or voucher. The ticket or voucher information on the central system shall be retained for two calendar years after a voucher is valid at that location.

D. Payment by voucher as a method of credit redemption shall only be permissible when the terminal is linked to a computerized voucher validation system that is approved by the commission.

E. The validation system must be able to identify a duplicate ticket or voucher to prevent fraud.

F. Terminals must meet the following minimum requirements to incorporate the ability to issue offline vouchers after a loss of communication has been identified by a wagering terminal:

1. The wagering terminal shall not issue more offline vouchers than it has the ability to retain and display in the wagering terminal maintained voucher-out log;

2. The wagering terminal shall not request validation numbers used in the issuance of vouchers until all outstanding offline voucher information has been fully communicated to the voucher validation system;

3. The wagering terminal shall request a new set of validation numbers used in the issuance of online or offline vouchers if the current list of validation numbers has the possibility of being compromised, which shall include:

a. After power has been recycled, or

b. Upon exit of a main door condition; and

4. Validation numbers must always be masked when viewable through any display supported by the wagering terminal such that only the last four digits of the validation number are visible.

G. Vouchers may be inserted in any terminal participating in the validation system providing that no credits are issued to the terminal prior to confirmation of voucher validity.

H. The offline voucher redemption may be validated as an internal control process at the specific terminal that issued the voucher. A manual handpay may be conducted for the offline voucher value.

11VAC10-47-100. Accounting and occurrence meter requirements.

A. The required accounting meters are as follows:

1. Coin in, which accumulates the total value of all wagers, whether the wagered amount results from the insertion of bills or vouchers or deduction from a credit meter;

2. Coin out, which accumulates the total value of all amounts directly paid by the terminal as a result of winning wagers, whether the payback is made to a credit meter or any other means;

3. Attendant paid jackpot, which accumulates the total value of credits paid by an attendant resulting from a single wager, the amount of which is not capable of being paid by the wagering terminal itself;

4. Attendant paid canceled credit, which accumulates the total value paid by an attendant resulting from a patron-initiated cashout that exceeds the physical or configured capability of the terminal to make the proper payout amount;

5. Bill in, which accumulates the total value of currency accepted. Each wagering terminal shall have a specific occurrence meter for each denomination of currency

accepted that records the number of bills accepted of each denomination;

6. Voucher in, which accumulates the total value of all wagering terminal vouchers accepted by the device;

7. Voucher out, which accumulates the total value of all wagering terminal vouchers issued by the device;

8. Noncashable electronic promotion in, which accumulates the total value of noncashable credits from vouchers accepted by the terminal;

9. Cashable electronic promotion in, which accumulates the total value of cashable credits from vouchers accepted by the terminal;

10. Noncashable electronic promotion out, which accumulates the total value of noncashable credits issued to vouchers by the device; and

11. Cashable electronic promotion out, which accumulates the total value of cashable credits issued to vouchers by the device.

B. Additional required occurrence meters are as follows:

1. Cashable promotional credit wagered, which accumulates the total value of promotional cashable credits that are wagered;

2. Games wagered, which accumulates the number of wagers placed; and

3. Games won, which accumulates the number of wagers resulting in a win to the patron.

C. Electronic accounting meters shall maintain and calculate data to at least 10 digits in length.

D. Electronic accounting meters shall be maintained in credit units equal to the denomination or in dollars and cents.

E. If the electronic accounting meter is maintained in dollars and cents, eight digits must be used for the dollar amount and two digits must be used for the cents amount.

F. Devices configured for multi-denomination wagering shall display the units in dollars and cents at all times.

G. Any time the meter exceeds 10 digits or after 9,999,999,999 has been exceeded, the meter must roll over to zero.

H. Occurrence meters shall be at least eight digits in length but are not required to automatically roll over.

I. Meters shall be identified so that they can be clearly understood in accordance with their function.

J. A wagering terminal shall maintain sufficient electronic metering to be able to display the following:

1. The total monetary value of all items accepted on the terminal;

2. The total number of all items accepted on the terminal;

3. For bills accepted, the number of bills for each bill denomination; and

4. For all other notes accepted, the number of notes accepted by note amount.

K. Meters can be on the server instead of the terminal.

11VAC10-47-110. Historical horse race specifications and selection requirements.

A. The outcome of any historical horse race wager shall be derived from the result of one or more historical horse races.

B. All historical horse races must be chosen at random from a database of actual historical horse races. All races in the database shall have a valid historical horse race result with details recorded at the same level as other races in the database, and shall include:

1. Horse names;

2. Race location;

3. Race date; and

4. Jockey name.

C. In the case where a random number generator (RNG) is used to select the historical horse races for a wager, all possible races in the database shall be available for selection.

11VAC10-47-120. Wagering terminal historical race display.

A. All wagering terminals shall have video displays that clearly identify the entertaining game theme, if any, being used to offer pari-mutuel wagering on historical horse racing. The video display shall make available the rules of the historical horse racing wager and the award that will be paid to the patron when the patron obtains a specific win.

B. All paytable information, rules of play, and help screen information shall be available to a patron prior to placing a wager.

C. All wagering terminals shall have video displays that make available to the patron the rules of any features or interactive functions that may occur on the patron interface as part of the entertaining display of the wager and its outcome.

D. The video display shall clearly indicate whether awards are designated in credits or currency.

E. All wagering terminals shall display the following information to the patron at all times the wagering terminal is available for patron wager input:

1. The patron's current credit balance in currency or credits;

2. The current bet amount;

3. The amount won for the last completed game until the next game starts or betting options are modified;

4. The patron options selected for the last completed game until the next game starts or a new selection is made; and

5. A disclaimer stating "Malfunction Voids All Pays" or some equivalent wording approved by the commission. This may be presented as a permanent sign on the terminal.

F. The default game display upon terminal reset shall not be a false winning outcome.

G. Entertaining game features that simulate bonus or free games shall meet the following requirements:

1. The initiation of a bonus or free game shall only be based on the result of the wager placed by the patron on the result of the historical horse race selected for the wager;

2. The bonus or free game shall not require additional money to be wagered by the patron;

3. The entertaining display shall make it clear to the patron that the patron is in bonus mode to avoid the possibility of the patron unknowingly leaving the wagering terminal while in a bonus mode; and

4. If the bonus or free game requires an input from the patron, the terminal shall provide a means to complete the bonus or free game from a touch screen or hard button.

H. Electronic metering displays shall:

1. At all times include all credits or cash available for the patron to wager or cash out unless the terminal is in an error or malfunction state. This information is not required when the patron is viewing a menu or help screen item;

2. Reflect the value of every prize at the end of a wager and add it to the patron's credit meter, except for handpays; and

3. Show the cash value collected by the patron upon a cashout unless the terminal is in an error or malfunction state.

I. A wager is complete when the final transfer to the patron's credit meter takes place or when all credits wagered are lost.

11VAC10-47-130. Required reports for wagering on historical horse races; audit and inspection by the commission.

A. All systems used for pari-mutuel wagering on historical horse races shall provide financial reports for individual approved wager model configurations and total pool amounts for each pool. Reports shall be available at the end of the wagering day or upon request by the commission with information current since the end of the last wagering day. The reports shall include:

1. Current values of each pari-mutuel wagering pool;

2. Total amounts wagered for all pools;

3. Total amounts won by patrons for all pools;

4. Total commission withheld for all pools;

5. Total breakage for all pools, where applicable;

6. Total amount wagered at each terminal;

7. Total amount won by patrons at a terminal;

8. The amount wagered on each mathematical model configuration and the amount won from each mathematical model configuration offered at a terminal;

9. Total amount of each type of financial instrument inserted into a terminal;

10. Total amount cashed out in voucher or handpays at a terminal; and

11. Taxable win events including:

a. Time and date of win;

b. Wagering terminal identification number;

c. Amount wagered resulting in taxable win;

d. Taxable amount won; and

e. Withholding amount.

B. As provided in subdivision 2 of § 59.1-369 of the Code of Virginia, the commission or its authorized representatives may, at any time, conduct an audit or inspection of the financial reports, software, terminals, or other equipment used by a licensee in conducting operations under this chapter.

11VAC10-47-140. Permits required.

All racing officials employed in a satellite facility or at a significant infrastructure facility that offers pari-mutuel wagering on historical horse racing shall apply for permits under the provisions of 11VAC10-50. All participants employed in such facilities shall apply for permits under the provisions of 11VAC10-60.

11VAC10-47-150. Filing of application; fee.

An applicant for a license to offer pari-mutuel wagering on historical horse racing shall apply for a license to conduct the same with the commission at its offices, with the application tendered by hand delivery, certified mail, or recognized overnight courier service with delivery confirmation to the attention of the executive secretary of the commission. An application fee of $1,000 shall be paid for each location where the applicant seeks to offer pari-mutuel wagering on historical horse racing.

11VAC10-47-160. Required information.

An application for a license to conduct pari-mutuel wagering on historical horse racing shall contain the materials and information specified in 11VAC10-40-130 through

11VAC10-40-280. The applicant may reference its materials provided for a satellite facility license or significant infrastructure limited license as part of its application for a license to offer pari-mutuel wagering on historical horse racing. The application shall also contain detailed information on the games to be offered by the applicant, including information demonstrating compliance with the requirements of this chapter. After review of the application, the executive secretary may request the applicant provide additional information, which the applicant shall promptly tender to the commission. Failure to provide information contained in this chapter, or as requested by the commission, shall be grounds for the commission to deny the request for a license to conduct pari-mutuel wagering on historical horse racing.

11VAC10-47-170. Duration of license; transfer.

A license for conducting pari-mutuel wagering on historical horse racing shall be effective for one calendar year or so long as the licensee shall hold a significant infrastructure limited license or satellite facility license for the particular location, whichever is shorter. A licensee may not transfer its license, or assign responsibility for compliance with the conditions of its license, to any party, including, without limitation, a transfer of effective control of the licensee, without commission approval.

11VAC10-47-180. Simulcast operations.

For any satellite facility that offers pari-mutuel wagering on historical horse racing, the following conditions shall apply:

1. A licensee may not reduce, limit, or otherwise alter the nature or extent of its simulcast operations if it offers pari-mutuel wagering on historical horse racing without commission approval.

2. Any licensee must provide the following minimum simulcast offerings:

a. An average daily simulcast schedule of not less than 14 racetracks, unless otherwise approved by the commission for a specific facility;

b. At least two tellers dedicated to simulcast wagering, or one teller for every 200 historical horse racing terminals at the satellite facility, whichever number is greater; and

c. At least 20 self-service tote machines dedicated to simulcast wagering at each satellite facility, unless otherwise approved by the commission for a specific facility.

3. The licensee must promote simulcast wagering inside its satellite facility and make available televisions broadcasting simulcast signal, tote machines, and tellers in a prominent location for use by patrons.

4. The commission may authorize a licensee to provide historical racing terminals at a satellite facility located in a jurisdiction with valid and unexpired referenda on pari-mutuel wagering in accordance with the following limits on the total number of historical racing terminals located in such jurisdiction:

a. Up to 700 terminals in a jurisdiction with a population of 120,000 or greater;

b. Up to 300 terminals in a jurisdiction with a population between 60,000 and 120,000; and

c. Up to 150 terminals in a jurisdiction with a population of 60,000 or less.

The population of a jurisdiction shall be determined based upon the most recent University of Virginia Weldon Cooper Center population estimates.

5. Any such satellite facility must receive all appropriate local government authorizations.

6. In no circumstance shall the total number of historical racing terminals located in a jurisdiction set forth in subdivision 4 of this section exceed 25% of the total limit for such jurisdiction absent formal approval by the relevant city or town council or county board of supervisors of the jurisdiction.

7. In no circumstance shall the combined statewide total number of historical racing terminals located at satellite facilities and significant infrastructure facilities exceed 3,000.

11VAC10-47-190. Significant infrastructure limited licensee operations.

For any significant infrastructure limited licensee that offers pari-mutuel wagering on historical horse racing, the following conditions shall apply:

1. For each calendar year, a licensee in accordance with 11VAC10-20-200 shall submit to the commission a request for live racing days at its significant infrastructure facility that includes at least:

a. Fifteen days of live racing, consisting of not less than six races per day; or

b. One day of live racing, consisting of not less than six races per day, for every 100 historical racing terminals installed at such facility together with any satellite facility owned, operated, controlled, managed, or otherwise affiliated directly or indirectly with such licensee, whichever number shall be greater.

2. In no circumstance shall the total number of historical racing terminals at any significant infrastructure facility exceed 700 terminals.

3. Live racing dates shall be assigned by the commission and conducted in accordance with the procedure in 11VAC10-20-220.

11VAC10-47-200. Responsible gaming.

A. A licensee shall implement a program to promote responsible gaming by its patrons and provide details of the same to the commission. At a minimum, such program shall require:

1. Posting in a conspicuous place in every place where pari-mutuel wagering on historical horse racing is conducted a sign that bears a toll-free number approved by the Virginia Council on Problem Gambling or other organizations that provide assistance to problem gamblers;

2. Providing informational leaflets or other similar materials at the licensee's facilities on the dangers associated with problem gambling;

3. Including in the licensee's promotional and marketing materials information on problem gambling and organizations that provide assistance to problem gamblers;

4. Routine auditing of patron activity to identify patrons who have suffered significant financial losses in repeated visits to the licensee's facilities and providing such patrons with information on organizations that provide assistance to problem gamblers;

5. If the licensee holds a license from the Virginia Alcohol Beverage Control Authority to serve alcoholic beverages, training for employees to identify patrons who have consumed excessive amounts of alcohol to prevent such patrons from continuing to engage in wagering activity while impaired;

6. Partnership with the Virginia Council on Problem Gambling, the National Council on Problem Gambling, or other similar organization to identify and promote best practices for preventing problem gambling;

7. Training for all employees who have contact with patrons as well as administrative and corporate staff members that shall include skills and procedures to respond to situations where a patron exhibits warning signs of a gambling problem or where a patron discloses they may have a gambling problem. Such employees and staff should be trained immediately upon their hiring and retrained and tested regularly; and

8. Ensuring that any request by a patron who wishes to self-exclude from the licensee's facilities is honored by the licensee.

B. A licensee shall report annually to the commission and make a copy available to the public on its efforts to meet subsection A of this section, its efforts to identify problem gamblers, and steps taken to:

1. Prevent such individuals from continuing to engage in pari-mutuel wagering on historical horse racing; and

2. Provide assistance to these individuals to address problem gambling activity.

VA.R. Doc. No. R19-5684; Filed October 5, 2018, 8:27 a.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Fast-Track Regulation

Title of Regulation: **12VAC5-371. Regulations for the Licensure of Nursing Facilities (amending 12VAC5-371-10; adding 12VAC5-371-191).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: November 28, 2018.

Effective Date: December 13, 2018.

Agency Contact: Erik Bodin, Director, Office of Licensure and Certification, Virginia Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2109, FAX (804) 527-4502, or email erik.bodin@vdh.virginia.gov.

Basis: Chapter 600 of the 2016 Acts of Assembly mandates the State Board of Health to promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes. Chapter 600 requires the board to convene a workgroup that includes representatives of nursing facilities, advocates for residents of nursing facilities, and other stakeholders to make recommendations to the board concerning such regulations. This regulatory action is mandated by law.

Purpose: Chapter 600 of the 2016 Acts of Assembly mandates the State Board of Health to promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes. Installing such equipment is not mandatory; however, if installed, facilities must safeguard a resident's autonomy and rights according to current federal and state privacy laws and regulations. This regulatory action provides the framework to address policies and procedures, informed consent, admission, and discharge or transfer. The amendments include the equipment request process and notice procedures, retention and ownership of tapes or recordings, and reporting suspected abuse, neglect, accident, or injury discovered through electronic monitoring. The amendments will protect and promote public health, safety, and welfare of citizens through the establishment of a framework that sets standards regarding electronic monitoring in nursing facility resident

rooms. This framework will ensure that resident privacy and autonomy is paramount when electronic monitoring is used.

Rationale for Using Fast-Track Rulemaking Process: Chapter 600 of the 2016 Acts of Assembly mandates the State Board of Health to promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes. The amendments were developed cooperatively with the assistance of a workgroup convened pursuant to Chapter 600 and rely heavily on language included in a Virginia Department of Health (VDH) guidance document in use since 2004. Therefore, VDH believes the amendments will be noncontroversial, allowing use of the fast-track rulemaking process.

Substance: Electronic monitoring in resident rooms provides the framework for policies and procedures, informed consent, right of implementation or refusal, retention of tapes and recordings, and reporting of abuse, neglect, accident, or injury discovered via electronic monitoring.

Issues: The primary advantages of the regulatory action to the public are increased safety of nursing facility patients. There are no known disadvantages to the public. The primary advantages to the agency and the Commonwealth are increased quality of care and safety for nursing home residents throughout the Commonwealth who chose to utilize electronic monitoring. There are no known disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 600 of the 2016 General Assembly,[1] the State Board of Health (Board) proposes to establish provisions for voluntary audio-visual recording of residents in nursing facilities.

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

Estimated Economic Impact. Electronic monitoring/audio-visual recording of residents in nursing facilities is completely optional. All requests for electronic monitoring must be made in writing and signed by the resident or the resident's responsible party if the resident has been properly assessed incapable of requesting and authorizing the monitoring.

Chapter 600 states that the Board shall promulgate regulations:

> "… for the audio-visual recording of residents in nursing facilities. Such regulations shall include provisions related to (i) resident privacy, (ii) notice and disclosure, (iii) liability, (iv) ownership and maintenance of equipment, (v) cost, (vi) recording and data security, and (vii) nursing facility options for both nursing facility-managed recording and resident-managed recording. The Department of Health shall convene a workgroup that includes representatives of nursing facilities, advocates for residents of nursing facilities, and other stakeholders to make recommendations to the Board on such regulations and shall report its recommendations to the Board and the General Assembly."

The Board proposes provisions to address each of the items delineated in the legislation. According to the Virginia Department of Health, the proposed amendments are a combination of the Board's 2004 guideline "Electronic Monitoring of Residents' Rooms" which were developed to assist facilities with the privacy issues that may arise when installing electronic monitoring equipment and the work of the workgroup assembled pursuant to Chapter 600.

Concerning cost, the proposed regulation states that:

> "A facility may require a resident or a resident's responsible party to pay for all costs, other than the cost of electricity, associated with installing electronic monitoring equipment. Such costs shall be reasonable and may include, but are not limited to: equipment, recording media and installation, compliance with life safety and building and electrical codes, maintenance or removal of the equipment, posting and removal of any public notices, or structural repairs to the building resulting from the removal of the equipment. Facilities shall give 45 days notice of an increase in monthly monitoring fees."

The proposed amendments provide clarity concerning rules and requirements for the optional electronic monitoring/audio-visual recording of residents in nursing facilities. The specificity of the proposed language would reduce the likelihood of misunderstandings and disagreements. Under the proposed regulation, nursing facilities would not be burdened by significant costs if residents or their representatives request electronic monitoring. Thus, the proposed amendments should produce a net benefit.

Businesses and Entities Affected

The proposed amendments affect the 281 licensed nursing facilities within the Commonwealth of Virginia, as well as the patients or residents of those facilities and their family members or legal representatives. Based upon Virginia Employment Commission data, all but one of the nursing facilities likely qualify as small businesses.

Localities Particularly Affected

The proposed amendments do not disproportionately affect particular localities.

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

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://leg1.state.va.us/cgi-bin/legp504.exe?161+ful+CHAP0600

Agency's Response to Economic Impact Analysis: The Virginia Department of Health has reviewed the Department of Planning and Budget's economic impact analysis and concurs with the results and findings.

Summary:

Pursuant to Chapter 600 of the 2016 Acts of Assembly, which mandates the State Board of Health promulgate regulations governing the implementation of voluntary electronic monitoring in the rooms of residents of nursing homes, the amendments provide the framework to assist nursing facilities with the privacy issues that may arise when installing electronic monitoring equipment and include (i) the equipment request process and notice procedures; (ii) informed consent, admission, and discharge or transfer; (iii) retention and ownership of tapes or recordings; and (iv) reporting suspected abuse, neglect, accident, or injury discovered through electronic monitoring.

Part I
Definitions and General Information

12VAC5-371-10. Definitions.

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

"Abuse" means the willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain or mental anguish, or deprivation by an individual, including caretaker, of goods or services that are necessary to attain or maintain physical, mental, and psychosocial well-being. This includes verbal, sexual, physical or mental abuse.

"Administrator" means the individual licensed by the Virginia Board of Long-Term Care Administrators and who has the necessary authority and responsibility for management of the nursing facility.

"Admission" means the process of acceptance into a nursing facility, including orientation, rules and requirements, and assignment to appropriate staff. Admission does not include readmission to the facility after a temporary absence.

"Advance directive" means (i) a witnessed written document, voluntarily executed by the declarant in accordance with the requirements of § 54.1-2983 of the Code of Virginia, or (ii) a witnessed oral statement, made by the declarant subsequent to the time he is diagnosed as suffering from a terminal condition and in accordance with the provision of § 54.1-2983 of the Code of Virginia.

"Assessment" means the process of evaluating a resident for the purpose of developing a profile on which to base services. Assessment includes information gathering, both initially and on an ongoing basis, designed to assist the multi-disciplinary staff in determining the resident's need for care, and the collection and review of resident-specific data.

"Attending physician" means a physician currently licensed by the Virginia Board of Medicine and identified by the resident, or legal representative, as having the primary responsibility in determining the delivery of the resident's medical care.

"Board" means the Board of Health.

"Certified nurse aide" means the title that can only be used by individuals who have met the requirements to be certified, as defined by the Virginia Board of Nursing, and who are listed in the nurse aide registry.

"Chemical restraint" means a psychopharmacologic drug (a drug prescribed to control mood, mental status, or behavior) that is used for discipline or convenience and not required to treat medical symptoms or symptoms from mental illness or mental retardation that prohibit an individual from reaching his highest level of functioning.

"Clinical record" means the documentation of health care services, whether physical or mental, rendered by direct or indirect resident-provider interactions. An account compiled by physicians and other health care professionals of a variety of resident health information, such as assessments and care details, including testing results, medicines, and progress notes.

"Commissioner" means the State Health Commissioner.

"Complaint" means any allegation received by the Department of Health other than an incident reported by the facility staff. Such allegations include~~, but are not limited to,~~ abuse, neglect, exploitation, or violation of state or federal laws or regulations.

"Comprehensive plan of care" means a written action plan, based on assessment data, that identifies a resident's clinical and psychosocial needs, the interventions to meet those needs, treatment goals that are measurable and that documents the resident's progress toward meeting the stated goals.

"Construction" means the building of a new nursing facility or the expansion, remodeling, or alteration of an existing nursing facility and includes the initial and subsequent equipping of the facility.

"Department" means the Virginia Department of Health.

"Dignity" means staff, in their interactions with residents, carry out activities which assist a resident in maintaining and enhancing the resident's self-esteem and self-worth.

"Discharge" means the process by which the resident's services, delivered by the nursing facility, are terminated.

"Discharge summary" means the final written summary of the services delivered, goals achieved and post-discharge plan or final disposition at the time of discharge from the nursing facility. The discharge summary becomes a part of the clinical record.

"Drug" means (i) articles or substances recognized in the official United States "Drug" Pharmacopoeia National Formulary or official Homeopathic Pharmacopoeia of the United States, or any supplement to any of them; (ii) articles or substances intended for the use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal; (iii) articles or substances, other than food, intended to affect the structure or any function of the body of man or other animal; and (iv) articles or substances intended for use as a component of any article specified in clause (i), (ii), or (iii). This does not include devices or their components, parts or accessories.

"Electronic monitoring" means an unmanned video recording system with or without audio capability installed in the room of a resident.

"Emergency preparedness plan" means a component of a nursing facility's safety management program designed to manage the consequences of natural disasters or other emergencies that disrupt the nursing facility's ability to provide care.

"Employee" means a person who performs a specific job function for financial remuneration on a full-time or part-time basis.

"Facility-managed" means an electronic monitoring system that is installed, controlled, and maintained by the nursing facility with the knowledge of the resident or resident's responsible party in accordance with the facility's policies.

"Full-time" means a minimum of 35 hours or more worked per week in the nursing facility.

"Guardian" means a person legally invested with the authority and charged with the duty of taking care of the resident, managing his property, and protecting the rights of the resident who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the resident in need of a guardian has been determined to be incapacitated.

"Medication" means any substance, whether prescription or over-the-counter drug, that is taken orally or injected, inserted, topically applied, or otherwise administered.

"Neglect" means a failure to provide timely and consistent services, treatment, or care to a resident ~~or residents that are~~ necessary to obtain or maintain the ~~resident or residents'~~ resident's health, safety, or comfort~~;~~ or a failure to provide timely and consistent goods and services necessary to avoid physical harm, mental anguish, or mental illness.

"Nursing facility" means any nursing home as defined in § 32.1-123 of the Code of Virginia.

"OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Person" means any individual, corporation, partnership, association, trust, or other legal entity, whether governmental or private, owning, managing, or operating a nursing facility.

"Physical restraint" means any manual method or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that the individual cannot remove easily which restricts freedom of movement or normal access to one's own body.

"Policy" means a written statement that describes the principles and guides and governs the activities, procedures and operations of the nursing facility.

"Procedures" means a series of activities designed to implement program goals or policy, which may or may not be

written, depending upon the specific requirements within this chapter. For inspection purposes, there must be evidence that procedures are actually implemented.

"Progress note" means a written statement, signed and dated by the person delivering the care, consisting of a pertinent, chronological report of the resident's care. A progress note is a component of the clinical record.

"Qualified" means meeting current legal requirements of licensure, registration or certification in Virginia; having appropriate training and experience commensurate with assigned responsibilities; or, if referring to a professional, possessing an appropriate degree or having documented equivalent education, training or experience.

"Quality assurance" means systematic activities performed to determine the extent to which clinical practice meets specified standards and values with regard to such things as appropriateness of service assignment and duration, appropriateness of facilities and resources utilized, adequacy and clinical soundness of care given. Such activities should also assure changes in practice that do not meet accepted standards. Examples of quality assurance activities include the establishment of facility-wide goals for resident care, the assessment of the procedures used to achieve the goals, and the proposal of solutions to problems in attaining those goals.

"Readmission" means a planned return to the nursing facility following a temporary absence for hospitalization, off-site visit or therapeutic leave, or a return stay or confinement following a formal discharge terminating a previous admission.

"Resident" means the primary service recipient, admitted to the nursing facility, whether that person is referred to as a client, consumer, patient, or other term.

"Resident-managed" means an electronic monitoring system that is installed, controlled, and maintained by the resident with the knowledge of the nursing facility.

"Responsible person or party" means an individual authorized by the resident to act for him as an official delegate or agent. The responsible person may be a guardian, payee, family member or any other individual who has arranged for the care of the resident and assumed this responsibility. The responsible person or party may or may not be related to the resident. A responsible person or party is not a guardian unless so appointed by the court.

"Supervision" means the ongoing process of monitoring the skills, competencies and performance of the individual supervised and providing regular, face-to-face guidance and instruction.

"Volunteer" means a person who, without financial remuneration, provides services to the nursing facility.

12VAC5-371-191. Electronic monitoring in resident rooms.

A. All requests for electronic monitoring shall be made in writing and signed by the resident or the resident's responsible party if the resident has been properly assessed incapable of requesting and authorizing the monitoring.

B. Only electronic monitoring in accordance with this section is permitted.

C. A facility shall not refuse to admit an individual and shall not discharge or transfer a resident due to a request to conduct authorized electronic monitoring.

D. Family members cannot obtain electronic monitoring over the objections of the resident, the resident's roommate, or the resident's responsible party. No equipment may be installed pursuant to subsection Q of this section over the objections of the resident, or if the resident is incapable, the resident's responsible party. Facilities shall not use monitoring equipment in violation of the law based solely on a family member's request or approval.

E. Consent for electronic monitoring shall be kept in the resident's medical record.

F. Facilities shall designate one staff person to be responsible for managing the electronic monitoring program.

G. Facilities may designate custodial ownership of any recordings from monitoring devices to the resident or the resident's responsible party. Facility retained recordings shall be considered part of the resident's medical record and shall be retained for no less than two years or as required by state and federal laws.

H. If a facility chooses to retain ownership of recordings, the facility shall not permit viewings of recordings without consent of the resident or the resident's responsible party except to the extent that disclosure is required by law through a court order or pursuant to a lawful subpoena duces tecum. Should a resident or a resident's responsible party approve viewing, the facility shall accommodate viewing of any recordings in a timely manner, including providing:

1. Appropriate playing or viewing equipment;

2. Privacy during viewing; and

3. Viewing times convenient to the resident or the resident's responsible party.

If unauthorized viewing is discovered, the facility shall report any such violation to the Office of Long-Term Care Ombudsman and to OLC.

I. A facility shall require its staff to report any incidents regarding safety or quality of care discovered as a result of viewing a recording immediately to the facility administrator and to the OLC. Facilities shall instruct the resident or the resident's responsible party of this reporting requirement and

shall provide the resident or the resident's responsible party with the OLC's complaint hotline telephone number.

J. A facility shall have no obligation to seek access to a recording in its possession or to have knowledge of a recording's content, unless the facility is aware of a recorded incident of suspected abuse, neglect, accident, or injury, or the resident, the resident's responsible party, or a government agency seeks to use a recording. Facilities shall immediately report suspected abuse and neglect discovered as a result of using monitoring devices, as required by law.

K. A facility may require the resident or the resident's responsible party to be responsible for all aspects of the operation of the monitoring equipment, including the removal and replacement of recordings; adherence to local, state, and federal privacy laws; and for firewall protections to prevent images that would violate obscenity laws from being inadvertently shown on the Internet.

L. A facility shall prohibit assigned staff from refusing to enter a resident's room solely because of electronic monitoring.

M. Any electronic monitoring equipment shall be installed in a manner that is safe for residents, employees, or visitors who may be moving about the resident's room.

N. A facility shall make reasonable physical accommodation for monitoring equipment, including:

1. Providing a reasonably secure place to mount the device; and

2. Providing access to power sources for the device.

O. A facility may require a resident or a resident's responsible party to pay for all costs, other than the cost of electricity, associated with installing electronic monitoring equipment. Such costs shall be reasonable and may include equipment, recording media and installation, compliance with life safety and building and electrical codes, maintenance or removal of the equipment, posting and removal of any public notices, or structural repairs to the building resulting from the removal of the equipment. Facilities shall give 45 days' notice of an increase in monthly monitoring fees.

P. Any equipment installed for the purpose of monitoring a resident's room shall be fixed and unable to rotate.

Q. The informed consent of all residents, or if a resident is incapable, a resident's responsible party, assigned to the monitored room shall be obtained prior to any electronic monitoring equipment being installed.

R. A copy of any signed consent form shall be kept in the resident's medical record as well as on file with the facility's designated electronic monitoring coordinator.

S. Any resident or the resident's responsible party of a monitored room may condition consent for use of monitoring devices. Such conditions may include pointing the camera away or limiting or prohibiting the use of certain devices. If conditions are placed on consent, then electronic monitoring shall be conducted according to those conditions.

T. The facility shall conspicuously post and maintain a notice at the entrance to the resident's room stating that an electronic monitoring device is in operation.

U. Facilities shall notify all staff and their OLC Long-Term Care Supervisor that electronic monitoring is in use.

V. A facility shall prohibit staff from covert monitoring in violation of this chapter. Facilities shall instruct the resident or the resident's responsible party of this prohibition and shall provide the resident or the resident's responsible party with the OLC's complaint hotline telephone number.

W. If covert monitoring is discovered, the facility shall report any such violation to the Office of Long-Term Care Ombudsman and OLC, and the facility may require a resident or a resident's responsible party to meet all the requirements for authorized monitoring, if permitted by the facility.

X. Each nursing facility, including those that choose not to offer electronic monitoring, shall adopt policies and procedures for electronic monitoring. These policies and procedures shall address all the elements of this section.

Y. A facility shall prohibit staff from tampering with electronic monitoring in violation of this chapter. Facilities shall instruct the resident or the resident's responsible party of this prohibition and shall provide the resident or the resident's responsible party with the OLC's complaint hotline telephone number.

VA.R. Doc. No. R19-4519; Filed September 28, 2018, 8:45 a.m.

Final Regulation

Title of Regulation: **12VAC5-450. Rules and Regulations Governing Campgrounds (amending 12VAC5-450-10, 12VAC5-450-30 through 12VAC5-450-110, 12VAC5-450-130, 12VAC5-450-140, 12VAC5-450-150, 12VAC5-450-170 through 12VAC5-450-200; adding 12VAC5-450-15, 12VAC5-450-115, 12VAC5-450-183, 12VAC5-450-187; repealing 12VAC5-450-210, 12VAC5-450-230).**

Statutory Authority: §§ 35.1-11 and 35.1-17 of the Code of Virginia.

Effective Date: November 28, 2018.

Agency Contact: Olivia McCormick, Tourist Establishment Services Program Manager, Virginia Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 785-8146, FAX (804) 864-7475, or email olivia.mccormick@vdh.virginia.gov.

Summary:

The amendments, including those for facilities and permitting, (i) implement current public health and

camping industry practices, (ii) update terminology, and (iii) remove outdated requirements.

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.

12VAC5-450-10. Definitions.

~~For the purpose of this chapter, the~~ The following words and terms when used in this chapter shall have the following meanings ~~respectively indicated~~ unless ~~another meaning is clearly intended or required by~~ the context~~.~~ clearly indicates otherwise:

"Approved" means a procedure of operation or construction ~~which is~~ in accordance with the standards established by the Virginia Department of Health [~~,~~] or ~~which is~~ acceptable to the Health Commissioner based on ~~his~~ a determination as to the conformance with appropriate standards and good public health practice.

"Campgrounds" means ~~and includes, but is not limited to~~ tourist camps, travel trailer camps, recreation camps, family campgrounds, camping resorts, camping communities, or any other area, place, parcel [,] or tract of land, by whatever name called, on which three or more campsites are occupied or intended for occupancy, or facilities are established or maintained, wholly or in part, for the accommodation of camping units for periods of overnight or longer, whether the use of the campsites ~~and/or~~ or facilities is granted gratuitously, by a rental fee, by lease, by conditional sale [,] or by covenants, restrictions and easements. This definition is not intended to include [migrant labor camps and] summer camps~~,~~ [~~and migrant labor camps~~] as defined in §§ ~~35.1-16~~ 32.1-203 and ~~32.1-203~~ 35.1-16 of the Code of Virginia, construction camps, ~~permanent mobile~~ manufactured home parks, ~~or~~ storage areas for unoccupied camping units, or property upon which the individual owner may choose to camp and not be prohibited or encumbered by covenants, restrictions and conditions from providing ~~his~~ sanitary facilities within ~~his~~ established property lines.

"Camping unit" means ~~and includes~~ tents, tent trailers, travel trailers, camping trailers, pick-up campers, motor homes, yurts, cabins, or any other device or vehicular-type structure as may be developed marketed and used by the camping trade for use as temporary living quarters or shelter during periods of recreation, vacation, leisure time, or travel.

"Campsite" means ~~and includes~~ any plot of ground within a campground used or intended for the exclusive occupation by a camping unit [~~or units~~] ~~under the control of a camper~~.

~~"Emergency" means a condition that in the exercise of the sound discretion of the Health Commissioner is found deleterious to the public health, safety, and welfare and requires immediate action.~~

"Health Commissioner" means the chief executive officer of the State Board of Health or ~~his~~ authorized agent.

~~"Independent camping unit" means a unit which contains a water flushed toilet, lavatory and shower as an integral part of the structure, and which requires an on-site sewer connection due to the absence of a waste holding tank on the unit.~~

~~"Non self contained camping unit" means a unit which is dependent upon a service building for toilet and lavatory facilities.~~

~~"Outdoor bathing facilities" means lakes, ponds, rivers, tidal waters, impoundments, beaches, streams or other places, whether natural or man made, in which an area is held out for swimming or bathing purposes.~~

"Operator" means any person employed or contracted by a campground owner who is responsible for the management and general administrative operation of the campground.

"Overflow area" means a plot of ground in or adjacent to the campground set apart for accommodating those campers for whom no designated sites are available in the general geographical area, and which is subject to certain restrictions as to size, length of stay, temporary facilities, etc.

"Overnight" means the occupation of a camping unit as a temporary habitation between the hours of 7 p.m. and 7 a.m., or major portion thereof.

"Permit" means a written permit issued by the Health Commissioner authorizing a designated person to operate a specific [~~camping place~~ campground].

["Permit holder" means the owner or operator to whom the campground permit is issued.]

"Person" means ~~and include~~ any individual or group of individuals, named party, partnership, firm, private or public association or corporation, state, county, city, town, or anyone who by covenant, restriction, or agreement has care, control, custody, ownership, or management of property or parts thereof, or any combination of the above or other legal entity.

"Primitive ~~camps"~~ campsites" means ~~camps which~~ campsites that are characterized by the absence of [~~what is generally understood as modern conveniences such as~~] ~~water flushed~~ [~~flush~~] toilets, showers, [~~sinks~~ lavatories], [~~and~~] electrical connections [, or any combination thereof]. ~~A campground shall be classified as a primitive camp when half or more of the required number of toilet seats are nonflush type.~~

["Sanitary facilities" means toilets, privies, urinals, lavatories, and showers.]

"Self-contained camping unit" means a unit [~~which~~ that] contains a ~~water flushed~~ [~~flush~~] toilet, [and may contain a]

lavatory, shower, and kitchen sink, all of which are connected, as an integral part of the structure, to water storage and sewage holding tanks located within the unit.

"Service building" means a structure housing ~~toilet~~ toilets, showers, or lavatories.

"Sewage" means ~~the~~ water-carried and non-water-carried human excrement ~~from service buildings, sanitary stations, camping units or other places together with such,~~ kitchen, laundry ~~or,~~ shower, bath, or lavatory wastes separately or together with such underground surface, storm, or other water and liquid industrial waste as may be present from residences, buildings, vehicles, industrial establishments, or other places. [~~Other~~ Such other] places include service buildings, dump stations, campsites, and camping units.

"Swimming pool" means any swimming, wading, or spray pool, including all appurtenant equipment, structures, and facilities provided for the use of the campers.

12VAC5-450-15. Compliance with the Virginia Administrative Process Act.

The provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) shall govern the promulgation and administration of this chapter, including the procedures for rendering and appealing any case decision based upon this chapter.

12VAC5-450-30. Approval of plans required.

A. In order to ~~insure~~ ensure the provision of adequate, properly designed sanitation facilities at campgrounds, any person planning construction, ~~major alteration~~ renovation, or ~~extensive~~ addition to any campground shall, prior to the initiation of any such construction, submit to ~~the Health Commissioner, through~~ the local health department in the ~~county~~ locality in which the proposed project is located, complete plans or statements ~~which~~ that show the following, as applicable:

1. The proposed method and location of the sewage disposal system.

2. The proposed sources and location of the water supply.

3. The number, location, and dimensions of all campsites.

4. The number, description, and location of [all] proposed sanitary facilities [~~such as toilets, privies, and~~] dump stations, sewer lines, etc.

5. ~~Name~~ The name and address of [~~applicant~~ the person applying to be the permit holder, and a designation of whether that person is the owner or the intended operator of the campground].

6. ~~Location~~ The location, boundaries, and dimensions of the proposed project.

7. Such other pertinent information as the Health Commissioner may deem necessary.

B. When, upon review of the plans, the Health Commissioner is satisfied that the proposed plans, if executed, will meet the requirements of this ~~regulation~~ chapter and other pertinent laws and regulations designed to protect the public health, written approval shall be issued [by the Health Commissioner].

C. When upon review of the plans, the Health Commissioner determines that the proposed plans ~~preclude~~ prevent a safe, sanitary operation, the plans shall be disapproved and the applicant shall be notified in writing of any deficiency in the plans that constitute the basis for disapproval. [The applicant shall be notified of the opportunity for administrative process as provided by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).]

D. No person shall begin construction, ~~major alteration~~ renovation, or addition to a campground until written approval has been granted by the Health Commissioner.

E. If construction is not begun within one year from the date of the approval of the plans, such approval shall be ~~considered~~ null and void.

F. All construction, ~~reconstruction~~ renovation, or [~~alteration~~ additions] shall be done in accordance with and limited to work covered by the plans and recorded changes ~~which~~ that have been approved by the Health Commissioner.

G. Any person whose plans have been disapproved may request and shall be granted ~~a hearing on the matter under the procedure provided by 12VAC5-450-60~~ an appeal as described by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Owners or operators of temporary campgrounds shall submit complete plans as described in subsection A of this section as a part of the permit application. No written approval of [~~this material~~ the plans] is required separate from the campground permit.

12VAC5-450-40. Permits.

A. No person ~~or persons~~, directly or indirectly, shall conduct, control, manage, operate, or maintain a campground, [~~or offer campsites for occupancy~~] within the Commonwealth, without first making application for and receiving a valid permit from the Health Commissioner for the operation of ~~said camp~~ the campground.

B. ~~Any campground for which a permit was not issued during the previous year~~ An authorized representative of a campground shall file an application for a permit with the local health department ~~in writing on a form and~~ in a manner prescribed by the Health Commissioner at least 30 days before such camp is to be opened.

C. If, after receipt of an application to operate a campground, the Health Commissioner finds ~~that~~ the campground ~~is~~ does not ~~in compliance~~ comply with ~~the provisions of~~ this ~~regulation~~ chapter, ~~he~~ the Health Commissioner shall notify the applicant in writing (i) citing the noncomplying items that constitute ~~his reason~~ the reasons for denying ~~the~~ a permit and (ii) providing the applicant with the opportunity for administrative process as provided by the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

D. ~~A permit may be revoked by the Health Commissioner, or his authorized agent, if he finds that the camp for which the permit was issued is operated, maintained, or occupied in violation of this chapter, or any law, ordinance or regulation applicable to such establishments, or in violation of the conditions stated in the permit.~~ If the Health Commissioner finds that the campground complies with this chapter, a permit shall be issued. Permits may be issued to the campground's owner or operator.

E. The permit shall be conspicuously posted in the office of the ~~camp~~ campground or on the premises if no office is available.

F. ~~The permit shall not be transferable~~ Permits shall either be (i) annual and shall expire ~~on December 31 of each year, unless stated otherwise in special permits such as temporary permits that may be granted by the Health Commissioner to allow a reasonable time to conform to the requirements of this chapter, or to correct existing violations~~ 12 months from the date of issuance or (ii) temporary and granted for a specific period of time to allow temporary camping of 14 days duration or less. Temporary permits may be valid for periods of 60 days or less, but the total days of operation may not exceed 14 days during [~~a~~ any] 60-day period. Permits shall not be transferable.

12VAC5-450-50. Inspection ~~of camping places~~.

A. The Health Commissioner ~~is hereby authorized and directed to make~~ [, in accordance with § 35.1-22 of the Code of Virginia,] shall conduct such inspections as ~~are~~ necessary to determine satisfactory compliance with this chapter, including the following:

1. Before permit issuance, the Health Commissioner shall conduct one or more preoperational inspections of annually permitted campgrounds that (i) have not been permitted in the previous year; (ii) have undergone modifications in their water delivery, sewage conveyance, or sewage disposal systems; (iii) have modified their sanitary facilities; or (iv) have changed the number of offered campsites since the issuance of their last annual permit.

2. Annually permitted campgrounds shall be inspected at least once per permit period.

3. Temporary campgrounds shall be inspected at least once during each operational period.

4. Campground inspection schedules may be adjusted if the Virginia Department of Health develops a written risk-based plan for adjusting the frequency of inspections, and this plan is uniformly applied throughout the Commonwealth.

B. ~~It~~ Upon presentation of appropriate credentials and consent of the owner, permit holder, or authorized agent of the owner or permit holder, the Health Commissioner shall be ~~the duty of the operator or occupant(s) of a campground to give the Health Commissioner~~ given free access to such premises at reasonable times for the purpose of inspection, in accordance with § 35.1-5 of the Code of Virginia.

~~C. A register shall be kept indicating name and address of the camper, the date of the campsite occupancy, and the number of the campsite occupied. Such register shall be made available to the Health Commissioner, upon request, during his inspection of the campground.~~

C. Whenever an inspection is conducted, a completed inspection report shall be provided to the permit holder of the campground. The inspection report shall contain descriptions of observed alleged violations and citations to the alleged regulatory violations. The report shall establish reasonable timelines for compliance with this chapter and provide an opportunity for due process in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

12VAC5-450-60. Enforcement, notices, ~~hearings~~ informal conferences.

~~A. Whenever the Health Commissioner finds violations of this chapter, an inspection report shall be filled out and left with the person in charge of the campground. Such inspection report shall be legible, contain written notation of the violation and remedial action to be taken to effect compliance with this chapter.~~

~~B. If, after a reasonable time has elapsed for the correction of noted items, the violation is found to continue to exist, a formal notice shall be issued which; (i) includes a written statement of the reasons for its issuance; (ii) sets forth a time for the performance of the corrections; (iii) is served upon the operator or his agent; Provided: that such notice shall be deemed to have been properly served upon such operator or agent when a copy has been sent by certified mail to his last known address; or when he has been served with such notice by any other method authorized or required by the laws of this Commonwealth; (iv) contains an outline of remedial action which, if taken will effect compliance with the provisions of this chapter; (v) informs the person to whom the notice is directed of his right to a hearing and of his responsibility to request the hearing and to whom the request should be made.~~

~~C. Periods of time allowed to elapse between notation of the violation on the inspection report and issuance of a formal notice, and time allowed in formal notice for performance of correction shall depend upon the nature and seriousness of the violation, but shall generally not exceed 30 days.~~

~~D. Whenever the Health Commissioner finds that an emergency exists which requires immediate action to protect the public health, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he may deem necessary to meet the emergency including the suspension of the permit. Notwithstanding any other provisions of this chapter, such order shall be effective immediately. Any person to whom such an order is directed shall comply therewith immediately, by upon petition to the Health Commissioner, shall be afforded a hearing as soon as possible.~~

A. The Health Commissioner may, after providing a notice of intent to revoke the permit, and after providing an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia, revoke a permit for flagrant or continuing violation of this chapter. Any person to whom a notice of revocation is directed shall immediately comply with the notice. Upon revocation, the former permit holder shall be given an opportunity for appeal of the revocation in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

B. The Health Commissioner may summarily suspend a permit to operate a campground if continued operation constitutes a substantial and imminent threat to public health. Upon receipt of such notice that a permit is suspended, the permit holder shall cease campground operations immediately [~~and begin corrective action~~]. Whenever a permit is suspended, the holder of the permit shall be notified in writing by certified mail or by hand delivery. Upon service of notice that the permit is immediately suspended, the former permit holder shall be given an opportunity for an informal conference in accordance with § 2.2-4019 of the Code of Virginia. The request for an informal conference shall be in writing and shall be filed with the local health department by the former holder of the permit. If written request for an informal conference is not filed within 10 working days after the service of notice, the suspension is sustained. Each holder of a suspended permit shall be afforded an opportunity for an informal conference within three working days of receipt of a request for the informal conference. The Health Commissioner may end the suspension at any time if the reasons for the suspension no longer exist. [Working days means days on which the local health department is open for business and does not include holidays and closures.]

~~E.~~ C. Any person affected by ~~any notice which has been~~ a determination issued in connection with the enforcement ~~of any provision~~ of this chapter may ~~request and shall be granted a hearing~~ challenge such determination in accordance with the provisions of ~~Title 9, Chapter 1.1:1 of~~ the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

~~F. If a request for a hearing is not made within 10 days after the receipt of a formal notice of violation of this chapter, or correction of the violation has not taken place within the prescribed time, the permit may be revoked and the continued operation of the campground shall be considered unlawful.~~

~~G. Nothing~~ D. All campgrounds shall be constructed, operated, and maintained in compliance with the requirements as set forth in this chapter. The Health Commissioner may enforce this chapter through any means lawfully available pursuant to § 35.1-7 of the Code of Virginia, and nothing in this chapter shall be construed as preventing the Health Commissioner from making efforts to obtain ~~voluntary~~ compliance through warning, conference, or any other appropriate enforcement means.

12VAC5-450-70. Location.

A. Each campground shall ~~be located on ground which has~~ have good surface drainage and ~~which is~~ be free of natural and man-made hazards such as mine pits, shafts, and quarries. ~~Camps~~ Campgrounds shall not be located on ground ~~which~~ that is in ~~or adjacent to~~ swamps, marshes, landfills or abandoned landfills, or breeding places for insects or rodents of public health importance, unless adequate, approved safeguards or preventive measures are taken.

B. The density of campsites in a campground shall not exceed an average of 20 campsites per acre inclusive of service roads, toilet buildings, recreational areas, etc.

C. Each campsite (including parking space) shall provide a minimum of 1600 square feet of space and shall not be less than 25 feet at its narrowest point.

D. Each campsite shall be identified by number and section. Camping units within a campground shall be required to locate within the designated campsites.

12VAC5-450-80. Water supplies.

A. ~~The water supply, storage reservoirs and distribution system shall be approved by the Health Commissioner.~~ An adequate supply of safe, sanitary, potable water shall be provided. [~~The~~ An approved] water supply shall either be an approved private well or a permitted waterworks. Waterworks must be maintained and operated in compliance with 12VAC5-590. Private wells shall be constructed, maintained, and operated in compliance with [the standards of] 12VAC5-630. Additionally, campgrounds utilizing private wells for potable water shall sample and test for total coliform and nitrate annually and prior to permit application; water shall be satisfactory for the total coliform standards identified in 12VAC5-630-370 and shall not have more than 10 mg/L nitrate. Samples shall be analyzed by a laboratory [~~certified~~ accredited] by the Department of General Services, Division of Consolidated Laboratory Services.

B. ~~An adequate supply of safe, sanitary, potable water capable of supplying a total capacity of at least 50 gallons per campsite per day if privies are used, and at least 100 gallons per campsite per day if water flushed toilets are used,~~ Water shall be provided at one or more easily accessible locations within the ~~camping area~~ campground. ~~Adequate water storage facilities shall be provided to meet the demands for~~ The water system shall be capable of meeting the demand for water during periods of peak use by the ~~campers~~ campground.

C. Water [~~delivery~~] systems [~~utilizing private wells as a water source~~ that are not a part of a waterworks regulated under 12VAC5-590] must meet the following construction and operational standards:

1. All water storage reservoirs shall be covered, watertight, and constructed of impervious material.

2. Overflows and vents of such reservoirs shall be effectively screened.

3. Manholes shall be constructed with ~~over lapping~~ overlapping covers so as to prevent the entrance of contaminating material.

4. Reservoir overflow pipes shall discharge through an acceptable air gap.

5. All cross connections between approved and unapproved water supply systems are prohibited.

6. All water supplies shall be protected against the hazards of backflow or back siphonage.

~~D. All cross connections, between approved and nonapproved water supply systems are prohibited, and the supply shall be protected against the hazards of backflow or back siphonage.~~

~~E. Drinking fountains and water coolers, if provided, shall be of an approved type~~. D. Common water coolers, drinking cups, glasses, or vessels are prohibited.

~~F. Unsafe~~ E. Unapproved wells or springs in the ~~camp area~~ campground shall be eliminated or made inaccessible for human consumption. [All accessible water outlets with sources not approved for human consumption under the terms identified in subsection A of this section shall be identified with signage stating, in effect, "Caution: nonpotable water. DO NOT DRINK."]

~~G.~~ F. All ice provided shall be from an approved source~~. All ice~~ and shall be handled and stored in ~~such~~ a manner ~~as~~ to prevent contamination. Ice-making machines shall be ~~of approved construction~~ automatic dispensing, and water shall be from a source approved under subsection A of this section. Open-bin type ice machines are prohibited.

~~H.~~ G. Portable water tanks or watering stations shall not be [~~approved~~ allowed]~~, except in emergencies, and then~~ unless such tanks, stations, and dispensing ~~shall be~~ are reviewed and approved by the Health Commissioner.

~~I.~~ H. The area surrounding a pump or hydrant used for a water supply shall be maintained in a properly drained and sanitary condition~~,~~ to prevent the accumulation of standing water or the creation of muddy conditions.

~~J.~~ I. The connection for potable water piped to individual campsites shall be ~~so~~ installed so that it will not be damaged by the parking of camping vehicles.

~~K.~~ J. If installed above the ground, the riser shall terminate at least four inches above the ground surface. If installed in a pit, the riser shall terminate at least 12 inches above the floor of the pit, and the pit shall be drained to prevent it from containing standing water. The drain for the pit shall not be connected to a sanitary sewerage system.

~~L.~~ K. If a water connection and a sewer connection are provided at ~~individual campsites~~ a campsite, the two connections shall be separated by a minimum horizontal distance of ~~five~~ 10 feet. Campgrounds that have been issued a permit before [November 28, 2018,] shall be exempt and required to maintain a minimum horizontal distance of five feet between water and sewer connections. If an exempt campground conducts construction or renovation activity impacting water and sewer connections, current regulations shall apply to all campsites where work is conducted. Normal maintenance work will not constitute construction or renovation.

~~M.~~ L. Adequate provisions shall be made to prevent the freezing of service lines, valves, and riser pipes.

12VAC5-450-90. Sewage disposal.

A. Every campground shall be provided with an approved method of [~~collection~~ collecting], conveying, and disposing of all sewage and liquid wastes.

~~B. Privies shall be an acceptable method of sewage disposal when the location, design, construction, and quantity have been approved by the Health Commissioner provided their use is not prohibited or restricted by local requirements.~~

~~C.~~ B. All methods or systems of collecting and disposing of sewage and liquid wastes, whether temporary or permanent, shall be subject to the approval of the Health Commissioner.

~~D.~~ C. It shall be unlawful to discharge sewage, sink waste water, shower waste water, or other putrescible wastes in such a manner as to enter the ground surface ~~or~~, subsurface, or a body of water, except following a treatment device or process approved prior to construction by the Health Commissioner.

~~E. A sanitary or~~ D. Campgrounds shall provide a dump station for the disposal of sewage and other liquid wastes from self-contained camping units ~~shall be provided which~~ that complies with the following requirements:

1. Campgrounds having ~~less~~ [200 or] fewer [~~than 200~~] campsites shall provide a minimum of one ~~sanitary~~ dump station, unless all campsites that allow self-contained camping units provide direct sewer connections.

2. Campgrounds having more than 200 campsites shall provide an additional ~~sanitary~~ dump station for each additional 200 campsites or major fraction thereof, provided that campsites equipped with sewer connections shall not be included in the total.

3. Where two or more ~~sanitary~~ dump stations are required, they shall be ~~so~~ located ~~as~~ to facilitate the simultaneous discharge of sewage wastes from different units.

4. Each ~~sanitary~~ [dump] station shall be ~~so~~ located and designed ~~as~~ to be easily accessible and facilitate ingress and egress for camping vehicles.

~~F.~~ E. The ~~sanitary~~ dump station shall consist of the following:

1. A four-inch sewer pipe trapped below the frost line connected to an approved sewage disposal system or suitable holding tank.

2. The sewer pipe, at the inlet, shall be surrounded by a reinforced, concrete apron sloped to drain to the sewer pipe.

3. The minimum dimensions of the concrete apron shall be 36 inches wide, 60 inches long, and four inches thick. The sewer pipe shall be located such that the major portion of the apron will project under the camping unit when it is discharging.

4. The inlet of the sewer pipe shall be provided with a suitable fly-tight cover.

5. The ~~sanitary~~ [dump] station shall be provided with a water outlet to permit wash down of the immediate area after each use and so arranged as to prevent a cross-connection or back siphonage.

6. Each water outlet used for such purposes shall display a sign stating, in effect, "Notice: Unsafe Water Outlet-This water is for wash-down purposes only."

F. [If a campground dump station is connected to a sewage holding tank that does not receive sewage or liquid wastes from any other source, the pumping and hauling of sewage from that holding tank shall be exempt from the pump and haul permit requirements and procedures of 12VAC5-610-410, 12VAC5-610-420, and 12VAC5-610-440. However, the owner of the campground must obtain a construction permit as described in 12VAC5-430 prior to construction of the holding tank.

G.] A slop sink or suitable drain shall be provided within 500 feet of all campsites for the disposal of liquid cooking and wash water wastes, unless a dump station is accessible for this purpose. Adequate provision shall be made by the permit holder [~~of a campground~~] to assure that the slop sink or other suitable drain is kept in a sanitary condition and is used for the purpose for which it was intended.

[~~G.~~ H.] Individual sewer connections for camping vehicles, if provided, shall be installed in accordance with the following provisions:

1. The individual sewer (equivalent to the building sewer for a permanent building)~~,~~ shall be at least four inches in diameter, shall be trapped below the frost line, and shall be laid at depths sufficient to provide adequate protection against physical injury.

2. The sewer inlet shall (i) consist of a four-inch riser extending, at a minimum, four inches above the surface of the surrounding ground to accommodate a hose connection from the camping vehicle~~,~~ or ~~so~~ (ii) be designed ~~as~~ to divert surface drainage away from the riser. The riser shall be imbedded firmly in the ground and be protected against heaving and shifting.

3. The sewer riser shall be equipped with a standard ferrule and close nipple provided with a tight cap or expanding sewer plug. The screw cap or sewer plug shall be fastened by a durable chain to prevent removal while the sewer riser is in use. When the sewer riser is not in use, it shall be capped or plugged.

4. The sewer hose between the camping vehicle drain and the sewer riser shall be watertight~~,~~ and shall be of flexible, noncollapsible, corrosion and weather-resistant material of suitable diameter to fit the camping vehicle drain. Its lower end shall be secured into the open sewer riser with a gasket of rubber or other suitable material. All joints shall be effected ~~so as~~ to prevent the leakage of sewage~~,~~ or odor or prevent the entrance of rodents [or insects].

12VAC5-450-100. ~~Service buildings~~ Sanitary facilities.

A. Each campground shall ~~be provided with one or more service buildings which contain~~ provide an adequate number of ~~toilet and~~ sanitary facilities. The minimum ratio of sanitary facilities to the number of campsites ~~shall be provided according to~~ is established in the following schedule~~:~~. [The provision of showers and lavatories is optional on the part of the campground owner, but when they are provided the schedule will apply.] Facilities shall either be gender-balanced in number or single-occupant access with no gender designation.

No. Sites	Toilets		Urinals	Lavatories		Showers*		Other Fixtures
	M	W	M	M	W	M	W	
1 - 15	1	1	0	1	1	1	1	1 slop drain
16 - 30	2	2	0	2	2	1	1	
31 - 45	2	3	1	3	3	1	1	See Subsection F of this section
46 - 60	3	4	1	3	3	2	2	
61 - 75	4	5	1	4	4	2	2	
76 - 90	4	6	2	4	4	2	2	
91 - 105	5	7	2	4	4	3	3	
106 - 120	6	8	2	5	5	3	3	
121 - 135	6	9	3	5	5	3	3	
136 - 150	7	10	3	5	5	4	4	

*The providing of showers in the service building(s) is optional on the part of the campground owner, but when are provided the schedule will apply.

Campsites	Toilets	Lavatories	Showers [*]
1 - 15	2	2	2
16 - 30	4	4	2
31 - 45	6	6	2
46 - 60	8	6	4
61 - 75	10	8	4
76 - 90	12	8	4
91 - 105	14	8	6
106 - 120	16	10	6
121 - 135	18	10	8
136 - 150	20	10	8

[*The providing of showers is optional on the part of the campground owner, but when showers are provided the schedule will apply.]

B. For campgrounds having more than 150 campsites located, in the opinion of the Health Commissioner, contiguously contiguous to the service building or buildings sanitary facilities required by the schedule in subsection A of this section, there shall be provided one two toilet seat seats and one lavatory for each sex two lavatories for each additional 30 campsites, and one two additional shower showers for each additional 40 campsites and one additional men's urinal for each 100 campsites. When Regardless of the number of campsites, when [a section or sections portions] of a campground are found to be incontiguous noncontiguous, the Health Commissioner may shall apply the schedule in subsection A above in determining the adequacy of the fixtures of this section for such [section portion] of the campground. Whenever the number of campsites fall in between the numbers listed above, the larger number of required fixtures shall apply when a major fraction of the difference in the two numbers is attained.

C. Primitive camps shall be exempted from the provisions for lavatories and showers. If, however, any showers are provided at a campground designated as a primitive camp, the schedule in subsections A and B shall apply.

C. Campsites [with individual sewer connections] used solely for self-contained camping units or cabins with [indoor plumbing and] approved sewage disposal shall not count towards the number of campsites used to determine the minimum number of [fixtures facilities] required in subsections A and B of this section. If all campsites in a campground are used solely for self-contained camping units or cabins, then the campground shall provide [at least] the required number of facilities for a campground of 15 campsites or fewer.

D. When a campground is operated in connection with a resort or other business operation, the campground facilities provided shall be in excess of those required by the schedules in subsections A and B of this section by the number of facilities required by the Virginia Statewide Building Code (13VAC5-63) or other applicable regulation.

E. Sanitary facilities required by subsections A and B of this section may be in service buildings or may be [in other sanitary facilities] located outside of service buildings. Privies of a type approved by 12VAC5-610-980 may be

substituted for flush toilets [~~and shall be~~ when] provided according to the schedule in subsection A of this section. Where present, privies shall be maintained in good repair, pumped as needed, and kept clean and sanitary at all times. When portable privies are used to meet the requirements of the schedule in subsection A of this section, they shall not serve nonprimitive campsites or more than 30 campsites in a campground.

~~D.~~ F. Urinals may be substituted for up to one half of the required male toilets. Where existing urinal troughs are used, two feet of urinal trough shall constitute one urinal.

~~E. Exemptions. Any person desiring to furnish temporary facilities for accommodating a travel trailer rally, or other group of camping units assembled for the purpose of traveling together, shall make application for such activity to the Health Commissioner through the local health department having jurisdiction, 15 days in advance of the intended date of use. The requirements for a service building may be waived by the Health Commissioner on the determination that public health will not be endangered; but the location of the site, the facilities which must be provided, and the method of conducting such rally shall be acceptable to the Health Commissioner before a special permit shall be issued specifying the location of the site, the period of operation not to exceed seven days, and any conditions of issuance.~~

~~F. A slop sink or suitable drain shall be provided within 500 feet of all campsites for the disposal of liquid wastes unless a sanitary station is accessible for this purpose. Adequate provision shall be made by the operator of a campground to assure that the slop sink or other suitable drain, if necessary, is kept in a sanitary condition and is used for the purpose for which it was intended such as the disposal of dish water and wash water.~~

~~G. Lavatories shall be provided adjacent to the toilet fixtures.~~

~~H. When a campground is operated in connection with a resort or other business establishment, the total number of sanitary facilities shall be in excess of those required by the aforementioned schedules and shall be based on the total number of persons using such facilities.~~

~~I. Service buildings shall be located no farther than 500 feet from any campsite served by such building, nor closer than 30 feet to any campsite. When two or more service buildings exist, the ratio of fixtures as specified in subsections A and B shall be in approximate relation to the number of campsites located within a 500-foot radius of each building.~~

~~J.~~ G. All ~~service buildings~~ [~~sanitary facilities~~ service buildings] and ~~the commodes~~ toilets, urinals, lavatories, ~~shower~~ showers, and other appurtenances located therein shall be maintained in a state of good repair and shall be kept in a clean and sanitary condition at all times. Toilet and shower rooms shall not be used for miscellaneous storage during operation of the campground.

~~K. All doors to the exterior from service buildings shall be self-closing.~~

~~L. Toilet rooms, shower rooms and other areas receiving heavy camper use shall not be used for miscellaneous storage during operation of the camp.~~

~~M.~~ H. Toilet tissue shall be provided at each privy ~~or~~ and toilet ~~seat~~, and a covered receptacle for sanitary product disposal shall be provided at each privy and female [and gender-neutral] toilet. Where provided, lavatories shall be in the immediate vicinity of toilet fixtures, and soap and a method of hand drying shall be provided.

~~N.~~ I. Shower compartments, whether individual type with partitions or group type without partitions, shall have not less than 1,024 square inches in floor area and~~, if rectangular, square or triangular in plan,~~ shall be ~~not less than~~ at least 30 inches in shortest dimension.

~~O. In a campground where there is a combination of campsites, part of which are provided with a water connection and a sewer outlet, the minimum number of fixtures as required in subsections A and B above may be adjusted by the Health Commissioner based on individual conditions provided any request for an adjustment complies with 12VAC5-450-190.~~

J. Sanitary facilities shall be located no farther than 500 feet from any campsite served by such building nor closer than 30 feet from any campsite. [~~However~~ Additionally], privies shall be no closer than 50 feet from any campsite. When two or more service buildings or areas with other sanitary facilities exist, the ratio of [~~fixtures~~ facilities] as specified in subsections A and B of this section shall be in approximate relation to the number of campsites located within a 500-foot radius of each building.

12VAC5-450-110. Structural requirements for service buildings.

A. All portions of the structure shall be properly protected from damage by ordinary use and by decay and corrosion. Exterior portions shall be of such material and be so constructed and protected as to prevent entrance or penetration of moisture and weather.

B. Effective ventilation of all service buildings shall be provided to prevent condensation, moisture, and odors.

C. Interior of service buildings shall be finished in a light color and provided with adequate natural or artificial illumination, or both.

D. The floors of toilet and shower rooms shall be sloped to a properly trapped floor drain connected to the sewerage system.

E. Partitions between flush toilets in the same room shall be raised a minimum of eight inches from the floor to permit easy cleaning.

F. The interior finish of such buildings shall be of moisture resistant and easily cleanable material ~~which~~ that will withstand frequent washing and cleaning. Special attention shall be given wall finishes immediately around lavatories, urinals, ~~commodes~~ and toilets and in showers to ~~insure~~ ensure a surface in these heavily used areas ~~which~~ that will withstand commercial use.

G. The floors shall be constructed of material impervious to water and be of easily cleanable material. Duck boards or ~~walk-ways~~ walkways made of wood or other absorptive material shall not be permitted.

H. All windows and openings to the outside from areas containing ~~commodes~~ toilets and urinals shall be provided with fly-proof screening material of at least 16 mesh per inch.

I. [~~Water closets~~ Toilets] and bathing facilities shall not be located in the same compartment.

J. Permanent service buildings shall be provided with an artificial light at the entrance to the building to facilitate its use at night~~: Provided, that primitive~~. Primitive camps with privies ~~may be exempted~~ are exempt from this requirement.

K. Service buildings shall have appropriate signs ~~to denote its use~~ such as "Men's Toilet," "Women's Toilet," "Showers," etc.

L. Showers shall be equipped with [~~a drain or~~] drains ~~which will~~ that prevent the shower water from running across floors that are used for other purposes.

M. All fixtures shall be of durable material ~~which will be~~ that is capable of withstanding the heavy usage ~~which~~ that public facilities receive.

N. All doors to the exterior from service buildings shall be self-closing.

12VAC5-450-115. Cabins and other rental units.

A. All cabins, yurts, and other camping units offered for [~~rent~~ use] to campers, [whether for free or for a fee,] including self-contained camping units and other mobile units, and the equipment, fixtures, and furnishings contained therein shall be kept clean, in good repair, free of vermin, and maintained so as to protect the health, safety, and well-being of persons using those facilities.

B. When provided, dishes, glassware, silverware, and other cooking implements must be kept in a clean and sanitary condition. If such items are not washed [by campground staff] between occupants, the permit holder must post a sign alerting cabin occupants that kitchen items are not washed under management supervision.

C. When provided, box springs, mattresses, and other furnishings shall be clean and in good repair. Conventional mattress covers or pads shall be used for the protection of mattresses and shall be kept clean and in good repair. When provided, all sheets, pillowcases, towels, washcloths, and bathmats shall be kept clean and in good repair, freshly laundered between occupants, and changed at least once every seven days if used by the same occupant. When a blanket is placed on the bed, the upper sheet shall be of sufficient length to fold and overlap the top section of the blanket. All blankets, quilts, bedspreads, and comforters shall be maintained in a sanitary and good condition, and all clean bedding and linen shall be stored in a clean and dry place.

D. When provided, smoke detectors and fire extinguishers shall be functional and serviced as appropriate.

E. Bed arrangements [~~of lodging units~~] shall provide suitable clear space between each bed, cot, or bunk to allow for ingress to and egress from the [~~lodging unit~~ cabin, yurt, or other camping unit]. There shall be sufficient space between the floor and the underside of the beds to facilitate easy cleaning. In lieu of such space, the bed shall have a continuous base or shall be on rollers.

F. Measures shall be taken to prevent the infestation of cabins and other [~~rental~~ camping] units by rodents, bedbugs, and vector insects.

12VAC5-450-130. Insect, rodent, and weed control.

A. [~~Camping places~~ Campgrounds] shall be kept free from cans, jars, buckets, old tires, and other articles ~~which~~ that may hold water and provide temporary breeding places for mosquitoes. Mosquito control measures and supplemental larvicidal measures shall be undertaken by the [~~owner~~ permit holder] when the need is indicated.

B. Fly and rodent breeding shall be controlled by eliminating ~~the insanitary practices which provide~~ breeding places. The area surrounding the garbage cans shall not be permitted to become littered with garbage nor saturated with waste liquid from garbage. [Infestations of rodents or flies, ticks, mosquitos, or other insects of public health concern shall be evidence that sufficient vector control measures have not been implemented and shall be considered a violation of these regulations.]

C. The growth of weeds, grass, poison ivy, or other noxious plants shall be controlled as a safety measure and as a means toward the elimination of ticks and chiggers. Pesticidal measures shall be applied, if necessary, provided the pesticide and its use is in accordance with the rules promulgated by the ~~Pesticide Control Board~~ Board of Agriculture and Consumer Services.

D. The campsite and the premises shall be maintained in a clean and orderly manner.

12VAC5-450-140. Swimming pools ~~and outdoor bathing facilities~~.

The construction, modification, maintenance, operation, and use of any swimming pool at a campground, if provided, shall be subject to the ~~State Board of Health regulations adopted under §§ 35.1-17 of the Code of Virginia~~ Regulations Governing Tourist Establishment Swimming Pools and Other Public Pools (12VAC5-460) and [the] Swimming Pool Regulations Governing the Posting of Water Quality Test Results (12VAC5-462).

12VAC5-450-150. Safety.

A. The electrical installation and electrical hook-up provided [~~travel trailers, and other similar units~~ to self-contained camping units and other mobile units] shall be in accordance with the provisions of local electrical ordinances, or if no such ordinance exists, in accordance with the provisions of the [~~National Electrical Code~~ Virginia Statewide Building Code (13VAC5-63)]~~,~~ applicable at the time of installation.

B. ~~Adequate precautions shall be exercised by the operator~~ The permit holder shall exercise precautions to prevent the outbreak of fires. If open fires are permitted, ~~there shall be~~ a definite area shall be provided within the bounds of each campsite for the building of fires by the camper, with a cleared area surrounding the ~~firesite~~ fire site to aid in fire control.

C. ~~Adequate precautions shall be taken by the operator~~ The permit holder shall take precautions in the storage and handling of gasoline, gas cylinders, or other explosive materials, in accordance with local, state, and national safety standards.

D. The ~~operator~~ permit holder shall make ~~adequate~~ provisions for the use and control of ~~mini-bikes~~ all-terrain vehicles, trail bikes, and other similar vehicles within the confines of the camping area to prevent accidents to small children and campers.

E. Broken bottles, glass, and other sharp objects shall not be allowed to create a hazard to children or others.

F. A register shall be kept for recording the names of all campers, the date of campsite occupancy by each camper, and the number and location of occupied campsites.

G. Campground permit holders shall develop and maintain an emergency response plan. This plan shall include identification of a point of contact during emergency incidents and a written plan for communicating emergency response information to campers. The plan shall also include provisions for camper safety, identification, and evacuation in the event of natural disasters, fires, or other emergencies. Contact telephone numbers for local police, fire response, and emergency medical services shall be posted in a central location in all campgrounds.

12VAC5-450-170. Control of animals and pets.

A. ~~Every pet permitted in a campground~~ Pets shall be maintained under control at all times and shall not be permitted to create a public health problem. ~~Dogs shall be kept on leash at all times. Dung~~ Animal waste shall be removed immediately and be disposed of in a waste receptacle or buried in a location ~~which~~ that will not interfere with the use of the ~~site for camping purposes~~ [~~campsite~~ campground].

B. Any kennels, pens, or other facilities provided for such pets, including horses, shall be maintained in a sanitary condition at all times.

12VAC5-450-180. Overflow areas.

A. It shall be unlawful for any person operating a campground to exceed the design capacity of the campground as stated on the [~~health~~] permit by the use of certain unequipped areas as an overflow area for campers~~, camping clubs or rallies~~ unless and until the overflow area and its proposed use have been approved by the Health Commissioner in writing as to the specific location of the overflow area, number and location of sanitary facilities, size and number of campsites, and such other factors as may be deemed necessary to prevent overcrowding and the accompanying insanitary conditions.

B. The length of stay of any camping unit permitted to use an area specifically designated and approved as an overflow area shall be limited to a 12 hour period. Overflow areas are to be used for incidental traffic only and are not for planned temporary camping.

12VAC5-450-183. Primitive campgrounds.

A. Campgrounds or sections of campgrounds may be [~~permitted~~ designated] as primitive in the absence of [~~flush~~] toilets, showers and lavatories, and electrical connections [, or any combination thereof]. Campsites shall be designated primitive at the time of permitting.

B. Primitive campgrounds or sections of campgrounds with only primitive campsites shall be exempt from the following requirements of this chapter:

1. Campsite identification requirements of 12VAC5-450-70 D. Although individual primitive campsites do not need to be marked, the overall campground size shall be large enough to accommodate campsites arranged according to the size and density requirements of 12VAC5-450-70 B and C.

2. Potable water requirements of 12VAC5-450-80, provided that the primitive campground or section thereof has 10 campsites or fewer [,] and the following signage is clearly posted at the entrance to the primitive campground or section thereof: "No potable water provided at this

campground." When potable water is provided, all requirements of 12VAC5-450-80 shall apply.

3. Where water is not provided, slop sink requirements of 12VAC5-450-90 [~~F~~ G].

4. Lavatory and shower requirements of 12VAC5-450-100 A. If the primitive campground provides showers or lavatories then the schedule in 12VAC5-450-100 A shall apply.

5. Garbage and refuse disposal requirements of 12VAC5-450-120, provided the primitive campground or section thereof has 10 campsites or fewer, and [~~the campground shall display a sign stating, in effect~~ the following signage is clearly posted at the entrance to the primitive campground or section thereof]: "Pack It In, Pack It Out, no garbage collection provided, please remove your own garbage from this campground."

6. Weed, grass, and noxious plant control measures as specified in 12VAC5-450-130 C. If pesticide measures are taken, then all pesticide use must be done in accordance with rules promulgated by the Board of Agriculture and Consumer Services.

12VAC5-450-187. Temporary campgrounds.

Temporary campgrounds, as permitted under 12VAC5-450-40 F, shall be exempt from the following requirements of this chapter:

1. Density, size, and designation requirements of 12VAC5-450-70 [~~A~~ B] through D. However, temporary campgrounds shall establish a maximum number of campsites and campers. [~~Campground~~ Temporary campground] permit holders shall ensure that the size, location, and orientation of campsites do not prohibit the safe and timely evacuation of campsites in the event of an emergency, and that vehicular traffic routes and parking are located where they do not pose a safety risk to campers.

2. Permanent water supply requirements of 12VAC5-450-80.

a. If potable water is provided in the form of a waterworks or private well, then it must comply with 12VAC5-450-80 A, B, and D through I. If no piped water source is provided, then bottled water that complies with 21 CFR Part 129 shall be available, and the unavailability of piped water must be advertised to campers prior to the time of the temporary camping event.

b. Water may be [~~hauled~~ transported] in from a source that meets the requirements of 12VAC5-450-80 A. Water shall be transported in tanks of food-grade construction and maintain a one-parts-per-million chlorine residual. Any tanks, hoses, or appurtenances that are used to distribute water shall be of food-grade construction, be disinfected between uses, and be protected from contamination [and backflow].

3. The dump station and slop sink requirements of 12VAC5-450-90 D, E, and [~~F~~ G].

a. Greywater disposal barrels or approved equivalents shall be provided and serviced during the event unless all of the following conditions apply: (i) piped water is not available, (ii) portable showers and handwashing sinks are provided, and (iii) cooking and campfires are prohibited. Only water from cooking, washing, or bathing shall be disposed of in greywater barrels.

b. If self-contained camping units are present at the campground, a sewage handler shall be available to pump holding tanks as appropriate during the event. Sewage handlers must possess a valid sewage handling permit as required by 12VAC5-610 and any licensure required by the Board for Waterworks and Wastewater Works Operators and Onsite Sewage Professionals in accordance with that board's regulations (18VAC160-30 and 18VAC160-40) and [~~Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 23 (§ 54.1-2300 et seq.) of~~] Title 54.1 of the Code of Virginia.

4. Permanent [sanitary] facility requirements in 12VAC5-450-100 A, B, and I. However, portable toilet facilities shall be provided at the ratio of at least one toilet for every 75 campers, and at least one toilet shall comply with the Americans with Disabilities Act (42 USC § 12101 et seq.). No campsite shall be farther than 500 feet from any portable toilet. Portable sinks and showers are not required [~~for events of four days or less~~], although hand sanitizer must be provided in all portable toilets where portable sinks are not provided. All portable units shall be serviced at least daily during the event unless the applicant can demonstrate that they are provided in numbers significant enough to warrant a reduced-maintenance service schedule. If the temporary campground has permanent bathroom facilities, facilities may count towards the required number of portable [~~privies~~ toilets]. Campers who will be camping in self-contained camping units shall not be counted toward the total number of campers in calculating the required number of portable [~~privies~~ toilets].

12VAC5-450-190. ~~Waiver~~ Variances.

A. One or more of the ~~provisions in the above regulation~~ regulations in this chapter may be waived in whole or in part when, in the opinion of the Health Commissioner, ~~there are factors or circumstances which render compliance with such provision(s) unnecessary; provided, that such provision(s) shall be specifically exempt in writing by the Health Commissioner.~~ the hardship imposed by the regulations, which may be economic, outweighs the benefits that may be

received by the public and that granting such a variance does not subject the public to unreasonable health risks or environmental pollution. Variances shall be issued in writing by the Health Commissioner.

B. ~~It shall be the duty of the campground operator to file a written request for such waiver in which the reasons for noncompliance of a certain provision(s) are stated fully. If data, test or other adequate information is necessary to the rendering of a decision by the Health Commissioner, it shall be the responsibility of the applicant to provide such evidence.~~ Any permit holder who seeks a variance shall apply in writing to the local health department. The application shall include:

1. A citation to the regulation from which a variance is requested;

2. The nature and duration of the variance requested;

3. Evidence that establishes that the public health and welfare [~~,~~] and the environment would not be adversely affected if the variance were granted;

5. Suggested conditions that might be imposed on the granting of a variance that would limit the detrimental impact on the public health and welfare;

6. Other information believed pertinent by the applicant; and

7. Such other information as the district or local health department or Health Commissioner may require.

C. [~~The Health Commissioner shall issue a case decision regarding the variance request within 90 days of receipt. The campground operator or other named party may appeal any adverse decision regarding a variance request pursuant to the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).~~ If the Health Commissioner proposes to grant a variance request, the permit holder shall be notified in writing of this decision within 90 days of receipt of the variance request. If the Health Commissioner proposes to deny the variance request, the Health Commissioner shall notify the permit holder of the proposed denial within 90 days of receipt of the variance request and provide an opportunity for an informal fact-finding conference as provided in § 2.2-4019 of the Code of Virginia.]

12VAC5-450-200. Penalties.

Any person who violates any provision of this chapter ~~shall, upon conviction, be punished by a fine of not less than $10 nor more than $100; and each day's failure of compliance with any provision shall constitute a separate violation~~ may be subject to penalties provided by § 35.1-7 of the Code of Virginia.

12VAC5-450-210. ~~Constitutionality.~~ (Repealed.)

~~If any provision of any section of this chapter is declared unconstitutional, or the application thereof to any person or circumstance is held invalid, the validity and constitutionality of the remainder of such regulations shall not be affected thereby.~~

12VAC5-450-230. ~~Exemptions.~~ (Repealed.)

~~Whenever it is found that existing facilities provided at a campground prior to the effective date of this chapter such as the size of campsites and design of structures are in noncompliance, and that the required changes would work an undue hardship on the operator and not materially affect the public health or safety, such major items shall be exempted from this chapter. Other nonconforming items at existing campgrounds such as dump station requirements and number of sanitary facilities may continue in use for a reasonable period of time not to exceed two years from the effective date, provided that a diligent effort is made by the owner to effect compliance. All new campgrounds, sections added to existing campgrounds and additions and extensions within existing campgrounds shall be subject to the provisions of this chapter.~~

NOTICE: Forms used in administering the regulation 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 a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

[FORMS (12VAC5-450)

Application for a Campground Operation Permit, TER-CG-1 (eff. 11/2018)

Application for Campground Plan Review, TER-CG-2 (eff. 11/2018)

Annually-Permitted Campground Inspection Report, TER-CG-3 (eff. 11/2018)

Temporary Campground Inspection Report, TER-CG-4 (eff. 11/2018)]

VA.R. Doc. No. R16-4752; Filed October 5, 2018, 8:44 a.m.

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Fast-Track Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-140, 12VAC30-50-150, 12VAC30-50-180).**

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: November 28, 2018.

Effective Date: December 13, 2018.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority as established by § 1902(a) of the Social Security Act (42 USC § 1396a) provides governing authority for payments for services.

Purpose: The purpose of this action is to bring Virginia regulations into alignment with current practice. This action relates to the public health, safety, and welfare of citizens in that it clarifies that providers who are in training, and who are under supervision, can provide behavioral health services. This increases the number of service providers, which expands access to these services.

Rationale for Using the Fast-Track Rulemaking Process: This regulatory action is being promulgated as a fast-track rulemaking action because it is expected to be noncontroversial. The Department of Health Professions (DHP) has long recognized the LMHP-resident, LMHP-resident in psychology, and LMHP-supervisee as individuals who may perform the practice of professional counseling, psychology, and social work and under the supervision of a DHP-licensed professional in the same field. As a result, DMAS has long recognized these individuals as able to perform these functions. This regulatory action clarifies long-standing DMAS practice.

Substance: This regulatory action includes LMHP-resident, LMHP-resident in psychology, and LMHP-supervisee in the list of individuals who may provide outpatient psychiatric services to Medicaid members. In addition, this regulatory action includes text changes required by Centers for Medicare and Medicaid Services; these changes mainly reorganize existing text.

Issues: The primary advantages to the Commonwealth and the public is the clarification of existing practice so that individuals who have the status of an LMHP-resident, LMHP-resident in psychology, and LMHP-supervisee may continue to provide outpatient psychiatric services in accordance with their licensure requirements.

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 proposed regulation clarifies that a Resident Licensed Mental Health Professional (LMHP-R), a Resident in Psychology (LMHP-RP), and a Supervisee (LMHP-S) may provide outpatient psychiatric services in accordance with their licensure requirements.

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

Estimated Economic Impact. The Department of Health Professionals (DHP) has long authorized LMHP-R, LMHP-RP, and LMHP-S as individuals who may perform the practice of professional counseling, psychology, and social work under the supervision of a DHP-licensed professional in the same field. The Department of Medical Assistance Services (DMAS) also has long allowed these individuals to provide billable services to Medicaid patients. This proposed regulatory action clarifies long-standing DHP and DMAS practices. No significant economic impact is expected from this action other than improving the clarity of the regulatory language.

Businesses and Entities Affected. The proposed clarification would primarily help the public to understand that LMHP-R, LMHP-RP, and LMHP-S may perform mental health services under supervision.

Localities Particularly Affected. The proposed changes do not disproportionately affect any locality more than others.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not impose costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on businesses.

Localities. The proposed regulation does not adversely affect localities.

Other Entities. The proposed regulation does not adversely affect other entities.

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

Summary:

The amendments clarify that a licensed mental health professional-resident (LMHP-R), a licensed resident in psychology (LMHP-RP), and a licensed supervisee in social work (LMHP-S) may provide outpatient behavioral health services to Medicaid members in accordance with their licensure requirements.

12VAC30-50-140. Physician's services whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere.

A. Elective surgery as defined by the Program is surgery that is not medically necessary to restore or materially improve a body function.

B. Cosmetic surgical procedures are not covered unless performed for physiological reasons and require Program prior approval.

C. Routine physicals and immunizations are not covered except when the services are provided under the Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Program and when a well-child examination is performed in a private physician's office for a foster child of the local social services department on specific referral from those departments.

D. Outpatient psychiatric services.

1. Psychiatric services can be provided by ~~psychiatrists or by~~ or under the supervision of an individual licensed under state law to practice medicine or osteopathy. Only the following licensed providers are permitted to provide psychiatric services under the supervision of an individual licensed under state law to practice medicine or osteopathy: (i) a licensed clinical psychologist; (ii) a LMHP-RP, as defined in 12VAC30-50-130; (iii) a licensed clinical social worker~~,~~; (iv) a LMHP-S, as defined in 12VAC30-50-130; (v) a licensed professional counselor~~,~~; (vi) a LMHP-R, as defined in 12VAC30-50-130; (vii) a licensed clinical nurse specialist-psychiatric~~, or~~; (viii) a licensed marriage and family therapist ~~under the direct supervision of a psychiatrist~~; or (ix) a licensed substance abuse professional. Medically necessary psychiatric services shall be covered by DMAS or its designee and shall be directly and specifically related to an active written plan designed and signature dated by one of the healthcare professionals listed in this subdivision.

~~2. Psychological and psychiatric services shall be medically prescribed treatment that is directly and specifically related to an active written plan designed and signature dated by either a psychiatrist or by a licensed psychiatric nurse practitioner, licensed clinical social worker, licensed professional counselor, licensed clinical nurse specialist-psychiatric, or licensed marriage and family therapist under the direct supervision of a psychiatrist.~~

~~3. Psychological or psychiatric~~ 2. Psychiatric services shall be considered appropriate when an individual meets the following criteria:

a. Requires treatment in order to sustain behavioral or emotional gains or to restore cognitive functional levels that have been impaired;

b. Exhibits deficits in peer relations, dealing with authority; is hyperactive; has poor impulse control; is clinically depressed or demonstrates other dysfunctional clinical symptoms having an adverse impact on attention and concentration, ability to learn, or ability to participate in employment, educational, or social activities;

c. Is at risk for developing or requires treatment for maladaptive coping strategies; and

d. Presents a reduction in individual adaptive and coping mechanisms or demonstrates extreme increase in personal distress.

~~4. Psychological or psychiatric services may be provided in an office or a mental health clinic.~~

E. Any procedure considered experimental is not covered.

F. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of life to the mother if the fetus was carried to term.

G. Physician visits to inpatient psychiatric hospital patients over the age of 21 are limited to a maximum of 21 days per admission within 60 days for the same or similar diagnoses or treatment plan and is further restricted to medically necessary authorized (for enrolled providers)/approved (for nonenrolled providers) inpatient psychiatric hospital days as determined by the Program.

EXCEPTION: SPECIAL PROVISIONS FOR ELIGIBLE INDIVIDUALS UNDER 21 YEARS OF AGE: Consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in

~~general hospitals and~~ freestanding psychiatric facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a ~~physical examination~~ psychiatric assessment. Payments for physician visits for inpatient days shall be limited to medically necessary inpatient hospital days.

H. (Reserved.)

I. Reimbursement shall not be provided for physician services provided to recipients in the inpatient setting whenever the facility is denied reimbursement.

J. (Reserved.)

K. For the purposes of organ transplantation, all similarly situated individuals will be treated alike. Transplant services for kidneys, corneas, hearts, lungs, and livers shall be covered for all eligible persons. High dose chemotherapy and bone marrow/stem cell transplantation shall be covered for all eligible persons with a diagnosis of lymphoma, breast cancer, leukemia, or myeloma. Transplant services for any other medically necessary transplantation procedures that are determined to not be experimental or investigational shall be limited to children (under 21 years of age). Kidney, liver, heart, and bone marrow/stem cell transplants and any other medically necessary transplantation procedures that are determined to not be experimental or investigational require preauthorization by DMAS. Cornea transplants do not require preauthorization. The patient must be considered acceptable for coverage and treatment. The treating facility and transplant staff must be recognized as being capable of providing high quality care in the performance of the requested transplant. Standards for coverage of organ transplant services are in 12VAC30-50-540 through 12VAC30-50-580.

L. Breast reconstruction/prostheses following mastectomy and breast reduction.

1. If prior authorized, breast reconstruction surgery and prostheses may be covered following the medically necessary complete or partial removal of a breast for any medical reason. Breast reductions shall be covered, if prior authorized, for all medically necessary indications. Such procedures shall be considered noncosmetic.

2. Breast reconstruction or enhancements for cosmetic reasons shall not be covered. Cosmetic reasons shall be defined as those which are not medically indicated or are intended solely to preserve, restore, confer, or enhance the aesthetic appearance of the breast.

M. Admitting physicians shall comply with the requirements for coverage of out-of-state inpatient hospital services. Inpatient hospital services provided out of state to a Medicaid recipient who is a resident of the Commonwealth of Virginia shall only be reimbursed under at least one the following conditions. It shall be the responsibility of the hospital, when requesting prior authorization for the admission, to demonstrate that one of the following conditions exists in order to obtain authorization. Services provided out of state for circumstances other than these specified reasons shall not be covered.

1. The medical services must be needed because of a medical emergency;

2. Medical services must be needed and the recipient's health would be endangered if he were required to travel to his state of residence;

3. The state determines, on the basis of medical advice, that the needed medical services, or necessary supplementary resources, are more readily available in the other state; or

4. It is general practice for recipients in a particular locality to use medical resources in another state.

N. In compliance with 42 CFR 441.200, Subparts E and F, claims for hospitalization in which sterilization, hysterectomy or abortion procedures were performed shall be subject to review of the required DMAS forms corresponding to the procedures. The claims shall suspend for manual review by DMAS. If the forms are not properly completed or not attached to the bill, the claim will be denied or reduced according to DMAS policy.

O. Prior authorization is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging (MRI), including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. The referring physician ordering nonemergency outpatient Magnetic Resonance Imaging (MRI), Computerized Axial Tomography (CAT) scans, or Positron Emission Tomography (PET) scans must obtain prior authorization from the Department of Medical Assistance Services (DMAS) for those scans. The servicing provider will not be reimbursed for the scan unless proper prior authorization is obtained from DMAS by the referring physician.

P. Addiction and recovery treatment services shall be covered in physician services consistent with 12VAC30-130-5000 et seq.

12VAC30-50-150. Medical care by other licensed practitioners within the scope of their practice as defined by state law.

A. Podiatrists' services.

1. Covered podiatry services are defined as reasonable and necessary diagnostic, medical, or surgical treatment of

disease, injury, or defects of the human foot. These services must be within the scope of the license of the podiatrists' profession and defined by state law.

2. The following services are not covered: preventive health care, including routine foot care; treatment of structural misalignment not requiring surgery; cutting or removal of corns, warts, or calluses; experimental procedures; acupuncture.

3. The Program may place appropriate limits on a service based on medical necessity or for utilization control, or both.

B. Optometrists' services. Diagnostic examination and optometric treatment procedures and services by ophthalmologists, optometrists, and opticians, as allowed by the Code of Virginia and by regulations of the Boards of Medicine and Optometry, are covered for all recipients. Routine refractions are limited to once in 24 months except as may be authorized by the agency.

C. Chiropractors' services are not provided.

D. ~~Other practitioners' services; psychological services, psychotherapy. Limits and requirements for covered services are found under outpatient psychiatric services (see 12VAC30-50-140-D).~~ In accordance with 42 CFR 440.60, licensed practitioners (including an LMHP, LMHP-R, LMHP-RP, or LMHP-S, as defined in 12VAC30-50-130) may provide medical care or any other type of remedial care or services, other than physician's services, within the scope of practice as defined by state law.

~~1. These limitations apply to psychotherapy sessions provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed clinical nurse specialists psychiatric/licensed marriage and family therapists who are either independently enrolled or under the direct supervision of a licensed clinical psychologist.~~

~~2. Psychological testing is covered when provided, within the scope of their licenses, by licensed clinical psychologists or licensed clinical social workers/licensed professional counselors/licensed clinical nurse specialists psychiatric, marriage and family therapists who are either independently enrolled or under the direct supervision of a licensed clinical psychologist.~~

E. Addiction and recovery treatment services shall be covered in other licensed practitioner services consistent with Part XX (12VAC30-130-5000 et seq.) of 12VAC30-130.

12VAC30-50-180. Clinic services.

A. Reimbursement for induced abortions is provided in only those cases in which there would be a substantial endangerment of life to the mother if the fetus were carried to term.

B. Clinic services means preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services that:

1. Are provided to outpatients;

2. Are provided by a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients; and

3. Except in the case of nurse-midwife services, as specified in 42 CFR 440.165, are furnished by or under the direction of a physician or dentist.

C. Reimbursement to community mental health clinics for ~~medical~~ psychotherapy services is provided only when performed by a qualified therapist. For purposes of this section, a qualified therapist is:

1. A licensed physician who has completed three years of post-graduate residency training in psychiatry; or

2. An individual licensed by one of the boards administered by the Department of Health Professions to provide ~~medical~~ psychotherapy services including: (i) a licensed clinical ~~psychologists,~~ psychologist; (ii) a LMHP-RP, as defined in 12VAC30-50-130; (iii) a licensed psychiatric nurse ~~practitioners,~~ practitioner; (iv) a licensed clinical social ~~workers,~~ worker; (v) a LMHP-S, as defined in 12VAC30-50-130; (vi) a licensed professional ~~counselors,~~ counselor; (vii) a LMHP-R, as defined in 12VAC30-50-130; (viii) a clinical nurse ~~specialists psychiatric, or~~ specialist-psychiatric; (ix) a licensed marriage and family therapists~~; or~~.

~~3. An individual who holds a master's or doctorate degree, who has completed all coursework necessary for licensure by one of the appropriate boards as specified in subdivision 2 of this subsection, and who has applied for a license but has not yet received such license, and who is currently supervised in furtherance of the application for such license, in accordance with requirements or regulations promulgated by DMAS, by one of the licensed practitioners listed in subdivisions 1 and 2 of this subsection.~~

D. Addiction and recovery treatment services shall be covered in clinics consistent with 12VAC30-130-5000 et seq.

VA.R. Doc. No. R19-5303; Filed October 4, 2018, 12:20 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-40).**

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

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 28, 2018.

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

Basis: Section 32.1-325 of the Code of Virginia grants to the Board of Medical Assistance Services the authority to administer and amend the State Plan for Medical Assistance. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance according to the board's requirements. The Medicaid authority, as established by § 1902(a) of the Social Security Act (42 USC § 1396a), provides governing authority for payments for services. Chapter 780, Item 306 OO of the 2016 Acts of Assembly and Chapter 836, Item 306 OO of the 2017 Acts of Assembly direct the agency to promulgate emergency regulations to implement a pricing methodology to modify or replace the current pricing methodology for pharmaceutical products as defined in 12VAC30-80-40 within 280 days or less from the enactment of the act. These proposed regulations follow emergency regulations, which are already in place.

Purpose: DMAS is proposing this regulatory change to 12VAC30-80-40 to meet the requirements of the Centers for Medicare and Medicaid Services (CMS) final rule and to comply with Virginia budget appropriations language that requires DMAS to implement a pricing methodology that is cost neutral or creates cost savings. In order to develop a pricing methodology that meets both the requirements of the new rule and that is cost neutral or creates cost savings, DMAS proposes to utilize the CMS national average drug acquisition cost (NADAC), which is offered by CMS to meet, in part, their definition of average acquisition cost (AAC). NADAC is based on a comprehensive national survey carried out on behalf of CMS that provides wholesale purchase prices of all covered drugs by retail community pharmacies in the United States and published weekly by CMS.

In order to establish a reasonable dispensing fee that meets the CMS definition of AAC and a "professional dispensing fee" referenced in the proposed regulation, DMAS, in collaboration with Myers and Stauffer, a nationally recognized leader in developing pricing, carried out a cost of dispensing survey in 2014. Myers and Stauffer determined that the weighted average cost of dispensing prescriptions to Virginia Medicaid members is $10.65. DMAS then carried out a fiscal impact analysis using the most recent nine months of prior pharmacy claims data and a spread of dispensing fees ranging from $10 to $10.75. This fiscal impact analysis concluded that DMAS would obtain cost savings ranging between $0.2 and $1.3 million dollars per year, in addition to saving $88,000 per year with the elimination of the Virginia maximum allowable cost (VMAC) program by using the NADAC. This action is not expected to have an effect on the health, safety, or welfare of Medicaid individuals or the citizens of the Commonwealth.

Substance: DMAS proposes to change its fee-for-service pricing methodology in 12VAC30-80-40 from the lessor of payment logic that reimburses Medicaid-enrolled pharmacies for drug ingredients based on the lowest of certain costs and a dispensing fee of $3.75 with a new pricing methodology using the NADAC and a dispensing fee that reflects the actual costs of dispensing by Virginia Medicaid pharmacies. The new pricing methodology will reimburse pharmacies for drug ingredients based on the lowest of NADAC, wholesale acquisition cost, or usual and customary charge plus a dispensing fee of $10.65. This dispensing fee was obtained utilizing a methodologically sound cost of dispensing survey carried out by Myers and Stauffer.

Current policy: In current state regulation (12VAC30-80-40), DMAS utilizes an estimated acquisition cost (EAC) methodology to pay pharmacies that is based on a "lessor of" logic that reimburses pharmacies using either the federal upper payment limit, Virginia's maximum allowable cost, Virginia's specialty maximum allowable cost, the estimated acquisition cost (EAC) or the provider's usual and customary (U&C) amount plus a dispensing fee, whichever is less. Virginia's current EAC is based on the published average wholesale price minus a percentage discount established by the Virginia General Assembly (12VAC30-80-40). The current DMAS dispensing fee is $3.75, which does not reflect actual dispensing costs and does not meet the CMS proposed definition of a "professional dispensing fee."

Issues: Current state regulations governing Virginia Medicaid fee-for-service prescription drug pricing methodology under 12VAC30-80-40 no longer comply with federal regulations. In order for the Commonwealth to comply with federal regulations that govern how Virginia reimburses drug ingredient costs under its Medicaid fee-for-service programs, DMAS is required to change its drug ingredient cost pricing methodology and dispensing fee reimbursement rate to meet the new definition of "AAC" and "professional dispensing fee."

Recommendations: DMAS is proposing regulatory changes to 12VAC30-80-40 that eliminate the lessor of pricing logic and replace it with the NADAC wholesale price survey and that reimburse Medicaid enrolled Virginia pharmacies a professional dispensing fee based on the actual cost of dispensing, which is based on a methodologically sound, statewide survey of pharmacies carried out by Myers and Stauffer. This proposed methodology meets both the federal regulatory requirements and the current Virginia appropriations language, which requires DMAS to develop a drug pricing methodology that is cost neutral or produces cost savings.

Issues: The primary advantage of this regulatory action for the public and the agency is that it will allow DMAS to

comply with federal regulations. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation The proposed action implements a Centers for Medicare and Medicaid Services (CMS) rule requiring states to pay pharmacies based on the drug's ingredient cost plus a professional dispensing fee.

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

Estimated Economic Impact. Pursuant to the federal Affordable Care Act, CMS published a final rule in the Federal Register on February 1, 2016[1] that requires states to pay pharmacies based on the drug's ingredient cost, defined as the actual acquisition cost (AAC) plus a "professional dispensing fee." Consequently, the 2016 Acts of the Assembly, Chapter 780, Item 306.OO,[2] and the 2017 Acts of Assembly, Chapter 836, Item 306.OO,[3] directed the Department of Medical Assistance Services (DMAS) to implement a pricing methodology to modify or replace the current pricing methodology for pharmaceutical products that is cost neutral or creates cost savings. DMAS implemented the new methodology on January 9, 2017 on federal authority. The emergency regulation to that effect became effective June 16, 2017.[4] This action permanently implements the pricing methodology.

Prior to the CMS final rule, Virginia Medicaid utilized an estimated acquisition cost (EAC) methodology to pay pharmacies that was based on "lesser of" logic that reimbursed pharmacies using the federal upper payment limit, Virginia's maximum allowable cost (MAC), Virginia specialty maximum allowable cost, the estimated acquisition cost (EAC) or the provider's usual and customary amount plus a dispensing fee, whichever was less. Virginia's EAC was based on the published Average Wholesale Price (AWP) minus a percentage discount established by the Virginia General Assembly (12 VAC 30-80-40). This methodology did not meet the requirements of the new federal rule, and the dispensing fee of $3.75 did not reflect actual dispensing costs and did not meet the CMS definition of a "professional dispensing fee."

In order to establish a reasonable dispensing fee that meets the CMS definition of AAC and a "professional dispensing fee" referenced in their proposed rule, DMAS, in collaboration with a nationally recognized consulting company in developing pricing carried out a cost of dispensing survey in 2014. The consultant determined that the weighted average cost of dispensing prescriptions to Virginia Medicaid members was $10.65. That estimate translated in 2014 to $22.6 million annual increase in dispensing fee reimbursements.[5]

DMAS also chose to utilize the CMS National Average Drug Acquisition Cost (NADAC), which is offered by CMS to meet, in part, their definition of AAC. NADAC is based on a comprehensive national survey carried out on behalf of CMS that provides wholesale purchase prices of all covered drugs by retail community pharmacies in the United States (U.S) and published weekly by CMS. When NADAC is not available, the new methodology provides reimbursement at the lowest of the wholesale acquisition cost or the provider's usual and customary charge. The new methodology was estimated in 2014 to reduce annual reimbursements for drug ingredients by $21.3 million offsetting largely the anticipated increase due to the higher dispensing fee.

DMAS reports that the new methodology has been cost neutral as expected. In addition, the new methodology has already been in effect. Thus, no significant economic impact is expected upon promulgation of this permanent regulation. The main impact is increasing reimbursements for dispensing costs while reducing reimbursements for ingredient costs. The U.S. Office of the Inspector General has repeatedly demonstrated that AWP, which the previous Virginia methodology was based on, often overstated drug prices and inflated the reimbursements.[6] As explained above the proposed dispensing fee was based on a survey and was reflective of actual dispensing costs. Therefore, although there appears to be no significant difference in total reimbursement to pharmacies, the proposed methodology is beneficial in the sense that it reflects more accurately the actual costs of ingredients and dispensing.

Businesses and Entities Affected. The proposed amendments primarily affect how provider pharmacies are reimbursed for their costs. There are approximately 1,400 pharmacies participating in Virginia Medicaid program.

Localities Particularly Affected. The proposed changes do not disproportionately affect any locality more than others.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. Some of the 1,400 participating pharmacies are small businesses. The proposed amendments do not impose costs on small businesses. The other effects on small pharmacies are as discussed above.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses: The proposed regulation does not have an adverse impact on 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]https://www.gpo.gov/fdsys/pkg/FR-2016-02-01/pdf/2016-01274.pdf

[2]https://budget.lis.virginia.gov/item/2016/1/HB30/Chapter/1/306/

[3]https://budget.lis.virginia.gov/item/2017/1/HB1500/Chapter/1/306/

[4]http://townhall.virginia.gov/l/ViewStage.cfm?stageid=7358

[5]A $6.90 increase for 3,272,796 claims.

[6]https://oig.hhs.gov/oei/reports/oei-03-11-00060.pdf

Agency Response to Economic Impact Analysis: The agency has reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs with this analysis.

Summary:

Item 306 OO of Chapter 780 of the 2016 Acts of Assembly (the 2016 Appropriation Act) directed the Department of Medical Assistance Services (DMAS) to implement a pricing methodology to modify or replace the current pricing methodology for pharmaceutical products as defined in 12VAC30-80-40. The amendments conform the regulation to these requirements and to the federal drug pricing regulation, which was published at 81 FR 5170, requiring states to pay pharmacies based on a drug's ingredient cost, defined as the actual acquisition cost plus a professional dispensing fee.

12VAC30-80-40. Fee-for-service providers: pharmacy.

~~Payment for pharmacy services (excluding outpatient hospital) shall be the lowest of subdivisions 1 through 5 of this section (except that subdivisions 1 and 2 of this section will not apply when prescriptions are certified as brand necessary by the prescribing physician in accordance with the procedures set forth in 42 CFR 447.512(c) if the brand cost is greater than the Centers for Medicare and Medicaid Services (CMS) upper limit of VMAC cost) subject to the conditions, where applicable, set forth in subdivisions 6 and 7 of this section:~~

~~1. The upper limit established by the CMS for multiple source drugs pursuant to 42 CFR 447.512 and 447.514, as determined by the CMS Upper Limit List plus a dispensing fee. If the agency provides payment for any drugs on the HCFA Upper Limit List, the payment shall be subject to the aggregate upper limit payment test.~~

~~2. The methodology used to reimburse for generic drug products shall be the higher of either (i) the lowest Wholesale Acquisition Cost (WAC) plus 10% or (ii) the second lowest WAC plus 6.0%. This methodology shall reimburse for products' costs based on a Maximum Allowable Cost (VMAC) list to be established by the single state agency.~~

~~a. In developing the maximum allowable reimbursement rate for generic pharmaceuticals, the department or its designated contractor shall:~~

~~(1) Identify three different suppliers, including manufacturers that are able to supply pharmaceutical products in sufficient quantities. The drugs considered must be listed as therapeutically and pharmaceutically equivalent in the Food and Drug Administration's most recent version of the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book). Pharmaceutical products that are not available from three different suppliers, including manufacturers, shall not be subject to the VMAC list.~~

~~(2) Identify that the use of a VMAC rate is lower than the Federal Upper Limit (FUL) for the drug. The FUL is a known, widely published price provided by CMS; and~~

~~(3) Distribute the list of state VMAC rates to pharmacy providers in a timely manner prior to the implementation of VMAC rates and subsequent modifications. DMAS shall publish on its website, each month, the information used to set the Commonwealth's prospective VMAC rates, including, but not necessarily limited to:~~

~~(a) The identity of applicable reference products used to set the VMAC rates;~~

~~(b) The Generic Code Number (GCN) or National Drug Code (NDC), as may be appropriate, of reference products;~~

~~(c) The difference by which the VMAC rate exceeds the appropriate WAC price; and~~

~~(d) The identity and date of the published compendia used to determine reference products and set the VMAC rate. The difference by which the VMAC rate exceeds the appropriate WAC price shall be at least or equal to 10% above the lowest-published wholesale acquisition cost for products widely available for purchase in the Commonwealth and shall be included in national pricing compendia.~~

~~b. Development of a VMAC rate that does not have a FUL rate shall not result in the use of higher cost innovator brand name or single source drugs in the Medicaid program.~~

c. DMAS or its designated contractor shall:

(1) Implement and maintain a procedure to add or eliminate products from the list, or modify VMAC rates, consistent with changes in the fluctuating marketplace. DMAS or its designated contractor will regularly review manufacturers' pricing and monitor drug availability in the marketplace to determine the inclusion or exclusion of drugs on the VMAC list; and

(2) Provide a pricing dispute resolution procedure to allow a dispensing provider to contest a listed VMAC rate. DMAS or its designated contractor shall confirm receipt of pricing disputes within 24 hours, via telephone or facsimile, with the appropriate documentation of relevant information, for example, invoices. Disputes shall be resolved within three business days of confirmation. The pricing dispute resolution process will include DMAS' or the contractor's verification of accurate pricing to ensure consistency with marketplace pricing and drug availability. Providers will be reimbursed, as appropriate, based on findings. Providers shall be required to use this dispute resolution process prior to exercising any applicable appeal rights.

3. The provider's usual and customary charge to the public, as identified by the claim charge.

4. The Estimated Acquisition Cost (EAC), which shall be based on the published Average Wholesale Price (AWP) minus a percentage discount established by the General Assembly (as set forth in subdivision 7 of this section) or, in the absence thereof, by the following methodology set out in subdivisions a, b, and c of this subdivision.

a. Percentage discount shall be determined by a statewide survey of providers' acquisition cost.

b. The survey shall reflect statistical analysis of actual provider purchase invoices.

c. The agency will conduct surveys at intervals deemed necessary by DMAS.

5. Maximum allowable cost (MAC) methodology for specialty drugs. Payment for drug products designated by DMAS as specialty drugs shall be the lesser of subdivisions 1 through 4 of this section or the following method, whichever is least:

a. The methodology used to reimburse for designated specialty drug products shall be the WAC price plus the WAC percentage. The WAC percentage is a constant percentage identified each year for all GCNs.

b. Designated specialty drug products are certain products used to treat chronic, high cost, or rare diseases; the drugs subject to this pricing methodology and their current reimbursement rates are listed on the DMAS website at the following internet address: http://www.dmas.virginia.gov/Content_pgs/pharm-home.aspx.

c. The MAC reimbursement methodology for specialty drugs shall be subject to the pricing review and dispute resolution procedures described in subdivisions 2 c (1) and 2 c (2) of this section.

6. Payment for pharmacy services will be as described in subdivisions 1 through 5 of this section; however, payment for legend drugs will include the allowed cost of the drug plus only one dispensing fee per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The dispensing fee for brand name and generic drugs is $3.75.

7. An EAC of AWP minus 13.1% shall become effective July 1, 2011. The dispensing fee for brand name and generic drugs of $3.75 shall remain in effect, creating a payment methodology based on the previous algorithm (least of subdivisions of this section) plus a dispensing fee where applicable.

A. Payment for covered outpatient legend and nonlegend drugs dispensed by a retail community pharmacy will include the drug ingredient cost plus a $10.65 professional dispensing fee. The drug ingredient cost reimbursement shall be the lowest of:

1. The national average drug acquisition cost (NADAC) of the drug, the federal upper limit (FUL), or the provider's usual and customary (U&C) charge to the public as identified by the claim charge; or

2. When no NADAC is available, DMAS shall reimburse at the lowest of the wholesale acquisition cost plus 0%, the FUL, or the provider's U&C charge to the public as identified by the claim charge.

B. Payment for specialty drugs not dispensed by a retail community pharmacy but dispensed primarily through the mail will include the drug ingredient cost plus a $10.65 professional dispensing fee. The drug ingredient cost reimbursement shall be the lowest of:

1. The NADAC of the drug, the federal upper limit (FUL), or the provider's U&C charge to the public as identified by the claim charge; or

2. When no NADAC is available, DMAS shall reimburse at the lowest of the wholesale acquisition cost plus 0%, the FUL, or the provider's U&C charge to the public as identified by the claim charge.

C. Payment for drugs not dispensed by a retail community pharmacy (i.e., institutional or long-term care facility pharmacies) will include the drug ingredient cost plus a $10.65 professional dispensing fee. The drug ingredient cost reimbursement shall be the lowest of:

1. The NADAC of the drug, the FUL, or the provider's U&C charge to the public as identified by the claim charge; or

2. When no NADAC is available, DMAS shall reimburse at the lowest of the wholesale acquisition cost plus 0%, the FUL, or the provider's U&C charge to the public as identified by the claim charge.

D. Payment for clotting factor from specialty pharmacies, hemophilia treatment centers, and centers of excellence will include the drug ingredient cost plus a $10.65 professional dispensing fee. The drug ingredient cost reimbursement shall be the lowest of:

1. The NADAC of the drug or the provider's U&C charge to the public as identified by the claim charge; or

2. When no NADAC is available, DMAS shall reimburse at the lowest of the wholesale acquisition cost plus 0% or the provider's U&C charge to the public as identified by the claim charge.

E. Section 340B covered entities and federally qualified health centers that fill Medicaid member prescriptions with drugs purchased at the prices authorized under § 340B of the Public Health Services Act (Chapter 6A of 42 USC (42 USC § 201 et seq.)) are reimbursed no more than the actual acquisition cost for the drug plus a $10.65 professional dispensing fee. Section 340B covered entities that fill Medicaid member prescriptions with drugs not purchased under § 340B of the Public Health Services Act are reimbursed in accordance with subsection A of this section plus the $10.65 professional dispensing fee as described in subsection I of this section.

F. Drugs acquired through the federal § 340B drug price program and dispensed by § 340B contract pharmacies are not covered.

G. Facilities purchasing drugs through the federal supply schedule (FSS) or drug pricing program under 38 USC § 1826, 42 USC § 256b, or 42 USC § 1396-8, other than the § 340B drug pricing program are reimbursed no more than the actual acquisition cost for the drug plus a $10.65 professional dispensing fee.

H. Facilities purchasing drugs at nominal price (i.e., outside of § 340B or FSS) are reimbursed no more than the actual acquisition cost for the drug plus a $10.65 professional dispensing fee. Nominal price as defined in 42 CFR 447.502 means that a price is less than 10% of the average manufacturer price (AMP) in the same quarter for which the AMP is computed.

I. Payment for pharmacy services are as described in subsections A through H of this section; however, they shall include the allowed cost of the drug plus only one professional dispensing fee, as defined at 42 CFR 447.502, per member per month for each specific drug. Exceptions to the monthly dispensing fees shall be allowed for drugs determined by the department to have unique dispensing requirements. The professional dispensing fee for all covered outpatient drugs shall be $10.65. The professional dispensing fee shall be determined by a cost of dispensing survey conducted at least every five years.

J. Physician administered drugs (PADs) submitted under the medical benefit are reimbursed at 106% of the average sales price (ASP) as published by the Centers for Medicare and Medicaid Services (CMS). PADs without an ASP on the CMS reference file are reimbursed at the provider's actual acquisition cost. Covered entities using drugs purchased at the prices authorized under § 340B of the Public Health Services Act for Medicaid members shall bill Medicaid their actual acquisition cost.

K. Payment to Indian Health Service, tribal, and urban Indian pharmacies. DMAS does not have any Indian Health Service, tribal, or urban Indian pharmacies enrolled at this time. Payment for pharmacy services will be defined in a state plan amendment if such entity enrolls with DMAS.

L. Investigational drugs are not a covered service under the DMAS pharmacy program.

~~8.~~ M. Home infusion therapy.

~~a.~~ 1. The following therapy categories shall have a pharmacy service day rate payment allowable: hydration therapy, chemotherapy, pain management therapy, drug therapy, and total parenteral nutrition (TPN). The service day rate payment for the pharmacy component shall apply to the basic components and services intrinsic to the therapy category. Submission of claims for the per diem rate shall be accomplished by use of the CMS 1500 claim form.

~~b.~~ 2. The cost of the active ingredient or ingredients for chemotherapy, pain management and drug therapies shall be submitted as a separate claim through the pharmacy program, using standard pharmacy format. Payment for this component shall be consistent with the current reimbursement for pharmacy services. Multiple applications of the same therapy shall be reimbursed one service day rate for the pharmacy services. Multiple applications of different therapies shall be reimbursed at 100% of standard pharmacy reimbursement for each active ingredient.

~~9.~~ N. Supplemental rebate agreement. The Commonwealth complies with the requirements of § 1927 of the Social Security Act and Subpart I (42 CFR 447.500 et seq.) of 42 CFR Part 447 with regard to supplemental drug rebates. In addition, the following requirements are also met:

~~a.~~ 1. Supplemental drug rebates received by the state in excess of those required under the national drug rebate agreement will be shared with the federal government on

the same percentage basis as applied under the national drug rebate agreement.

~~b.~~ 2. Prior authorization requirements found in § 1927(d)(5) of the Social Security Act have been met.

~~c.~~ 3. Nonpreferred drugs are those that were reviewed by the Pharmacy and Therapeutics Committee and not included on the preferred drug list (PDL). Nonpreferred drugs will be made available to Medicaid beneficiaries through prior authorization.

~~d.~~ 4. Payment of supplemental rebates may result in a product's inclusion on the PDL.

VA.R. Doc. No. R17-4546; Filed October 4, 2018, 1:23 p.m.

Proposed Regulation

Title of Regulation: **12VAC30-141. Family Access to Medical Insurance Security Plan (amending 12VAC30-141-10 through 12VAC30-141-70, 12VAC30-141-100, 12VAC30-141-110, 12VAC30-141-150, 12VAC30-141-160, 12VAC30-141-175, 12VAC30-141-500, 12VAC30-141-660 through 12VAC30-141-760, 12VAC30-141-790, 12VAC30-141-800, 12VAC30-141-880; repealing 12VAC30-141-120).**

Statutory Authority: § 32.1-351 of the Code of Virginia; 42 USC § 1396 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 28, 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 and directs that such plan shall include a provision for the Family Access to Medical Insurance Security Plan (FAMIS) program. Section 32.1-324 of the Code of Virginia authorizes the Director of the Department of Medical Assistance Services (DMAS) to administer and amend the State Plan for Medical Assistance when the board is not in session, subject to such rules and regulations as may be prescribed by the board. Section 32.1-351 of the Code of Virginia authorizes DMAS or the director to develop and submit to the federal Secretary of Health and Human Services an amended Title XXI plan for the Family Access to Medical Insurance Security Plan and revise such plan and promulgate regulations as may be necessary. Title XXI of the Social Security Act, § 2105, (42 USC § 1397ee) provides governing authority for payments for services.

Section 1115 of the Social Security Act (42 USC § 1315) provides states with the opportunity to implement demonstration projects that extend benefits to additional population groups with the intent of promoting program objectives, including those of Title XXI. Virginia implements the FAMIS MOMS program through a § 1115 Health Insurance Flexibility and Accountability (HIFA) Demonstration called "FAMIS MOMS and FAMIS Select" (No. 21-W-00058/3).

The Centers for Medicare and Medicaid Services (CMS) has approved the Children's Health Insurance Program (CHIP) state plan amendment to implement maximum adjusted gross income (MAGI) rules. CMS has also approved an amendment to the demonstration waiver that reinstated enrollment in FAMIS MOMS using MAGI rules and setting the income eligibility to that of CHIP.

Purpose: The purpose of this action is to bring state regulations into line with federal rules and current Virginia practice. This action does not directly affect the health, safety, and welfare of citizens of the Commonwealth.

Substance: The proposed amendments (i) add new definitions and modify existing definitions pertinent to MAGI and operational processes; (ii) update operational processes to reflect current practice; (iii) update the reference to the Children's Health Insurance Program Advisory Committee; (iv) specify financial and nonfinancial eligibility standards consistent with MAGI requirements and update operational processes pertinent to the Virginia Department of Social Services (VDSS) and the central processing unit (CPU); (v) clarify that inpatient status in an institution for mental disease is a factor for ineligibility at initial enrollment or renewal; (vi) update terminology regarding VDSS and CPU consistent with implementation of MAGI standards; (vii) streamline application, case documentation, and maintenance processes in implementation of MAGI standards; and (viii) specify that a choice of managed care organization may be made at the time of application.

Issues: The primary advantages to the public, the agency, and the Commonwealth from this regulatory package are greater clarity in the program rules for FAMIS and FAMIS MOMS, and greater consistency between Virginia regulations and current practice. There are no disadvantages to the public or the Commonwealth as a result of these regulatory changes.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The proposed action updates the regulation to reflect 1) the changes in federal income eligibility rules, 2) the changes in

client appeal process, and 3) the current terminology, references, and processes used in practice.

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

Estimated Economic Impact. The federal Affordable Care Act (ACA) required eligibility for health coverage under all health insurance affordability programs to be based on a new Modified Adjusted Gross Income methodology. The new methodology has already been implemented in the Family Access to Medical Insurance Program (FAMIS) and FAMIS MOMS effective January 1, 2014. The proposed action updates the regulation to reflect the current methodology followed in practice.

The ACA also required changes in client appeal processes,[1] which were implemented in FAMIS and FAMIS MOMS effective January 1, 2017. The proposed action also updates the regulation to reflect the current appeal processes followed in practice.

Finally, this action updates terminology, references, and processes to reflect other current practices.

No significant economic effect is expected from these updates other than improving the clarity of the regulatory language.

Businesses and Entities Affected. The proposed amendments mainly affect readers of this regulation who may have been misled by the current outdated language as to the FAMIS and FAMIS MOMS eligibility methodology and appeal rules that are in effect. There are 121 local departments of social services making eligibility determinations based on these rules. There are 69,523 individuals enrolled in FAMIS and 1,180 in FAMIS MOMS.

Localities Particularly Affected. The proposed changes do not disproportionately affect any locality more than others.

Projected Impact on Employment. No impact on employment is expected.

Effects on the Use and Value of Private Property. No impact on the use and value of private property is expected.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. The proposed amendments do not impose costs or other effects on small businesses.

Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Adverse Impacts:

Businesses. The proposed regulation does not have an adverse impact on 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] https://www.gpo.gov/fdsys/pkg/FR-2016-11-30/pdf/2016-27844.pdf

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

Summary:

Effective January 1, 2014, the Affordable Care Act required eligibility for health coverage under all health insurance affordability programs to be based on a new modified adjusted gross income (MAGI) methodology. Calculating MAGI eligibility entails defining household composition and executing income counting procedures based on Internal Revenue Service rules. Federal law requires these changes to be made in the State Child Health Plan under Title XXI of the Social Security Act.

The proposed amendments incorporate the required changes in eligibility determination standards and update operational processes supporting eligibility and renewal actions, including (i) adding new definitions and modifying existing definitions pertinent to MAGI and operational processes; (ii) updating operational processes to reflect current practice; (iii) updating the reference to the Children's Health Insurance Program Advisory Committee; (iv) specifying financial and nonfinancial eligibility standards consistent with MAGI requirements and updating operational processes pertinent to the Virginia Department of Social Services (VDSS) and Cover Virginia, the central processing unit (CPU); (v) clarifying that inpatient status in an institution for mental disease is a factor for ineligibility at initial enrollment or renewal; (vi) updating terminology regarding VDSS and CPU consistent with implementation of MAGI standards; (vii) streamlining application, case documentation, and maintenance processes in implementation of MAGI standards; and (viii) specifying that a choice of managed care organization may be made at the time of application.

Part I
General Provisions

12VAC30-141-10. Definitions.

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

~~"Act" means the Social Security Act.~~

~~"Adult caretaker relative" or "caretaker relative" means an individual who is age 18 or older, who is not the parent of, but who is related to, the child by blood or marriage, and who lives with and assumes responsibility for day to day care of the child in a place of residence maintained as his or their own home.~~

"Adverse action," consistent with 42 CFR 457.1130, means the denial of eligibility; failure to make a timely determination of eligibility; suspension or termination of enrollment, including disenrollment for failure to pay cost sharing; or delay, denial, reduction, suspension, or termination of health services, in whole or in part, including a determination about the type or level of services; and failure to approve, furnish, or provide payment for health services in a timely manner; provided, however, that determination of eligibility to participate in and termination of participation in the FAMIS Select program shall not constitute an adverse action.

"Adverse benefit determination," consistent with 42 CFR 438.400, means the denial or limited authorization of a requested service; the failure to take action or timely take action on a request for service; the reduction, suspension, or termination of a previously authorized service; denial in whole or in part of a payment for a service; failure to provide services within the timeframes required by the state; for a resident of a rural exception area with only one MCO, the denial of a enrollee's request to exercise the enrollee's right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network; the denial of a enrollee's request to dispute a financial liability as provided in 42 CFR 438(b)(7); or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Agency" means a local department of social services, the central processing unit, or other entity designated by DMAS to make eligibility determinations for FAMIS.

~~"Agency error" means a person or persons received benefits to which they were not entitled as a result of an error on the part of an eligibility worker at a local department of social services or the central processing unit.~~

"Agent" means an individual designated in writing to act on behalf of a FAMIS Plan applicant or enrollee during the administrative review process.

"Appeal" means an enrollee's request for review of an adverse benefit determination by an MCO or an adverse action by the LDSS, CPU, or DMAS.

"Applicant" means a child who has filed an application (or who has an application filed on his behalf) for child health insurance and is awaiting a determination of eligibility. A child is an applicant until his eligibility has been determined.

"Application for health insurance" means the ~~form or forms developed and approved by the Department of Medical Assistance Services that are used for determining eligibility for Family Access to Medical Insurance Security Plan (FAMIS), FAMIS Plus (Children's Medicaid), for Medicaid for pregnant women, and for FAMIS MOMS~~ single streamlined application for determining eligibility in public health insurance programs operated by the Commonwealth.

"Authorized representative" means a person, 18 years of age or older, who is authorized to conduct the personal or financial affairs for an individual ~~who is 18 years of age or older~~.

~~"Board" or "BMAS" means that policy board created by § 32.1 324 of the Code of Virginia to administer the plans established by the Social Security Act.~~

~~"CMSIP" means that original child health insurance program that preceded FAMIS.~~

"Central processing unit" or "CPU" means Cover Virginia, which is the ~~private contractor that will determine eligibility for and administer part of the Family Access to Medical Insurance Security Plan or FAMIS~~ centralized entity supported by DMAS to accept and act on applications for health insurance.

"Child" means an individual ~~under the age of~~ younger than 19 years of age.

~~"Competent individual" means a person who has not been judged by a court to be legally incapacitated.~~

~~"Comprehensive health insurance coverage" means health benefits coverage, which includes the following categories of services at a minimum: inpatient and outpatient hospital services; physician's surgical and medical services; and laboratory and radiological services.~~

"Creditable health coverage" means coverage that meets the definition in 42 CFR 457.10.

"Conservator" means a person appointed by a court of competent jurisdiction to manage the estate and financial affairs of an incapacitated individual.

"Continuation of ~~enrollment~~ coverage" means ensuring an enrollee's benefits are continued until completion of the review process, with the condition that should the enrollee not prevail in the review process, the enrollee shall be liable for

the repayment of all benefits received during the review process.

"Director" means the individual, or his designee, specified in § 32.1-324 of the Code of Virginia with all of the attendant duties and responsibilities to administer the State Plan for Medical Assistance and the State Plan for FAMIS.

"DMAS" or "department" means the Department of Medical Assistance Services.

"Eligibility worker" means an individual who, under supervision, applies regulations, policies, and procedures to determine eligibility for public assistance programs, including FAMIS and FAMIS MOMS.

"Enrollee" means a child who has been determined eligible to participate in FAMIS and is enrolled in the FAMIS program.

"Ex parte review" means the review of administratively available information pertinent to the application or renewal process, conducted by eligibility staff, in order to expediently process the applicant's renewal without seeking that information from the applicant.

"External quality review organization" means the independent contractor assigned by DMAS to handle quality reviews and to conduct final review of MCHIP adverse actions for FAMIS.

~~"Family" means parents, including adoptive and stepparents, and their children under the age of 19, who are living in the same household. Family shall not mean grandparents, other relatives, or legal guardians.~~

"Family," when used in the context of the FAMIS Select component, means a unit or group that has access to ~~an~~ a private or employer's group health plan. Thus, it includes the policyholder or employee and any dependents who can be covered under the ~~employer's~~ plan.

~~"Family income" means the total income of all family members in a household. Income includes, but is not necessarily limited to, before tax earnings from a job, including cash, wages, salary, commissions, tips, self-employment net profits, Social Security, Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, child support, alimony, spousal support, pensions, retirement benefits, settlement benefits, rental income, and lottery/bingo winnings. Income excludes public assistance program benefits such as SSI and TANF payments, foster care payments, general relief, loans, grants, or scholarships for educational expenses or earned income of a child who is a student.~~

"FAMIS" means the Family Access to Medical Insurance Security Plan.

"FAMIS Select" means an optional program available to children determined eligible for FAMIS, whereby DMAS provides premium assistance to the family to cover the child through a private or employer-sponsored health plan instead of directly through the FAMIS program.

"Federal poverty level" or "FPL" means that income standard as published annually by the U.S. Department of Health and Human Services in the Federal Register.

"Fee-for-service" means the traditional Medicaid health care delivery and payment system in which physicians and other providers receive a payment for each unit of service they provide.

"Fixed premium assistance amount" means a predetermined amount of premium assistance that DMAS will pay per child to a family who chooses to enroll its FAMIS eligible child in a private or employer-sponsored health plan. The fixed premium assistance amount will be determined annually by DMAS to ensure that the FAMIS Select program is cost-effective as compared to the cost of covering a child directly through the FAMIS program.

~~"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.~~

~~"Group health plan" or "health insurance coverage" means that health care coverage as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)).~~

"Guardian" means a person appointed by a court of competent jurisdiction to be responsible for the affairs of an incapacitated individual, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, and therapeutic treatment, and if not inconsistent with an order of commitment, residence.

"Household" means the household composition and follows the federal tax rules through the use of modified adjusted gross income (MAGI) methodology. An individual's household is based upon the tax filing relationships of applicant, persons living with the individual, and those claimed as dependents and as outlined in 42 USC § 435.603(3)(f)(1) through (f)(4).

"Household income" means the sum of MAGI-based income as outlined in 42 USC § 435.603(3)(d) through (3)(e) to include every individual in the household.

"Incapacitated ~~individual~~" means a person who, pursuant to an order of a court of competent jurisdiction, has been found to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements of his health, care, safety, or therapeutic needs without the assistance or protection of a

guardian, or (ii) manage property or financial affairs or provide for his support or for the support of his legal dependents without the assistance or protection of a conservator.

"Internal appeal" means a request to the MCO by an enrollee, an enrollee's authorized representative, or a provider, acting on behalf of the enrollee and with the enrollee's written consent, for review of an MCO's adverse benefit determination. The internal appeal is the only level of appeal with the MCO and must be exhausted by an enrollee or deemed exhausted according to 42 CFR 438.408(c)(3) before the enrollee may initiate a state fair hearing.

"Lawfully residing" means the individual is lawfully present in the United States.

~~"Legally emancipated" means that the parents and child have gone through the court and a judge has declared that the parents have surrendered the right to care, custody, and earnings of the child and have renounced parental duties. A married minor is not emancipated unless a court has declared the married minor emancipated from his parents.~~

"LDSS" or "local department" means the local department of social services.

"Managed care health insurance plan" or "MCHIP," as defined in § 32.1-137.1 of the Code of Virginia, means an arrangement for the delivery of health care in which a health carrier ~~means~~ under contract with DMAS for Title XXI delivery systems, undertakes to provide, arrange and pay for, or reimburse any of the costs of health care services for a covered person on a prepaid or insured basis, which contains one or more incentive arrangements, including any credential requirements intended to influence the cost of the health care services between the health carrier and one or more providers and requires or creates benefit payment differential incentives for covered persons to use providers that are directly or indirectly managed, owned, under contract with, or employed by the health carrier.

~~"Maternal and child health insurance application" means the form or forms developed and approved by the Department of Medical Assistance Services that are used by local departments of social services and the FAMIS CPU for determining eligibility for Medicaid for poverty level children and for the Family Access to Medical Insurance Security Plan (FAMIS).~~

~~"Member of a family," for purposes of determining whether the child is eligible for coverage under a state employee health insurance plan, means a parent or parents, including stepparents with whom the child is living if the stepparent claims the child as a dependent on the employee's federal tax return.~~

"Managed care organization" or "MCO" means an organization that offers managed care health insurance plans (MCHIPs) as defined in this section.

"Notice of reasonable opportunity" means the written notice that is sent to the applicant to inform the applicant that the applicant must provide verification of citizenship and identity within 90 calendar days.

"Premium assistance" means the portion of the family's cost of participating in a private or employer's health plan that DMAS will pay to cover the FAMIS-eligible children under the private or employer-sponsored plan if DMAS determines it is cost effective to do so.

"Private" or "employer-sponsored health insurance coverage" means a health insurance policy that is either purchased by an individual directly or through an employer. This component of FAMIS refers to the ability of DMAS to provide coverage to FAMIS-eligible children by providing premium assistance to families who enroll the FAMIS-eligible children in a private or employer-sponsored health plan.

"Provider" means the individual, facility or other entity registered, licensed, or certified, as appropriate, and enrolled by an MCHIP or in fee-for-service to render services to FAMIS enrollees eligible for services.

~~"Supplemental coverage" means coverage provided to FAMIS-eligible children covered under the FAMIS Select component so that they can receive all childhood immunizations included in the FAMIS benefits.~~

"Reasonable opportunity period" means a 90-calendar-day period given to applicants to supply verification of citizenship and identity.

"State fair hearing" means, consistent with 42 CFR 438.400, the process set forth in 42 CFR 431 Subpart E.

"Targeted low-income child" means an uninsured child younger than age 19 years whose household income is within the FAMIS eligibility standards established by the Commonwealth.

"Targeted low-income pregnant woman" means an uninsured pregnant woman whose household income is within the Medicaid or FAMIS MOMS eligibility standards established by the Commonwealth.

"Title XXI" means the federal State Children's Health Insurance Program as established by Subtitle J of the Balanced Budget Act of 1997.

~~"Virginia State Employee Health Insurance Plan" means a health insurance plan offered by the Commonwealth of Virginia to its employees.~~

12VAC30-141-20. Administration and general background.

A. The state shall use funds provided under Title XXI for obtaining coverage that meets the requirements for a State Child Health Insurance Plan (also known as Title XXI).

B. The DMAS director will have the authority to contract with entities for the purpose of establishing a centralized processing site, determining eligibility, enrolling eligible children into health plans, performing outreach, data collection, reporting, and other services necessary for the administration of the Family Access to Medical Insurance Security Plan ~~and for employing state staff to perform Medicaid eligibility determinations on children referred by FAMIS staff~~.

C. Health care services under FAMIS shall be provided through MCHIPs and through fee-for-service or through any other health care delivery system deemed appropriate by the Department of Medical Assistance Services.

12VAC30-141-30. Outreach and public participation.

A. DMAS will work cooperatively with other state agencies and contractors to ensure that federal law and any applicable federal regulations are met.

~~B. Pursuant to § 32.1 351.2 of the Code of Virginia, DMAS shall establish an Outreach Oversight Committee (committee) to discuss strategies to improve outreach activities. The committee members shall be selected by DMAS and shall be composed of representatives from community based organizations engaged in outreach activities, social services eligibility workers, the provider community, health plans, and consumers. The committee shall meet on a quarterly basis. As may be appropriate, the committee shall make recommendations regarding state level outreach activities, the coordination of regional and local outreach activities, and procedures for streamlining and simplifying the application process, brochures, other printed materials, forms, and applicant correspondence.~~

~~C. The board, in consultation with the committee, shall develop a comprehensive, statewide community based outreach plan to enroll children in the FAMIS program and, if so eligible, in Medicaid. The outreach plan shall include specific strategies for: (i) improving outreach and enrollment in those localities where enrollment is less than the statewide average and (ii) enrolling uninsured children of former Temporary Assistance to Needy Families (TANF) recipients.~~

~~D.~~ B. DMAS shall develop a comprehensive marketing and outreach effort. The marketing and outreach efforts will be aimed at promoting the FAMIS and Medicaid programs and increasing enrollment~~,~~ and may include contracting with a public relations firm, nonprofit agencies, and foundations; coordination with other state agencies~~,~~; coordination with the business community~~,~~; and coordination with health care associations and providers.

C. DMAS shall ensure consultation by Native American tribes on the development and implementation of enrollment processes and procedures to exempt cost-sharing for American Indian and Alaskan Native children in compliance with 42 CFR 457.120 and 42 CFR 457.125.

Part II
~~Review~~ Appeal of Adverse Actions

12VAC30-141-40. ~~Review~~ Appeal of adverse actions or adverse benefit determinations.

A. Upon written request, all FAMIS ~~Plan~~ applicants and enrollees shall have the right to a ~~review~~ state fair hearing of an adverse action made by the ~~MCHIP,~~ local department of social services, CPU, or DMAS and to an internal appeal of an adverse benefit determination made by an MCO.

B. During ~~review~~ the appeal of a suspension or termination of enrollment or a reduction, suspension, or termination of services, the enrollee shall have the right to continuation of coverage if the enrollee requests ~~review~~ an internal appeal with the MCO or an appeal to DMAS prior to the effective date of the suspension or termination of enrollment or suspension, reduction, or termination of services.

C. ~~Review~~ An appeal of an adverse action made by the local department of social services, CPU, or DMAS shall be heard and decided by an agent of DMAS who has not been directly involved in the adverse action under ~~review~~ appeal.

D. ~~Review~~ An internal appeal of an adverse ~~action~~ benefit determination made by the ~~MCHIP~~ MCO must be conducted by a person or agent of the ~~MCHIP~~ MCO who has not been directly involved in the adverse ~~action~~ benefit determination under ~~review~~ appeal.

E. ~~After final review by the MCHIP,~~ Pursuant to 42 CFR 438.402(c)(1)(B), after exhausting the MCO's internal appeals process, there shall ~~also~~ be opportunity for ~~final independent~~ the enrollee to request an external medical review by ~~the~~ an independent external quality review organization. The review is optional and shall not be required before proceeding to a state fair hearing. The review shall not extend any of the timeframes for issuing a decision and shall not disrupt any continuation of coverage granted to the enrollee.

F. There will be no opportunity for ~~review~~ appeal of an adverse action to the extent that such adverse action is based on a determination by the director that funding for FAMIS has been terminated or exhausted. ~~There will be no opportunity for review based on which type of delivery system (i.e., fee for service, MCHIP) is assigned.~~ There will be no opportunity for ~~review~~ appeal if the sole basis for the ~~adverse action is a state or federal law or regulation requiring an automatic change that affects all applicants or enrollees or a group of applicants or enrollees without regard to their~~

~~individual circumstances.~~ decision is a provision in the State Plan or in a state or federal law requiring an automatic change in eligibility or enrollment or is a change in coverage under the health benefits package that affects all applicants or enrollees or a group of applicants or enrollees without regard to their individual circumstances.

G. The burden of proof shall be upon the applicant or enrollee to show that an adverse action or adverse benefit determination is incorrect.

H. At no time shall ~~the MCHIP's,~~ local ~~department's~~ department of social services, ~~the CPU's, or DMAS'~~ MCO, CPU, or DMAS failure to meet the ~~time frames~~ timeframes set in this chapter or set in ~~the MCHIP's~~ MCO or ~~DMAS'~~ DMAS written ~~review~~ appeal procedures constitute a basis for granting the applicant or enrollee the relief sought.

I. Adverse actions related to health benefits covered through the FAMIS Select program shall be resolved between the insurance company or employer's plan and the FAMIS Select enrollee~~,~~ and are not subject to further ~~review~~ appeal by DMAS or its contractors. ~~Adverse actions made by an MCHIP, the local department of social services, the CPU, or DMAS shall be subject to the review process set forth in Part II (12VAC30-141-40 et seq.) of this chapter.~~

12VAC30-141-50. Notice of adverse action or adverse benefit determination.

A. The local department of social services, ~~the~~ CPU, or DMAS shall send written notification to enrollees at least 10 calendar days prior to suspension or termination of enrollment.

B. DMAS or the ~~MCHIP~~ MCO shall send written notification to enrollees at least 10 calendar days prior to reduction, suspension, or termination of a previously authorized health service.

C. The local department of social services, ~~the~~ CPU, DMAS, or the ~~MCHIP~~ MCO shall send written notification to applicants and enrollees of all other adverse actions within 10 calendar days of the adverse action.

D. Notice shall include ~~the reasons for determination, an explanation of applicable rights to a review of that determination, the standard and expedited time frames for review, the manner in which a review can be requested, and the circumstances under which enrollment or services may continue pending review.~~:

1. The determination the LDSS, CPU, DMAS, or MCO has made or intends to make;

2. The reasons for the determination, including the right of the enrollee to be provided, upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the determination;

3. An explanation of applicable rights to request an appeal of that determination. For adverse benefit determinations by an MCO, this shall include information on the MCO's internal appeal process and, after the internal appeal process is exhausted, a state fair hearing pursuant to 42 CFR 402(b) and 42 CFR 402(c);

4. The procedure for exercising these appeal rights;

5. The circumstances under which an appeal process can be expedited and how to request it; and

6. The circumstances under which enrollment or services may continue pending appeal, how to request benefits be continued, and the circumstances, consistent with state policy, under which the enrollee may be required to pay the costs of these services.

12VAC30-141-60. Request for ~~review~~ appeal.

A. Requests for ~~review~~ internal appeal of ~~MCHIP~~ MCO adverse ~~actions~~ benefit determinations shall be submitted orally or in writing to the ~~MCHIP~~ MCO. Unless the enrollee requests an expedited appeal, an oral appeal request must be followed by a written appeal request. The enrollee must exhaust the MCO's internal appeals process before appealing to DMAS.

B. If the MCO fails to adhere to the notice or timing requirements set forth in this part, the enrollee is deemed to have exhausted the MCO's internal appeals process and may initiate a state fair hearing.

C. Requests for ~~review~~ appeal of adverse actions made by the local department of social services, ~~the~~ CPU, or DMAS or of internal appeal decisions by the MCO shall be submitted ~~in writing~~ to DMAS.

~~C.~~ D. Any ~~written~~ communication ~~clearly~~ expressing a desire to have an adverse ~~action~~ benefit determination by an MCO reviewed shall be treated as a request for ~~review~~ an internal appeal. Any communication expressing a desire to have an adverse action by the LDSS, CPU, or DMAS reviewed shall be treated as a request for a state fair hearing. Any communication expressing a desire to have an MCO's internal appeal decision reviewed shall be treated as a request for a state fair hearing.

~~D.~~ E. To be timely, requests for ~~review~~ internal appeal of ~~a MCHIP~~ an MCO's adverse benefit determination shall be received by the ~~MCHIP~~ MCO no later than ~~30~~ 60 calendar days from the date of the ~~MCHIP's~~ MCO's notice of adverse ~~action~~ benefit determination.

~~E.~~ F. To be timely, a request for an appeal of an adverse benefit determination upheld in whole or in part by the MCO's internal appeal decision shall be received by DMAS within 120 calendar days from the date of the internal appeal decision.

G. To be timely, requests for ~~review~~ appeal of a local department of social services, DMAS, or CPU ~~determination~~ adverse action shall be filed with DMAS no later than 30 calendar days from the date of the ~~CPU's, LDSS' or DMAS'~~ notice of adverse action. Requests for ~~review~~ appeal of ~~a local department of social services, DMAS, or CPU~~ an agency determination shall be considered filed with DMAS on the date the request is postmarked~~,~~ if mailed, or on the date the request is received~~,~~ if delivered other than by mail, by DMAS.

12VAC30-141-70. ~~Review~~ Appeal procedures.

A. At a minimum, the ~~MCHIP review~~ MCO internal appeal shall be conducted pursuant to written procedures as defined in § 32.1-137.6 of the Code of Virginia and ~~as may be further defined by DMAS~~ 42 CFR 438.400 et seq. Such procedures shall be subject to review and approval by DMAS.

B. Any adverse benefit determination upheld in whole or in part by the internal appeal decision issued by the MCO may be appealed by the enrollee to DMAS in accordance with the DMAS client appeals regulations at 12VAC30-110-10 through 12VAC30-110-370. DMAS shall conduct an evidentiary hearing in accordance with the 12VAC30-110-10 through 12VAC30-110-370 and shall not base any appealed decision on the record established by any internal appeal decision of the MCO. The MCO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the MCO.

~~The DMAS review~~ C. Appeals of adverse actions by the LDSS, CPU, or DMAS shall be conducted pursuant to ~~written procedures developed by DMAS~~ 12VAC30-110.

~~C. The procedures in effect on the date a particular request for review is received by the MCHIP or DMAS shall apply throughout the review.~~

D. Copies of the procedures shall be promptly ~~mailed~~ provided by the ~~MCHIP~~ MCO or DMAS to applicants and enrollees upon receipt of timely requests for ~~review~~ internal appeals or state fair hearings. Such written procedures shall include ~~but not be limited to~~ the following:

1. The right to representation by an attorney or other agent of the applicant's or enrollee's choice, but at no time shall the ~~MCHIP~~ MCO, local department of social services, DSS, or DMAS be required to obtain or compensate attorneys or other agents acting on behalf of applicants or enrollees;

2. The right to timely review of ~~their~~ files and other applicable information relevant to the ~~review of the~~ internal appeal or state fair hearing decision;

3. The right to fully participate in the ~~review~~ internal appeal or state fair hearing process, whether the ~~review~~ internal appeal or state fair hearing is conducted in person or in writing, including the presentation of supplemental information during the ~~review~~ internal appeal or state fair hearing process;

4. The right to have personal and medical information and records maintained as confidential; ~~and~~

5. The right to a written final decision ~~within 90 calendar days of receipt of the request for review, unless the applicant or enrollee requests or causes a delay.~~:

a. For internal appeals to the MCO, within 30 calendar days of receipt of the request for an internal appeal; or

b. For state fair hearings, within the time limitations for appeals imposed by federal regulations and as permitted in 12VAC30-110-30;

6. For eligibility and enrollment matters, if the applicant's or enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain, or regain maximum function, an applicant or enrollee will have the opportunity to request an expedited ~~review~~ appeal. Under these conditions, a request for ~~review~~ an expedited appeal shall result in a written final decision within ~~three business days~~ 72 hours after DMAS receives~~,~~ the expedited appeal request from the physician or health plan~~,~~ with the case record and information indicating that taking the time for a standard resolution of the ~~review~~ appeal request could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain, or regain maximum function, unless the applicant or enrollee ~~or his authorized representative causes a delay.~~ requests an extension;

7. For health services matters for FAMIS enrollees receiving services through ~~MCHIPs, if~~ an MCO:

a. If the enrollee's physician or health plan determines that the ~~90-calendar-day~~ 30-calendar-day timeframe for a standard internal appeal could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to request an expedited ~~review~~ internal appeal. Under these conditions, a request for ~~review~~ an internal appeal shall result in a written decision by the ~~external quality review organization~~ MCO within 72 hours from the time ~~an enrollee requests~~ the expedited ~~review~~ internal appeal is requested, unless the applicant, enrollee, or authorized representative requests ~~or causes~~ a delay. If a delay is requested ~~or caused~~ by the applicant, enrollee, or authorized representative, then the expedited ~~review~~ internal appeal may be extended up to 14 calendar days.

b. If the adverse benefit determination is upheld in whole or in part by the expedited internal appeal decision issued by the MCO, and if the enrollee's physician or health plan determines that the timeframe for a standard appeal

to DMAS could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, and enrollee will have the opportunity to request an expedited appeal to DMAS. Under these conditions, a request for a state fair hearing shall result in a written decision within 72 hours from the time an enrollee requests the expedited appeal, unless the applicant, enrollee, or authorized representative requests a delay. If a delay is requested by the applicant, enrollee, or authorized representative, then the expedited appeal may be extended up to 14 calendar days; and

8. For health services matters for FAMIS enrollees receiving services through fee-for-service, if the enrollee's physician or health plan determines that the 90-calendar-day timeframe for a standard appeal could seriously jeopardize the enrollee's life, health, or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to request an expedited review. Under these conditions, a request for ~~review~~ an expedited appeal shall result in a written decision within 72 hours from the time ~~an enrollee requests~~ the expedited ~~review~~ appeal is requested, unless the applicant, enrollee, or authorized representative requests ~~or causes~~ a delay. If a delay is requested ~~or caused~~ by the applicant, enrollee, or authorized representative, then expedited ~~review~~ appeal may be extended up to 14 calendar days.

Part III
Eligibility Determination and Application Requirements

12VAC30-141-100. ~~Eligibility requirements~~ General conditions of eligibility.

A. ~~This section shall be used to determine eligibility of children for FAMIS.~~ An LDSS, DMAS, or the CPU determines eligibility for Title XXI services.

B. FAMIS shall be in effect statewide.

C. ~~Eligible children must:~~ FAMIS serves targeted low-income children consistent with requirements at 42 CFR 457.310, 42 CFR 457.315, and 42 CFR 457.320.

~~1. Be determined ineligible for Medicaid by a local department of social services or be screened by the FAMIS central processing unit and determined not Medicaid likely;~~

~~2. Be under 19 years of age;~~

~~3. Be residents of the Commonwealth;~~

~~4. Be either United States citizens, United States nationals or qualified noncitizens;~~

~~5. Be uninsured, that is, not have comprehensive health insurance coverage; and~~

~~6. Not be an inpatient in an institution for mental diseases (IMD), or an inmate in a public institution that is not a medical facility.~~

~~D. Income.~~

~~1. Screening. All child health insurance applications received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid. Children screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS until there has been a finding of ineligibility for Medicaid. Children who do not appear to be eligible for Medicaid shall have their eligibility for FAMIS determined. Children determined to be eligible for FAMIS will be enrolled in the FAMIS program. Child health insurance applications received at a local department of social services shall have a full Medicaid eligibility determination completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined. If a child is found to be eligible for FAMIS, the local department of social services will enroll the child in the FAMIS program.~~

~~2. Standards. Income standards for FAMIS are based on a comparison of countable income to 200% of the federal poverty level for the family size, as defined in the State Plan for Title XXI as approved by the Centers for Medicare and Medicaid Services. Children who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS.~~

~~3. Grandfathered CMSIP children. Children who were enrolled in the Children's Medical Security Insurance Plan at the time of conversion from CMSIP to FAMIS and whose eligibility determination was based on the requirements of CMSIP shall continue to have their income eligibility determined using the CMSIP income methodology. If their income exceeds the FAMIS standard, income eligibility will be based on countable income using the same income methodologies applied under the Virginia State Plan for Medical Assistance for children as set forth in 12VAC30-40-90. Income that would be excluded when determining Medicaid eligibility will be excluded when determining countable income for the former CMSIP children. Use of the Medicaid income methodologies shall only be applied in determining the financial eligibility of former CMSIP children for FAMIS and for only as long as the children meet the income eligibility requirements for CMSIP. When a former CMSIP child is determined to be ineligible for FAMIS, these former CMSIP income methodologies shall no longer apply and income eligibility will be based on the FAMIS income standards.~~

~~4. Spenddown. Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS. If the family income exceeds the income limits~~

~~described in this section, the individual shall be ineligible for FAMIS regardless of the amount of any incurred medical expenses.~~

~~E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a child is a resident of Virginia for purposes of eligibility for FAMIS. A child who is not emancipated and is temporarily living away from home is considered living with his parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.~~

~~F. United States citizen or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of United States citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.~~

~~G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a child is a qualified noncitizen for purposes of FAMIS eligibility.~~

~~H. Coverage under other health plans.~~

~~1. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.~~

~~2. No substitution for private insurance.~~

~~a. Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance. Each redetermination of eligibility shall also document inquiry about current health insurance.~~

~~b. Health insurance does not include Medicare, Medicaid, FAMIS, or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program~~

D. Each individual covered under the plan shall be:

1. Financially eligible to receive services as established using the methods and standards described in subsection F of this section; and

2. Meet the applicable nonfinancial eligibility conditions.

E. Nonfinancial eligibility conditions.

1. Eligible individuals shall be younger than 19 years of age.

2. Eligible individuals shall be residents of the Commonwealth. A child is considered to be a resident of the Commonwealth under the following conditions:

a. A noninstitutionalized child if capable of indicating intent and who is emancipated or married if the child is living in the state and intends to reside in the state, including without a fixed address;

b. A noninstitutionalized child not described in subdivision E 2 a of this section and who is not in the custody of the state:

(1) Residing in the state, with or without a fixed address; or

(2) The state of residency of the parent or caretaker, in accordance with 42 CFR.435.403(h)(1), with whom the individual resides;

c. An institutionalized child who is not a ward of the state if the state is the state of residence of the child's custodial parent or caretaker at the time of placement;

d. A child who is in the custody of the state regardless of where the child lives; or

e. A child physically located in the state when there is a dispute with one or more states as to the child's actual state of residence.

3. FAMIS eligibility is open to:

a. United States citizens;

b. United States nationals;

c. Qualified noncitizens as defined in § 431 of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) (8 USC § 1641) or whose eligibility is required by § 402(b) of PRWORA (8 USC § 1612(b)) and is not prohibited by § 403 of PRWORA (8 USC § 1613);

d. Individuals who have declared themselves to be citizens or nationals of the United States or an individual having satisfactory immigration status, during a reasonable opportunity period pending verification of their citizenship, nationality, or satisfactory immigration status consistent with requirements of §§ 1903(x), 1137(d), and 1902(ee) of the Social Security Act and 42 CFR 435.407, 42 CFR 407, 42 CFR 956, and 42 CFR 457.380.

(1) The reasonable opportunity period begins on and extends 90 calendar days from the date the notice of reasonable opportunity is received by the individual.

(2) An extension of the reasonable opportunity period is allowed if the individual is making a good faith effort to resolve any inconsistencies or obtain any necessary documentation, or the agency determining eligibility needs more time to complete the verification process.

(3) The agency will provide benefits to otherwise eligible individuals during the reasonable opportunity period;

e. Lawfully residing in the United States, as provided in § 2107(e)(1)(J) of the Social Security Act (§ 214 of CHIPRA 2009, P.L. 111-3). An individual is considered to be lawfully residing in the United States if the person is:

(1) A qualified noncitizen as defined in 8 USC § 1641(b) and (c);

(2) A noncitizen in a valid nonimmigrant status as defined in 8 USC § 1101(a)(15) or otherwise under the immigration laws (as defined in 8 USC § 1101 (a)(17));

(3) A noncitizen who has been paroled into the United States in accordance with 8 USC § 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection, or pending removal proceedings;

(4) A noncitizen who belongs to one of the following classes:

(a) Granted temporary resident status in accordance with 8 USC § 1160 or 1255a, respectively;

(b) Granted temporary protected status (TPS) in accordance with 8 USC § 1254a and individuals with pending applications for TPS who have been granted employment authorization;

(c) Granted employment authorization under 8 CFR § 274a.12(c);

(d) Family unity beneficiaries in accordance with § 301 of P.L. 101-649, as amended;

(e) Under deferred enforced departure in accordance with a decision made by the President;

(f) Granted deferred action status;

(g) Granted an administrative stay of removal under 8 CFR 241; or

(h) Beneficiary of approved visa petition who has a pending application for adjustment of status;

(5) Is an individual with a pending application for asylum under 8 USC § 1158, for withholding of removal under 8 USC § 1231, or under the Convention Against Torture who:

(a) Has been granted employment authorization; or

(b) Is younger than 14 years of age and has had an application pending for at least 180 calendar days;

(6) Has been granted withholding of removal under the Convention Against Torture;

(7) Is a child who has a pending application for Special Immigrant Juvenile Status as described in 8 USC § 1101(a)(27)(J);

(8) Is lawfully present in American Samoa under the immigration laws of American Samoa; or

(9) Is a victim of severe trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, P.L. 106-386, as amended (22 USC § 7105(b)).

f. An individual with deferred action under the Department of Homeland Security's deferred action for the childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012, memorandum, shall not be considered to be lawfully present with respect to any of the categories in subdivision E 3 e of this section.

4. Eligible individuals shall be uninsured, that is, not have creditable health insurance coverage.

a. Individuals eligible for FAMIS shall not be found eligible or potentially eligible for Medicaid under policies of the State Plan determined through the screening process described at 42 CFR 457.350.

b. Any child covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS.

(1) FAMIS shall not be a substitution for private insurance.

(2) Only uninsured children shall be eligible for FAMIS. A child is not considered to be insured if the health insurance plan covering the child does not have a network of providers in the area where the child resides. Each application for child health insurance shall include an inquiry about health insurance. Each redetermination of eligibility shall also document inquiry about current health insurance.

(3) Health insurance does not include Medicare, Medicaid, FAMIS, or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment Program or under Title XXI through the state children's health insurance program premium assistance program known as FAMIS Select.

5. Residents of an institution. Eligible individuals may not be an inpatient in an institution for mental diseases or an inmate in a public institution that is not a medical facility at the time of the initial eligibility determination or redetermination.

6. Social Security Number.

a. All eligible individuals shall furnish their Social Security Numbers (SSNs), with the following exceptions: (i) individuals refusing to obtain a SSN because of well-established religious objections; (ii) individuals who are not eligible for a SSN; or (iii) individuals who are issued a SSN only for a valid nonwork purpose.

b. DMAS or its designee shall:

(1) Assist individuals who are required to provide their SSN to apply for or obtain an SSN from the Social Security Administration if the individuals do not have or forgot their SSNs;

(2) Inform individuals required to provide their SSNs (i) by what statutory authority the number is required to be provided; and (ii) how the Commonwealth will use the SSN;

(3) Verify each SSN furnished by applicants or beneficiaries with the Social Security Administration; and

(4) Not deny or delay services to an otherwise eligible applicant pending issuance or verification of the individual's SSN by the Social Security Administration.

c. The utilization of the SSN is consistent with §§ 205 and 1137 of the Social Security Act and the Privacy Act of 1974.

d. DMAS requests nonapplicant household members to voluntarily provide their SSNs. When requesting an SSN for nonapplicant household members, DMAS (i) informs the nonapplicant that this information is voluntary and provides information regarding how the SSN will be used and (ii) uses the SSN for determination of eligibility for Children's Health Insurance Program (CHIP) or other insurance affordability programs or for a purpose directly connected with the administration of the state plan.

F. Financial eligibility.

1. Screening. All applications shall have a Medicaid income eligibility screen completed. Children determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS determined.

2. Standards.

a. The Commonwealth shall apply modified adjusted gross income (MAGI) methodologies for all separate CHIP covered groups, consistent with 42 CFR 457.315 and 435.603(b) through (i). FAMIS shall be available for targeted low-income children. Income standards shall be applied statewide. Children from birth to age 19 years who have income above the Medicaid-eligible limit at or below 200% of the federal poverty level, with a 5% income disregard, shall be income eligible to participate in FAMIS.

b. In determining family size for the eligibility determination of other individuals in the household that includes a pregnant woman, the pregnant woman is counted just as herself.

c. Financial eligibility is determined consistent with the following provisions:

(1) For new applicants, financial eligibility is based on the monthly income and family size.

(2) When determining eligibility for current beneficiaries, financial eligibility is based on current monthly household income and family size.

(3) In determining current household income, the agency will use reasonable methods to account for current income and reasonable prediction of changes in future income or family size.

d. Unless an exception exists, as provided at 42 CFR 457.315 and 42 CFR 435.603(d)(2) through (d)(4), household income is the sum of the MAGI-based income for every person counted in the individual's MAGI household.

3. Spenddown. The Commonwealth shall not apply a spenddown process for FAMIS where household income exceeds the income eligibility limit for FAMIS.

~~I.~~ G. Eligibility of newborns.

1. If a child otherwise eligible for FAMIS is born within the three months prior to the month in which a signed application is received, the eligibility for coverage is effective retroactive to the child's date of birth if the child would have met all eligibility criteria during that time.

~~A child born to a mother who is enrolled in FAMIS, under either the XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall be deemed eligible for FAMIS for one year from birth unless the child is otherwise eligible for Medicaid.~~

2. A child born to a targeted low-income pregnant woman is deemed to have applied for and be eligible for FAMIS or Medicaid until the child turns age one year in accordance with § 2112 of the Social Security Act.

a. The child is deemed to have applied for and been found eligible for FAMIS or Medicaid, as appropriate, as of the date of the child's birth and remains eligible without regard to changes in circumstances until the child's first birthday.

b. DMAS shall cover as a deemed newborn a child born to a mother who is covered under Medicaid or CHIP through the authority of the state's § 1115 demonstration on the date of the newborn's birth.

12VAC30-141-110. Duration of eligibility and renewal.

A. The effective date of FAMIS eligibility shall be the date of birth for a newborn deemed eligible under 12VAC30-141-100 ~~I~~ G. ~~Otherwise~~ For all other children, the effective date of FAMIS eligibility shall be the first day of the month in which a signed completed application was received by either the ~~FAMIS central processing unit or a local department of social services~~ LDSS or CPU if the applicant met all eligibility requirements in that month. In no case shall a child's eligibility be effective earlier than the date of the child's birth.

B. Eligibility for FAMIS will continue for 12 months so long as the child remains a resident of Virginia and the child's countable income does not exceed 200% of the federal poverty level. A child born to a mother who was enrolled in FAMIS, under either the Title XXI Plan or a related waiver (such as FAMIS MOMS), on the date of the child's birth shall remain eligible for one year regardless of income unless otherwise found to be eligible for Medicaid. A change in eligibility will be effective the first of the month following expiration of a ~~10-day~~ 10-calendar-day advance notice. Eligibility based on all eligibility criteria listed in 12VAC30-141-100 ~~C~~ D will be redetermined no less often than annually.

C. Renewal of coverage.

1. Renewal of coverage for individuals whose financial eligibility is based on the applicable modified adjusted gross income (MAGI) standard are performed as follows, consistent with 42 CFR 457.343:

a. Renewal of coverage is completed once every 12 months, and

b. Without requiring information from the individual if able to do so based on an ex parte review of reliable information contained in the individual's account or other more current information available to the agency.

2. If the agency cannot determine eligibility solely on the basis of the ex parte review or otherwise needs additional information to complete the redetermination, the individual is provided with a renewal form that is prepopulated with information contained in the individual's case. The individual shall be allowed 30 calendar days to return the renewal form and the necessary verifications.

If the individual's coverage is canceled because the renewal was not completed (either electronically, by phone, or on paper) or because verifications needed to complete the renewal were not returned, the individual has 90 calendar days after the coverage is canceled to provide the information necessary to complete the renewal without having to file a new application. This 90-calendar-day period is called the reconsideration period. If all necessary information is provided during the reconsideration period and the individual found eligible, enrollment will be restored without any lapse in coverage.

12VAC30-141-120. ~~Children ineligible for FAMIS.~~ (Repealed.)

~~A. If a child is:~~

~~1. Eligible for Medicaid, or would be eligible if he applied for Medicaid, he shall be ineligible for coverage under FAMIS. A child found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS;~~

~~2. An inmate of a public institution as defined in 42 CFR §435.1009, he shall be ineligible for FAMIS; or~~

~~3. An inpatient in an institution for mental disease (IMD) as defined in 42 CFR §435.1010, he shall be ineligible for FAMIS.~~

~~B. If a child's parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the child shall be ineligible for FAMIS.~~

~~C. If a child, if age 18, or if under age 18, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a child or children who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the child or children for whom the application is made shall be ineligible for FAMIS. The child, if age 18, or if under age 18, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.~~

12VAC30-141-150. Application requirements.

A. Availability of program information. DMAS or its designee shall furnish the following information in written form and orally as appropriate to all applicants and to other individuals who request it:

1. The eligibility requirements;

2. Summary of covered benefits;

3. Copayment amounts required; and

4. The rights and responsibilities of applicants and enrollees.

B. Opportunity to apply. DMAS or its designee must afford an individual, wishing to do so, the opportunity to apply ~~for child health insurance~~. ~~Applications for health insurance will~~

~~be accepted at a central site designated by DMAS and at local departments of social services throughout the Commonwealth.~~ Applicants may file an application ~~for child health insurance~~ by mail, by fax, by phone, via the internet, or in person at local departments of social services. ~~Applications filed at the FAMIS CPU can be submitted by mail, by fax, via the Internet, or by phone.~~ Face-to-face interviews for the program are not required. Eligibility determinations for FAMIS shall occur at either local departments of social services ~~or at the,~~ DMAS ~~designated central site~~, or the CPU.

C. Application. DMAS or its designee shall require an application from the applicant if the applicant is at least 18 years of age or older, or from a parent, adult relative caretaker, guardian, legal custodian, or authorized representative if the applicant is younger than 18 years of age or the applicant is incapacitated.

1. DMAS employs a single, streamlined application developed by the state and approved by the Secretary of the Department of Health and Human Services in accordance with § 1413(b)(I)(B) of the Affordable Care Act.

2. DMAS may employ an alternative application used to apply for multiple human service programs approved by the Secretary of the Department of Health and Human Services, provided that the agency makes readily available the single or alternative application used only for insurance affordability programs to individuals seeking assistance only through such programs.

~~C.~~ D. Right to apply. An individual who is 18 years of age shall not be refused the right to complete an application for ~~health insurance for~~ himself and shall not be discouraged from asking for assistance for himself under any circumstances.

~~D.~~ E. Applicant's signature. The applicant must sign state-approved application forms submitted, even if another person fills out the form, unless the application is filed and signed by the applicant's parent, adult relative caretaker, legal guardian or conservator, attorney-in-fact or authorized representative.

~~E.~~ F. The authorized representative for an individual 18 years of age or older shall be those individuals as set forth in 12VAC30-110-1380.

~~F.~~ G. The authorized representative for children younger than 18 years of age shall be those individuals as set forth in 12VAC30-110-1390.

~~G.~~ H. Persons prohibited from signing an application. An employee of, or an entity hired by, a medical service provider who stands to obtain FAMIS payments shall not sign an application for health insurance on behalf of an individual who cannot designate an authorized representative.

~~H. Written application. DMAS or its designee shall require a written application from the applicant if he is at least 18 years of age or older, or from a parent, adult relative caretaker, guardian, legal custodian, or authorized representative if the applicant is less than 18 years of age or the applicant is incapacitated. The application must be on a form prescribed by DMAS, and must be signed under a penalty of perjury. The application form shall contain information sufficient to determine Medicaid and FAMIS eligibility.~~

I. Assistance with application. DMAS or its designee shall allow an individual ~~or individuals~~ of the applicant's choice to assist and represent the applicant in the application process, ~~or~~ a ~~redetermination~~ renewal process ~~for eligibility~~, or both.

J. Timely determination of eligibility. The time processing standards for determining eligibility ~~for child health insurance~~ begin with the date ~~a signed~~ an application is submitted online, by telephone, by fax, or received in hard copy either at a ~~local department of social services~~ LDSS or the ~~FAMIS~~ CPU. An application for health insurance ~~received at local departments of social services must~~ shall have ~~a full Medicaid eligibility determination and, when a child is determined to be ineligible for Medicaid due to excess income, a FAMIS eligibility determination~~ an eligibility determination performed~~,~~ within the ~~same Medicaid~~ established federal case processing time standards.

~~Except in cases of unusual circumstances as described below, an application for health insurance received at the FAMIS CPU and screened as ineligible for Medicaid, shall have a FAMIS eligibility determination completed within 10 business days of the date the complete application was received at the CPU. Applications that are screened as Medicaid likely will be processed within Medicaid case processing time standards.~~

~~1. Unusual circumstances include: administrative or other emergency beyond the agency's control. In such case, DMAS, or its designee, or the LDSS must document, in the applicant's case record, the reasons for delay. DMAS or its designee or the local department of social services must not use the time standards as a waiting period before determining eligibility or as a reason for denying eligibility because it has not determined eligibility within the time standards.~~

~~2. Incomplete applications shall be held open for a period of 30 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Any applicant who fails to provide, within 30 calendar days of the receipt of the initial application, information or verifications necessary to determine eligibility, shall have his application for FAMIS eligibility denied.~~

K. Notice of ~~DMAS', its designee's or~~ the ~~local department of social services'~~ decision concerning eligibility. ~~DMAS, its designee or the local department of social services must~~ The determining agency shall send each applicant a written notice

of the ~~agency's/designee's~~ agency's or designee's decision on ~~his~~ the applicant's application, and~~,~~ if approved, ~~his~~ the applicant's obligations under the program. If eligibility for both FAMIS and Medicaid is denied, notice must be given concerning the reasons for the action and an explanation of the applicant's right to request a review of the adverse actions, as described in 12VAC30-141-50.

L. Case documentation. ~~DMAS, its designee, or the local department of social services must~~ The determining agency shall include in each applicant's record all necessary facts to support the decision on ~~his~~ the applicant's application~~,~~ and must dispose of each application by a finding of eligibility or ineligibility, unless (i) there is an entry in the case record that the applicant voluntarily withdrew the application and that the agency or its designee sent a notice confirming ~~his~~ the applicant's decision; or (ii) there is a supporting entry in the case record that the applicant cannot be located.

M. Case maintenance. All cases approved for FAMIS shall be maintained at ~~the FAMIS CPU~~ local departments of social services or another entity designated by DMAS. ~~Children determined by local departments of social services to be eligible for FAMIS shall have their cases transferred to the FAMIS CPU for ongoing case maintenance. The FAMIS CPU~~ The determining agency will be responsible for providing newly enrolled recipients with program information, benefits available, how to secure services under the program, a FAMIS handbook, and for processing changes in eligibility and annual renewals within established ~~time frames~~ timeframes. DMAS outreach resources may also provide information or assistance to the enrollee.

N. ~~Redetermination~~ Renewal of eligibility. DMAS, LDSS, or the ~~FAMIS~~ CPU ~~must~~ shall redetermine the eligibility of enrollees with respect to circumstances that may change at least every 12 months. During the 12-month period of coverage, enrollees must make timely and accurate reports if an enrollee no longer resides in the Commonwealth of Virginia or when changes in income exceed 200% of the federal poverty level plus a 5.0% income disregard. ~~DMAS or the FAMIS CPU must~~ The agency responsible for managing the case shall promptly redetermine eligibility when it receives information about changes in a FAMIS enrollee's circumstances that may affect eligibility. DMAS or its designee may assist with documenting changes reported by the enrollee.

O. Notice of decision concerning eligibility. ~~DMAS or the FAMIS CPU must~~ The agency responsible for managing the case shall give enrollees timely notice of proposed action to terminate their eligibility under FAMIS. The notice must meet the requirements of 42 CFR 457.1180.

Part IV
Cost Sharing

12VAC30-141-160. Copayments for families not participating in FAMIS Select.

A. Copayments shall apply to all enrollees in an MCHIP.

B. These cost-sharing provisions shall be implemented with the following restrictions:

1. Total cost sharing for each 12-month eligibility period shall be limited to (i) for families with incomes equal to or less than 150% of ~~FPL~~ federal poverty level (FPL), the lesser of (a) $180 and (b) 2.5% of the family's income for the year (or 12-month eligibility period); and (ii) for families with incomes greater than 150% of FPL, the lesser of $350 and 5.0% of the family's income for the year (or 12-month eligibility period).

2. DMAS or its designee shall ensure that the annual aggregate cost sharing for all FAMIS enrollees in a family does not exceed the aforementioned caps.

3. Families will be required to submit documentation to DMAS or its designee showing that their maximum copayment amounts are met for the year.

4. Once the cap is met, DMAS or its designee will issue a new eligibility card excluding such families from paying additional copays for the 12-month enrollment period.

C. Exceptions to the above cost-sharing provisions:

1. Copayments shall not be required for well-child, well baby, and pregnancy-related services. This shall include:

a. All healthy newborn inpatient physician visits, including routine screening (inpatient or outpatient);

b. Routine physical examinations, laboratory tests, immunizations, and related office visits;

c. Routine preventive and diagnostic dental services (i.e., oral examinations, prophylaxis and topical fluoride applications, sealants, and x-rays);

d. Services to pregnant females related to the pregnancy; and

e. Other preventive services as defined by the department.

2. Enrollees are not held liable for any additional costs, beyond the standard copayment amount, for emergency services furnished outside of the individual's managed care network. Only one copayment charge will be imposed for a single office visit.

3. No cost sharing will be charged to American Indians and Alaska Natives.

12VAC30-141-175. FAMIS Select.

A. Enrollees in FAMIS may, but shall not be required to, enroll in a private or employer-sponsored health plan if DMAS or its designee determines that such enrollment is cost effective, as defined in this section.

B. Eligibility determination. FAMIS children may elect to receive coverage under a health plan purchased privately or through an employer and DMAS may elect to provide coverage by paying all or a portion of the premium if all of the following conditions are met:

1. The children are determined to be eligible for FAMIS;

2. The cost of coverage for the child or children under FAMIS Select is equal to or less than the Commonwealth's cost of obtaining coverage under FAMIS only for the eligible targeted low-income children involved. The cost-effectiveness determination methodology is described in subsection E of this section;

3. The policyholder agrees to assign rights to benefits under the private or employer's plan to DMAS to assist the Commonwealth in pursuing these third-party payments for childhood immunizations. When a child is provided coverage under a private or employer's plan, that plan becomes the payer for all other services covered under that plan; and

4. The policyholder is not under a court order to provide medical support for the applicant child.

C. DMAS will continually verify the child's or children's coverage under the private or employer's plan and will redetermine the eligibility of the child or children for the FAMIS Select component when it receives information concerning an applicant's or enrollee's circumstances that may affect eligibility.

D. Application requirements.

1. DMAS shall furnish the following information in written form and orally, as appropriate, to the families of FAMIS children who have indicated an interest in FAMIS Select:

a. The eligibility requirements for FAMIS Select;

b. A description of how the program operates, the amount of premium assistance available, and how children can move from FAMIS Select into FAMIS if requested;

c. A summary of the covered benefits and cost-sharing requirements available through FAMIS;

d. A guide to help families make an informed choice by comparing the FAMIS plan to their private or employer-sponsored health plan. Such guide shall include a notice to the effect that children covered by FAMIS Select will not receive FAMIS-covered services, but only those health services covered by their private or employer-sponsored health plan, and that the FAMIS Select enrollee shall be responsible for any and all costs associated with their chosen health plan;

e. Information on coverage for childhood immunizations through FAMIS; and

f. The rights and responsibilities of applicants and enrollees.

2. DMAS will provide interested families with applications for FAMIS Select.

3. ~~A~~ An electronic or written application for the FAMIS Select component shall be required from interested families.

4. DMAS shall determine eligibility for the FAMIS Select component promptly, within 45 calendar days from the date of receiving an application that contains all information and verifications necessary to determine eligibility, except in unusual circumstances beyond the agency's control. Actual enrollment into the FAMIS Select component may not occur for extended periods of time, depending on the ability of the family to enroll in the employer's plan.

5. Incomplete FAMIS Select applications shall be held for a period of 30 calendar days to enable applicants to provide outstanding information needed for a FAMIS Select eligibility determination. Any applicant who, within 30 calendar days of the receipt of the initial application, fails to provide information or verifications necessary to determine FAMIS Select eligibility shall have his application denied.

6. DMAS must send each applicant a written notice of the agency's decision on his application for FAMIS Select and, if approved, his obligations under the program. If eligibility is denied, notice will be given concerning the reasons for the denial.

E. Cost effectiveness. DMAS may elect to provide coverage to FAMIS children by paying all or a portion of the family's private or employer-sponsored health insurance premium if the cost of such premium assistance under FAMIS Select is equal to or less than the Commonwealth's cost of obtaining coverage under FAMIS only for the eligible, targeted, low-income child or children involved. Providing premium assistance for the FAMIS-eligible children may result in the coverage of an adult or other ~~relative/dependent~~ relative or dependent; however, this coverage shall be solely incidental to covering the FAMIS child.

1. To ensure that the FAMIS Select program remains cost effective, DMAS will establish a fixed premium assistance amount per child that will be paid to a family choosing to enroll their FAMIS-eligible child in FAMIS Select. The fixed premium assistance amount will be determined annually by:

a. Determining the cost of covering a child under FAMIS. The cost will be determined by using the capitated payment rate paid to MCHIPs, or an average cost amount developed by DMAS;

b. Determining the administrative costs associated with the FAMIS Select program; and

c. Establishing a fixed premium assistance amount that includes administrative costs and is less than or equal to the cost of covering the FAMIS child or children under FAMIS.

DMAS will ensure that the total of the fixed premium assistance amounts for all the FAMIS-eligible children per family do not exceed the total cost of the family's health insurance premium payment for the private or employer-sponsored coverage. If the total fixed premium assistance amounts do exceed the family's premium payment, then the family premium assistance will be reduced by an amount necessary to ensure the premium assistance payment is less than or equal to the family's premium payment.

F. Enrollment and disenrollment.

1. FAMIS children applying for FAMIS Select will receive coverage under FAMIS until their eligibility for coverage under the FAMIS Select component is established and until they are able to enroll in the private or employer-sponsored health plan.

2. The timing and procedures employed to transfer FAMIS children's coverage to the FAMIS Select component will be coordinated between DMAS and the ~~CPU~~ agency managing the case to ensure continuation of ~~health plan~~ coverage.

3. Participation by families in the FAMIS Select component shall be voluntary. Families may disenroll their child or children from the FAMIS Select component as long as the proper timing and procedures established by DMAS are followed to ensure continued health coverage.

G. Premium assistance. When a child is determined eligible for coverage under the FAMIS Select component, premium assistance payments shall become effective the month in which the FAMIS child or children are enrolled in the employer's plan. Payment of premium assistance shall end:

1. On the last day of the month in which FAMIS eligibility ends;

2. The last day of the month in which the child or children lose eligibility for coverage under the private or employer's plan;

3. The last day of the month in which the family notifies DMAS that it wishes to disenroll its child or children from the FAMIS Select component; or

4. On the next business day following a request by the family to immediately transfer the child from FAMIS Select into the FAMIS program. The request must include notification that the child's private or employer-sponsored coverage has been terminated as of the date of transfer and an agreement by the family to return to DMAS the premium assistance payment prorated for that portion of the month in which the child was not enrolled in the private or employer-sponsored plan.

H. Supplemental health benefits coverage will be provided to ensure that FAMIS children enrolled in the FAMIS Select component receive all childhood immunizations available under the FAMIS benefits. FAMIS children can obtain these supplemental benefits through Medicaid providers.

I. Cost sharing. FAMIS Select families will be responsible for all copayments, deductibles, coinsurance, fees, or other cost-sharing requirements of the private or employer-sponsored health plan in which they enroll their children. There is no Title XXI family cost-sharing cap applied to families with children enrolled in FAMIS Select.

There is no copayment required for the supplemental immunization benefits provided through FAMIS.

12VAC30-141-500. Benefits reimbursement.

A. Reimbursement for the services covered under FAMIS fee-for-service and MCHIPs shall be as specified in this section.

B. Reimbursement for physician services, surgical services, clinic services, prescription drugs, laboratory and radiological services, outpatient mental health services, early intervention services, emergency services, home health services, immunizations, mammograms, medical transportation, organ transplants, skilled nursing services, well baby and well child care, vision services, durable medical equipment, disposable medical supplies, dental services, case management services, physical ~~therapy/occupational therapy/speech language~~ therapy, occupational therapy, or speech-language therapy services, hospice services, school-based health services, behavioral therapy services including ~~but not limited to~~ applied behavior analysis, and certain community-based mental health services shall be based on the Title XIX rates.

C. Reimbursement to MCHIPs shall be determined on the basis of the estimated cost of providing the MCHIP benefit package and services to an actuarially equivalent population. MCHIP rates will be determined annually and published 30 days prior to the effective date.

D. Exceptions.

1. Prior authorization is required after five visits in a fiscal year for physical therapy, occupational therapy, and ~~speech~~ speech-language therapy provided by home health providers and outpatient rehabilitation facilities and for home health skilled nursing visits. Prior authorization ~~is~~

~~required after 26 visits for outpatient mental health visits in the first year of service and prior authorization~~ is required for the following nonemergency outpatient procedures: Magnetic Resonance Imaging, including Magnetic Resonance Angiography (MRA), Computerized Axial Tomography (CAT) scans, including Computed Tomography Angiography (CTA), or Positron Emission Tomography (PET) scans performed for the purpose of diagnosing a disease process or physical injury. Prior authorization for dental services will be based on the Title XIX prior authorization requirements for dental services.

2. Reimbursement for inpatient hospital services will be based on the Title XIX rates in effect for each hospital. Reimbursement shall not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made shall be final and there shall be no retrospective cost settlements.

3. Reimbursement for outpatient hospital services shall be based on the Title XIX rates in effect for each hospital. Payments made will be final and there will be no retrospective cost settlements.

4. Reimbursement for inpatient mental health services other than by free standing psychiatric hospitals will be based on the Title XIX rates in effect for each hospital. Reimbursement will not include payments for disproportionate share or graduate medical education payments made to hospitals. Payments made will be final and there will be no retrospective cost settlements.

5. Reimbursement for outpatient rehabilitation services will be based on the Title XIX rates in effect for each rehabilitation agency. Payments made will be final and there will be no retrospective cost settlements.

6. Reimbursement for outpatient substance abuse treatment services will be based on rates determined by DMAS for children ages six through 18 years. Payments made will be final and there will be no retrospective cost settlements.

7. Reimbursement for prescription drugs will be based on the Title XIX rates in effect. Reimbursements for Title XXI do not receive drug rebates as under Title XIX.

8. Reimbursement for covered prescription drugs for noninstitutionalized FAMIS recipients receiving the fee-for-service benefits will be subject to review and prior authorization when their current number of prescriptions exceeds nine unique prescriptions within 180 calendar days, and as may be further defined by the agency's guidance documents for pharmacy utilization review and the prior authorization program. The prior authorization process shall be applied consistent with the process set forth in 12VAC30-50-210 A 7.

12VAC30-141-660. Assignment to managed care.

A. Except for children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia, all eligible enrollees shall be assigned in managed care through the department or ~~the central processing unit (CPU) under contract to DMAS~~ CPU. FAMIS individuals, during the preassignment period to an MCHIP, shall receive Title XXI benefits via fee-for-service utilizing a FAMIS card issued by DMAS. After assignment to an MCHIP, benefits and the delivery of benefits shall be administered specific to the managed care program in which the individual is enrolled. DMAS shall contract with MCHIPs to deliver health care services for infants born to mothers enrolled in FAMIS for the month of birth plus two additional months regardless of the status of the newborn's application for FAMIS. If federal funds are not available for those months of coverage, DMAS shall use state funding only.

1. MCHIPs shall be offered to enrollees in all areas.

2. All enrollees shall be assigned to the contracted MCHIPs.

3. ~~Enrollees~~ Applicants for FAMIS may choose an MCHIP at the time of application. If a choice is not made at application, enrollees shall be assigned through a random system algorithm; provided however, all children within the same family shall be assigned to the same MCHIP.

4. All children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program shall be assigned to the fee-for-service component.

5. Enrolled individuals will receive a letter indicating that they may select one of the contracted MCHIPs that serve such area. Enrollees who do not select an MCHIP as described above, shall be assigned to an MCHIP as described in subdivision 3 of this subsection.

6. Individuals assigned to an MCHIP who lose and then regain eligibility for FAMIS within 60 days will be reassigned to their previous MCHIP.

B. Following their initial assignment to an MCHIP, those enrollees shall be restricted to that MCHIP until their next annual eligibility redetermination, unless appropriately disenrolled by the department.

1. During the first 90 calendar days of managed care assignment, an enrollee may request reassignment for any reason. Such reassignment shall be effective no later than the first day of the second month after the month in which the enrollee requests reassignment.

2. Enrollees may only request reassignment to another MCHIP serving that geographic area.

3. After the first 90 calendar days of the assignment period, the enrollee may only be reassigned from one MCHIP to

another MCHIP upon determination by DMAS that good cause exists pursuant to subsection C of this section or for any reason at annual renewal.

C. Disenrollment for good cause, defined in 12VAC30-120-370, may be requested at any time.

1. After the first 90 calendar days of assignment in managed care, enrollees may request disenrollment from DMAS based on good cause. The request must ~~be made in writing to DMAS and~~ cite the reasons why the enrollee wishes to be reassigned. The department shall establish procedures for good cause reassignment through written policy directives.

2. DMAS shall determine whether good cause exists for reassignment.

Part VII
FAMIS MOMS

12VAC30-141-670. Definitions.

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

~~"Act" means the Social Security Act.~~

~~"Adult caretaker relative" or "caretaker relative" means an individual who is 18 years of age or older, who is not the parent of but who is related to the child applicant by blood or marriage, and who lives with and assumes responsibility for day to day care of the child applicant in a place of residence maintained as his or their own home.~~

"Adverse action," consistent with 42 CFR 457.1130, means the denial of eligibility; failure to make a timely determination of eligibility; suspension or termination of enrollment, including disenrollment for failure to pay cost sharing; or delay, denial, reduction, suspension, or termination of health services, in whole or in part, including a determination about the type or level of services; and failure to approve, furnish, or provide payment for health services in a timely manner; provided, however, that determination of eligibility to participate in and termination of participation in the FAMIS Select program shall not constitute an adverse action.

"Adverse benefit determination," consistent with 42 CFR 438.400, means the denial or limited authorization of a requested service; the failure to take action or timely take action on a request for service; the reduction, suspension, or termination of a previously authorized service; denial in whole or in part of a payment for a service; failure to provide services within the timeframes required by the state; for a resident of a rural exception area with only one MCO, the denial of a enrollee's request to exercise the enrollee's right under 42 CFR 438.52(b)(2)(ii) to obtain services outside of the network; the denial of a enrollee's request to dispute a financial liability as provided in 42 CFR 438(b)(7); or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Agency" means ~~a local department of social services, the central processing unit, or other entity designated by DMAS to make eligibility determinations for FAMIS MOMS.~~ the same as defined in 12VAC30-141-10.

~~"Agency error" means a person or persons received benefits to which they were not entitled as a result of an error on the part of an eligibility worker at a local department of social services or the central processing unit.~~

"Agent" means an individual designated in writing to act on behalf of a FAMIS MOMS Plan applicant or enrollee during the administrative review process.

"Appeal" means an enrollee's request for review of an adverse benefit determination by an MCO or an adverse action by the LDSS, CPU, or DMAS.

"Applicant" means a pregnant woman who has filed an application (or who has an application filed on her behalf) for health insurance and is awaiting a determination of eligibility. A pregnant woman is an applicant until her eligibility has been determined.

"Application for health insurance" means the ~~form or forms developed and approved by the Department of Medical Assistance Services that are used for determining eligibility for Medicaid for poverty level children, for the Family Access to Medical Insurance Security Plan (FAMIS) for children, for Medicaid for pregnant women, and for FAMIS MOMS coverage for pregnant women~~ single streamlined application for determining eligibility in public health insurance programs operated by the Commonwealth.

"Authorized representative" means a person who is authorized to conduct the personal or financial affairs for an individual who is 18 years of age or older.

~~"Board" or "BMAS" means that policy board created by § 32.1 324 of the Code of Virginia to administer the plans established by the Social Security Act.~~

"Central processing unit" or "CPU" means Cover Virginia, which is the ~~private contractor that will determine eligibility for and administer part of the FAMIS MOMS Plan~~ same as defined in 12VAC30-141-10.

"Child" means an individual ~~under the age of~~ younger than 19 years of age.

~~"Competent individual" means a person who has not been judged by a court to be legally incapacitated.~~

~~"Comprehensive health insurance coverage" means health benefits coverage, which includes the following categories of services at a minimum: inpatient and outpatient hospital~~

~~services, physician's surgical and medical services, and laboratory and radiological services.~~

"Conservator" means a person appointed by a court of competent jurisdiction to manage the estate and financial affairs of an incapacitated individual.

"Continuation of ~~enrollment~~ coverage" means ensuring an enrollee's benefits are continued until completion of the review process, with the condition that should the enrollee not prevail in the review process, the enrollee shall be liable for the repayment of all benefits received during the review process.

"Creditable health coverage" means coverage that meets the definition at 42 CFR 457.10.

"Director" means the individual, or his designee, specified in § 32.1-324 of the Code of Virginia with all of the attendant duties and responsibilities to administer the State Plan for Medical Assistance and the State Plan for Title XXI.

"DMAS" or "department" means the Department of Medical Assistance Services.

"Enrollee" means a pregnant woman who has been determined eligible to participate in FAMIS MOMS and is enrolled in the FAMIS MOMS program.

"External quality review organization" means the independent contractor assigned by DMAS to handle quality reviews and to conduct final review of MCHIP adverse actions for FAMIS MOMS.

~~"Family" for a pregnant woman under the age of 21, means parents, including adoptive parents, if they are all residing together and the spouse of the pregnant woman if the woman is married and living with her spouse, as well as any children under the age of 21 the woman may have.~~

~~For a pregnant woman over the age of 21, "family" means her spouse, if married and living together, as well as any children under the age of 21 the pregnant woman may have.~~

~~"Family income" means the total income of all family members in a household. Income includes, but is not necessarily limited to, before tax earnings from a job, including cash, wages, salary, commissions, tips, self-employment net profits, Social Security, Retirement Survivor Disability Insurance (RSDI), veterans benefits, Railroad Retirement, disability workers' compensation, unemployment benefits, child support, alimony, spousal support, pensions, retirement benefits, settlement benefits, rental income, and lottery/bingo winnings. Income excludes public assistance program benefits such as SSI and TANF payments, foster care payments, general relief, loans, grants, or scholarships for educational expenses or earned income of a child who is a student.~~

"FAMIS" means the Family Access to Medical Insurance Security Plan.

"FAMIS MOMS" means the Title XXI program available to eligible pregnant women.

"Federal poverty level" or "FPL" means that income standard as published annually by the U.S. Department of Health and Human Services in the Federal Register.

"Fee-for-service" means the traditional Medicaid health care delivery and payment system in which physicians and other providers receive a payment for each unit of service they provide.

~~"Fraud" means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to herself or some other person. It includes any act that constitutes fraud under applicable federal or state laws.~~

~~"Group health plan" or "health insurance coverage" means that health care coverage as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)).~~

"Guardian" means a person appointed by a court of competent jurisdiction to be responsible for the affairs of an incapacitated individual, including responsibility for making decisions regarding the person's support, care, health, safety, habilitation, education, and therapeutic treatment, and, if not inconsistent with an order of commitment, residence.

"Incapacitated ~~individual~~" means a person who, pursuant to an order of a court of competent jurisdiction, has been found to be incapable of receiving and evaluating information effectively or responding to people, events, or environments to such an extent that the individual lacks the capacity to (i) meet the essential requirements of her health, care, safety, or therapeutic needs without the assistance or protection of a guardian, or (ii) manage property or financial affairs or provide for her support or for the support of her legal dependents without the assistance or protection of a conservator.

~~"Legally emancipated" means that the parents and child have gone through the court and a judge has declared that the parents have surrendered the right to care, custody, and earnings of the child and have renounced parental duties. A married minor is not emancipated unless a court has declared the married minor emancipated from her parents.~~

"Lawfully residing" means the individual is lawfully present in the United States and meets state residency requirements.

"LDSS" or "local department" means the local department of social services.

"Managed care health insurance plan" or "MCHIP," as defined in § 32.1-137.1 of the Code of Virginia, means an arrangement for the delivery of health care in which a health carrier under contract with DMAS for Title XXI delivery systems undertakes to provide, arrange and pay for, or reimburse any of the costs of health care services for a

covered person on a prepaid or insured basis, which contains one or more incentive arrangements, including any credential requirements intended to influence the cost of the health care services between the health carrier and one or more providers and requires or creates benefit payment differential incentives for covered persons to use providers that are directly or indirectly managed, owned, under contract with, or employed by the health carrier.

~~"Member of a family," for purposes of determining whether the applicant is eligible for coverage under a state employee health insurance plan, means a spouse, parent or parents, including stepparents with whom the child is living if the stepparent claims the child as a dependent on the employee's federal tax return.~~

"Managed care organization" or "MCO" means an organization that offers managed care health insurance plans (MCHIPs) as defined in this section.

"Pregnant woman" means a woman of any age who is medically determined to be pregnant. The pregnant woman definition is met from the first day of the earliest month that the medical practitioner certifies as being a month in which the woman was pregnant, through the last day of the month in which the 60th day occurs, following the last day of the month in which her pregnancy ended, regardless of the reason the pregnancy ended.

"Provider" means the individual, facility, or other entity registered, licensed, or certified, as appropriate, and enrolled by an MCHIP or in fee-for-service to render services to FAMIS MOMS enrollees eligible for services.

"State fair hearing" means, consistent with 42 CFR 438.400, the process set forth in 42 CFR 431 Subpart E.

"Title XXI" means the federal State Children's Health Insurance Program as established by Subtitle J of the Balanced Budget Act of 1997.

~~"Virginia State Employee Health Insurance Plan" means a health insurance plan offered by the Commonwealth of Virginia to its employees.~~

12VAC30-141-680. Administration and general background.

A. The state shall use funds provided under Title XXI for obtaining coverage that meets the requirements of Title XXI of the Social Security Act and any waiver of federal regulations approved by the Centers for Medicare and Medicaid Services.

B. The DMAS director will have the authority to contract with entities for the ~~purpose~~ purposes of establishing a centralized processing site, determining eligibility, enrolling eligible pregnant women into health plans, performing outreach, data collection, reporting, and other services necessary for the administration of the FAMIS MOMS program~~; and for employing state staff to perform Medicaid eligibility determinations on pregnant women referred by the contractor's staff~~.

C. Health care services under FAMIS MOMS shall be provided through MCHIPs and fee-for-service or through any other health care delivery system deemed appropriate by the Department of Medical Assistance Services.

12VAC30-141-690. Outreach and public participation.

A. DMAS will work cooperatively with other state agencies and contractors to ensure that state and federal law and any applicable state and federal regulations are met.

B. DMAS shall develop a comprehensive marketing and outreach effort. The marketing and outreach efforts will be aimed at promoting FAMIS MOMS and Medicaid for pregnant women and increasing enrollment~~,~~ and may include contracting with a public relations firm, nonprofit agencies, and foundations, and coordination with other state agencies, coordination with the business community, and coordination with health care associations and providers.

12VAC30-141-700. ~~Review~~ Appeal of adverse actions or adverse benefit determinations.

A. Upon ~~written~~ request, all FAMIS MOMS program applicants and enrollees shall have the right to a ~~review~~ state fair hearing of an adverse action made by the ~~MCHIP,~~ local department of social services, CPU, or DMAS, or an internal appeal of an adverse benefit determination made by the MCO.

B. During ~~review~~ the appeal of a suspension or termination of enrollment or a reduction, suspension, or termination of services, the enrollee shall have the right to continuation of coverage if the enrollee requests ~~review~~ an internal appeal with the MCO or an appeal to DMAS prior to the effective date of the suspension or termination of enrollment or suspension, reduction, or termination of services.

C. ~~Review~~ An appeal of an adverse action made by the local department of social services, CPU, or DMAS shall be heard and decided by an agent of DMAS who has not been directly involved in the adverse action under ~~review~~ appeal.

D. ~~Review~~ An internal appeal of an adverse ~~action~~ benefit determination made by the ~~MCHIP~~ MCO must be conducted by a person or agent of the ~~MCHIP~~ MCO who has not been directly involved in the adverse ~~action~~ benefit determination under ~~review~~ appeal.

E. ~~After final review by~~ Pursuant to 42 CFR 438.402(c)(1)(B), after exhausting the ~~MCHIP~~ MCO's internal appeals process, there shall ~~also~~ be opportunity for ~~final independent~~ the enrollee to request an external medical review by ~~the~~ an independent external quality review organization. The review is optional and shall not be required before proceeding to a state fair hearing. The review shall not

extend any of the timeframes for issuing a decision and shall not disrupt any continuation of coverage granted to the enrollee.

F. There will be no opportunity for ~~review~~ appeal of an adverse action to the extent that such adverse action is based on a determination by the director that funding for FAMIS MOMS has been terminated or exhausted. ~~There will be no opportunity for review based on which type of delivery system (i.e., fee for service, MCHIP) is assigned.~~ There will be no opportunity for ~~review~~ appeal if the sole basis for the ~~adverse action~~ decision is a provision in the State Plan or in a state or federal law ~~or regulation~~ requiring an automatic change in eligibility or enrollment or a change in coverage under the health benefits package that affects all applicants or enrollees or a group of applicants or enrollees without regard to their individual circumstances.

G. The burden of proof shall be upon the applicant or enrollee to show that an adverse action or adverse benefit determination is incorrect.

H. At no time shall ~~the MCHIP's, local department's of social services, the CPU's~~ MCO, LDSS, CPU, or ~~DMAS'~~ DMAS failure to meet the ~~time frames~~ timeframes set in this chapter or set in ~~the MCHIP's~~ MCO or ~~DMAS'~~ DMAS written ~~review procedures~~ appeal procedure constitute a basis for granting the applicant or enrollee the relief sought.

12VAC30-141-710. Notice of adverse action or adverse benefit determination.

A. The ~~CPU or~~ LDSS, CPU, DMAS, or DMAS contractor shall send written notification to enrollees at least 10 calendar days prior to suspension or termination of enrollment.

B. DMAS or the ~~MCHIP~~ MCO shall send written notification to enrollees at least 10 calendar days prior to reduction, suspension, or termination of a previously authorized health service.

C. The local department of social services, ~~the~~ CPU, DMAS, or ~~the MCHIP~~ MCO shall send written notification to applicants and enrollees of all other adverse actions within 10 calendar days of the adverse action.

D. Notice shall include ~~the reasons for determination, an explanation of applicable rights to a review of that determination, the standard and expedited time frames for review, the manner in which a review can be requested, and the circumstances under which enrollment or services may continue pending review.~~:

1. The determination the LDSS, CPU, DMAS, or MCO has made or intends to make;

2. The reasons for the determination, including the right of the enrollee to be provided upon request and free of charge reasonable access to and copies of all documents, records, and other information relevant to the determination;

3. An explanation of applicable rights to request an appeal of that determination. For adverse benefit determinations by an MCO, this shall include information on the MCO's internal appeals process and, after the internal appeals process is exhausted, a state fair hearing pursuant to 42 CFR 402(b) and 42 CFR 402(c);

4. The procedures for exercising these appeal rights;

5. The circumstances under which an appeal process can be expedited and how to request it; and

6. The circumstances under which enrollment or services may continue pending appeal, how to request benefits be continued, and the circumstances, consistent with state policy, under which the enrollee may be required to pay the costs of these services.

12VAC30-141-720. Request for ~~review~~ appeal.

A. Requests for ~~review~~ internal appeal of ~~MCHIP~~ MCO adverse ~~actions~~ benefit determinations shall be submitted orally or in writing to the ~~MCHIP~~ MCO. Unless the enrollee requests an expedited appeal, an oral appeal request must be followed by a written appeal request. The enrollee must exhaust the MCO's internal appeals process before appealing to DMAS.

B. If the MCO fails to adhere to the notice or timing requirements set forth in this part, the enrollee is deemed to have exhausted the MCO's internal appeals process and may initiate a state fair hearing.

C. Requests for ~~review~~ appeal of adverse actions made by the ~~local department of social services,~~ LDSS, ~~the~~ CPU, or DMAS, or of internal appeal decisions by the MCO shall be submitted ~~in writing~~ to DMAS.

~~C.~~ D. Any ~~written~~ communication ~~clearly~~ expressing a desire to have an adverse ~~action~~ benefit determination by an MCO reviewed shall be treated as a request for ~~review~~ an internal appeal. Any communication expressing a desire to have an adverse action by the LDSS, CPU, or DMAS reviewed shall be treated as a request for a state fair hearing. Any communication expressing a desire to have an MCO internal appeal decision reviewed shall be treated as a request for a state fair hearing.

~~D.~~ E. To be timely, requests for ~~review~~ an internal appeal of ~~a MCHIP~~ an MCO's adverse benefit determination shall be received by the ~~MCHIP~~ MCO no later than ~~30~~ 60 calendar days from the date of the ~~MCHIP's~~ MCO's notice of adverse ~~action~~ benefit determination.

~~E.~~ F. To be timely, requests for an appeal of an adverse benefit determination upheld in whole or in part by the MCO's internal appeal decision shall be received by DMAS within 120 calendar days from the date of the internal appeal decision.

G. To be timely, requests for ~~review~~ appeal of a local department of social services, DMAS, or CPU ~~determination~~ adverse action shall be filed with DMAS no later than 30 calendar days from the date of the ~~CPU's, LDSS' or DMAS'~~ notice of adverse action. Requests for ~~review~~ appeal of ~~a local department of social services, DMAS, or CPU~~ an agency determination shall be considered filed with DMAS on the date the request is postmarked~~,~~ if mailed, or on the date the request is received~~,~~ if delivered other than by mail, by DMAS.

12VAC30-141-730. ~~Review~~ Appeal procedures.

A. At a minimum, the ~~MCHIP review~~ MCO internal appeal shall be conducted pursuant to written procedures as defined in § 32.1-137.6 of the Code of Virginia and ~~as may be further defined by DMAS~~ 42 CFR 438.400 et seq. Such procedures shall be subject to review and approval by DMAS.

B. Any adverse benefit determination upheld in whole or in part by the internal appeal decision issued by the MCO may be appealed by the enrollee to DMAS in accordance with the DMAS client appeals regulations at 12VAC30-110-10 through 12VAC30-110-370. DMAS shall conduct an evidentiary hearing in accordance with 12VAC30-110-10 through 12VAC30-110-370 and shall not base any appealed decision on the record established by any internal appeal decision of the MCO. The MCO shall comply with the DMAS appeal decision. The DMAS decision in these matters shall be final and shall not be subject to appeal by the MCO.

~~The DMAS review~~ C. Appeals of adverse actions by the LDSS, CPU, or DMAS shall be conducted pursuant to ~~written procedures developed by DMAS~~ 12VAC30-110.

~~C. The procedures in effect on the date a particular request for review is received by the MCHIP or DMAS shall apply throughout the review.~~

D. Copies of the procedures shall be promptly ~~mailed~~ provided by the ~~MCHIP~~ MCO or DMAS to applicants and enrollees upon receipt of timely requests for ~~review~~ internal appeals or state fair hearings. Such written procedures shall include ~~but not be limited to~~ the following:

1. The right to representation by an attorney or other agent of the applicant's or enrollee's choice, but at no time shall the ~~MCHIP, local department of social services,~~ MCO, LDSS, DSS, or DMAS be required to obtain or compensate attorneys or other agents acting on behalf of applicants or enrollees;

2. The right to timely review of ~~their~~ files and other applicable information relevant to the ~~review~~ internal appeal or state fair hearing of the decision;

3. The right to fully participate in the ~~review~~ internal appeal or state fair hearing process, whether the ~~review~~ internal appeal or state fair hearing is conducted in person or in writing, including the presentation of supplemental information during the ~~review~~ internal appeal or state fair hearing process;

4. The right to have personal and medical information and records maintained as confidential; ~~and~~

5. The right to a written final decision ~~within 90 calendar days of receipt of the request for review, unless the applicant or enrollee requests or causes a delay.~~:

a. For internal appeals to the MCO, within 30 calendar days of receipt of the request for an internal appeal; or

b. For state fair hearings, within the time limitations for appeals imposed by federal regulations and as permitted in 12VAC30-110-30;

~~E.~~ 6. For eligibility and enrollment matters, if the applicant's or enrollee's physician or health plan determines that the 90-calendar-day timeframe could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain, or regain maximum function, an applicant or enrollee will have the opportunity to request an expedited ~~review~~ appeal. Under these conditions, a request for ~~review~~ an expedited appeal shall result in a written final decision within ~~three business days~~ 72 hours after DMAS receives~~,~~ the expedited appeal request from the physician or health plan~~,~~ with the case record and information indicating that taking the time for a standard resolution of the ~~review~~ appeal request could seriously jeopardize the applicant's or enrollee's life or health or ability to attain, maintain, or regain maximum function, unless the applicant or enrollee ~~or her authorized representative causes a delay.~~ requests an extension;

~~F.~~ 7. For health services matters for FAMIS MOMS enrollees receiving services through ~~MCHIPs, if~~ an MCO:

a. If the enrollee's physician or health plan determines that the ~~90-calendar-day~~ 30-calendar-day timeframe for a standard internal appeal could seriously jeopardize the enrollee's life ~~or~~, health, or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to request an expedited ~~review~~ internal appeal. Under these conditions, a request for ~~review~~ an internal appeal shall result in a written decision by the ~~external quality review organization~~ MCO within 72 hours from the time ~~an enrollee requests~~ the expedited ~~review~~ internal appeal is requested, unless the applicant, enrollee, or authorized representative requests ~~or causes~~ a delay. If a delay is requested ~~or caused~~ by the applicant, enrollee, or authorized representative, then expedited ~~review~~ internal appeal may be extended up to 14 calendar days.

b. If the adverse benefit determination is upheld in whole or in part by the expedited internal appeal decision issued by the MCO, and if the enrollee's physician or health plan determines that the timeframe for a standard appeal

to DMAS could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to request an expedited appeal to DMAS. Under these conditions, a request for a state fair hearing shall result in a written decision within 72 hours from the time an enrollee requests the expedited appeal, unless the applicant, enrollee, or authorized representative requests or causes a delay. If a delay is requested by the applicant, enrollee, or authorized representative, then the expedited appeal may be extended up to 14 calendar days; and

~~C.~~ 8. For health services matters for FAMIS MOMS enrollees receiving services through fee-for-service, if the enrollee's physician or health plan determines that the 90-calendar-day timeframe for a standard appeal could seriously jeopardize the enrollee's life, health, or ability to attain, maintain, or regain maximum function, an enrollee will have the opportunity to request an expedited review. Under these conditions, a request for ~~review~~ an expedited appeal shall result in a written decision within 72 hours from the time ~~an enrollee requests~~ the expedited ~~review~~ appeal is requested, unless the applicant, enrollee, or authorized representative requests or causes a delay. If a delay is requested or caused by the applicant, enrollee, or authorized representative, then expedited ~~review~~ appeal may be extended up to 14 calendar days.

12VAC30-141-740. ~~Eligibility requirements~~ General conditions of eligibility.

A. This section shall be used to determine eligibility of pregnant women for FAMIS MOMS.

B. FAMIS MOMS shall be in effect statewide.

C. Eligible pregnant women must:

1. Be determined ineligible for Medicaid due to excess income by ~~a local department of social services or~~ LDSS, by DMAS ~~eligibility staff co-located at the FAMIS~~, or by the CPU;

2. Be a pregnant woman at the time of application;

3. Be a resident of the Commonwealth as described in 12VAC30-141-100 E;

4. Be either a ~~U.S.~~ United States citizen, ~~U.S.~~ United States national, lawfully residing, or a qualified noncitizen as described in 12VAC30-141-100 E;

5. Be uninsured, that is, not have ~~comprehensive~~ creditable health insurance coverage; and

6. Not be an inpatient in an institution for mental diseases ~~(IMD)~~, or an inmate in a public institution that is not a medical facility.

D. ~~Income~~ Financial eligibility.

1. Screening. All applications for FAMIS MOMS coverage ~~received at the FAMIS central processing unit must be screened to identify applicants who are potentially eligible for Medicaid~~ shall have a Medicaid income eligibility screen completed. Pregnant women ~~screened and found potentially eligible for Medicaid cannot be enrolled in FAMIS MOMS until there has been a finding of ineligibility for Medicaid. Pregnant women who do not appear to be eligible for Medicaid due to excess income~~ determined to be ineligible for Medicaid due to excess income shall have their eligibility for FAMIS MOMS determined ~~and, if eligible, will be enrolled in the FAMIS MOMS program. Applications for FAMIS MOMS received at a local department of social services shall have a full Medicaid eligibility determination completed. Pregnant women determined to be ineligible for Medicaid due to excess income will have their eligibility for FAMIS MOMS determined and, if eligible, the local department of social services will enroll the pregnant woman in the FAMIS MOMS program~~.

2. Standards. Income standards for FAMIS MOMS are ~~based on a comparison of countable income to 200% of the federal poverty level for the family size. Countable income and family size are based on the methodology utilized by the Medicaid program as defined in 12VAC30-40-100 B 1 b. Pregnant women who have income at or below 200% of the federal poverty level, but are ineligible for Medicaid due to excess income, will be income eligible to participate in FAMIS MOMS~~ the same as those described at 12VAC30-141-100 F 2, applied to pregnant women. For purposes of income determination, the family size of the pregnant woman will count the unborn child.

3. Spenddown. ~~Deduction of incurred medical expenses from countable income (spenddown) shall not apply in FAMIS MOMS. If the family income exceeds the income limits described in this section, the individual shall be ineligible for FAMIS MOMS regardless of the amount of any incurred medical expenses~~ DMAS does not apply a spenddown process for FAMIS MOMS where household income exceeds the income eligibility limit for FAMIS MOMS.

~~E. Residency. The requirements for residency, as set forth in 42 CFR 435.403, will be used when determining whether a pregnant woman is a resident of Virginia for purposes of eligibility for FAMIS MOMS. A child who is not emancipated and is temporarily living away from home is considered living with her parents, adult relative caretaker, legal guardian, or person having legal custody if the absence is temporary and the child intends to return to the home when the purpose of the absence (such as education, medical care, rehabilitation, vacation, visit) is completed.~~

~~F. U.S. citizenship or nationality. Upon signing the declaration of citizenship or nationality required by § 1137(d) of the Social Security Act, the applicant or recipient is required under § 2105(c)(9) to furnish satisfactory documentary evidence of U.S. citizenship or nationality and documentation of personal identity unless citizenship or nationality has been verified by the Commissioner of Social Security or unless otherwise exempt.~~

~~G. Qualified noncitizen. The requirements for qualified aliens set out in Public Law 104-193, as amended, and the requirements for noncitizens set out in subdivisions 3 b, c, and e of 12VAC30-40-10 will be used when determining whether a pregnant woman is a qualified noncitizen for purposes of FAMIS MOMS eligibility.~~

~~H.~~ E. Coverage under other health plans.

1. Any pregnant woman covered under a group health plan or under health insurance coverage, as defined in § 2791 of the Public Health Services Act (42 USC § 300gg-91(a) and (b)(1)), shall not be eligible for FAMIS MOMS.

2. ~~No~~ FAMIS MOMS shall not be a substitution for private insurance.

a. Only uninsured pregnant women shall be eligible for FAMIS MOMS. A pregnant woman is not considered to be insured if the health insurance plan covering the pregnant woman does not have a network of providers in the area where the pregnant woman resides. Each application for FAMIS MOMS coverage shall include an inquiry about health insurance the pregnant woman has at the time of application.

b. Health insurance does not include Medicare, Medicaid, FAMIS or insurance for which DMAS paid premiums under Title XIX through the Health Insurance Premium Payment (HIPP) Program or under Title XXI through the SCHIP premium assistance program.

12VAC30-141-750. Duration of eligibility.

A. The effective date of FAMIS MOMS eligibility shall be the first day of the month in which ~~a signed~~ an application was received by ~~either the FAMIS central processing unit or a local department of social services~~ LDSS, DMAS, or the CPU if the applicant met all eligibility requirements in that month.

B. Eligibility for FAMIS MOMS will continue through the last day of the month in which the 60th day occurs, following the last day the woman was pregnant, regardless of the reason the pregnancy ended. Eligibility will continue until the end of the coverage period, regardless of changes in circumstances such as income or family size.

12VAC30-141-760. Pregnant women ineligible for FAMIS MOMS.

A. If a pregnant woman is:

1. Eligible for Medicaid, ~~or would be eligible if she applied for Medicaid,~~ she shall be ineligible for coverage under FAMIS MOMS~~. A pregnant woman found through the screening process to be potentially eligible for Medicaid but who fails to complete the Medicaid application process for any reason, cannot be enrolled in FAMIS MOMS~~;

2. An inmate of a public institution as ~~defined~~ provided in 42 CFR ~~435.1009~~ 435.1009(a)(1), she shall be ineligible for FAMIS MOMS at the initial determination of eligibility; or

3. An inpatient in an institution for mental disease ~~(IMD)~~ as ~~defined~~ provided in ~~42 CFR 435.1010~~ 42 CFR 435.1010(a)(2), she shall be ineligible for FAMIS MOMS at the initial determination of eligibility.

B. If a pregnant woman age 18 years or older or, if younger than age 18 years, a parent or other authorized representative does not meet the requirements of assignment of rights to benefits or requirements of cooperation with the agency in identifying and providing information to assist the Commonwealth in pursuing any liable third party, the pregnant woman shall be ineligible for FAMIS MOMS.

C. If a pregnant woman age 18 years or older, or if younger than age 18 years, a parent, adult relative caretaker, guardian, or legal custodian obtained benefits for a pregnant woman who would otherwise be ineligible by willfully misrepresenting material facts on the application or failing to report changes, the pregnant woman for whom the application is made shall be ineligible for FAMIS MOMS. The pregnant woman age 18 years or older, or if younger than age 18 years, the parent, adult relative caretaker, guardian, or legal custodian who signed the application shall be liable for repayment of the cost of all benefits issued as the result of the misrepresentation.

12VAC30-141-790. Application requirements.

A. Availability of program information. DMAS or its designee shall furnish the following information in written form and orally as appropriate to all applicants and to other individuals who request it:

1. The eligibility requirements;

2. Summary of covered benefits;

3. Copayment amounts required; and

4. The rights and responsibilities of applicants and enrollees.

B. Opportunity to apply. DMAS or its designee must afford a pregnant woman, wishing to do so, the opportunity to apply for the FAMIS MOMS program. ~~Applications from pregnant~~

~~women will be accepted at a central site designated by DMAS and at local departments of social services throughout the Commonwealth.~~ Applicants may file an application ~~for health insurance~~ by mail, by fax, by phone, via the internet, or in person at local departments of social services. ~~Applications filed at the FAMIS CPU can be submitted by mail, by fax, by the Internet, or by phone.~~ Face-to-face interviews for the program are not required. Eligibility determinations for FAMIS MOMS shall occur at ~~either local departments of social services or at the DMAS designated central site~~ LDSS, DMAS, or the CPU.

C. Application. DMAS or its designee shall require an application from the applicant if the applicant is at least 18 years of age or older, or from a parent, adult relative caretaker, guardian, legal custodian, or authorized representative if the applicant is younger than 18 years of age or the applicant is incapacitated.

1. DMAS employs a single, streamlined application developed by the state and approved by the Secretary of the Department of Health and Human Services in accordance with § 1413(b)(1)(B) of the Affordable Care Act.

2. DMAS may employ an alternative application used to apply for multiple human service programs approved by the Secretary of the Department of Health and Human Services, provided that the agency makes readily available the single or alternative application used only for insurance affordability programs to individuals seeking assistance only through such programs.

D. Right to apply. An individual who is 18 years of age or older shall not be refused the right to complete an application for health insurance for herself and shall not be discouraged from asking for assistance for herself under any circumstances.

~~D.~~ E. Applicant's signature. The applicant must sign state-approved application forms submitted, even if another person fills out the form, unless the application is filed and signed by the applicant's parent, spouse, adult relative caretaker, legal guardian or conservator, attorney-in-fact or authorized representative.

~~E.~~ F. The authorized representative for an individual 18 years of age or older shall be those individuals as set forth in 12VAC30-110-1380.

~~F.~~ G. The authorized representative for children younger than 18 years of age shall be those individuals as set forth in 12VAC30-110-1390.

~~G.~~ H. Persons prohibited from signing an application. An employee of, or an entity hired by, a medical service provider who stands to obtain FAMIS MOMS payments shall not sign an application for health insurance on behalf of an individual who cannot designate an authorized representative.

~~H. Written application. DMAS or its designee shall require a written application from the applicant if she is at least 18 years of age or older, or from a parent, adult relative caretaker, guardian, legal custodian, or authorized representative if the applicant is less than 18 years of age or the applicant is incapacitated. The application must be on a form prescribed by DMAS and must be signed under a penalty of perjury. The application form shall contain information sufficient to determine Medicaid and FAMIS MOMS eligibility.~~

I. Assistance with application. DMAS or its designee shall allow an individual ~~or individuals~~ of the applicant's choice to assist and represent the applicant in the application process, or a ~~redetermination~~ renewal process for eligibility.

J. Timely determination of eligibility. The time processing standards for determining eligibility for FAMIS MOMS coverage begin with the date ~~a signed~~ an application is submitted online, by telephone, by fax, or received ~~either~~ in hard copy at a local department of social services or the ~~FAMIS~~ CPU. All ~~Applications received at local departments of social services must~~ applications shall have ~~a full Medicaid~~ an eligibility determination ~~and, when a pregnant woman is determined to be ineligible~~ for Medicaid ~~due to excess income, a~~ for pregnant women and FAMIS MOMS ~~eligibility determination~~ performed~~,~~ within the ~~same~~ Medicaid case processing time standards (10 business days) if all information necessary to make the determination has been received.

~~Except in cases of unusual circumstances as described below, health insurance applications for pregnant women received at the local department of social services shall have a Medicaid eligibility determination completed and, if denied Medicaid for excess income, a FAMIS MOMS eligibility determination completed within 10 business days of the date the signed application was received at the local department. An application from a pregnant woman received at the FAMIS CPU and screened as ineligible for Medicaid, shall have a FAMIS MOMS eligibility determination completed within 10 business days of the date the complete application was received at the CPU. Complete applications that are screened as Medicaid likely will be processed within the 10 business day time standard. If the application cannot be processed within this standard, a notice will be sent to the applicant explaining why a decision has not yet been made.~~

~~1. Unusual circumstances include administrative or other emergency beyond the agency's control. In such case, DMAS or its designee or the LDSS must document, in the applicant's case record, the reasons for delay. DMAS or its designee or the local department of social services must not use the time standards as a waiting period before determining eligibility or as a reason for denying eligibility because it has not determined eligibility within the time standards.~~

~~2. Applications filed at the CPU that are incomplete shall be held open for a period of 30 calendar days to enable applicants to provide outstanding information needed for an eligibility determination. Incomplete applications determined complete by the receipt of additional information required to determine FAMIS MOMS eligibility will be processed in an expedited manner upon receipt of the additional information. Any applicant who fails to provide, within 30 calendar days of the receipt of the initial application, information or verifications necessary to determine eligibility, shall have her application for FAMIS MOMS eligibility denied.~~

K. Notice of ~~DMAS', its designee's or~~ the ~~local department of social services'~~ decision concerning eligibility. DMAS, ~~its designee or the local department of social services must~~ an LDSS, or the CPU shall send each applicant a written notice of the ~~agency's/designee's~~ agency's or designee's decision on ~~her~~ the applicant's application, and~~,~~ if approved, ~~her~~ the applicant's obligations under the program. If eligibility for FAMIS MOMS is denied, notice ~~must~~ shall be given concerning the reasons for the action and an explanation of the applicant's right to request a review of the adverse actions, as described in 12VAC30-141-50.

L. Case documentation. DMAS, ~~its designee, or~~ the local department of social services ~~must~~, or the CPU shall include in each applicant's record all necessary facts to support the decision on ~~her~~ the applicant's application~~,~~ and ~~must~~ shall dispose of each application by a finding of eligibility or ineligibility, unless (i) there is an entry in the case record that the applicant voluntarily withdrew the application and that the agency or its designee sent a notice confirming ~~her~~ the applicant's decision~~;~~ or (ii) there is a supporting entry in the case record that the applicant cannot be located.

M. Case maintenance. All cases approved for FAMIS MOMS shall be maintained at ~~the FAMIS CPU~~ departments of social services or the CPU. ~~Pregnant women determined by local departments of social services to be eligible for FAMIS MOMS shall have their cases transferred to the FAMIS CPU for ongoing case maintenance. The FAMIS CPU~~ The LDSS or the agency determining eligibility will be responsible for providing newly enrolled recipients with program information, benefits available, how to secure services under the program, a FAMIS MOMS handbook, and for processing changes in eligibility within established ~~time frames~~ timeframes. DMAS outreach resources may also provide information or assistance to the enrollee.

N. Notice of decision concerning eligibility. ~~DMAS or the FAMIS CPU~~ LDSS, DMAS, or the CPU must give enrollees timely notice of proposed action to terminate their eligibility under FAMIS MOMS. The notice must meet the requirements of 42 CFR 457.1180.

12VAC30-141-800. Copayments.

A. Pregnant women enrolled in FAMIS MOMS will be subject to copayments for medical services in the same manner and amount as pregnant women covered by the Medicaid program as defined in 12VAC30-10-570 B and C.

B. These cost-sharing provisions shall be implemented with the following restrictions:

1. Total cost sharing for a pregnant woman shall be limited to ~~the lesser of (i) $180 and (ii) 2.5% of the family's income~~ (i) for families with incomes equal to or less than 150% of federal poverty level (FPL), the lesser of (a) $180 and (b) 2.5% of the family's income for the year; and (ii) for families with incomes greater than 150% of FPL, the lesser of $350 and 5.0% of the family's income for the year for the duration of ~~her~~ the pregnant woman's enrollment in FAMIS MOMS.

2. If a family includes a pregnant woman enrolled in FAMIS MOMS and a child ~~or children~~ enrolled in FAMIS, DMAS or its designee shall ensure that the annual aggregate cost sharing for all Title XXI enrollees in a family does not exceed the cost sharing caps as defined in 12VAC30-141-160 B.

3. Families will be required to submit documentation to DMAS or its designee showing that their maximum copayment amounts are met for the year.

4. Once the cap is met, DMAS or its designee will issue a new eligibility card or written documentation excluding such families from paying additional copays.

C. Exceptions to the above cost-sharing provisions. No cost sharing will be charged to American Indians and Alaska Natives.

12VAC30-141-880. Assignment to managed care.

A. All eligible enrollees shall be assigned in managed care through the department or the central processing unit (CPU) under contract to DMAS. FAMIS MOMS individuals, during the preassignment period to an MCHIP, shall receive Medicaid-like benefits via fee-for-service utilizing a FAMIS MOMS card issued by DMAS. After assignment to an MCHIP, benefits and the delivery of benefits shall be administered specific to the managed care program in which the individual is enrolled.

1. MCHIPs shall be offered to enrollees in all areas.

2. All enrollees shall be assigned to that contracted MCHIP.

3. Enrollees shall be assigned through a random system algorithm.

4. Enrolled individuals will receive a letter indicating that they may select one of the contracted MCHIPs that serve such area. Enrollees who do not select an MCHIP as

described above, shall be assigned to an MCHIP as described in subdivision 3 of this subsection.

5. Individuals assigned to an MCHIP who lose and then regain eligibility for FAMIS MOMS within 60 calendar days will be reassigned to their previous MCHIP.

B. Following their initial assignment to an MCHIP, those enrollees shall be restricted to that MCHIP until their next annual eligibility redetermination, unless appropriately disenrolled by the department.

1. During the first 90 calendar days of managed care assignment, an enrollee may request reassignment for any reason from that MCHIP to another MCHIP serving that geographic area. Such reassignment shall be effective no later than the first day of the second month after the month in which the enrollee requests reassignment.

2. After the first 90 calendar days of the assignment period, the enrollee may only be reassigned from one MCHIP to another MCHIP upon determination by DMAS that good cause exists pursuant to subsection C of this section.

C. Disenrollment for good cause may be requested at any time.

1. After the first 90 calendar days of assignment in managed care, enrollees may request disenrollment from DMAS based on good cause. The request must ~~be made in writing to DMAS and~~ cite the reasons why the enrollee wishes to be reassigned. ~~The department shall establish procedures for good cause reassignment through written policy directives~~.

2. DMAS shall determine whether good cause exists for reassignment.

D. Exclusion for assignment to a MCHIP. The following individuals shall be excluded from assignment to a MCHIP. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified ~~time frame~~ timeframe of the effective date of their MCHIP enrollment. Exclusion may be granted only if the member's obstetrical provider (physician or hospital) does not participate with the enrollee's assigned MCHIP. Exclusion requests made during the third trimester may be made by the enrollee, MCHIP, or provider. DMAS shall determine if the request meets the criteria for exclusion.

VA.R. Doc. No. R17-4662; Filed October 4, 2018, 1:17 p.m.

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TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **14VAC5-300. Rules Governing Credit for Reinsurance (amending 14VAC5-300-60 through 14VAC5-300-95, 14VAC5-300-110, 14VAC5-300-150).**

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

Effective Date: November 1, 2018.

Agency Contact: Raquel C. Pino, Policy Advisor, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9873, or email raquel.pino@scc.virginia.gov.

Summary:

The amendments correct subsection citations to § 38.2-1316.2 of the Code of Virginia pertaining to credit allowed a domestic ceding insurer. Chapter 477 of the 2017 Acts of Assembly amended § 38.2-1316.2 effective on July 1, 2017. Certain National Association of Insurance Commissioners documents incorporated by reference into the regulation have also been updated.

AT RICHMOND, SEPTEMBER 28, 2018

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2018-00182

Ex Parte: In the matter of Amending the
Rules Governing Credit for Reinsurance

ORDER ADOPTING AMENDED RULES

By Order to Take Notice ("Order") entered July 2, 2018, insurers and interested persons were ordered to take notice that subsequent to September 20, 2018, the State Corporation Commission ("Commission") would consider the entry of an order adopting amendments to rules set forth in Chapter 300 of Title 14 of the Virginia Administrative Code, entitled Rules Governing Credit for Reinsurance, 14 VAC 5-300-10 et seq. ("Rules"), which amend the Rules at 14 VAC 5-300-60 through 14 VAC 5-300-95, 14 VAC 5-300-110, and 14 VAC 5-300-150, unless on or before September 20, 2018 any insurers or interested persons file written comments or

request a hearing to consider the amendments to the Rules with the Clerk of the Commission ("Clerk").

No comments were filed with the Clerk. No requests for a hearing were filed with the Clerk.

The amendments to Chapter 300 are necessary to correct subsection references to § 38.2-1316.2 of the Code pertaining to credit allowed a domestic ceding insurer. The subsection references to § 38.2-1316.2 have been changed due to the enactment of Chapter 477 of the 2017 Acts of Assembly, which took effect on July 1, 2017. No changes have been made to the proposed amendments to the Rules.

NOW THE COMMISSION, having considered the proposed amendments to the Rules, is of the opinion that the attached amendments to the Rules should be adopted, effective November 1, 2018.

Accordingly, IT IS ORDERED THAT:

(1) The amendments to the Rules Governing Credit for Reinsurance at Chapter 300 of Title 14 of the Virginia Administrative Code which amend the Rules at 14 VAC 5-300-60 through 14 VAC 5-300-95, 14 VAC 5-300-110, and 14 VAC 5-300-150, which are attached hereto and made a part hereof, are hereby ADOPTED effective November 1, 2018.

(2) The Bureau of Insurance forthwith shall give notice of the adoption of the amendments to the Rules to all insurers, burial societies, fraternal benefit societies, health services plans, risk retention groups, joint underwriting associations, group self-insurance pools, and group self-insurance associations licensed by the Commission, to qualified reinsurers in Virginia, and to all interested persons.

(3) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the amendments to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(4) The Commission's Division of Information Resources shall make available this Order and the attached amendments to the Rules on the Commission's website: http://www.scc.virginia.gov/case.

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

(6) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: Office of the Attorney General, Division of Consumer Counsel, 202 North 9th Street, 8th Floor, Richmond, Virginia 23219-3424; and a copy hereof shall be delivered to the Commission's Office of General Counsel and the Bureau of Insurance in care of Deputy Commissioner Donald C. Beatty.

14VAC5-300-60. Credit for reinsurance; reinsurer licensed in this Commonwealth.

Pursuant to § 38.2-1316.2 ~~A 1 and B~~ C 1 of the Act, the commission shall allow credit when reinsurance is ceded to an assuming insurer which is licensed to transact insurance in this Commonwealth. For purposes of this section, an insurer shall not be considered so "licensed" unless it is fully authorized to actively solicit and conduct its business in this Commonwealth and in its domiciliary state.

14VAC5-300-70. Credit for reinsurance; accredited reinsurers.

A. Pursuant to § 38.2-1316.2 ~~A~~ C 2 of the Act, the commission shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that is accredited as a reinsurer in this Commonwealth as of the date on which statutory financial statement credit for reinsurance is claimed. An accredited reinsurer shall:

1. File a properly executed Certificate of Assuming Insurer as evidence of its submission to this Commonwealth's jurisdiction and to this Commonwealth's authority to examine its books and records;

2. File with the commission a certified copy of a certificate of authority or other acceptable evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

3. File annually with the commission an electronic copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement; and

4. Maintain a surplus as regards policyholders in an amount not less than $20 million, or obtain the affirmative approval of the commission upon a finding that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers.

B. If the commission determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commission may upon written notice and opportunity for hearing, suspend, or revoke the accreditation. Credit shall not be allowed a domestic ceding insurer under this section if the assuming insurer's accreditation has been revoked by the commission, or if the reinsurance was ceded while the assuming insurer's accreditation was under suspension by the commission.

14VAC5-300-80. Credit for reinsurance; reinsurer domiciled and licensed in another state, and neither licensed nor accredited in Virginia.

A. Pursuant to the provisions of § 38.2-1316.2 ~~A~~ C 3 of the Act, the commission shall allow credit

for reinsurance ceded by a domestic insurer to an assuming insurer that as of any date on which statutory financial statement credit for reinsurance is claimed:

1. Is domiciled in ~~(~~or, in the case of a United States branch of an alien assuming insurer, is entered through~~)~~ a state that employs standards regarding credit for reinsurance substantially similar to those applicable under the Act and this chapter;

2. Maintains a surplus as regards policyholders in an amount not less than $20 million; and

3. Files a properly executed Certificate of Assuming Insurer with the commission as evidence of its submission to this Commonwealth's authority to examine its books and records.

B. The provisions of this section relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used in this section, "substantially similar" standards means credit for reinsurance standards that the commission determines equal or exceed the standards of the Act and this chapter.

14VAC5-300-90. Credit for reinsurance; reinsurers maintaining trust funds.

A. Pursuant to § 38.2-1316.2 ~~A~~ C 4 of the Act, the commission shall allow credit for reinsurance ceded to a trusteed assuming insurer which, as of the date of the ceding insurer's statutory financial statement:

1. Maintains a trust fund and trusteed surplus that complies with the provisions of § 38.2-1316.2 ~~A~~ C 4;

2. Complies with the requirements set forth in subsections B, C, and D of this section; and

3. Reports annually to the commission on or before June 1 of each year in which a ceding insurer seeks reserve credit under the Act substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commission to determine the sufficiency of the trust fund. The accounting shall, among other things, set forth the balance to the trust and list the trust's investments as of the preceding year end and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

B. The following requirements apply to the following categories of assuming insurer:

1. The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States domiciled insurers, and in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million, except as provided in subdivision 2 of this subsection.

2. At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

3. a. The trust fund for a group including incorporated and individual unincorporated underwriters shall consist of:

(1) For reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, funds in trust in an amount not less than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group;

(2) For reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this chapter, funds in trust in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States; and

(3) In addition to these trusts, the group shall maintain a trusteed surplus of which $100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all the years of account.

b. The incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of regulation and solvency control by the group's

domiciliary regulator as are the unincorporated members. The group shall, within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, provide to the commission:

(1) An annual certification by the group's domiciliary regulator of the solvency of each underwriter member of the group; or

(2) If a certification is unavailable, a financial statement~~,~~ prepared by independent public accountants~~,~~ of each underwriter member of the group.

4. a. The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholders surplus of $10 billion (calculated and reported in substantially the same manner as prescribed by the NAIC Annual Statement Instructions and the NAIC Accounting Practices and Procedures Manual) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall:

(1) Consist of funds in trust in an amount not less than the assuming insurers' several liabilities attributable to business ceded by United States domiciled ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group;

(2) Maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group; and

(3) File a properly executed Certificate of Assuming Insurer as evidence of the submission to this Commonwealth's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination.

b. Within 90 days after the statements are due to be filed with the group's domiciliary regulator, the group shall file with the commission an annual certification of each underwriter member's solvency by the member's domiciliary regulators, and financial statements, prepared by independent public accountants, of each underwriter member of the group.

C. 1. Credit for reinsurance shall not be granted unless the form of the trust and any amendments to the trust have been approved by either the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted responsibility for regulatory oversight of the trust. The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that:

a. Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States;

b. Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in interest;

c. The trust and the assuming insurer shall be subject to examination as determined by the commission;

d. The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust; and

e. No later than February 28 of each year the trustees of the trust (i) shall report to the commission in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end and (ii) shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next December 31.

2. a. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by this subsection or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight over the trust or other designated receiver all of the assets of the trust fund.

b. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight over the trust in accordance with the laws of the state in which the trust is domiciled applicable to the liquidation of domestic insurance companies.

c. If the commissioner with regulatory oversight over the trust determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States beneficiaries of the trust, the commissioner with regulatory oversight over the trust shall return the assets, or any part thereof, to the trustee for distribution in accordance with the trust agreement.

d. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

D. For purposes of this section, the term "liabilities" shall mean the assuming insurer's gross liabilities attributable to reinsurance ceded by United States domiciled insurers, excluding liabilities that are otherwise secured by acceptable means, and, shall include:

1. For business ceded by domestic insurers authorized to write accident and health, and property and casualty insurance:

a. Losses and allocated loss expenses paid by the ceding insurer, recoverable from the assuming insurer;

b. Reserves for losses reported and outstanding;

c. Reserves for losses incurred but not reported;

d. Reserves for allocated loss expenses; and

e. Unearned premiums.

2. For business ceded by domestic insurers authorized to write life, health, and annuity insurance:

a. Aggregate reserves for life policies and contracts net of policy loans and net due and deferred premiums;

b. Aggregate reserves for accident and health policies;

c. Deposit funds and other liabilities without life or disability contingencies; and

d. Liabilities for policy and contract claims.

E. Assets deposited in trusts established pursuant to § 38.2-1316.2 of the Act and this section shall be valued according to their current fair market value and shall consist only of cash in United States dollars, certificates of deposit issued by a United States financial institution as defined in § 38.2-1316.1 of the Act, clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States financial institution, as defined in § 38.2-1316.1, and investments of the type specified in this subsection, but investments in or issued by an entity controlling, controlled by or under common control with either the grantor or beneficiary of the trust shall not exceed 5.0% of total investments. No more than 20% of the total of the investments in the trust may be foreign investments authorized under subdivisions 1 e, 3, 5 b, or 6 of this subsection, and no more than 10% of the total of the investments in the trust may be securities denominated in foreign currencies. For purposes of applying the preceding sentence, a depository receipt denominated in United States dollars and representing rights conferred by a foreign security shall be classified as a foreign investment denominated in a foreign currency. The assets of a trust established to satisfy the requirements of § 38.2-1316.2 shall be invested only as follows:

1. Government obligations that are not in default as to principal or interest, that are valid and legally authorized and that are issued, assumed, or guaranteed by:

a. The United States or by any agency or instrumentality of the United States;

b. A state of the United States;

c. A territory, possession, or other governmental unit of the United States;

d. An agency or instrumentality of a governmental unit referred to in subdivisions 1 b and c of this subsection if the obligations shall be by law (statutory or otherwise) payable, as to both principal and interest, from taxes levied or by law required to be levied or from adequate special revenues pledged or otherwise appropriated or by law required to be provided for making these payments, but shall not be obligations eligible for investment under this subsection if payable solely out of special assessments on properties benefited by local improvements; or

e. The government of any other country that is a member of the Organization for Economic Cooperation and Development and whose government obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

2. Obligations that are issued in the United States, or that are dollar denominated and issued in a non-United States market, by a solvent United States institution (other than an insurance company) or that are assumed or guaranteed by a solvent United States institution (other than an insurance company) and that are not in default as to principal or interest if the obligations:

a. Are rated A or higher (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC, or if not so rated, are similar in structure and other material respects to other obligations of the same institution that are so rated;

b. Are insured by at least one authorized insurer (other than the investing insurer or a parent, subsidiary or affiliate of the investing insurer) licensed to insure obligations in this Commonwealth and, after considering the insurance, are rated AAA (or the equivalent) by a securities rating agency recognized by the Securities Valuation Office of the NAIC; or

c. Have been designated as Class One or Class Two by the Securities Valuation Office of the NAIC;

3. Obligations issued, assumed or guaranteed by a solvent non-United States institution chartered in a country that is a member of the Organization for Economic Cooperation and Development or obligations of United States corporations issued in a non-United States currency, provided that in either case the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC;

4. An investment made pursuant to the provisions of subdivision 1, 2, or 3 of this subsection shall be subject to the following additional limitations:

a. An investment in or loan upon the obligations of an institution other than an institution that issues mortgage-related securities shall not exceed 5.0% of the assets of the trust;

b. An investment in any one mortgage-related security shall not exceed 5.0% of the assets of the trust;

c. The aggregate total investment in mortgage-related securities shall not exceed 25% of the assets of the trust; and

d. Preferred or guaranteed shares issued or guaranteed by a solvent United States institution are permissible investments if all of the institution's obligations are eligible as investments under subdivisions 2 a and 2 c of this subsection, but shall not exceed 2.0% of the assets of the trust.

5. Equity interests.

a. Investments in common shares or partnership interests of a solvent United States institution are permissible if:

(1) Its obligations and preferred shares, if any, are eligible as investments under this subsection; and

(2) The equity interests of the institution (except an insurance company) are registered on a national securities exchange as provided in the Securities Exchange Act of 1934, 15 USC §§ 78 a to 78 kk or otherwise registered pursuant to that Act, and if otherwise registered, price quotations for them are furnished through a nationwide automated quotations system approved by the Financial Industry Regulatory Authority, or successor organization. A trust shall not invest in equity interests under this subdivision an amount exceeding 1.0% of the assets of the trust even though the equity interests are not so registered and are not issued by an insurance company;

b. Investments in common shares of a solvent institution organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development~~,~~ if:

(1) All its obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC; and

(2) The equity interests of the institution are registered on a securities exchange regulated by the government of a country that is a member of the Organization for Economic Cooperation and Development;

c. An investment in or loan upon any one institution's outstanding equity interests shall not exceed 1.0% of the assets of the trust. The cost of an investment in equity interests made pursuant to this subdivision, when added to the aggregate cost of other investments in equity interests then held pursuant to this subdivision, shall not exceed 10% of the assets in the trust;

6. Obligations issued, assumed, or guaranteed by a multinational development bank, provided the obligations are rated A or higher, or the equivalent, by a rating agency recognized by the Securities Valuation Office of the NAIC.

7. Investment companies.

a. Securities of an investment company registered pursuant to the Investment Company Act of 1940, 15 USC § 80 a, are permissible investments if the investment company:

(1) Invests at least 90% of its assets in the types of securities that qualify as an investment under subdivision 1, 2, or 3 of this subsection or invests in securities that are determined by the commission to be substantively similar to the types of securities set forth in subdivision 1, 2, or 3 of this subsection; or

(2) Invests at least 90% of its assets in the types of equity interests that qualify as an investment under subdivision 5 a of this subsection;

b. Investments made by a trust in investment companies under this subdivision shall not exceed the following limitations:

(1) An investment in an investment company qualifying under subdivision 7 a (1) of this subsection shall not exceed 10% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall not exceed 25% of the assets in the trust; and

(2) Investments in an investment company qualifying under subdivision 7 a (2) of this subsection shall not exceed 5.0% of the assets in the trust and the aggregate amount of investment in qualifying investment companies shall be included when calculating the permissible aggregate value of equity interests pursuant to subdivision 5 a of this subsection.

8. Letters of credit.

a. In order for a letter of credit to qualify as an asset of the trust, the trustee shall have the right and the obligation pursuant to the deed of trust or some other binding agreement (as duly approved by the commission)~~,~~ to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if the letter of credit will otherwise expire without being renewed or replaced.

b. The trust agreement shall provide that the trustee shall be liable for its negligence, willful misconduct, or lack of

good faith. The failure of the trustee to draw against the letter of credit in circumstances where such draw would be required shall be deemed to be negligence and/or willful misconduct.

F. A specific security provided to a ceding insurer by an assuming insurer pursuant to 14VAC5-300-100 shall be applied, until exhausted, to the payment of liabilities of the assuming insurer to the ceding insurer holding the specific security prior to, and as a condition precedent for, presentation of a claim by the ceding insurer for payment by a trustee of a trust established by the assuming insurer pursuant to this section.

14VAC5-300-95. Credit for reinsurance; certified reinsurers.

A. Pursuant to § 38.2-1316.2 ~~B~~ D of the Act, the commission shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer that has been certified as a reinsurer in this Commonwealth at all times for which statutory financial statement credit for reinsurance is claimed under this section. The credit allowed shall be based upon the security held by or on behalf of the ceding insurer in accordance with a rating assigned to the certified reinsurer by the commission. The security shall be in a form consistent with the provisions of § 38.2-1316.2 ~~B~~ D and 14VAC5-300-110, 14VAC5-300-120, 14VAC5-300-130, or 14VAC5-300-140. The amount of security required in order for full credit to be allowed shall correspond with the following requirements:

1. Ratings	Security Required
Secure – 1	0.0%
Secure – 2	10%
Secure – 3	20%
Secure – 4	50%
Secure – 5	75%
Vulnerable – 6	100%

2. Affiliated reinsurance transactions shall receive the same opportunity for reduced security requirements as all other reinsurance transactions.

3. The commission shall require the certified reinsurer to post 100%, for the benefit of the ceding insurer or its estate, security upon the entry of an order of rehabilitation, liquidation, or conservation against the ceding insurer.

4. In order to facilitate the prompt payment of claims, a certified reinsurer shall not be required to post security for catastrophe recoverables for a period of one year from the date of the first instance of a liability reserve entry by the ceding company as a result of a loss from a catastrophic occurrence that is likely to result in significant insured losses, as recognized by the commission. The one year deferral period is contingent upon the certified reinsurer continuing to pay claims in a timely manner. Reinsurance recoverables for only the following lines of business as reported on the NAIC annual financial statement related specifically to the catastrophic occurrence will be included in the deferral:

a. Line 1: Fire

b. Line 2: Allied Lines

c. Line 3: Farmowners multiple peril

d. Line 4: Homeowners multiple peril

e. Line 5: Commercial multiple peril

f. Line 9: Inland marine

g. Line 12: Earthquake

h. Line 21: Auto physical damage

5. Credit for reinsurance under this section shall apply only to reinsurance contracts entered into or renewed on or after the effective date of the certification of the assuming insurer. Any reinsurance contract entered into prior to the effective date of the certification of the assuming insurer that is subsequently amended by mutual agreement of the parties to the reinsurance contract after the effective date of the certification of the assuming insurer, or a new reinsurance contract, covering any risk for which collateral was provided previously, shall only be subject to this section with respect to losses incurred and reserves reported from and after the effective date of the amendment or new contract.

6. Nothing in this section shall prohibit the parties to a reinsurance agreement from agreeing to provisions establishing security requirements that exceed the minimum security requirements established for certified reinsurers under this section.

B. Certification procedure.

1. The commission shall post notice on the Bureau of Insurance's website promptly upon receipt of any application for certification, including instructions on how members of the public may respond to the application. The commission may not take final action on the application until at least 30 days after posting the notice required by this subdivision.

2. The commission shall issue written notice to an assuming insurer that has made application and been approved as a certified reinsurer. Included in such notice shall be the rating assigned the certified reinsurer in accordance with subsection A of this section. The commission shall publish a list of all certified reinsurers and their ratings.

3. In order to be eligible for certification, the assuming insurer shall meet the following requirements:

a. The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commission pursuant to subsection C of this section.

b. The assuming insurer shall maintain capital and surplus, or its equivalent, of no less than $250 million calculated in accordance with subdivision 4 h of this subsection. This requirement may also be satisfied by an association including incorporated and individual unincorporated underwriters having minimum capital and surplus equivalents (net of liabilities) of at least $250 million and a central fund containing a balance of at least $250 million.

c. The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commission. These ratings shall be based on interactive communication between the rating agency and the assuming insurer and shall not be based solely on publicly available information. These financial strength ratings will be one factor used by the commission in determining the rating that is assigned to the assuming insurer. Acceptable rating agencies include the following:

(1) Standard & Poor's;

(2) Moody's Investors Service;

(3) Fitch Ratings;

(4) A.M. Best Company; or

(5) Any other nationally recognized statistical rating organization.

d. The certified reinsurer shall comply with any other requirements reasonably imposed by the commission.

4. Each certified reinsurer shall be rated on a legal entity basis, with due consideration being given to the group rating where appropriate, except that an association including incorporated and individual unincorporated underwriters that has been approved to do business as a single certified reinsurer may be evaluated on the basis of its group rating. Factors that may be considered as part of the evaluation process include, but are not limited to, the following:

a. The certified reinsurer's financial strength rating from an acceptable rating agency. The maximum rating that a certified reinsurer may be assigned will correspond to its financial strength rating as outlined in the table below. The commission shall use the lowest financial strength rating received from an approved rating agency in establishing the maximum rating of a certified reinsurer. A failure to obtain or maintain at least two financial strength ratings from acceptable rating agencies will result in loss of eligibility for certification:

Ratings	Best	S&P	Moody's	Fitch
Secure – 1	A++	AAA	Aaa	AAA
Secure – 2	A+	AA+, AA, AA-	Aa1, Aa2, Aa3	AA+, AA, AA-
Secure – 3	A	A+, A	A1, A2	A+, A
Secure – 4	A-	A-	A3	A-
Secure – 5	B++, B+	BBB+, BBB, BBB-	Baa1, Baa2, Baa3	BBB+, BBB, BBB-
Vulnerable – 6	B, B-, C++, C+, C, C-, D, E, F	BB+, BB, BB-, B+, B, B-, CCC, CC, C, D, R	Ba1, Ba2, Ba3, B1, B2, B3, Caa, Ca, C	BB+, BB, BB-, B+, B, B-, CCC+, CC, CCC-, DD

b. The business practices of the certified reinsurer in dealing with its ceding insurers, including its record of compliance with reinsurance contractual terms and obligations;

c. For certified reinsurers domiciled in the United States, a review of the most recent applicable NAIC annual statement blank, either Schedule F (for property/casualty reinsurers) or Schedule S (for life and health reinsurers);

d. For certified reinsurers not domiciled in the United States, a review annually of the Assumed Reinsurance Form CR-F (for property/casualty reinsurers) or the Reinsurance Assumed Life Insurance, Annuities, Deposit Funds and Other Liabilities Form CR-S (for life and health reinsurers) of this chapter;

e. The reputation of the certified reinsurer for prompt payment of claims under reinsurance agreements, based on an analysis of ceding insurers' Schedule F reporting of overdue reinsurance recoverables, including the proportion of obligations that are more than 90 days past due or are in dispute, with specific attention given to obligations payable to companies that are in administrative supervision or receivership;

f. Regulatory actions against the certified reinsurer;

g. The report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 4 h of this subsection;

h. For certified reinsurers not domiciled in the United States, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis), regulatory filings, and actuarial opinion (as filed with the non-United States jurisdiction supervisor). Upon the initial application for certification, the commission will consider audited financial statements for the last three years filed with its non-United States jurisdiction supervisor;

i. The liquidation priority of obligations to a ceding insurer in the certified reinsurer's domiciliary jurisdiction in the context of an insolvency proceeding;

j. A certified reinsurer's participation in any solvent scheme of arrangement, or similar procedure, which involves United States ceding insurers. The commission shall receive prior notice from a certified reinsurer that proposes participation by the certified reinsurer in a solvent scheme of arrangement; and

k. Any other information deemed relevant by the commission.

5. Based on the analysis conducted under subdivision 4 e of this subsection of a certified reinsurer's reputation for prompt payment of claims, the commission may make appropriate adjustments in the security the certified reinsurer is required to post to protect its liabilities to United States ceding insurers, provided that the commission shall, at a minimum, increase the security the certified reinsurer is required to post by one rating level under subdivision 4 a of this subsection if the commission finds that:

a. More than 15% of the certified reinsurer's ceding insurance clients have overdue reinsurance recoverables on paid losses of 90 days or more that are not in dispute and that exceed $100,000 for each cedent; or

b. The aggregate amount of reinsurance recoverables on paid losses that are not in dispute that are overdue by 90 days or more exceeds $50 million.

6. The assuming insurer shall submit a properly executed Certificate of Certified Reinsurer as evidence of its submission to the jurisdiction of this Commonwealth, appointment of the commission as an agent for service of process in this Commonwealth, and agreement to provide security for 100% of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment. The commission shall not certify any assuming insurer that is domiciled in a jurisdiction that the commission has determined does not adequately and promptly enforce final United States judgments or arbitration awards.

7. The certified reinsurer shall agree to meet applicable information filing requirements as determined by the commission, both with respect to an initial application for certification and on an ongoing basis. All information submitted by certified reinsurers that are not otherwise public information subject to disclosure shall be exempted from disclosure under §§ 38.2-221.3 and 38.2-1306.1 of the Act and shall be withheld from public disclosure. The applicable information filing requirements are~~,~~ as follows:

a. Notification within 10 days of any regulatory actions taken against the certified reinsurer, any change in the provisions of its domiciliary license, or any change in rating by an approved rating agency, including a statement describing such changes and the reasons therefore;

b. Annually, Form CR-F or CR-S, as applicable;

c. Annually, the report of the independent auditor on the financial statements of the insurance enterprise, on the basis described in subdivision 7 d of this subsection;

d. Annually, audited financial statements (audited United States GAAP basis if available, audited IFRS basis statements are allowed but shall include an audited footnote reconciling equity and net income to a United States GAAP basis), regulatory filings, and actuarial opinion (as filed with the certified reinsurer's supervisor). Upon the initial certification, audited financial statements for the last three years filed with the certified reinsurer's supervisor;

e. At least annually, an updated list of all disputed and overdue reinsurance claims regarding reinsurance assumed from United States domestic ceding insurers;

f. A certification from the certified reinsurer's domestic regulator that the certified reinsurer is in good standing and maintains capital in excess of the jurisdiction's highest regulatory action level; and

g. Any other information that the commission may reasonably require.

8. Change in rating or revocation of certification.

a. In the case of a downgrade by a rating agency or other disqualifying circumstance, the commission shall upon written notice assign a new rating to the certified reinsurer in accordance with the requirements of subdivision 4 a of this subsection.

b. The commission shall have the authority to suspend, revoke, or otherwise modify a certified reinsurer's certification at any time if the certified reinsurer fails to meet its obligations or security requirements under this section, or if other financial or operating results of the certified reinsurer, or documented significant delays in payment by the certified reinsurer, lead the commission

to reconsider the certified reinsurer's ability or willingness to meet its contractual obligations.

c. If the rating of a certified reinsurer is upgraded by the commission, the certified reinsurer may meet the security requirements applicable to its new rating on a prospective basis, but the commission shall require the certified reinsurer to post security under the previously applicable security requirements as to all contracts in force on or before the effective date of the upgraded rating. If the rating of a certified reinsurer is downgraded by the commission, the commission shall require the certified reinsurer to meet the security requirements applicable to its new rating for all business it has assumed as a certified reinsurer.

d. Upon revocation of the certification of a certified reinsurer by the commission, the assuming insurer shall be required to post security in accordance with 14VAC5-300-110 in order for the ceding insurer to continue to take credit for reinsurance ceded to the assuming insurer. If funds continue to be held in trust in accordance with 14VAC5-300-90, the commission may allow additional credit equal to the ceding insurer's pro rata share of such funds, discounted to reflect the risk of uncollectibility and anticipated expenses of trust administration. Notwithstanding the change of a certified reinsurer's rating or revocation of its certification, a domestic insurer that has ceded reinsurance to that certified reinsurer may not be denied credit for reinsurance for a period of three months for all reinsurance ceded to that certified reinsurer, unless the reinsurance is found by the commission to be at high risk of uncollectibility.

C. Qualified jurisdictions.

1. If, upon conducting an evaluation under this section with respect to the reinsurance supervisory system of any non-United States assuming insurer, the commission determines that the jurisdiction qualifies to be recognized as a qualified jurisdiction, the commission shall publish notice and evidence of such recognition in an appropriate manner. The commission may establish a procedure to withdraw recognition of those jurisdictions that are no longer qualified.

2. In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commission shall evaluate the reinsurance supervisory system of the non-United States jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. The commission shall determine the appropriate approach for evaluating the qualifications of such jurisdictions, and create and publish a list of jurisdictions whose reinsurers may be approved by the commission as eligible for certification. A qualified jurisdiction shall agree to share information and cooperate with the commission with respect to all certified reinsurers domiciled within that jurisdiction. Additional factors to be considered in determining whether to recognize a qualified jurisdiction, in the discretion of the commission, include but are not limited to the following:

a. The framework under which the assuming insurer is regulated.

b. The structure and authority of the domiciliary regulator with regard to solvency regulation requirements and financial surveillance.

c. The substance of financial and operating standards for assuming insurers in the domiciliary jurisdiction.

d. The form and substance of financial reports required to be filed or made publicly available by reinsurers in the domiciliary jurisdiction and the accounting principles used.

e. The domiciliary regulator's willingness to cooperate with United States regulators in general and the commission in particular.

f. The history of performance by assuming insurers in the domiciliary jurisdiction.

g. Any documented evidence of substantial problems with the enforcement of final United States judgments in the domiciliary jurisdiction. A jurisdiction will not be considered to be a qualified jurisdiction if the commission has determined that it does not adequately and promptly enforce final United States judgments or arbitration awards.

h. Any relevant international standards or guidance with respect to mutual recognition of reinsurance supervision adopted by the International Association of Insurance Supervisors or successor organization.

i. Any other matters deemed relevant by the commission.

3. A list of qualified jurisdictions shall be published through the NAIC committee process. The commission shall consider this list in determining qualified jurisdictions. If the commission approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commission shall provide thoroughly documented justification with respect to the criteria provided under subdivisions 2 a through i of this subsection.

4. United States jurisdictions that meet the requirements for accreditation under the NAIC financial standards and accreditation program shall be recognized as qualified jurisdictions.

D. Recognition of certification issued by an NAIC accredited jurisdiction.

1. If an applicant for certification has been certified as a reinsurer in an NAIC accredited jurisdiction, the commission has the discretion to defer to that jurisdiction's certification, and to defer to the rating assigned by that jurisdiction, if the assuming insurer submits a properly executed Certificate of Certified Reinsurer and such additional information as the commission requires. The assuming insurer shall be considered to be a certified reinsurer in this Commonwealth.

2. Any change in the certified reinsurer's status or rating in the other jurisdiction shall apply automatically in this Commonwealth as of the date it takes effect in the other jurisdiction. The certified reinsurer shall notify the commission of any change in its status or rating within 10 days after receiving notice of the change.

3. The commission may withdraw recognition of the other jurisdiction's rating at any time and assign a new rating in accordance with subdivision B 8 a of this section.

4. The commission may withdraw recognition of the other jurisdiction's certification at any time, with written notice to the certified reinsurer. Unless the commission suspends or revokes the certified reinsurer's certification in accordance with subdivision B 8 b of this section, the certified reinsurer's certification shall remain in good standing in this Commonwealth for a period of three months, which shall be extended if additional time is necessary to consider the assuming insurer's application for certification in this Commonwealth.

E. Mandatory funding clause. In addition to the clauses required under 14VAC5-300-150, reinsurance contracts entered into or renewed under this section shall include a proper funding clause, which requires the certified reinsurer to provide and maintain security in an amount sufficient to avoid the imposition of any financial statement penalty on the ceding insurer under this section for reinsurance ceded to the certified reinsurer.

F. The commission shall comply with all reporting and notification requirements that may be established by the NAIC with respect to certified reinsurers and qualified jurisdictions.

14VAC5-300-110. Asset or reduction from liability for reinsurance ceded to an assuming insurer not meeting the requirements of 14VAC5-300-60 through 14VAC5-300-100.

A. Pursuant to § 38.2-1316.4 of the Act, the commission shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of § 38.2-1316.2 of the Act in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations under the reinsurance contract. The security shall be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution as defined in § 38.2-1316.1 of the Act. This security may be in the form of any of the following:

(1) Cash;

(2) Securities listed by the Securities Valuation Office of the NAIC, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the NAIC ~~Securities Valuation~~ Investment Analysis Office, and qualifying as admitted assets;

(3) Clean, irrevocable, unconditional, and "evergreen" letters of credit issued or confirmed by a qualified United States institution, as defined in § 38.2-1316.1 of the Act, effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs; or

(4) Any other form of security acceptable to the commission.

B. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer pursuant to this section shall be allowed only when the requirements of 14VAC5-300-150 and the applicable portions of 14VAC5-300-120, 14VAC5-300-130, or 14VAC5-300-140 of this chapter have been satisfied.

14VAC5-300-150. Reinsurance contract.

A. Credit will not be granted, nor an asset or reduction from liability allowed, to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of 14VAC5-300-60, 14VAC5-300-70, 14VAC5-300-80, 14VAC5-300-90, 14VAC5-300-95, or 14VAC5-300-100 or otherwise in compliance with § 38.2-1316.2 of the Act unless the reinsurance agreement:

1. Includes a proper insolvency clause that stipulates that reinsurance is payable directly to the liquidator or successor without diminution regardless of the status of the ceding company;

2. Includes a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decisions of such court or panel; and

3. Includes a proper reinsurance intermediary clause, if applicable, that stipulates that the credit risk for the intermediary is carried by the assuming insurer.

B. If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this Commonwealth, the credit permitted pursuant to § 38.2-1316.2 ~~A~~ C 3, ~~A~~ C 4, and ~~E~~ G shall not be allowed unless the assuming insurer agrees in the reinsurance agreements:

1. a. That in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court in the event of an appeal; and

b. To designate the commission or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

2. This subsection is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

C. If the assuming insurer does not meet the requirements of § 38.2-1316.2 ~~A~~ C 1, 2, or 3, the credit permitted by § 38.2-1316.2 ~~A~~ C 4 or ~~B~~ D shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

1. Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by § 38.2-1316.2 ~~A~~ C 4, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

2. The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

3. If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

4. The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

DOCUMENTS INCORPORATED BY REFERENCE (14VAC5-300-9999)

~~NAIC Policy Statement on Financial Regulation Standards, 2012, National Association of Insurance Commissioners.~~

NAIC Policy Statement on Financial Regulation Standards, 2018, National Association of Insurance Commissioners

NAIC Annual Statement Instructions, ~~2011~~ 2017 Life Annual Statement Instructions, September ~~15, 2011~~ 1, 2017, National Association of Insurance Commissioners and the Center for Insurance Policy and Research.

NAIC Annual Statement Instructions, ~~2011~~ 2017 Property/Casualty Annual Statement Instructions, September ~~15, 2011~~ 1, 2017, National Association of Insurance Commissioners and the Center for Insurance Policy and Research.

NAIC Accounting Practices & Procedures Manual, Volumes I, II, ~~III,~~ March ~~2011~~ 2018, National Association of Insurance Commissioners.

ICC Uniform Customs and Practice for Documentary Credits (UCP 500), 1993, International Chamber of Commerce.

ICC Uniform Customs and Practice for Documentary Credits (UCP 600), 2007, International Chamber of Commerce.

International Standby Practices ISP98, 1999, The Institute of International Banking Law and Practice, Inc.

Purposes and Procedures Manual of the NAIC ~~Securities Valuation~~ Investment Analysis Office - Effective for Statements Ending December 31, ~~2011~~ 2017, Volume/Issue ~~11/01, 2011~~ 17/01, 2017, National Association of Insurance Commissioners.

VA.R. Doc. No. R18-5488; Filed September 28, 2018, 2:57 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the regulation 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 a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

Titles of Regulations: **18VAC48-50. Common Interest Community Manager Regulations.**

18VAC48-60. Common Interest Community Board Management Information Fund Regulations.

Contact Information: Joseph Haughwout, Board Administrator, Common Interest Community Board, 9960 Mayland Drive, Richmond, VA 23233, telephone (804) 367-2684, or email joseph.haughwout@dpor.virginia.gov.

FORMS (18VAC48-50)

~~Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHG-v1 (eff. 10/2013)~~

~~Common Interest Community Manager License Application, A492-0501LIC-v1 (eff. 10/2013)~~

~~Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v2 (eff. 5/2017)~~

~~Certified Principals/Supervisory Employee Experience Verification Form, A492-0510EXP-v1 (eff. 10/2013)~~

~~Common Interest Community Manager Application Comprehensive Training Program Equivalency Form, A492-0501TREQ-v1 (eff. 9/2013)~~

~~Common Interest Community Manager License Renewal Application, A492-0501REN-v1 (eff. 10/2013)~~

~~Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v1 (eff. 10/2013)~~

~~Principal or Supervisory Employee Certificate Renewal Form, A492-0510REN-v1 (eff. 10/2017)~~

~~Common Interest Community Manager Application Supplement Experience Verification Form, A492-0510EXP-v1 (eff. 10/2013)~~

Common Interest Community Manager Change of Personnel Form, A492-0501MGTCHG-v2 (rev. 10/2018)

Common Interest Community Manager License Application, A492-0501LIC-v2 (rev. 10/2018)

Common Interest Community Manager Training Program Approval Application, A492-05TRAPRV-v3 (rev. 10/2018)

Experience Verification Form, A492-0501_10EXPv2 (rev. 10/2018)

Common Interest Community Manager License Renewal Application, A492-0501REN-v2 (rev. 10/2018)

Common Interest Community Manager Principal or Supervisory Employee Certificate Application, A492-0510CERT-v2 (rev. 10/2018)

Principal or Supervisory Employee Certificate Renewal Form, A492-0510REN-v2 (rev. 10/2018)

Common Interest Community Manager Application Supplement Comprehensive Training Program Equivalency Form, A492-0501TREQ-v2 (rev. 10/2018)

FORMS (18VAC48-60)

~~Community Association Registration Application, A492-0550REG-v5 (3/2018)~~

~~Community Association Annual Report, A492-0550ANRPT-v7 (3/2018)~~

Community Association Registration Application, A492-0550REG-v5 (rev. 6/2018)

Community Association Annual Report, A492-0550ANRPT-v7 (rev. 6/2018)

Community Association Governing Board Change Form, A492-0550GBCHG-v1 (eff. 9/2013)

Community Association Point of Contact/Management Change Form, A492-0550POCCHG-v2 (eff. 9/2017)

VA.R. Doc. No. R19-5718; Filed October 10, 2018, 9:21 a.m.

BOARD OF DENTISTRY

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC60-21. Regulations Governing the Practice of Dentistry (adding 18VAC60-21-101 through 18VAC60-21-106).**

Statutory Authority: §§ 54.1-2400 and 54.1-2708.4 of the Code of Virginia.

Expiration Date Extended Through: April 22, 2019.

The Governor approved the request of the Board of Dentistry to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through April 22, 2019. The emergency regulation relates to the prescribing of opioids by dentists. The emergency regulation was published in 33:19 VA.R 2112-

2113 May 15, 2017 and was amended in 33:25 VA.R. 2817-2818 August 7, 2017.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

VA.R. Doc. No. R17-5064; Filed October 3, 2018, 5:56 p.m.

Final Regulation

Titles of Regulations: **18VAC60-21. Regulations Governing the Practice of Dentistry (amending 18VAC60-21-10, 18VAC60-21-30, 18VAC60-21-40, 18VAC60-21-90, 18VAC60-21-130, 18VAC60-21-240, 18VAC60-21-250, 18VAC60-21-260, 18VAC60-21-290, 18VAC60-21-291).**

18VAC60-25. Regulations Governing the Practice of Dental Hygiene (amending 18VAC60-25-40, 18VAC60-25-190).

18VAC60-30. Regulations Governing the Practice of Dental Assistants (amending 18VAC60-30-50).

Statutory Authority: §§ 54.1-2400 and 54.1-2709.5 of the Code of Virginia.

Effective Date: November 28, 2018.

Agency Contact: Sandra Reen, Executive Director, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4437, FAX (804) 527-4428, or email sandra.reen@dhp.virginia.gov.

Summary:

The regulatory action (i) amends the term "conscious/moderate sedation" throughout the chapters to refer to "moderate sedation," (ii) changes the name of the American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students for consistency with the revised 2016 title, and (iii) eliminates the training for dentists to administer moderate sedation by the enteral method only.

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

Part I
General Provisions

18VAC60-21-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2700 of the Code of Virginia:

"Board"

"Dental hygiene"

"Dental hygienist"

"Dentist"

"Dentistry"

"License"

"Maxillofacial"

"Oral and maxillofacial surgeon"

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

"AAOMS" means the American Association of Oral and Maxillofacial Surgeons.

"ADA" means the American Dental Association.

"Advertising" means a representation or other notice given to the public or members thereof, directly or indirectly, by a dentist on behalf of himself, his facility, his partner or associate, or any dentist affiliated with the dentist or his facility by any means or method for the purpose of inducing purchase, sale, or use of dental methods, services, treatments, operations, procedures, or products, or to promote continued or increased use of such dental methods, treatments, operations, procedures, or products.

"CODA" means the Commission on Dental Accreditation of the American Dental Association.

"Code" means the Code of Virginia.

"Dental assistant I" means any unlicensed person under the direction of a dentist or a dental hygienist who renders assistance for services provided to the patient as authorized under this chapter but shall not include an individual serving in purely an administrative, secretarial, or clerical capacity.

"Dental assistant II" means a person under the direction and direct supervision of a dentist who is registered by the board to perform reversible, intraoral procedures as specified in 18VAC60-21-150 and 18VAC60-21-160.

"Mobile dental facility" means a self-contained unit in which dentistry is practiced that is not confined to a single building and can be transported from one location to another.

"Nonsurgical laser" means a laser that is not capable of cutting or removing hard tissue, soft tissue, or tooth structure.

"Portable dental operation" means a nonfacility in which dental equipment used in the practice of dentistry is transported to and utilized on a temporary basis at an out-of-office location, including patients' homes, schools, nursing homes, or other institutions.

"Radiographs" means intraoral and extraoral radiographic images of hard and soft tissues used for purposes of diagnosis.

C. The following words and terms relating to supervision as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Direct supervision" means that the dentist examines the patient and records diagnostic findings prior to delegating restorative or prosthetic treatment and related services to a dental assistant II for completion the same day or at a later date. The dentist prepares the tooth or teeth to be restored and remains immediately available in the office to the dental assistant II for guidance or assistance during the delivery of treatment and related services. The dentist examines the patient to evaluate the treatment and services before the patient is dismissed.

"Direction" means the level of supervision (i.e., immediate, direct, indirect, or general) that a dentist is required to exercise with a dental hygienist, a dental assistant I, or a dental assistant II or that a dental hygienist is required to exercise with a dental assistant to direct and oversee the delivery of treatment and related services.

"General supervision" means that a dentist completes a periodic comprehensive examination of the patient and issues a written order for hygiene treatment that states the specific services to be provided by a dental hygienist during one or more subsequent appointments when the dentist may or may not be present. Issuance of the order authorizes the dental hygienist to supervise a dental assistant performing duties delegable to dental assistants I.

"Immediate supervision" means the dentist is in the operatory to supervise the administration of sedation or provision of treatment.

"Indirect supervision" means the dentist examines the patient at some point during the appointment and is continuously present in the office to advise and assist a dental hygienist or a dental assistant who is (i) delivering hygiene treatment, (ii) preparing the patient for examination or treatment by the dentist, or (iii) preparing the patient for dismissal following treatment.

"Remote supervision" means that a supervising dentist is accessible and available for communication and consultation with a dental hygienist during the delivery of dental hygiene services but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided. For the purpose of practice by a public health dental hygienist, "remote supervision" means that a public health dentist has regular, periodic communications with a public health dental hygienist regarding patient treatment, but such dentist may not have conducted an initial examination of the patients who are to be seen and treated by the dental hygienist and may not be present with the dental hygienist when dental hygiene services are being provided.

D. The following words and terms relating to sedation or anesthesia as used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Analgesia" means the diminution or elimination of pain.

~~"Conscious/moderate sedation" or "moderate sedation" means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.~~

"Deep sedation" means a drug-induced depression of consciousness during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. The ability to independently maintain ventilatory function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained.

~~"Enteral" means any technique of administration in which the agent is absorbed through the gastrointestinal tract or oral mucosa (i.e., oral, rectal, sublingual).~~

"General anesthesia" means a drug-induced loss of consciousness during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired.

"Inhalation" means a technique of administration in which a gaseous or volatile agent, including nitrous oxide, is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed.

"Inhalation analgesia" means the inhalation of nitrous oxide and oxygen to produce a state of reduced sensation of pain with minimal alteration of consciousness.

"Local anesthesia" means the elimination of sensation, especially pain, in one part of the body by the topical application or regional injection of a drug.

"Minimal sedation" means a drug-induced state during which patients respond normally to verbal commands.

Although cognitive function and physical coordination may be impaired, airway reflexes, and ventilator and cardiovascular functions are unaffected. Minimal sedation includes "anxiolysis" (the diminution or elimination of anxiety through the use of pharmacological agents in a dosage that does not cause depression of consciousness) and includes "inhalation analgesia" when used in combination with any anxiolytic agent administered prior to or during a procedure.

"Moderate sedation" ~~(see the definition of conscious/moderate sedation)~~ means a drug-induced depression of consciousness, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. Reflex withdrawal from a painful stimulus is not considered a purposeful response. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained.

"Monitoring" means to observe, interpret, assess, and record appropriate physiologic functions of the body during sedative procedures and general anesthesia appropriate to the level of sedation as provided in Part VI (18VAC60-21-260 et seq.) of this chapter.

"Parenteral" means a technique of administration in which the drug bypasses the gastrointestinal tract (i.e., intramuscular, intravenous, intranasal, submucosal, subcutaneous, or intraocular).

"Titration" means the incremental increase in drug dosage to a level that provides the optimal therapeutic effect of sedation.

"Topical oral anesthetic" means any drug, available in creams, ointments, aerosols, sprays, lotions, or jellies, that can be used orally for the purpose of rendering the oral cavity insensitive to pain without affecting consciousness.

18VAC60-21-30. Posting requirements.

A. A dentist who is practicing under a firm name or who is practicing as an employee of another dentist is required by § 54.1-2720 of the Code to conspicuously display his name at the entrance of the office. The employing dentist, firm, or company must enable compliance by designating a space at the entrance of the office for the name to be displayed.

B. In accordance with § 54.1-2721 of the Code a dentist shall display his dental license where it is conspicuous and readable by patients in each dental practice setting. If a licensee practices in more than one office, a duplicate license obtained from the board may be displayed.

C. A dentist who administers, prescribes, or dispenses Schedules II through V controlled substances shall maintain a copy of his current registration with the federal Drug Enforcement Administration in a readily retrievable manner at each practice location.

D. A dentist who administers ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia in a dental office shall display his sedation or anesthesia permit issued by the board or certificate issued by AAOMS.

18VAC60-21-40. Required fees.

A. Application/registration fees.

1. Dental license by examination	$400
2. Dental license by credentials	$500
3. Dental restricted teaching license	$285
4. Dental faculty license	$400
5. Dental temporary resident's license	$60
6. Restricted volunteer license	$25
7. Volunteer exemption registration	$10
8. Oral maxillofacial surgeon registration	$175
9. Cosmetic procedures certification	$225
10. Mobile clinic/portable operation	$250
11. ~~Conscious/moderate~~ Moderate sedation permit	$100
12. Deep sedation/general anesthesia permit	$100

B. Renewal fees.

1. Dental license - active	$285
2. Dental license - inactive	$145
3. Dental temporary resident's license	$35
4. Restricted volunteer license	$15
5. Oral maxillofacial surgeon registration	$175
6. Cosmetic procedures certification	$100
7. ~~Conscious/moderate~~ Moderate sedation permit	$100
8. Deep sedation/general anesthesia permit	$100

C. Late fees.

1. Dental license - active	$100
2. Dental license - inactive	$50
3. Dental temporary resident's license	$15
4. Oral maxillofacial surgeon registration	$55
5. Cosmetic procedures certification	$35
6. ~~Conscious/moderate~~ Moderate sedation permit	$35
7. Deep sedation/general anesthesia permit	$35

D. Reinstatement fees.

1. Dental license - expired	$500
2. Dental license - suspended	$750
3. Dental license - revoked	$1000
4. Oral maxillofacial surgeon registration	$350
5. Cosmetic procedures certification	$225

E. Document fees.

1. Duplicate wall certificate	$60
2. Duplicate license	$20
3. License certification	$35

F. Other fees.

1. Returned check fee	$35
2. Practice inspection fee	$350

G. No fee will be refunded or applied for any purpose other than the purpose for which the fee is submitted.

H. For the renewal of licenses, registrations, certifications, and permits in 2018, the following fees shall be in effect:

1. Dentist - active	$142
2. Dentist - inactive	$72
3. Dental full-time faculty	$142
4. Temporary resident	$17
5. Dental restricted volunteer	$7
6. Oral/maxillofacial surgeon registration	$87
7. Cosmetic procedure certification	$50
8. [~~Conscious/moderate~~ Moderate] sedation certification	$50
9. Deep sedation/general anesthesia	$50
10. Mobile clinic/portable operation	$75

18VAC60-21-90. Patient information and records.

A. A dentist shall maintain complete, legible, and accurate patient records for not less than six years from the last date of service for purposes of review by the board with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last patient encounter regardless of the age of the child;

2. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative pursuant to § 54.1-2405 of the Code; or

3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

B. Every patient record shall include the following:

1. Patient's name on each page in the patient record;

2. A health history taken at the initial appointment that is updated (i) when analgesia, sedation, or anesthesia is to be administered; (ii) when medically indicated; and (iii) at least annually;

3. Diagnosis and options discussed, including the risks and benefits of treatment or nontreatment and the estimated cost of treatment options;

4. Consent for treatment obtained and treatment rendered;

5. List of drugs prescribed, administered, or dispensed and the route of administration, quantity, dose, and strength;

6. Radiographs, digital images, and photographs clearly labeled with patient name, date taken, and teeth identified;

7. Notation of each treatment rendered, the date of treatment and of the dentist, dental hygienist, and dental assistant II providing service;

8. Duplicate laboratory work orders that meet the requirements of § 54.1-2719 of the Code including the address and signature of the dentist;

9. Itemized patient financial records as required by § 54.1-2404 of the Code;

10. A notation or documentation of an order required for treatment of a patient by a dental hygienist practicing under general supervision as required in 18VAC60-21-140 B; and

11. The information required for the administration of ~~conscious/moderate~~ moderate sedation, deep sedation, and general anesthesia required in 18VAC60-21-260 D.

C. A licensee shall comply with the patient record confidentiality, release, and disclosure provisions of § 32.1-127.1:03 of the Code and shall only release patient information as authorized by law.

D. Records shall not be withheld because the patient has an outstanding financial obligation.

E. A reasonable cost-based fee may be charged for copying patient records to include the cost of supplies and labor for copying documents, duplication of radiographs and images, and postage if mailing is requested as authorized by § 32.1-127.1:03 of the Code. The charges specified in § 8.01-413 of the Code are permitted when records are subpoenaed as evidence for purposes of civil litigation.

F. When closing, selling, or relocating a practice, the licensee shall meet the requirements of § 54.1-2405 of the Code for giving notice and providing records.

G. Records shall not be abandoned or otherwise left in the care of someone who is not licensed by the board except that, upon the death of a licensee, a trustee or executor of the estate may safeguard the records until they are transferred to a licensed dentist, are sent to the patients of record, or are destroyed.

H. Patient confidentiality must be preserved when records are destroyed.

18VAC60-21-130. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist, who meets the requirements of 18VAC60-25-100, may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and Part VI (18VAC60-21-260 et seq.) of this chapter;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

Part V
Licensure Renewal

18VAC60-21-240. License renewal and reinstatement.

A. The license or permit of any person who does not return the completed renewal form and fees by the deadline shall automatically expire and become invalid, and his practice of dentistry shall be illegal. With the exception of practice with a current, restricted volunteer license as provided in § 54.1-2712.1 of the Code practicing in Virginia with an expired license or permit may subject the licensee to disciplinary action by the board.

B. Every person holding an active or inactive license and those holding a permit to administer ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia shall annually, on or before March 31, renew his license or permit. Every person holding a faculty license, temporary resident's license, a restricted volunteer license, or a temporary permit shall, on or before June 30, request renewal of his license.

C. Any person who does not return the completed form and fee by the deadline required in subsection B of this section shall be required to pay an additional late fee.

D. The board shall renew a license or permit if the renewal form, renewal fee, and late fee are received within one year of the deadline required in subsection B of this section provided that no grounds exist to deny said renewal pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

E. Reinstatement procedures.

1. Any person whose license or permit has expired for more than one year or whose license or permit has been revoked or suspended and who wishes to reinstate such license or permit shall submit a reinstatement application and the reinstatement fee. The application must include evidence of continuing competence.

2. To evaluate continuing competence, the board shall consider (i) hours of continuing education that meet the requirements of subsection H of 18VAC60-21-250; (ii) evidence of active practice in another state or in federal service; (iii) current specialty board certification; (iv) recent passage of a clinical competency examination accepted by the board; or (v) a refresher program offered by a program accredited by the Commission on Dental Accreditation of the American Dental Association.

3. The executive director may reinstate such expired license or permit provided that the applicant can demonstrate continuing competence, the applicant has paid the reinstatement fee and any fines or assessments, and no grounds exist to deny said reinstatement pursuant to § 54.1-2706 of the Code and Part II (18VAC60-21-50 et seq.) of this chapter.

18VAC60-21-250. Requirements for continuing education.

A. A dentist shall complete a minimum of 15 hours of continuing education, which meets the requirements for content, sponsorship, and documentation set out in this section, for each annual renewal of licensure except for the first renewal following initial licensure and for any renewal of a restricted volunteer license.

1. All renewal applicants shall attest that they have read and understand and will remain current with the laws and regulations governing the practice of dentistry and dental hygiene in Virginia.

2. A dentist shall maintain current training certification in basic cardiopulmonary resuscitation with hands-on airway training for health care providers or basic life support unless he is required by 18VAC60-21-290 or 18VAC60-21-300 to hold current certification in advanced life support with hands-on simulated airway and megacode training for health care providers.

3. A dentist who administers or monitors patients under general anesthesia, deep sedation, or ~~conscious/moderate~~ moderate sedation shall complete four hours every two years of approved continuing education directly related to administration and monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

4. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

5. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of dental services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. To be accepted for license renewal, continuing education programs shall be directly relevant to the treatment and care of patients and shall be:

1. Clinical courses in dentistry and dental hygiene; or

2. Nonclinical subjects that relate to the skills necessary to provide dental or dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, and stress management). Courses not acceptable for the purpose of this subsection include~~, but are not limited to,~~ estate planning, financial planning, investments, business management, marketing, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subsection B of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association, their constituent and component/branch associations, and approved continuing education providers;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association, and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry, its constituent and component/branch associations, and approved continuing education providers;

7. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

8. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

9. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education;

10. A dental, dental hygiene, or dental assisting program or advanced dental education program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation; or

15. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted prior to renewal of the license.

E. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

F. A licensee is required to verify compliance with the continuing education requirements in his annual license renewal. Following the renewal period, the board may conduct an audit of licensees to verify compliance. Licensees selected for audit must provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

G. All licensees are required to maintain original documents verifying the date and subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.

H. A licensee who has allowed his license to lapse, or who has had his license suspended or revoked, shall submit evidence of completion of continuing education equal to the requirements for the number of years in which his license has not been active, not to exceed a total of 45 hours. Of the required hours, at least 15 must be earned in the most recent 12 months and the remainder within the 36 months preceding an application for reinstatement.

I. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

J. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

Part VI
Controlled Substances, Sedation, and Anesthesia

18VAC60-21-260. General provisions.

A. Application of Part VI. This part applies to prescribing, dispensing, and administering controlled substances in dental offices, mobile dental facilities, and portable dental operations and shall not apply to administration by a dentist practicing in (i) a licensed hospital as defined in § 32.1-123 of the Code, (ii) a state-operated hospital, or (iii) a facility directly maintained or operated by the federal government.

B. Registration required. Any dentist who prescribes, administers, or dispenses Schedules II through V controlled drugs must hold a current registration with the federal Drug Enforcement Administration.

C. Patient evaluation required.

1. The decision to administer controlled drugs for dental treatment must be based on a documented evaluation of the health history and current medical condition of the patient in accordance with the Class I through V risk category classifications of the American Society of Anesthesiologists (ASA) in effect at the time of treatment. The findings of the evaluation, the ASA risk assessment class assigned, and any special considerations must be recorded in the patient's record.

2. Any level of sedation and general anesthesia may be provided for a patient who is ASA Class I and Class II.

3. A patient in ASA Class III shall only be provided minimal sedation, ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary;

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary; or

c. A person licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1 of the Code who has a specialty in anesthesia.

4. Minimal sedation may only be provided for a patient who is in ASA Class IV by:

a. A dentist after he has documented a consultation with the patient's primary care physician or other medical specialist regarding potential risks and special monitoring requirements that may be necessary; or

b. An oral and maxillofacial surgeon who has performed a physical evaluation and documented the findings and the ASA risk assessment category of the patient and any special monitoring requirements that may be necessary.

5. ~~Conscious/moderate~~ Moderate sedation, deep sedation, or general anesthesia shall not be provided in a dental office for patients in ASA Class IV and Class V.

D. Additional requirements for patient information and records. In addition to the record requirements in 18VAC60-21-90, when ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia is administered, the patient record shall also include:

1. Notation of the patient's American Society of Anesthesiologists classification;

2. Review of medical history and current conditions, including the patient's weight and height or, if appropriate, the body mass index;

3. Written informed consent for administration of sedation and anesthesia and for the dental procedure to be performed;

4. Preoperative vital signs;

5. A record of the name, dose, and strength of drugs and route of administration including the administration of

local anesthetics with notations of the time sedation and anesthesia were administered;

6. Monitoring records of all required vital signs and physiological measures recorded every five minutes; and

7. A list of staff participating in the administration, treatment, and monitoring including name, position, and assigned duties.

E. Pediatric patients. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

F. Informed written consent. Prior to administration of any level of sedation or general anesthesia, the dentist shall discuss the nature and objectives of the planned level of sedation or general anesthesia along with the risks, benefits, and alternatives and shall obtain informed, written consent from the patient or other responsible party for the administration and for the treatment to be provided. The written consent must be maintained in the patient record.

G. Level of sedation. The determinant for the application of the rules for any level of sedation or for general anesthesia shall be the degree of sedation or consciousness level of a patient that should reasonably be expected to result from the type, strength, and dosage of medication, the method of administration, and the individual characteristics of the patient as documented in the patient's record. The drugs and techniques used must carry a margin of safety wide enough to render the unintended reduction of or loss of consciousness unlikely, factoring in titration and the patient's age, weight, and ability to metabolize drugs.

H. Emergency management.

1. If a patient enters a deeper level of sedation than the dentist is qualified and prepared to provide, the dentist shall stop the dental procedure until the patient returns to and is stable at the intended level of sedation.

2. A dentist in whose office sedation or anesthesia is administered shall have written basic emergency procedures established and staff trained to carry out such procedures.

I. Ancillary personnel. Dentists who employ unlicensed, ancillary personnel to assist in the administration and monitoring of any form of minimal sedation, ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia shall maintain documentation that such personnel have:

1. Training and hold current certification in basic resuscitation techniques with hands-on airway training for health care providers, such as Basic Cardiac Life Support for Health Professionals or a clinically oriented course devoted primarily to responding to clinical emergencies offered by an approved provider of continuing education as set forth in 18VAC60-21-250 C; or

2. Current certification as a certified anesthesia assistant (CAA) by the American Association of Oral and Maxillofacial Surgeons or the American Dental Society of Anesthesiology (ADSA).

J. Assisting in administration. A dentist, consistent with the planned level of administration (i.e., local anesthesia, minimal sedation, ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthesia) and appropriate to his education, training, and experience, may utilize the services of a dentist, anesthesiologist, certified registered nurse anesthetist, dental hygienist, dental assistant, or nurse to perform functions appropriate to such practitioner's education, training, and experience and consistent with that practitioner's respective scope of practice.

K. Patient monitoring.

1. A dentist may delegate monitoring of a patient to a dental hygienist, dental assistant, or nurse who is under his direction or to another dentist, anesthesiologist, or certified registered nurse anesthetist. The person assigned to monitor the patient shall be continuously in the presence of the patient in the office, operatory, and recovery area (i) before administration is initiated or immediately upon arrival if the patient self-administered a sedative agent, (ii) throughout the administration of drugs, (iii) throughout the treatment of the patient, and (iv) throughout recovery until the patient is discharged by the dentist.

2. The person monitoring the patient shall:

a. Have the patient's entire body in sight;

b. Be in close proximity so as to speak with the patient;

c. Converse with the patient to assess the patient's ability to respond in order to determine the patient's level of sedation;

d. Closely observe the patient for coloring, breathing, level of physical activity, facial expressions, eye movement, and bodily gestures in order to immediately recognize and bring any changes in the patient's condition to the attention of the treating dentist; and

e. Read, report, and record the patient's vital signs and physiological measures.

L. A dentist who allows the administration of general anesthesia, deep sedation, or ~~conscious/moderate~~ moderate sedation in his dental office is responsible for assuring that:

1. The equipment for administration and monitoring, as required in subsection B of 18VAC60-21-291 or subsection C of 18VAC60-21-301, is readily available and in good working order prior to performing dental treatment with anesthesia or sedation. The equipment shall either be

maintained by the dentist in his office or provided by the anesthesia or sedation provider; and

2. The person administering the anesthesia or sedation is appropriately licensed and the staff monitoring the patient is qualified.

18VAC60-21-290. Requirements for a ~~conscious/moderate~~ moderate sedation permit.

A. ~~After March 31, 2013, no~~ No dentist may employ or use ~~conscious/moderate~~ moderate sedation in a dental office unless he has been issued a permit by the board. The requirement for a permit shall not apply to an oral and maxillofacial surgeon who maintains membership in the American Association of Oral and Maxillofacial Surgeons (AAOMS) and who provides the board with reports that result from the periodic office examinations required by AAOMS. Such an oral and maxillofacial surgeon shall be required to post a certificate issued by AAOMS.

B. Automatic qualification. Dentists who hold a current permit to administer deep sedation and general anesthesia may administer ~~conscious/moderate~~ moderate sedation.

C. To determine eligibility for a ~~conscious/moderate~~ moderate sedation permit, a dentist shall submit the following:

1. A completed application form ~~indicating one of the following permits for which the applicant is qualified:~~

~~a. Conscious/moderate sedation by any method;~~

~~b. Conscious/moderate sedation by enteral administration only; or~~

~~c. Temporary conscious/moderate sedation permit (may be renewed one time)~~;

2. The application fee as specified in 18VAC60-21-40;

3. A copy of a transcript, certification, or other documentation of training content that meets the educational and training qualifications as specified in subsection D of this section~~, as applicable~~; and

4. A copy of current certification in advanced cardiac life support (ACLS) or pediatric advanced life support (PALS) as required in subsection E of this section.

D. Education requirements for a permit to administer ~~conscious/moderate~~ moderate sedation. ~~1. Administration by any method.~~ A dentist may be issued a ~~conscious/moderate~~ moderate sedation permit to administer by any method by meeting one of the following criteria:

~~a.~~ 1. Completion of training for this treatment modality according to the ADA's Guidelines for Teaching ~~the Comprehensive~~ Pain Control ~~of Anxiety~~ and ~~Pain in Dentistry~~ Sedation to Dentists and Dental Students in effect at the time the training occurred, while enrolled in an accredited dental program or while enrolled in a post-doctoral university or teaching hospital program; or

~~b.~~ 2. Completion of a continuing education course that meets the requirements of 18VAC60-21-250 and consists of (i) 60 hours of didactic instruction plus the management of at least 20 patients per participant, (ii) demonstration of competency and clinical experience in ~~conscious/moderate~~ moderate sedation, and (iii) management of a compromised airway. The course content shall be consistent with the ADA's Guidelines for Teaching ~~the Comprehensive~~ Pain Control ~~of Anxiety~~ and ~~Pain in Dentistry~~ Sedation to Dentists and Dental Students in effect at the time the training occurred.

~~2. Enteral administration only. A dentist may be issued a conscious/moderate sedation permit to administer only by an enteral method if he has completed a continuing education program that meets the requirements of 18VAC60-21-250 and consists of not less than 18 hours of didactic instruction plus 20 clinically oriented experiences in enteral or a combination of enteral and nitrous oxide/oxygen conscious/moderate sedation techniques. The course content shall be consistent with the ADA's Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry in effect at the time the training occurred. The certificate of completion and a detailed description of the course content must be maintained.~~

~~3. A dentist who self-certified his qualifications in anesthesia and moderate sedation prior to January 1989 may be issued a temporary conscious/moderate sedation permit to continue to administer only conscious/moderate sedation until May 7, 2015. After May 7, 2015, a dentist shall meet the requirements for and obtain a conscious/moderate sedation permit to administer by any method or by enteral administration only.~~

E. Additional training required. Dentists who administer ~~conscious/moderate~~ moderate sedation shall:

1. Hold current certification in advanced resuscitation techniques with hands-on simulated airway and megacode training for health care providers, such as ACLS or PALS as evidenced by a certificate of completion posted with the dental license; and

2. Have current training in the use and maintenance of the equipment required in 18VAC60-21-291.

18VAC60-21-291. Requirements for administration of ~~conscious/moderate~~ moderate sedation.

A. Delegation of administration.

1. A dentist who does not hold a permit to administer ~~conscious/moderate~~ moderate sedation shall only use the services of a qualified dentist or an anesthesiologist to administer such sedation in a dental office. In a licensed

outpatient surgery center, a dentist who does not hold a permit to administer ~~conscious/moderate~~ moderate sedation shall use a qualified dentist, an anesthesiologist, or a certified registered nurse anesthetist to administer such sedation.

2. A dentist who holds a permit may administer or use the services of the following personnel to administer ~~conscious/moderate~~ moderate sedation:

a. ~~A dentist with the training required by 18VAC60-21-290 D 2 to administer by an enteral method;~~

~~b.~~ A dentist with the training required by 18VAC60-21-290 D ~~1~~ to administer by any method and who holds a moderate sedation permit;

~~c.~~ b. An anesthesiologist;

~~d.~~ c. A certified registered nurse anesthetist under the medical direction and indirect supervision of a dentist who meets the training requirements of 18VAC60-21-290 D ~~1~~ and holds a moderate sedation permit; or

~~e.~~ d. A registered nurse upon his direct instruction and under the immediate supervision of a dentist who meets the training requirements of 18VAC60-21-290 D ~~1~~ and holds a moderate sedation permit.

3. If minimal sedation is self-administered by or to a patient 13 years of age or older before arrival at the dental office, the dentist may only use the personnel listed in subdivision 2 of this subsection to administer local anesthesia. No sedating medication shall be prescribed for or administered to a patient 12 years of age or younger prior to his arrival at the dentist office or treatment facility.

4. Preceding the administration of ~~conscious/moderate~~ moderate sedation, a permitted dentist may use the services of the following personnel under indirect supervision to administer local anesthesia to anesthetize the injection or treatment site:

a. A dental hygienist with the training required by 18VAC60-25-100 C to parenterally administer Schedule VI local anesthesia to persons 18 years of age or older; or

b. A dental hygienist, dental assistant, registered nurse, or licensed practical nurse to administer Schedule VI topical oral anesthetics.

5. A dentist who delegates administration of ~~conscious/moderate~~ moderate sedation shall ensure that:

a. All equipment required in subsection B of this section is present, in good working order, and immediately available to the areas where patients will be sedated and treated and will recover; and

b. Qualified staff is on site to monitor patients in accordance with requirements of subsection D of this section.

B. Equipment requirements. A dentist who administers ~~conscious/moderate~~ moderate sedation shall have available the following equipment in sizes for adults or children as appropriate for the patient being treated and shall maintain it in working order and immediately available to the areas where patients will be sedated and treated and will recover:

1. Full face mask or masks;

2. Oral and nasopharyngeal airway management adjuncts;

3. Endotracheal tubes with appropriate connectors or other appropriate airway management adjunct such as a laryngeal mask airway;

4. A laryngoscope with reserve batteries and bulbs and appropriately sized laryngoscope blades;

5. Pulse oximetry;

6. Blood pressure monitoring equipment;

7. Pharmacologic antagonist agents;

8. Source of delivery of oxygen under controlled positive pressure;

9. Mechanical (hand) respiratory bag;

10. Appropriate emergency drugs for patient resuscitation;

11. Electrocardiographic monitor if a patient is receiving parenteral administration of sedation or if the dentist is using titration;

12. Defibrillator;

13. Suction apparatus;

14. Temperature measuring device;

15. Throat pack;

16. Precordial or pretracheal stethoscope; and

17. An end-tidal carbon dioxide monitor (capnograph).

C. Required staffing. At a minimum, there shall be a two-person treatment team for ~~conscious/moderate~~ moderate sedation. The team shall include the operating dentist and a second person to monitor the patient as provided in 18VAC60-21-260 K and assist the operating dentist as provided in 18VAC60-21-260 J, both of whom shall be in the operatory with the patient throughout the dental procedure. If the second person is a dentist, an anesthesiologist, or a certified registered nurse anesthetist who administers the drugs as permitted in ~~18VAC60-21-291~~ subsection A of this section, such person may monitor the patient.

D. Monitoring requirements.

1. Baseline vital signs shall be taken and recorded prior to administration of any controlled drug at the facility and prior to discharge.

2. Blood pressure, oxygen saturation, end-tidal carbon dioxide, and pulse shall be monitored continually during the administration and recorded every five minutes.

3. Monitoring of the patient under ~~conscious/moderate~~ moderate sedation is to begin prior to administration of sedation or, if pre-medication is self-administered by the patient, immediately upon the patient's arrival at the dental facility and shall take place continuously during the dental procedure and recovery from sedation. The person who administers the sedation or another licensed practitioner qualified to administer the same level of sedation must remain on the premises of the dental facility until the patient is evaluated and is discharged.

E. Discharge requirements.

1. The patient shall not be discharged until the responsible licensed practitioner determines that the patient's level of consciousness, oxygenation, ventilation, and circulation are satisfactory for discharge and vital signs have been taken and recorded.

2. Post-operative instructions shall be given verbally and in writing. The written instructions shall include a 24-hour emergency telephone number.

3. The patient shall be discharged with a responsible individual who has been instructed with regard to the patient's care.

F. Emergency management. The dentist shall be proficient in handling emergencies and complications related to pain control procedures, including the maintenance of respiration and circulation, immediate establishment of an airway, and cardiopulmonary resuscitation.

Part II
Practice of Dental Hygiene

18VAC60-25-40. Scope of practice.

A. Pursuant to § 54.1-2722 of the Code, a licensed dental hygienist may perform services that are educational, diagnostic, therapeutic, or preventive under the direction and indirect or general supervision of a licensed dentist.

B. The following duties of a dentist shall not be delegated:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue, except as may be permitted by subdivisions C 1 and D 1 of this section;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 C may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administration of deep sedation or general anesthesia and ~~conscious/moderate~~ moderate sedation;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

C. The following duties shall only be delegated to dental hygienists under direction and may only be performed under indirect supervision:

1. Scaling, root planing, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with any sedation or anesthesia administered.

2. Performing an initial examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for assisting the dentist in the diagnosis.

3. Administering nitrous oxide or local anesthesia by dental hygienists qualified in accordance with the requirements of 18VAC60-25-100.

D. The following duties shall only be delegated to dental hygienists and may be performed under indirect supervision or may be delegated by written order in accordance with § 54.1-2722 D of the Code to be performed under general supervision:

1. Scaling, root planning, or gingival curettage of natural and restored teeth using hand instruments, slow-speed rotary instruments, ultrasonic devices, and nonsurgical lasers with or without topical oral anesthetics.

2. Polishing of natural and restored teeth using air polishers.

3. Performing a clinical examination of teeth and surrounding tissues including the charting of carious lesions, periodontal pockets, or other abnormal conditions for further evaluation and diagnosis by the dentist.

4. Subgingival irrigation or subgingival and gingival application of topical Schedule VI medicinal agents pursuant to § 54.1-3408 J of the Code.

5. Duties appropriate to the education and experience of the dental hygienist and the practice of the supervising dentist, with the exception of those listed as nondelegable in subsection B of this section and those restricted to indirect supervision in subsection C of this section.

E. The following duties may only be delegated under the direction and direct supervision of a dentist to a dental assistant II:

1. Performing pulp capping procedures;

2. Packing and carving of amalgam restorations;

3. Placing and shaping composite resin restorations with a slow speed handpiece;

4. Taking final impressions;

5. Use of a non-epinephrine retraction cord; and

6. Final cementation of crowns and bridges after adjustment and fitting by the dentist.

F. A dental hygienist employed by the Virginia Department of Health may provide educational and preventative dental care under remote supervision, as defined in § 54.1-2722 D of the Code, of a dentist employed by the Virginia Department of Health and in accordance with the protocol adopted by the Commissioner of Health for Dental Hygienists to Practice in an Expanded Capacity under Remote Supervision by Public Health Dentists, September 2012, which is hereby incorporated by reference.

18VAC60-25-190. Requirements for continuing education.

A. In order to renew an active license, a dental hygienist shall complete a minimum of 15 hours of approved continuing education. Continuing education hours in excess of the number required for renewal may be transferred or credited to the next renewal year for a total of not more than 15 hours.

1. A dental hygienist shall be required to maintain evidence of successful completion of a current hands-on course in basic cardiopulmonary resuscitation for health care providers.

2. A dental hygienist who monitors patients under general anesthesia, deep sedation, or ~~conscious/moderate~~ moderate sedation shall complete four hours every two years of approved continuing education directly related to monitoring of such anesthesia or sedation as part of the hours required for licensure renewal.

3. Up to two hours of the 15 hours required for annual renewal may be satisfied through delivery of dental hygiene services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. An approved continuing education program shall be relevant to the treatment and care of patients and shall be:

1. Clinical courses in dental or dental hygiene practice; or

2. Nonclinical subjects that relate to the skills necessary to provide dental hygiene services and are supportive of clinical services (i.e., patient management, legal and ethical responsibilities, risk management, and recordkeeping). Courses not acceptable for the purpose of this subsection include estate planning, financial planning, investments, and personal health.

C. Continuing education credit may be earned for verifiable attendance at or participation in any course, to include audio and video presentations, that meets the requirements in subdivision B 1 of this section and is given by one of the following sponsors:

1. The American Dental Association and the National Dental Association and their constituent and component/branch associations;

2. The American Dental Hygienists' Association and the National Dental Hygienists Association and their constituent and component/branch associations;

3. The American Dental Assisting Association and its constituent and component/branch associations;

4. The American Dental Association specialty organizations and their constituent and component/branch associations;

5. A provider accredited by the Accreditation Council for Continuing Medical Education for Category 1 credits;

6. The Academy of General Dentistry and its constituent and component/branch associations;

7. Community colleges with an accredited dental hygiene program if offered under the auspices of the dental hygienist program;

8. A college or university that is accredited by an accrediting agency approved by the U.S. Department of Education or a hospital or health care institution accredited by the Joint Commission on Accreditation of Healthcare Organizations;

9. The American Heart Association, the American Red Cross, the American Safety and Health Institute, and the American Cancer Society;

10. A medical school accredited by the American Medical Association's Liaison Committee for Medical Education or a dental school or dental specialty residency program accredited by the Commission on Dental Accreditation of the American Dental Association;

11. State or federal government agencies (i.e., military dental division, Veteran's Administration, etc.);

12. The Commonwealth Dental Hygienists' Society;

13. The MCV Orthodontic Education and Research Foundation;

14. The Dental Assisting National Board and its affiliate, the Dental Auxiliary Learning and Education Foundation;

15. The American Academy of Dental Hygiene, its constituent and component/branch associations; or

16. A regional testing agency (i.e., Central Regional Dental Testing Service, Northeast Regional Board of Dental Examiners, Southern Regional Testing Agency, Council of Interstate Testing Agencies, or Western Regional Examining Board) when serving as an examiner.

D. Verification of compliance.

1. All licensees are required to verify compliance with continuing education requirements at the time of annual license renewal.

2. Following the renewal period, the board may conduct an audit of licensees to verify compliance.

3. Licensees selected for audit shall provide original documents certifying that they have fulfilled their continuing education requirements by the deadline date as specified by the board.

4. Licensees are required to maintain original documents verifying the date and the subject of the program or activity, the sponsor, and the amount of time earned. Documentation shall be maintained for a period of four years following renewal.

5. Failure to comply with continuing education requirements may subject the licensee to disciplinary action by the board.

E. Exemptions.

1. A licensee is exempt from completing continuing education requirements and considered in compliance on the first renewal date following the licensee's initial licensure.

2. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters. A written request with supporting documents must be submitted at least 30 days prior to the deadline for renewal.

F. The board may grant an extension for up to one year for completion of continuing education upon written request with an explanation to the board prior to the renewal date.

G. Continuing education hours required by board order shall not be used to satisfy the continuing education requirement for license renewal or reinstatement.

H. In order to practice under remote supervision in accordance with subsection F of § 54.1-2722 of the Code of Virginia, a dental hygienist shall complete a continuing education course of no less than two hours in duration that is offered by an accredited dental education program or a sponsor listed in subsection C of this section and that includes the following course content:

1. Intent and definitions of remote supervision;

2. Review of dental hygiene scope of practice and delegation of services;

3. Administration of controlled substances;

4. Patient records, documentation, and risk management;

5. Remote supervision laws for dental hygienists and dentists;

6. Written practice protocols; and

7. Settings allowed for remote supervision.

18VAC60-30-50. Nondelegable duties; dentists.

Only licensed dentists shall perform the following duties:

1. Final diagnosis and treatment planning;

2. Performing surgical or cutting procedures on hard or soft tissue except a dental hygienist performing gingival curettage as provided in 18VAC60-21-140;

3. Prescribing or parenterally administering drugs or medicaments, except a dental hygienist who meets the requirements of 18VAC60-25-100 may parenterally administer Schedule VI local anesthesia to patients 18 years of age or older;

4. Authorization of work orders for any appliance or prosthetic device or restoration that is to be inserted into a patient's mouth;

5. Operation of high speed rotary instruments in the mouth;

6. Administering and monitoring ~~conscious/moderate~~ moderate sedation, deep sedation, or general anesthetics except as provided for in § 54.1-2701 of the Code and subsections J and K of 18VAC60-21-260;

7. Condensing, contouring, or adjusting any final, fixed, or removable prosthodontic appliance or restoration in the mouth with the exception of packing and carving amalgam

and placing and shaping composite resins by dental assistants II with advanced training as specified in 18VAC60-30-120;

8. Final positioning and attachment of orthodontic bonds and bands; and

9. Final adjustment and fitting of crowns and bridges in preparation for final cementation.

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BOARD OF FUNERAL DIRECTORS AND EMBALMERS

Final Regulation

Title of Regulation: **18VAC65-20. Regulations of the Board of Funeral Directors and Embalmers (amending 18VAC65-20-151).**

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

Effective Date: November 28, 2018.

Agency Contact: Corie Tillman Wolf, Executive Director, Board of Funeral Directors and Embalmers, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4479, FAX (804) 527-4471, or email fanbd@dhp.virginia.gov.

Summary:

The amendment allows for one hour of continuing education (CE) credit every other year for attending a meeting of the board or a committee of the board or an informal conference or formal hearing to fulfill the requirement for one hour of CE covering compliance with federal or state laws and regulations governing the profession.

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.

18VAC65-20-151. Continued competency requirements for renewal of an active license.

A. Funeral service licensees, funeral directors or funeral embalmers shall be required to have completed a minimum of five hours per year of continuing education offered by a board-approved sponsor for licensure renewal in courses that emphasize the ethics, standards of practice, preneed contracts and funding, or federal or state laws and regulations governing the profession of funeral service.

1. One hour per year shall cover compliance with laws and regulations governing the profession, and at least one hour per year shall cover preneed funeral arrangements. The one-hour requirement on compliance with laws and regulations may be met once every two years by attendance at a meeting of the board or at a committee of the board or an informal conference or formal hearing.

2. One hour of the five hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for one hour of providing such volunteer services, as documented by the health department or free clinic. For the purposes of continuing education credit for volunteer service, an approved sponsor shall be a local health department or free clinic.

B. Courses must be directly related to the scope of practice of funeral service. Courses for which the principal purpose is to promote, sell or offer goods, products or services to funeral homes are not acceptable for the purpose of credit toward renewal.

C. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

D. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

VA.R. Doc. No. R17-5113; Filed October 4, 2018, 3:15 p.m.

BOARD OF MEDICINE

Proposed Regulation

Titles of Regulations: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (adding 18VAC85-20-91).**

18VAC85-50. Regulations Governing the Practice of Physician Assistants (adding 18VAC85-50-191).

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

Public Hearing Information:

December 7, 2018 - 8:35 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Richmond, VA 23233

Public Comment Deadline: December 28, 2018.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email william.harp@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which

provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system, and § 54.1-2973.1 of the Code of Virginia, which governs the practice of laser hair removal.

Purpose: A review of the practice of laser hair removal in 2016 concluded that the lack of comprehensive regulation over the use of laser technology for hair removal poses a risk of harm to the public's health, safety, and welfare. The purpose of this action is to develop regulations for some mechanism for determining whether someone has been "properly trained" and for the required direction and supervision.

The proposed regulations provide a regulatory framework for "direction and supervision" so that the laser hair technician, the supervising practitioner, and the public will understand the scope of responsibility for such direction and supervision. The intent is to establish minimum competencies for practitioners or persons to whom practitioners delegate the practice of laser hair removal and to specify the responsibilities of licensed practitioners for oversight and supervision in order to protect the health and safety of citizens of the Commonwealth who may become their patients.

Substance: Proposed regulations establish the knowledge and training that a practitioner supervising or performing laser hair removal must have; allows for delegation to a properly trained person, provided the supervising practitioner is readily available when laser hair removal is being performed; and limits any prescribing of controlled substances to practitioners authorized to prescribe in accordance with statutory requirements for establishment of a practitioner-patient relationship.

Issues: The primary advantage to the public is assurance of basic training and technique to avoid serious injury to members of the public. There are no disadvantages for the public; regulations will offer greater protection to clients or patients seeking laser hair removal. There are no advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 390 of the 2017 Acts of Assembly,[1] the Board of Medicine (Board) proposes to establish training requirements for the practice of laser hair removal and limit the practice to doctors, physician assistants, nurse practitioners, and other persons under the direction and supervision of a licensed doctor, a physician assistant, or a nurse practitioner.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. At the request of a General Assembly member, the Department of Professional and Occupational Regulation (DPOR) and the Department of Health Professions (DHP) reviewed the issue of laser hair removal in 2016 and concluded that the lack of a comprehensive regulation over the use of laser technology for hair removal posed a risk of harm to the public's health, safety and welfare. Subsequently, 2017 House Bill 2119 was introduced, passed, and became law. The legislation specifically limits the practice of laser hair removal to trained doctors, physician assistants, nurse practitioners, and other trained individuals provided they operate under the supervision of a licensed doctor, a physician assistant, or a nurse practitioner.[2]

Under the proposed regulation, doctors, physician assistants, and other authorized individuals will have to obtain training in skin physiology and histology, skin type and appropriate patient selection, laser safety, operation of laser device or devices to be used, recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment, and demonstrate hands on competence. Doctors and physician assistants practicing laser hair removal when this regulation becomes effective will be deemed to have met the training requirement.[3] Individuals who are not doctors or physician assistants but practicing under the supervision of one are required to be trained, but it will be up to the supervisor to ensure that such training is completed.

The costs of training vary from provider to provider. For example, an online research reveals that a provider in Denver, Colorado offers training composed of 20 hours of online training followed by 40 hours of classroom and hands-on training over a span of six days at $6,500, which includes a hotel room, lunches, books, classroom materials, and tuition.[4] Another provider in Stafford, Virginia offers training composed of two days of at-home training followed by a three-day on-site training at $2,500, which includes books, classroom materials, and tuition, but does not include lodging and meals.[5] The other major costs of training would include travel expenses and lost wages.

In addition to the training, the proposed regulation requires that the laser hair removal is performed by a doctor or a physician assistant or by a person who is supervised by one. Therefore, a practitioner who does not have such a qualification will have to enter into a supervision arrangement by a licensed doctor, a physician assistant, or a nurse practitioner. A nurse practitioner or physician assistant in turn is required to have a collaborative agreement or practice agreement with a physician under other existing regulations. The cost of securing supervision from a licensed doctor is not known, but will likely be significant. Individuals who are currently operating without supervision will have to cease practicing laser hair removal if they cannot secure a supervision arrangement with a licensed doctor.

According to DHP, the main aim of the proposed regulation is to "[provide] some assurance that a potentially harmful procedure can be performed without risk of injury to a patient and some accountability the performance of laser hair removal." As mentioned above, DPOR and DHP reviewed the issue of laser hair removal in 2016 and concluded that the lack of a comprehensive regulation over the use of laser technology for hair removal posed a risk of harm to the public's health, safety and welfare. Thus, to the extent the proposed regulation reduces those risks, it will be beneficial. However, some businesses currently operating without supervision will have to cease practicing laser hair removal if they cannot secure a supervision arrangement.

Businesses and Entities Affected. The number of businesses practicing laser hair removal and the number of businesses with staff currently working without supervision in Virginia are not known. Similarly, there is no data on the number of laser hair removal customers in Virginia. There are 38,021 doctors of medicine, 3,362 doctors of osteopathic medicine, and 3,612 physician assistants licensed in Virginia.[6]

Localities Particularly Affected. The proposed regulation does not affect any particular locality more than others.

Projected Impact on Employment. If a business currently practicing laser hair removal cannot secure supervision arrangement with a doctor, physician assistant, or a nurse practitioner for its staff, it will have to cease operations. Thus, the proposed supervision agreement may have a negative impact on employment.

Effects on the Use and Value of Private Property. Securing supervision may introduce additional costs to some of the laser hair removal practices and reduce their asset values or may force some to cease their operations.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. Most of the businesses performing laser hair removal are likely to be small. The legislation and the proposed regulation introduce additional costs associated with securing a supervision arrangement. The additional cost in some cases may be significant enough to force closure.

Alternative Method that Minimizes Adverse Impact. The legislative mandate specifically requires training and supervision. Thus, there is no alternative method that minimizes the potential adverse impact on some small businesses while satisfying the law.

Adverse Impacts:

Businesses. Larger laser hair removal businesses are more likely to have an existing supervision arrangement for their staff and the adverse impact identified above may not be implicated for them.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed required supervision arrangement may introduce additional compliance costs on laser hair removal businesses. Higher compliance costs or closures could result in price increases and negatively affect consumers.

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[1]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0390

[2]Practice of laser hair removal by a nurse practitioner is regulated in a separate regulation, 18 VAC 90-30.

[3]Ibid.

[4]http://rockymountainlasercollege.com/laser-training/cost/, accessed on February 8, 2018.

[5]http://www.nvlet.com/tuition/, accessed on February 8, 2018.

[6]Data source: Department of Health Professions

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

Summary:

Consistent with Chapter 390 of the 2017 Acts of Assembly, the proposed amendments (i) require laser hair removal be performed by a "properly trained person" who is a licensee or by a "properly trained person under the direction and supervision" of a doctor, physician assistant, or nurse practitioner; and (ii) provide a regulatory framework for such direction and supervision.

18VAC85-20-91. Practice and supervision of laser hair removal.

A. A doctor of medicine or osteopathic medicine may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;

2. Skin type and appropriate patient selection;

3. Laser safety;

4. Operation of laser device to be used;

5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and

6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. Doctors of medicine or osteopathic medicine who have been performing laser hair removal prior to (the effective date of this regulation) are not required to complete training specified in subsection A of this section.

C. A doctor who delegates the practice of laser hair removal and provides supervision to a person other than a licensed physician assistant or licensed nurse practitioner shall ensure that such person has completed the training required in subsection A of this section.

D. A doctor who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The doctor shall ensure that persons the doctor supervises also receive ongoing training to maintain competency.

E. A doctor may delegate laser hair removal to a properly trained person under the doctor's direction and supervision. Direction and supervision shall mean that the doctor is readily available at the time laser hair removal is being performed. The supervising doctor is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

18VAC85-50-191. Practice and supervision of laser hair removal.

A. A physician assistant, as authorized pursuant to § 54.1-2952 of the Code of Virginia, may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;

2. Skin type and appropriate patient selection;

3. Laser safety;

4. Operation of laser device to be used;

5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and

6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. Physician assistants who have been performing laser hair removal prior to (the effective date of this regulation) are not required to complete training specified in subsection A of this section.

C. A physician assistant who delegates the practice of laser hair removal and provides supervision for such practice shall ensure the supervised person has completed the training required in subsection A of this section.

D. A physician assistant who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The physician assistant shall ensure that persons the physician assistant supervises also receive ongoing training to maintain competency.

E. A physician assistant may delegate laser hair removal to a properly trained person under the physician assistant's direction and supervision. Direction and supervision shall mean that the physician assistant is readily available at the time laser hair removal is being performed. The supervising physician assistant is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

VA.R. Doc. No. R18-5269; Filed October 4, 2018, 3:18 p.m.

BOARD OF NURSING

Proposed Regulation

Title of Regulation: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners (adding 18VAC90-30-124).**

Statutory Authority: §§ 54.1-2400 and 54.1-2957 of the Code of Virginia.

Public Hearing Information:

November 13, 2018 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Board Room 2, Richmond, VA 23233

Public Comment Deadline: December 28, 2018.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4520, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Boards of Medicine and Nursing the authority to promulgate regulations to administer the regulatory system, and § 54.1-2973.1 of the Code of Virginia, which governs the practice of laser hair removal.

Purpose: A review of the practice of laser hair removal in 2016 concluded that the lack of comprehensive regulation over the use of laser technology for hair removal poses a risk of harm to the public's health, safety, and welfare. The purpose of this action is to develop regulations for some mechanism for determining whether someone has been "properly trained" and for the required direction and supervision.

The proposed regulations provide a regulatory framework for "direction and supervision" so that the laser hair technician, the supervising practitioner, and the public will understand the scope of responsibility for such direction and supervision. The intent is to establish minimum competencies for practitioners or persons to whom practitioners delegate the practice of laser hair removal and to specify the responsibilities of licensed practitioners for oversight and supervision in order to protect the health and safety of citizens of the Commonwealth who may become their patients.

Substance: Proposed regulations establish the knowledge and training that a practitioner supervising or performing laser hair removal must have; allows for delegation to a properly trained person, provided the supervising practitioner is readily available when laser hair removal is being performed; and limits any prescribing of controlled substances to practitioners authorized to prescribe in accordance with statutory requirements for establishment of a practitioner-patient relationship.

Issues: The primary advantage to the public is assurance of basic training and technique to avoid serious injury to members of the public. There are no disadvantages to the public; regulations will offer greater protection to clients or patients seeking laser hair removal. There are no advantages or disadvantages to the agency.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 390 of the 2017 Acts of Assembly,[1] the Board of Nursing (Board) proposes to establish training requirements for the practice of laser hair removal and limit the practice to doctors, physician assistants, nurse practitioners, and other persons under the direction and supervision of a licensed doctor, a physician assistant, or a nurse practitioner.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. At the request of a General Assembly member, the Department of Professional and Occupational Regulation (DPOR) and the Department of Health Professions (DHP) reviewed the issue of laser hair removal in 2016 and concluded that the lack of a comprehensive regulation over the use of laser technology for hair removal posed a risk of harm to the public's health, safety and welfare. Subsequently, 2017 House Bill 2119 was introduced, passed, and became law. The legislation specifically limits the practice of laser hair removal to trained doctors, physician assistants, nurse practitioners, and other trained individuals provided they operate under the supervision of a licensed doctor, a physician assistant, or a nurse practitioner.[2]

Under the proposed regulation, nurse practitioners, and other authorized individuals will have to obtain training in skin physiology and histology, skin type and appropriate patient selection, laser safety, operation of laser device or devices to be used, recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment, and demonstrate hands-on competence. Nurses practicing laser hair removal when this regulation becomes effective will be deemed to have met the training requirement.[3] Individuals who are not nurses but practicing under the supervision of one are required to be trained, but it will be up to the supervisor to ensure that such training is completed.

The costs of training vary from provider to provider. For example, an online research reveals that a provider in Denver, Colorado offers training composed of 20 hours of online training followed by 40 hours of classroom and hands-on training over a span of six days at $6,500, which includes a hotel room, lunches, books, classroom materials, and tuition.[4] Another provider in Stafford, Virginia offers training composed of two days of at-home training followed by a three-day on-site training at $2,500, which includes books, classroom materials, and tuition, but does not include lodging and meals.[5] The other major costs of training would include travel expenses and lost wages.

In addition to the training, the proposed regulation requires that the laser hair removal is performed by a nurse or by a person who is supervised by one. Therefore, a practitioner who does not have such a qualification will have to enter into a supervision arrangement by a licensed doctor, a physician assistant, or a nurse practitioner. A nurse practitioner or physician assistant in turn is required to have a collaborative agreement or practice agreement with a physician under other existing regulations. The cost of securing supervision from a licensed doctor is not known, but will likely be significant. Individuals who are currently operating without supervision will have to cease practicing laser hair removal if they cannot secure a supervision arrangement with a licensed doctor.

According to DHP, the main aim of the proposed regulation is to "[provide] some assurance that a potentially harmful procedure can be performed without risk of injury to a patient and some accountability the performance of laser hair removal." As mentioned above, DPOR and DHP reviewed the issue of laser hair removal in 2016 and concluded that the lack of a comprehensive regulation over the use of laser technology for hair removal posed a risk of harm to the public's health, safety and welfare. Thus, to the extent the proposed regulation reduces those risks it will be beneficial. However, some businesses currently operating without supervision will have to cease practicing laser hair removal if they cannot secure a supervision arrangement.

Businesses and Entities Affected. The number of businesses practicing laser hair removal and the number of businesses with staff currently working without supervision in Virginia are not known. Similarly, there is no data on the number of laser hair removal customers in Virginia. There are 10,096 nurse practitioners licensed in Virginia.[6] However, nurse practitioners are licensed in 10 specialty categories- most of which would not have laser hair removal in their scope of practice.

Localities Particularly Affected. The proposed regulation does not affect any particular locality more than others.

Projected Impact on Employment. If a business currently practicing laser hair removal cannot secure supervision arrangement with a doctor, physician assistant, or a nurse practitioner for its staff, it will have to cease operations. Thus, the proposed supervision agreement may have a negative impact on employment.

Effects on the Use and Value of Private Property. Securing supervision may introduce additional costs to some of the laser hair removal practices and reduce their asset values or may force some to cease their operations.

Real Estate Development Costs. No impact on real estate development costs is expected.

Small Businesses:

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

Costs and Other Effects. Most of the businesses performing laser hair removal are likely to be small. The legislation and the proposed regulation introduce additional costs associated with securing a supervision arrangement. The additional cost in some cases may be significant enough to force closure.

Alternative Method that Minimizes Adverse Impact. The legislative mandate specifically requires training and supervision. Thus, there is no alternative method that minimizes the potential adverse impact on some small businesses while satisfying the law.

Adverse Impacts:

Businesses. Larger laser hair removal businesses are more likely to have an existing supervision arrangement for their staff and the adverse impact identified above may not be implicated for them.

Localities. The proposed regulation will not adversely affect localities.

Other Entities. The proposed required supervision arrangement may introduce additional compliance costs on laser hair removal businesses. Higher compliance costs or closures could result in price increases and negatively affect consumers.

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[1]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0390

[2]Practice of laser hair removal by a doctor is regulated in a separate regulation, 18 VAC 85 - 20.

[3]Ibid.

[4]http://rockymountainlasercollege.com/laser-training/cost/, accessed on February 8, 2018.

[5]http://www.nvlet.com/tuition/, accessed on February 8, 2018.

[6]Data source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Boards of Nursing and Medicine have the following comment on the economic impact analysis (EIA) of the Department of Planning and Budget.

The EIA references "nurses" practicing or performing laser hair removal; the proposed regulations and the statutory mandate references nurse practitioners. The references to "nurse" should be amended to read "nurse practitioner."

The EIA notes that individuals performing laser hair removal without supervision will have to secure a supervision arrangement with a licensed doctor. In fact, both the law and the regulation allow a nurse practitioner to provide such supervision. In 2018, legislation was adopted to authorize nurse practitioners with years of experience to practice autonomously. Additionally, nurse practitioners who do have an agreement with a collaborating physician may have their own practice and are not required to practice in the same location as the physician. Therefore, it is not necessary for a laser hair business to have a supervision arrangement with a doctor; it may have such an arrangement with a nurse practitioner.

Summary:

Consistent with Chapter 390 of the 2017 Acts of Assembly, the proposed action (i) requires that laser hair removal must be performed by a "properly trained person" who is a licensee or by a "properly trained person under the direction and supervision" of a doctor, physician assistant, or nurse practitioner and (ii) provides a regulatory framework for such direction and supervision.

18VAC90-30-124. Direction and supervision of laser hair removal.

A. A nurse practitioner, as authorized pursuant to § 54.1-2957 of the Code of Virginia, may perform or supervise the performance of laser hair removal upon completion of training in the following:

1. Skin physiology and histology;

2. Skin type and appropriate patient selection;

3. Laser safety;

4. Operation of laser device to be used;

5. Recognition of potential complications and response to any actual complication resulting from a laser hair removal treatment; and

6. A minimum number of 10 proctored patient cases with demonstrated competency in treating various skin types.

B. Nurse practitioners who have been performing laser hair removal prior to (the effective date of this regulation) are not required to complete the training specified in subsection A of this section.

C. A nurse practitioner who delegates the practice of laser hair removal and provides supervision for such practice shall ensure the supervised person has completed the training required in subsection A of this section.

D. A nurse practitioner who performs laser hair removal or who supervises others in the practice shall receive ongoing training as necessary to maintain competency in new techniques and laser devices. The nurse practitioner shall ensure that persons the nurse practitioner supervises also receive ongoing training to maintain competency.

E. A nurse practitioner may delegate laser hair removal to a properly trained person under the nurse practitioner's direction and supervision. Direction and supervision shall mean that the nurse practitioner is readily available at the time laser hair removal is being performed. The supervising nurse practitioner is not required to be physically present but is required to see and evaluate a patient for whom the treatment has resulted in complications prior to the continuance of laser hair removal treatment.

F. Prescribing of medication shall be in accordance with § 54.1-3303 of the Code of Virginia.

VA.R. Doc. No. R18-5221; Filed October 4, 2018, 3:23 p.m.

BOARD OF OPTOMETRY

Proposed Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-5, 18VAC105-20-10, 18VAC105-20-16, 18VAC105-20-20, 18VAC105-20-40, 18VAC105-20-45, 18VAC105-20-46, 18VAC105-20-47, 18VAC105-20-60, 18VAC105-20-70; repealing 18VAC105-20-15).**

Statutory Authority: §§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Public Hearing Information:

November 2, 2018 - 9:05 a.m. - Perimeter Center, 9960 Mayland Drive, Suite 200, Conference Center, Henrico, VA

Public Comment Deadline: December 28, 2018.

Agency Contact: Leslie L. Knachel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4471, or email leslie.knachel@dhp.virginia.gov.

Basis: Regulations are promulgated under the general authority of § 54.1-2400 of the Code of Virginia, which provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

Purpose: By updating the current regulations, eliminating any that are unnecessarily burdensome and adding requirements for evidence of continued competency, the board's intent is greater clarity and understanding by applicants and licensees of the applicable rules. Amended regulations will make it less onerous for an applicant who is currently licensed and practicing in another state and wants to become licensed in Virginia. If an applicant has been actively practicing and has a current license, the applicant would not be required to do additional continuing education (CE). If not actively practicing, the board believes some CE is necessary to ensure minimal competency for public health and safety in providing patient care.

Substance: In addition to editorial changes, the board proposes deletion of unnecessary or unenforceable rules, inclusion of a definition for active practice, more specificity about evidence of continued competency required for licensure by endorsement and reinstatement, clarification about the expiration date that may be included on an eyeglass prescription, and a waiver of graduation from an accredited school if an applicant was educated in a foreign country but has been actively practicing in another state.

Issues: The primary advantage to the public is the potential for additional practitioners to become licensed in Virginia if they are licensed in another state and actively practicing without a history of disciplinary action. It is also less onerous to reinstate a lapsed license, which could increase the supply of optometrists available to provide eye care. There are no disadvantages for the public. There are no advantages or disadvantages to the Commonwealth.

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

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. As the result of a periodic review,[1] the Board of Optometry (Board) proposes amendments concerning: 1) definitions, 2) requirements for licensure, 3) continuing education (CE), 4) alignment of regulatory text with the Code of Virginia, and 5) clarification.

Result of Analysis. The benefits likely exceed the costs for all proposed changes or are neutral in effect.

Estimated Economic Impact.

Definitions: The Board proposes to define "active clinical practice" as an average of 20 hours per week or 640 hours per year of providing patient care. The term is used in licensing and reinstatement requirements and is currently open to wide interpretation. According to the Department of Health Professions (DHP), the Board's intent is to allow practice hours less than full time but in a quantity sufficient to demonstrate continuing competency to practice. Having a specified definition would be beneficial and reduce the likelihood of confusion or dispute.

Requirements for Licensure. The current regulation requires that applicants for licensure to practice optometry "Be a graduate of a school of optometry accredited by the Accreditation Council on Optometric Education." The Board proposes to add "or other accrediting body deemed by the board to be substantially equivalent" to allow potential recognition of another educational accrediting body if there is one in the future. This may be beneficial if such a situation arises.

The Board proposes to add a provision that would allow it to waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another U.S. jurisdiction and has been engaged in active clinical practice for at least 36 out of the 60 months immediately preceding application for licensure in Virginia. According to DHP, the intent of this amendment is to allow a pathway to licensure for foreign-trained optometrists who have been engaged in active practice in another state. Currently, the regulation requires graduation from an accredited program. The Board believes the requirement of passage of the national examination and active practice for at least 36 months is sufficient evidence of qualification to practice.

The Board proposes to eliminate the requirement that an applicant must complete 32 hours of CE if he has not passed all parts of the examination within the five years prior to application and specify that an applicant who has been licensed in another state and has not been engaged in active practice within the 12 months immediately preceding application complete 20 hours (equivalent of one year) of CE. According to DHP, the Board is trying to make it less onerous for an applicant who is currently licensed and practicing in another state and wants to become licensed in Virginia. If he has been actively practicing and has a current license, the applicant would not be required to do additional CE. If not actively practicing, the Board believes some CE is necessary to ensure minimal competency for providing patient care.

Continuing Education: Other DHP boards have regulations that provide that the board may grant an exemption from all or part of the CE requirement for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters; the Board of Optometry proposes to add this provision for optometrists. To the extent that this proposed provision is applied wisely, it would be beneficial in that it would allow competent optometrists to continue to practice without interruption.

The current regulation states that "A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date." According to DHP, audits are not conducted within 14 days of the renewal date, so the current requirement is not practical. The Board proposes to amend the requirement to the licensee providing evidence substantiating participation in required continuing education courses within 30 days of the audit notification. The proposed requirement is beneficial in that it is much more feasible.

Under the current regulation CE course providers are directed to submit certificates of course completion and to ensure that all required information is included. The Board proposes to amend the regulatory text to place the burden on the licensee to ensure that the certificate of completion he receives from the CE provider includes the information necessary to receive credit from the Board for meeting regulatory requirements.

Chapter 89 of the 2016 Acts of Assembly amended Code of Virginia § 54.1-3219 to specify that at least 10 hours (of CE) be obtained through real-time, interactive activities, including in-person or electronic presentations. In order to practically meet this statutory requirement, the Board proposes to require that CE certificates include whether the course was in real-time and interactive activities, including in-person or electronic presentations.

Businesses and Entities Affected. The proposed amendments affect the 1,755 licensed optometrists[2] and the 486 offices of optometrists[3] in the Commonwealth. All 486 offices qualify as small businesses.[4]

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

Projected Impact on Employment. The proposals to make it less onerous for optometrists to become licensed or maintain licensure in the Commonwealth may moderately increase the number of employed optometrists.

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

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

Small Businesses:

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

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

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

Adverse Impacts:

Businesses. The proposed amendments do not adversely affect businesses.

Localities. The proposed amendments do not adversely affect localities.

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

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[1]See http://townhall.virginia.gov/l/ViewPReview.cfm?PRid=1516

[2]Data source: Department of Health Professions

[3]Data source: Virginia Employment Commission

[4]Data source: Ibid

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

Summary:

In addition to editorial changes, the proposed amendments (i) delete unnecessary or unenforceable rules, (ii) add a limitation on the number of times an applicant can take and fail the licensing examination before additional education is necessary, (iii) add specificity about evidence of continued competency required for licensure by endorsement and reinstatement, (iv) clarify the expiration date that may be included on an eyeglass prescription, and (v) waive requirement of graduation from an accredited school if an applicant was educated in a foreign country but has been actively practicing in another state.

18VAC105-20-5. Definitions.

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

"Active clinical practice" means as an average of 20 hours per week or 640 hours per year of providing patient care.

"Adnexa" is defined as the conjoined, subordinate, or immediately associated anatomic parts of the human eye, including eyelids and eyebrows.

"Board" means the Virginia Board of Optometry.

"NBEO" means the National Board of Examiners in Optometry.

"TMOD" means the treatment and management of ocular disease portion of the NBEO examination.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

18VAC105-20-10. ~~Licensure by examination~~ Requirements for licensure.

A. The applicant, in order to be eligible for licensure ~~by examination~~ to practice optometry in the Commonwealth, shall meet the requirements for TPA certification in 18VAC105-20-16 and shall:

1. Be a graduate of a school of optometry accredited by the Accreditation Council on Optometric Education or other accrediting body deemed by the board to be substantially equivalent; have an official transcript verifying graduation sent to the board;

2. Request submission of an official report from the NBEO of a score received on each required part of the NBEO examination or other board-approved examination; ~~and~~

3. Submit a completed application and the prescribed fee; and

4. Sign a statement attesting that the applicant has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.

B. ~~Applicants who passed the National Board Examination prior to May 1985 shall apply for licensure by endorsement as provided for in 18VAC105-20-15.~~ The board may waive the requirement of graduation from an accredited school of optometry for an applicant who holds a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice for 36 out of the 60 months immediately preceding application for licensure in Virginia.

C. Required examinations. ~~1.~~ For the purpose of § 54.1-3211 of the Code of Virginia, the board adopts all parts of the NBEO examination as its written examination for licensure. After July 1, 1997, the board shall require passage as determined by the board of Parts I, II, and III of the NBEO examination, including passage of TMOD.

~~2. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.~~

D. If an applicant has been licensed in another jurisdiction ~~and has not been engaged in active clinical practice for at least 36 out of the last 60 months preceding application, as required for licensure by endorsement, he may apply for licensure by examination, and~~, the following requirements shall also apply:

1. The applicant shall attest that ~~he~~ the applicant is not a respondent in a pending or unresolved malpractice claim~~; and~~.

2. Each jurisdiction in which the applicant is or has been licensed shall verify that:

a. The license is current and unrestricted, or if the license has lapsed, it is eligible for reinstatement;

b. All continuing education requirements have been completed, if applicable;

c. The applicant is not a respondent in any pending or unresolved board action; and

d. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia.

~~E.~~ 3. An applicant ~~who completed all parts of the board-approved examination more than five years prior to the date of the board's receipt of his application for licensure may be required to take up to 32 hours of board-approved continuing education~~ licensed in another jurisdiction who has not been engaged in active practice within the 12 months immediately preceding application for licensure in Virginia shall be required to complete 20 hours of continuing education as specified in 18VAC105-20-70.

4. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing.

18VAC105-20-15. ~~Licensure by endorsement.~~ (Repealed.)

~~A. An applicant for licensure by endorsement shall meet the requirements for TPA certification in 18VAC105-20-16, pay the fee as prescribed in 18VAC105-20-20, and file a completed application that certifies the following:~~

~~1. The applicant has successfully passed the examination required for licensure in optometry in any jurisdiction of the United States at the time of initial licensure.~~

~~2. The applicant has been engaged in active clinical practice for at least 36 months out of the last 60 months immediately preceding application.~~

~~3. The applicant is not a respondent in a pending or unresolved malpractice claim.~~

~~4. The applicant is currently licensed in another jurisdiction of the United States.~~

~~5. Each jurisdiction in which the applicant is or has been licensed shall verify that:~~

~~a. The license is current and unrestricted, or if the license has lapsed, it is eligible for reinstatement;~~

~~b. All continuing education requirements have been completed, if applicable;~~

~~c. The applicant is not a respondent in any pending or unresolved board action;~~

~~d. The applicant has not committed any act that would constitute a violation of § 54.1-3204 or 54.1-3215 of the Code of Virginia; and~~

~~e. The applicant has graduated from an accredited school or college of optometry.~~

~~B. The applicant shall also provide proof of competency in the use of diagnostic pharmaceutical agents (DPAs) that shall consist of a report from the national board of passing scores on all sections of Parts I and II of the NBEO examination taken in May 1985 or thereafter. If the applicant does not qualify through examination, he shall provide other proof of meeting the requirements for the use of DPA as provided in §§ 54.1-3220 and 54.1-3221 of the Code of Virginia.~~

~~C. As part of the application for licensure, an applicant must sign a statement attesting that he has read, understands, and will comply with the statutes and regulations governing the practice of optometry in Virginia.~~

~~D. In the case of a federal service optometrist, the commanding officer shall also verify that the applicant is in good standing and provide proof of credentialing and quality assurance review to satisfy compliance with applicable requirements of subsection A of this section.~~

~~E. An optometrist previously licensed in Virginia is not eligible for licensure by endorsement but may apply for reinstatement of licensure under 18VAC105-20-60.~~

18VAC105-20-16. Requirements for TPA certification.

A. An applicant for licensure shall meet the following requirements for TPA certification:

1. Complete a full-time, postgraduate or equivalent graduate-level optometric training program that is approved by the board and that shall include a minimum of 20 hours of clinical supervision by an ophthalmologist; and

2. ~~Take and pass~~ Submit a passing score on the TPA certification examination, which shall be ~~Treatment and Management of Ocular Disease (TMOD) of the NBEO~~ TMOD or~~, if~~ be TPA-certified by ~~a state examination,~~

~~provide evidence of comparability to the NBEO examination that is~~ an examination satisfactory to the board.

B. A candidate for certification by the board who fails the examination as required in subdivision A 2 of this section, following three attempts, shall complete additional postgraduate training as determined by the board to be eligible for TPA certification.

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	$250
~~Application for TPA certification~~	~~$200~~
Annual licensure renewal without TPA certification	$150
Annual licensure renewal with TPA certification	$200
Late renewal without TPA certification	$50
Late renewal with TPA certification	$65
Returned check	$35
Professional designation application	$100
Annual professional designation renewal (per location)	$50
Late renewal of professional designation	$20
Reinstatement application fee (including renewal and late fees)	$400
Reinstatement application after disciplinary action	$500
Duplicate wall certificate	$25
Duplicate license	$10
Licensure verification	$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	$75
Annual licensure renewal with TPA certification	$100
Annual professional designation renewal (per location)	$25

18VAC105-20-40. Standards of conduct.

The board has the authority to ~~deny,~~ refuse to issue or renew a license, suspend, revoke, or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."

2. ~~Disclose to~~ Notify the board of any disciplinary action taken by a regulatory body in another jurisdiction.

3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.

4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC105-20-45.

5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed in compliance with requirements of § 54.1-2405 of the Code of Virginia on the transfer of patient records in conjunction with closure, sale, or relocation of practice.

6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.

7. Provide for continuity of care in the event of an absence from the practice or, in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.

9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient

record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing, or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family to include~~, but not be limited to,~~ actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement, or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

13. Not practice with an expired or unregistered professional designation.

14. Not violate or cooperate with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) or 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

18VAC105-20-45. Standards of practice.

A. An optometrist shall legibly document in a patient record the following:

1. During a routine or medical eye examination:

a. An adequate case history, including the patient's chief complaint;

b. The performance of appropriate testing;

c. The establishment of an assessment or diagnosis; and

d. A recommendation for an appropriate treatment or management plan, including any necessary follow up.

2. During an initial contact lens examination:

a. The requirements of a routine or medical eye examination as prescribed in subdivision 1 of this subsection;

b. Assessment of corneal curvature;

c. Evaluation of contact lens fitting;

d. Acuity through the lens; and

e. Directions for the wear, care, and handling of lenses.

3. During a follow-up contact lens examination:

a. Evaluation of contact lens fitting and anterior segment health;

b. Acuity through the lens; and

c. Such further instructions as necessary for the individual patient.

4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

1. The printed name of the prescribing optometrist;

2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;

3. The name of the patient;

4. The signature of the optometrist;

5. The date of the examination ~~and an expiration date, if medically appropriate~~; ~~and~~

6. If an expiration date is placed on a prescription for ophthalmic goods, the date shall not be less than one year unless the medical reason for a shorter expiration date is documented in the patient record; and

7. Any special instructions.

C. Contact lens.

1. Sufficient information for complete and accurate filling of an established contact lens prescription shall include ~~but not be limited to~~ (i) the power, (ii) the material or manufacturer or both, (iii) the base curve or appropriate designation, (iv) the diameter when appropriate, and (v) medically appropriate expiration date.

2. An optometrist shall provide a patient with a copy of the patient's contact lens prescription at the end of the contact lens fitting, even if the patient does not ask for it. An optometrist may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products.

3. An optometrist shall provide or verify the prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers.

4. An optometrist shall not require patients to buy contact ~~lens~~ lenses, pay additional fees, or sign a waiver or release in exchange for a copy of the contact lens prescription.

5. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.

D. Spectacle lens.

1. A licensed optometrist shall provide a written prescription for spectacle lenses immediately after the eye examination is completed. He may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products.

2. An optometrist shall not require patients to buy ophthalmic goods, pay additional fees, or sign a waiver or release in exchange for a copy of the spectacle prescription.

3. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.

E. Practitioners shall maintain a patient record for a minimum of ~~five~~ six years following the last patient encounter with the following exceptions:

1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

F. Practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

G. For the purpose of prescribing spectacles, eyeglasses, lenses, or contact lenses to a patient, a licensee shall establish a bona fide provider-patient relationship in accordance with requirements of § 54.1-2400.01:2 of the Code of Virginia.

18VAC105-20-46. Treatment guidelines for TPA-certified optometrists.

A. TPA-certified optometrists may treat diseases and abnormal conditions of the human eye and its adnexa that may be treated with medically appropriate pharmaceutical agents as referenced in 18VAC105-20-47. ~~The adnexa is defined as conjoined, subordinate or immediately associated anatomic parts of the human eye, including eyelids and eyebrows.~~

B. In addition, the following may be treated:

1. Glaucoma (excluding the treatment of congenital and infantile glaucoma). Treatment of angle closure shall follow the definition and protocol prescribed in subsection C of this section.

2. Ocular-related post-operative care in cooperation with patient's surgeon.

3. Ocular trauma to the above tissues as in subsection A of this section.

4. Uveitis.

5. Anaphylactic shock (limited to the administration of intramuscular epinephrine).

C. The definition and protocol for treatment of angle closure glaucoma shall be as follows:

1. As used in this chapter, angle closure glaucoma shall mean a closed angle in the involved eye with significantly increased intraocular pressure, and corneal microcystic edema;

2. Treatment shall be limited to the initiation of immediate emergency care with appropriate pharmaceutical agents as prescribed by this chapter;

3. Once the diagnosis of angle closure glaucoma has been established by the optometrist, the ophthalmologist to whom the patient is to be referred should be contacted immediately;

4. If there are no medical contraindications, an oral osmotic agent may be administered as well as an oral carbonic anhydrase inhibitor and any other medically accepted, Schedule III, IV or VI, oral antiglaucomic agent as may become available; and

5. Proper topical medications as appropriate may also be administered by the optometrist.

D. An oral Schedule VI immunosuppressive agent shall only be used when (i) the condition fails to appropriately respond to any other treatment regimen; (ii) such agent is prescribed in consultation with a physician; and (iii) treatment with such agent includes monitoring of systemic effects.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedule III, IV and VI narcotic and nonnarcotic agents.

2. Topically administered Schedule VI agents:

a. Alpha-adrenergic blocking agents;

b. Anesthetic (including esters and amides);

c. Anti-allergy (including antihistamines and mast cell stabilizers);

d. Anti-fungal;

e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

f. Anti-infective (including antibiotics and antivirals);

g. Anti-inflammatory;

h. Cycloplegics and mydriatics;

i. Decongestants; and

j. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

a. Aminocaproic acids (including antifibrinolytic agents);

b. Anti-allergy (including antihistamines and leukotriene inhibitors);

c. Anti-fungal;

d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

e. Anti-infective (including antibiotics and antivirals);

f. Anti-inflammatory (including steroidal and nonsteroidal);

g. Decongestants; and

h. Immunosuppressive agents.

B. Schedule I~~, II~~ and V drugs and Schedule II drugs with the exception of controlled substances consisting of hydrocodone in combination with acetaminophen are excluded from the list of therapeutic pharmaceutical agents.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed or dispensed.

18VAC105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before December 31 of 2018, submit a completed renewal form and pay the prescribed annual licensure fee. Beginning with calendar year 2020, the renewal of licensure deadline shall be March 31 of each year. For calendar year 2019, no renewal is required.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address of record and the public address, if different from the address of record. All changes of address or name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address of record given and shall not relieve the licensee of the obligation to comply.

C. The license of every person who does not complete the renewal form and submit the renewal fee each year may be renewed for up to one year by paying the prescribed renewal fee and late fee, provided the requirements of 18VAC105-20-70 have been met. After the renewal deadline, a license that has not been renewed is lapsed. Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action ~~and additional fines by the board~~.

D. An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia shall apply for reinstatement. The executive director may grant reinstatement provided that:

1. The applicant ~~can demonstrate continuing competence~~ has a current, unrestricted license in another United States jurisdiction and has been engaged in active clinical practice within the 12 months immediately preceding application for reinstatement; or

2. The applicant has satisfied current requirements for continuing education as specified in 18VAC105-20-70 for the period in which the license has been lapsed, not to exceed two years; and

3. The applicant has paid the prescribed reinstatement application fee.

~~E. The board may require an applicant who has allowed his license to expire and who cannot demonstrate continuing competency to pass all or parts of the board-approved examinations.~~

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with

new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension ~~or waiver~~ has been granted by the Continuing Education Committee. A request for an extension ~~or waiver~~ shall be received prior to the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection ~~G~~ H of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within ~~14~~ 30 days of the ~~renewal date~~ audit notification.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection ~~G~~ H of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date ~~on which the post-test was graded as~~ indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

H. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

8. Council on Optometric Practitioner Education (COPE).

9. State or federal governmental agencies.

10. College of Optometrists in Vision Development.

11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.

12. Providers of training in cardiopulmonary resuscitation (CPR).

13. Optometric Extension Program.

~~H.~~ I. In order to ~~maintain approval~~ receive credit for continuing education courses, ~~providers or sponsors~~ a licensee shall submit a certificate that shows:

1. ~~Provide a certificate of attendance that shows the~~ The date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. ~~Maintain documentation about the course and attendance for at least three years following its completion.~~ Whether the course was in real-time and interactive, including in-person or electronic presentations.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to

disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

VA.R. Doc. No. R17-5114; Filed October 4, 2018, 3:25 p.m.

BOARD OF PHARMACY

Final Regulation

REGISTRAR'S NOTICE: The Board of Pharmacy is claiming an exemption from Article 2 of the Administrative Process Act in accordance with § 2.2-4006 A 13 of the Code of Virginia, which exempts amendments to regulations of the board to schedule a substance in Schedule I or II pursuant to subsection D of § 54.1-3443 of the Code of Virginia. The board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-322).**

Statutory Authority: §§ 54.1-2400 and 54.1-3443 of the Code of Virginia.

Effective Date: November 28, 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:

The amendments add two compounds into Schedule I of the Drug Control Act as recommended by the Virginia Department of Forensic Science pursuant to § 54.1-3443 of the Code of Virginia. The compounds added by this regulatory action will remain in effect for 18 months or until the compounds are placed in Schedule I by legislative action of the General Assembly.

18VAC110-20-322. Placement of chemicals in Schedule I.

A. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 2-(methylamino)-2-phenyl-cyclohexanone (other name: Deschloroketamine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. 2-methyl-1-(4-(methylthio)phenyl)-2-morpholinopropiophenone (other name: MMMP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

3. Alpha-ethylaminohexanophenone (other name: N-ethylhexedrone), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. N-ethyl-1-(3-methoxyphenyl)cyclohexylamine (other name: 3-methoxy-PCE), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

5. 4-fluoro-alpha-pyrrolidinohexiophenone (other name: 4-fluoro-alpha-PHP), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

6. N-ethyl-1,2-diphenylethylamine (other name: Ephenidine), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

7. Synthetic opioids:

a. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-1,3-benzodioxole-5-carboxamide (other name: Benzodioxole fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. 3,4-dichloro-N-[2-(diethylamino)cyclohexyl]-N-methylbenzamide (other name: U-49900), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. 2-(2,4-dichlorophenyl)-N-[2-(dimethylamino) cyclohexyl]-N-methylacetamide (other name: U-48800), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

8. Central nervous system stimulants:

a. Methyl 2-(4-fluorophenyl)-2-(2-piperidinyl)acetate (other name: 4-fluoromethylphenidate), including its salts, isomers, and salts of isomers.

b. Isopropyl-2-phenyl-2-(2-piperidinyl)acetate (other name: Isopropylphenidate), including its salts, isomers, and salts of isomers.

The placement of drugs listed in this subsection shall remain in effect until August 21, 2019, unless enacted into law in the Drug Control Act.

B. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. 2,5-dimethoxy-4-chloroamphetamine (other name: DOC), its optical, position, and geometric isomers, salts, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

2. Synthetic opioids:

a. N-(2-fluorophenyl)-2-methoxy-N-[1-(2-phenylethyl)-4-piperidinyl]-acetamide (other name: Ocfentanil), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

b. N-(4-methoxyphenyl)-N-[1-(2-phenylethyl)-4-piperidinyl]-butanamide (other name: 4-methoxybutyrylfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

c. N-phenyl-2-methyl-N-[1-(2-phenylethyl)-4-piperidinyl]-propanamide (other name: Isobutyryl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

d. N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl]-cyclopentanecarboxamide (other name: Cyclopentyl fentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

e. N-phenyl-N-(1-methyl-4-piperidinyl)-propanamide (other name: N-methyl norfentanyl), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

3. Cannabimimetic agent: 1-(4-cyanobutyl)-N-(1-methyl-1-phenylethyl)-1H-indazole-3-carboxamide (other name: 4-cyano CUMYL-BUTINACA), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

4. Benzodiazepine: Flualprazolam, its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until March 4, 2019, unless enacted into law in the Drug Control Act.

C. Pursuant to subsection D of § 54.1-3443 of the Code of Virginia, the Board of Pharmacy places the following in Schedule I of the Drug Control Act:

1. Synthetic opioid: N-[2-(dimethylamino)cyclohexyl]-N-methyl-1,3-benzodioxole-5-carboxamide (other names: 3,4-methylenedioxy U-47700 or 3,4-MDO-U-47700), its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation.

2. Cannabimimetic agent: N-(adamantanyl)-1-(5-chloropentyl) indazole-3-carboxamide (other name: 5-chloro-AKB48), its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

The placement of drugs listed in this subsection shall remain in effect until May 27, 2020, unless enacted into law in the Drug Control Act.

VA.R. Doc. No. R19-5660; Filed October 5, 2018, 12:03 p.m.

Notice of Extension of Emergency Regulation

Title of Regulation: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-690, 18VAC110-20-700, 18VAC110-20-710; adding 18VAC110-20-735).**

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

Effective Date Extended Through: May 6, 2019.

The Governor approved the request of the Board of Dentistry to extend the expiration date of the emergency regulation for six months as provided by § 2.2-4011 D of the Code of Virginia. Therefore, the emergency regulation will continue in effect through May 6, 2019. The emergency regulation extends controlled substances registration to certain trained individuals and was published in 33:20 VA.R. 2269-2272 May 29, 2017.

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.

VA.R. Doc. No. R17-5048; Filed October 3, 2018, 6:00 p.m.

Emergency Regulation

Title of Regulation: **18VAC110-60. Regulations Governing Pharmaceutical Processors (amending 18VAC110-60-10 through 18VAC110-60-40, 18VAC110-60-90, 18VAC110-60-110, 18VAC110-60-220, 18VAC110-60-240, 18VAC110-60-290, 18VAC110-60-310; adding 18VAC110-60-285, 18VAC110-60-295).**

Statutory Authority: §§ 54.1-2400 and 54.1-3442.6 of the Code of Virginia.

Effective Dates: October 1, 2018, through February 6, 2019.

Agency Contact: Caroline Juran, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4456, FAX (804) 527-4472, or email caroline.juran@dhp.virginia.gov.

Preamble:

Section 2.2-4011 of the Code of Virginia states that agencies may adopt emergency regulations in situations in which 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, and the regulation is not exempt under the provisions of § 2.2-4006 A 4 of the Code of Virginia. Emergency regulations governing issuance of a permit for a pharmaceutical processor to manufacture and provide cannabidiol oil and THC-A oil were published in 33:25 VA.R. 2818-2835 August 7, 2017, and became effective August 7, 2017.

The Board of Pharmacy adopted amendments to the August 7, 2017, emergency regulation to conform to Chapters 246, 809, and 567 of the 2018 Acts of the Assembly. The amendments include (i) expanding the conditions for which patients may receive a certification from a physician to possess cannabidiol oil or THC-A oil and the types of physicians who may issue a certification; (ii) increasing to 90 days, the supply of oil that can be dispensed and the number of plants a processor may cultivate per patient; (iii) requiring criminal background checks for applicants for pharmaceutical processor permits; (iv) allowing for delivery of the oil after the initial dispensing; (v) providing requirements for registration and labeling; and (vi) establishing a $25 fee for registration of each cannabidiol oil or THC-A product.

CHAPTER 60
REGULATIONS GOVERNING PHARMACEUTICAL PROCESSORS

Part I
General Provisions

18VAC110-60-10. Definitions.

In addition to words and terms defined in §§ 54.1-3408.3 and 54.1-3442.5 of the Code of Virginia, the following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

["90-day supply" means the amount of cannabidiol oil or THC-A oil reasonably necessary to ensure an uninterrupted availability of supply for a 90-day period for registered patients, which cannot exceed 60 fluid ounces.]

"Board" means the Board of Pharmacy.

"Certification" means a written statement, consistent with requirements of § 54.1-3408.3 of the Code of Virginia, issued by a practitioner for the use of cannabidiol oil or THC-A oil for treatment or to alleviate the symptoms of [~~a patient's intractable epilepsy~~ any diagnosed condition or disease determined by the practitioner to benefit from such use].

"Code" means the Code of Virginia.

"Dispensing error" means an act or omission relating to the dispensing of cannabidiol oil or THC-A oil that results in, or may reasonably be expected to result in, injury to or death of a registered patient or results in any detrimental change to the medical treatment for the patient.

"Electronic tracking system" means an electronic radio-frequency identification (RFID) seed-to-sale tracking system that tracks the Cannabis from either the seed or immature plant stage until the cannabidiol oil and THC-A oil are sold to a registered patient, parent, or legal guardian or until the Cannabis, including the seeds, parts of plants, and extracts, are destroyed. The electronic tracking system shall include, at a minimum, a central inventory management system and standard and ad hoc reporting functions as required by the board and shall be capable of otherwise satisfying required recordkeeping.

[~~"Intractable epilepsy" means drug-resistant epilepsy (DRE), which is defined as failure of adequate trials of two tolerated, appropriately chosen and used antiepileptic drug schedules (whether as monotherapies or in combination) to achieve sustained seizure freedom.~~

"On duty" means that a pharmacist is on the premises at the address of the permitted pharmaceutical processor and is available as needed.

[~~"One-month supply" means the amount of cannabidiol oil or THC-A oil reasonably necessary to ensure an uninterrupted availability of supply for a 30-day period for registered patients, which cannot exceed 20 fluid ounces.~~]

"PIC" means the pharmacist-in-charge.

"Production" or "produce" means the manufacture, planting, preparation, cultivation, growing, harvesting, propagation, conversion, or processing of marijuana, either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and

includes any packaging or repackaging of the substance or labeling or relabeling of its container.

"Resident" means a person whose principal place of residence is within the Commonwealth as evidenced by a federal or state income tax return or a current Virginia driver's license. If a person is a minor, residency may be established by evidence of Virginia residency by a parent or legal guardian.

"Qualifying patient" means a Virginia resident who has received [from a practitioner, as defined in § 54.1-3408.3 of the Code,] a written certification for the use of cannabidiol oil or THC-A oil for treatment of [~~intractable epilepsy~~ or to alleviate the symptoms of any diagnosed condition or disease ~~from a practitioner, as defined in § 54.1-3408.3 of the Code~~].

"Registered patient" means a qualifying patient who has been issued a registration by the board for the dispensing of cannabidiol oil or THC-A oil.

"Registration" means an identification card or other document issued by the board that identifies a person as a practitioner or a qualifying patient, parent, or legal guardian.

"Temperature and humidity" means temperature and humidity maintained in the following ranges:

Room or Phase	Temperature	Humidity
Mother room	65 - 75°	50% - 60%
Nursery phase	77 - 85° F	65% - 75%
Vegetation phase	77 - 85° F	55% - 65%
Flower/harvest phase	77 - 85° F	55% - 60%
Drying/extraction rooms	< 75° F	55% - 60%

18VAC110-60-20. Fees.

A. Fees are required by the board as specified in this section. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Registration of practitioner.

1. Initial registration	$50
2. Annual renewal of registration	$50
3. Replacement of registration for a qualifying practitioner whose information has changed or whose original registration certificate has been lost, stolen, or destroyed	$50

C. Registration by a qualifying patient or by a parent or legal guardian.

1. Initial registration	$50
2. Annual renewal of registration	$50
3. Replacement of registration for a qualifying patient or parent or legal guardian whose information has changed or whose original registration certificate has been lost, stolen, or destroyed	$50

D. Pharmaceutical processor permit.

1. Application	$10,000
2. Initial permit	$60,000
3. Annual renewal of permit	$10,000
4. Change of name of processor	$100
5. Change of PIC or any other information provided on the permit application	$100
6. Any acquisition, expansion, remodel, or change of location requiring an inspection	$1,000
7. Reinspection fee	$1,000
[8. Registration of each cannabidiol oil or THC-A oil product	$25]

Part II
Requirements for Practitioners and Patients

18VAC110-60-30. Requirements for practitioner issuing a certification.

A. Prior to issuing a certification for cannabidiol oil or THC-A oil for [~~the treatment or to alleviate symptoms of intractable epilepsy~~ any diagnosed condition or disease], the practitioner shall meet the requirements of § 54.1-3408.3 of the Code, shall submit an application and fee as prescribed in 18VAC110-60-20, and shall be registered with the board.

B. A practitioner issuing a certification shall:

1. Conduct an assessment and evaluation of the patient in order to develop a treatment plan for the patient, which shall include an examination of the patient and the patient's medical history, prescription history, and current medical condition, including an in-person physical examination;

2. Diagnose the patient [~~as having intractable epilepsy~~];

3. Be of the opinion that the potential benefits of cannabidiol oil or THC-A oil would likely outweigh the health risks of such use to the qualifying patient;

4. Explain proper administration and the potential risks and benefits of the cannabidiol oil or THC-A oil to the qualifying patient and, if the qualifying patient lacks legal capacity, to a parent or legal guardian prior to issuing the written certification;

5. Be available or ensure that another practitioner, as defined in § 54.1-3408.3 of the Code, is available to

provide follow-up care and treatment to the qualifying patient, including physical examinations, to determine the efficacy of cannabidiol oil or THC-A oil for treating the [~~intractable epilepsy~~ diagnosed condition or disease];

7. Comply with generally accepted standards of medical practice, except to the extent such standards would counsel against certifying a qualifying patient for cannabidiol oil or THC-A oil;

8. Maintain medical records for all patients for whom the practitioner has issued a certification in accordance with 18VAC85-20-26; and

9. [~~Be registered with and able to access~~ Access or direct the practitioner's delegate to access the Virginia Prescription Monitoring Program for the purpose of determining which, if any, covered substances have been dispensed to the patient].

C. Patient care and evaluation shall not occur by telemedicine for at least the first year of certification. Thereafter, the practitioner shall use his professional judgment to determine the manner and frequency of patient care and evaluation.

D. A practitioner shall not delegate the responsibility of diagnosing a patient or determining whether a patient should be issued a certification. Employees under the direct supervision of the practitioner may assist with preparing a certification, so long as the final certification is approved and signed by the practitioner before it is issued to the patient.

E. The practitioner shall provide instructions for the use of cannabidiol oil or THC-A oil to the patient, or parent or guardian, as applicable, and shall also securely transmit such instructions to the permitted pharmaceutical processor.

F. A practitioner shall not issue certifications for cannabidiol oil or THC-A oil to more than 600 patients at any given time. However, the practitioner may petition the Board of Pharmacy and Board of Medicine for an increased number of patients for whom certifications may be issued, upon submission of evidence that the limitation represents potential patient harm.

G. Upon request, a practitioner shall make a copy of medical records available to an agent of the Board of Medicine or Board of Pharmacy for the purpose of enabling the board to ensure compliance with the law and regulations or to investigate a possible violation.

18VAC110-60-40. Prohibited practices for practitioners.

A. A practitioner who issues certifications shall not:

1. Directly or indirectly accept, solicit, or receive anything of value from any person associated with a pharmaceutical processor or provider of paraphernalia;

2. Offer a discount or any other thing of value to a qualifying patient, parent, or guardian based on the patient's agreement or decision to use a particular pharmaceutical processor or cannabidiol oil or THC-A oil product;

3. Examine a qualifying patient for purposes of diagnosing [~~intractable epilepsy~~ the condition or disease] at a location where cannabidiol oil or THC-A oil is dispensed or produced; or

4. Directly or indirectly benefit from a patient obtaining a certification. Such prohibition shall not prohibit a practitioner from charging an appropriate fee for the patient visit.

B. A practitioner who issues certifications, and such practitioner's coworker, employee, spouse, parent, or child, shall not have a direct or indirect financial interest in a pharmaceutical processor or any other entity that may benefit from a qualifying patient's acquisition, purchase, or use of cannabidiol oil or THC-A oil, including any formal or informal agreement whereby a pharmaceutical processor or other person provides compensation if the practitioner issues a certification for a qualifying patient or steers a qualifying patient to a specific pharmaceutical processor or cannabidiol oil or THC-A oil product.

C. A practitioner shall not issue a certification for himself or for family members, employees, or coworkers.

D. A practitioner shall not provide product samples containing cannabidiol oil or THC-A oil other than those approved by the U.S. Food and Drug Administration.

18VAC110-60-90. Revocation or suspension of a qualifying patient, parent, or legal guardian registration.

The board may revoke or suspend the registration of a patient, a parent, or a legal guardian under the following circumstances:

1. The patient's practitioner notifies the board that the practitioner is withdrawing the written certification submitted on behalf of the patient, and 30 days after the practitioner's withdrawal of the written certification, the patient has not obtained a valid written certification from a different practitioner;

2. The patient, parent, or legal guardian provided false, misleading, or incorrect information to the board;

3. The patient, parent, or legal guardian is no longer a resident of Virginia;

4. The patient, parent, or legal guardian obtained more than a [~~one month~~ 90-day] supply of cannabidiol oil or THC-A oil in a [~~one month~~ 90-day] period;

5. The patient, parent, or legal guardian provided or sold cannabidiol oil or THC-A oil to any person, including another registered patient, parent, or legal guardian;

6. The patient, parent, or legal guardian permitted another person to use the patient, parent, or legal guardian's registration;

7. The patient, parent, or legal guardian tampered, falsified, altered, modified, or allowed another person to tamper, falsify, alter, or modify the patient, parent, or legal guardian's registration;

8. The patient, parent, or legal guardian's registration was lost, stolen, or destroyed, and the patient, parent, or legal guardian failed to notify the board or notified the board of such incident more than five business days after becoming aware that the registration was lost, stolen, or destroyed;

9. The patient, parent, or legal guardian failed to notify the board of a change in registration information or notified the board of such change more than 14 days after the change; or

10. The patient, parent, or legal guardian violated any federal or state law or regulation.

Part III
Application and Approval Process for Pharmaceutical Processors

18VAC110-60-110. Application process for pharmaceutical processor permits.

A. The application process for permits shall occur in three stages: submission of initial application, awarding of conditional approval, and granting of a pharmaceutical processor permit.

B. Submission of initial application.

1. A pharmaceutical processor permit applicant shall submit the required application fee and form with the following information and documentation:

a. The name and address of the applicant and the applicant's owners;

b. The location within the health service area established by the State Board of Health for the pharmaceutical processor that is to be operated under such permit;

c. Detailed information regarding the applicant's financial position, indicating all assets, liabilities, income, and net worth, to demonstrate the financial capacity of the applicant to build and operate a facility to cultivate Cannabis plants intended only for the production and dispensing of cannabidiol oil and THC-A oil pursuant to §§ 54.1-3442.6 and 54.1-3442.7 of the Code of Virginia, which may include evidence of an escrow account, letter of credit, or performance surety bond;

d. Details regarding the applicant's plans for security to maintain adequate control against the diversion, theft, or loss of the Cannabis plants and the cannabidiol oil or THC-A oil;

e. Documents sufficient to establish that the applicant is authorized to conduct business in Virginia and that all applicable state and local building, fire, and zoning requirements and local ordinances are met or will be met prior to issuance of a permit;

f. Information necessary for the board to conduct a criminal background check on [~~owners and any other person who is employed by or acts as an agent of the proposed pharmaceutical processor~~ applicants];

g. Information about any previous or current involvement in the medical cannabidiol oil or THC-A oil industry;

h. Whether the person has ever applied for a permit or registration related to medical cannabidiol oil or THC-A oil in any state and, if so, the status of that application, permit, or registration, to include any disciplinary action taken by any state on the permit, the registration, or an associated license;

i. Any business and marketing plans related to the operation of the pharmaceutical processor or the sale of cannabidiol oil or THC-A oil;

j. Text and graphic materials showing the exterior appearance of the proposed pharmaceutical processor;

k. A blueprint of the proposed pharmaceutical processor, which shall show and identify the square footage of each area of the facility, to include the location of all safes or vaults used to store the Cannabis plants and oils and the location of all areas that may contain Cannabis plants, cannabidiol oil, or THC-A oil, showing the placement of walls, partitions, counters, and all areas of ingress and egress;

l. Documents related to any compassionate need program the pharmaceutical processor intends to offer;

m. Information about the applicant's expertise in agriculture and other production techniques required to produce cannabidiol oil or THC-A oil and to safely dispense such products; and

n. Such other documents and information required by the board to determine the applicant's suitability for permitting or to protect public health and safety.

2. In the event any information contained in the application or accompanying documents changes after being submitted to the board, the applicant shall immediately notify the board in writing and provide corrected information in a timely manner so as not to disrupt the permit selection process.

3. The board shall conduct criminal background checks on [~~the owner or owners~~ applicants] and may verify information contained in each application and accompanying documentation in order to assess the applicant's ability to operate a pharmaceutical processor.

C. In the event the board determines that there are no qualified applicants to award conditional approval for a pharmaceutical processor permit in a health service area, the board may republish, in accordance with 18VAC110-60-100, a notice of open applications for pharmaceutical processor permits.

D. No person who has been convicted of a felony or of any offense in violation of Article 1 (§ 18.2-247 et seq.) or Article 1.1 (§ 18.2-265.1 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia shall have any form of ownership, be employed by, or act as an agent of a pharmaceutical processor.

Part V
Operation of a Pharmaceutical Processor

18VAC110-60-220. Pharmaceutical processor prohibitions.

A. No pharmaceutical processor shall:

1. Cultivate Cannabis plants, produce, or dispense cannabidiol oil or THC-A oil in any place except the approved facility at the address of record on the application for the pharmaceutical processor permit;

2. Sell, deliver, transport, or distribute Cannabis, including cannabidiol oil or THC-A oil, to any other facility;

3. Produce or manufacture cannabidiol oil or THC-A oil for use outside of Virginia; or

4. Provide cannabidiol oil or THC-A oil samples.

B. No pharmaceutical processor shall be open or in operation, and no person shall be in the pharmaceutical processor, unless a pharmacist is on the premises and directly supervising the activity within the pharmaceutical processor. At all other times, the pharmaceutical processor shall be closed and properly secured.

C. No pharmaceutical processor shall sell anything other than cannabidiol oil or THC-A oil products from the pharmaceutical processor.

D. A pharmaceutical processor shall not [~~market or~~] advertise cannabidiol oil or THC-A oil products, except it may post the following information on websites:

1. Name and location of the processor;

2. Contact information for the processor;

3. Hours and days the pharmaceutical processor is open for dispensing cannabidiol oil or THC-A oil products;

4. Laboratory results; and

5. Directions to the processor facility.

E. No cannabidiol oil or THC-A oil shall be consumed on the premises of a pharmaceutical processor, except for emergency administration to a registered patient.

F. No person except a pharmaceutical processor employee or a registered patient, parent, or legal guardian shall be allowed on the premises of a processor with the following exceptions: laboratory staff may enter a processor for the sole purpose of identifying and collecting Cannabis, cannabidiol oil, or THC-A oil samples for purposes of conducting laboratory tests; the board or the board's authorized representative may waive the prohibition upon prior written request.

G. All persons who have been authorized, in writing, to enter the facility by the board or the board's authorized representative shall obtain a visitor identification badge from a pharmaceutical processor employee, prior to entering the pharmaceutical processor.

1. An employee shall escort and monitor such a visitor at all times the visitor is in the pharmaceutical processor.

2. A visitor shall visibly display the visitor identification badge at all times the visitor is in the pharmaceutical processor and shall return the visitor identification badge to a pharmaceutical processor employee upon exiting the pharmaceutical processor.

3. All visitors shall log in and out. The pharmaceutical processor shall maintain the visitor log, which shall include the date, time, and purpose of the visit, and that shall be available to the board.

4. If an emergency requires the presence of a visitor and makes it impractical for the pharmaceutical processor to obtain a waiver from the board, the processor shall provide written notice to the board as soon as practicable after the onset of the emergency. Such notice shall include the name and company affiliation of the visitor, the purpose of the visit, and the date and time of the visit. A pharmaceutical processor shall monitor the visitor and maintain a log of such visit as required by this subsection.

H. No cannabidiol oil or THC-A oil shall be sold, dispensed, or distributed via a delivery service or any other manner outside of a pharmaceutical processor, except that a registered parent or legal guardian may deliver cannabidiol oil or THC-A oil to the registered patient [or in accordance with 18VAC110-60-310 A].

I. Notwithstanding the requirements of subsection [~~E~~ F] of this section, an agent of the board, local law enforcement or other federal, state, or local government officials may enter any area of a pharmaceutical processor if necessary to perform their governmental duties.

18VAC110-60-240. Security requirements.

A. A pharmaceutical processor shall initially cultivate only the number of Cannabis plants necessary to produce cannabidiol oil or THC-A oil for the number of patients anticipated within the first [~~three~~ nine] months of operation. Thereafter, the processor shall:

1. Not maintain more than [~~four~~ 12] Cannabis plants per patient at any given time based on dispensing data from the previous [~~30~~ 90] days;

2. Not maintain cannabidiol oil or THC-A oil in excess of the quantity required for normal, efficient operation;

3. Maintain all Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, and THC-A oil in a secure area or location accessible only by the minimum number of authorized employees essential for efficient operation;

4. Store all cut parts of Cannabis plants, extracts, cannabidiol oil, or THC-A oil in an approved safe or approved vault within the pharmaceutical processor and shall not sell cannabidiol oil or THC-A oil products when the pharmaceutical processor is closed;

5. Keep all approved safes, approved vaults, or any other approved equipment or areas used for the production, cultivation, harvesting, processing, manufacturing, or storage of cannabidiol oil or THC-A oil securely locked or protected from entry, except for the actual time required to remove or replace the Cannabis, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil;

6. Keep all locks and security equipment in good working order;

7. Restrict access to keys or codes to all safes, approved vaults, or other approved equipment or areas to pharmacists practicing at the pharmaceutical processor; and

8. Not allow keys to be left in the locks or accessible to nonpharmacists.

B. The pharmaceutical processor shall have an adequate security system to prevent and detect diversion, theft, or loss of Cannabis seeds, plants, extracts, cannabidiol oil, or THC-A oil. A device for the detection of breaking and a back-up alarm system with an ability to remain operational during a power outage shall be installed in each pharmaceutical processor. The installation and the device shall be based on accepted alarm industry standards and shall be subject to the following conditions:

1. The device shall be a sound, microwave, photoelectric, ultrasonic, or any other generally accepted and suitable device;

2. The device shall be monitored in accordance with accepted industry standards, maintained in operating order, have an auxiliary source of power, and be capable of sending an alarm signal to the monitoring entity when breached if the communication line is not operational;

3. The device shall fully protect the entire processor facility and shall be capable of detecting breaking by any means when activated;

4. The device shall include a duress alarm, a panic alarm, and automatic voice dialer; and

5. Access to the alarm system for the pharmaceutical processor shall be restricted to the pharmacists working at the pharmaceutical processor and the system shall be activated whenever the pharmaceutical processor is closed for business.

C. A pharmaceutical processor shall keep the outside perimeter of the premises well-lit. A processor shall have video cameras in all areas that may contain Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil and at all points of entry and exit, which shall be appropriate for the normal lighting conditions of the area under surveillance.

1. The processor shall direct cameras at all approved safes, approved vaults, dispensing areas, cannabidiol oil, or THC-A oil sales areas and any other area where Cannabis plants, seeds, extracts, cannabidiol oil, or THC-A oil are being produced, harvested, manufactured, stored, or handled. At entry and exit points, the processor shall angle cameras so as to allow for the capture of clear and certain identification of any person entering or exiting the facility;

2. The video system shall have:

a. A failure notification system that provides an audible, text, or visual notification of any failure in the surveillance system. The failure notification system shall provide an alert to the processor within five minutes of the failure, either by telephone, email, or text message;

b. The ability to immediately produce a clear color still photo that is a minimum of 9600 dpi from any camera image (live or recorded);

c. A date and time stamp embedded on all recordings. The date and time shall be synchronized and set correctly and shall not significantly obscure the picture; and

d. The ability to remain operational during a power outage;

3. All video recording shall allow for the exporting of still images in an industry standard image format. Exported video shall have the ability to be archived in a proprietary format that ensures authentication of the video and guarantees that no alteration of the recorded image has taken place. Exported video shall also have the ability to be saved in an industry standard file format that can be played on a standard computer operating system. A

pharmaceutical processor shall erase all recordings prior to disposal or sale of the facility; and

4. The processor shall make 24-hour recordings from all video cameras available for immediate viewing by the board or the board's agent upon request and shall retain the recordings for at least 30 days. If a processor is aware of a pending criminal, civil, or administrative investigation or legal proceeding for which a recording may contain relevant information, it shall retain an unaltered copy of the recording until the investigation or proceeding is closed or the entity conducting the investigation or proceeding notifies the pharmaceutical processor PIC that it is not necessary to retain the recording.

D. The processor shall maintain all security system equipment and recordings in a secure location so as to prevent theft, loss, destruction, or alterations. All security equipment shall be maintained in good working order and shall be tested no less than two times per year.

E. A pharmaceutical processor shall limit access to surveillance areas to persons who are essential to surveillance operations, law-enforcement agencies, security system service employees, the board or the board's agent, and others when approved by the board. A processor shall make available a current list of authorized employees and security system service employees who have access to the surveillance room to the processor. The pharmaceutical processor shall keep all onsite surveillance rooms locked and shall not use such rooms for any other function.

F. If diversion, theft, or loss of Cannabis plants, seeds, parts of plants, extracts, cannabidiol oil, or THC-A oil has occurred from a pharmaceutical processor, the board may require additional safeguards to ensure the security of the products.

[18VAC110-60-285. Registration of products.

A. A pharmaceutical processor shall assign a brand name to each product of cannabidiol oil or THC-A oil. The pharmaceutical processor shall register each brand name with the board, on a form prescribed by the board, prior to any dispensing and shall associate each brand name with a specific laboratory test that includes a terpenes profile and a list of all active ingredients, including:

1. Tetrahydrocannabinol (THC);

2. Tetrahydrocannabinol acid (THCA);

3. Cannabidiols (CBD);

4. Cannabidiolic acid (CBDA); and

5. Any other active ingredient that constitutes at least 1.0% of the batch used in the product.

B. A pharmaceutical processor shall not label two products with the same brand name unless the laboratory test results for each product indicate that they contain the same level of each active ingredient listed in subsection A of this section within a range of 97% to 103%.

C. The board shall not register any brand name that:

1. Is identical to, or confusingly similar to, the name of an existing commercially available product;

2. Is identical to, or confusingly similar to, the name of an unlawful product or substance;

3. Is confusingly similar to the name of a previously approved cannabidiol oil or THC-A oil product brand name;

4. Is obscene or indecent;

5. May encourage the use of marijuana, cannabidiol oil, or THC-A oil for recreational purposes;

6. May encourage the use of cannabidiol oil or THC-A oil for a disease or condition other than the disease or condition the practitioner intended to treat;

7. Is customarily associated with persons younger than the age of 18; or

8. Is related to the benefits, safety, or efficacy of the cannabidiol oil or THC-A oil product unless supported by substantial evidence or substantial clinical data.]

18VAC110-60-290. Labeling of batch of cannabidiol oil or THC-A oil products.

[~~A.~~] Cannabidiol oil or THC-A oil produced [~~for dispensing~~ as a batch] shall not be adulterated and shall be:

1. Processed, packaged, and labeled according to the Food and Drug Administration's Current Good Manufacturing Practice in Manufacturing, Packaging, Labeling, or Holding Operations for Dietary Supplements," 21 CFR Part 111; and

2. Labeled with [~~the results of an active ingredient analysis, a microbiological contaminants analysis, a mycotoxin analysis, a heavy metal analysis, and a pesticide chemical residue analysis that have been completed on a batch basis by a laboratory~~:

a. The name and address of the pharmaceutical processor;

b. The brand name of the cannabidiol oil or THC-A oil product that was registered with the board pursuant to 18VAC110-20-285;

c. A unique serial number that will match the product with the pharmaceutical processor batch and lot number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;

d. The date of final testing and packaging;

e. The expiration date;

f. The quantity of cannabidiol oil or THC-A oil contained therein;

g. A terpenes profile and a list of all active ingredients, including:

(1) Tetrahydrocannabinol (THC);

(2) Tetrahydrocannabinol acid (THCA);

(3) Cannabidiol (CBD);

(4) Cannabidiolic acid (CBDA); and

(5) Any other active ingredient that constitute at least 1.0% of the batch used in the product; and

h. A pass or fail rating based on the laboratory's microbiological, mycotoxins, and heavy metals and chemical residue analysis].

[~~B. The pharmaceutical processor shall assign a name to each cannabidiol oil or THC-A oil product and associate each name with a specific laboratory test that includes a terpenes profile and a list of all active ingredients, including:~~

~~1. Tetrahydrocannabinol (THC);~~

~~2. Tetrahydrocannabinol acid (THC-A); and~~

~~3. Cannabidiol (CBD).~~

~~C. The pharmaceutical processor shall not label two cannabidiol oil or THC-A oil products with the same name unless the laboratory test results for each product indicate that they contain the same level of each active ingredient listed in subsection A of this section within a range of 97% to 103%.~~

~~D. The pharmaceutical processor shall not name a batched product that:~~

~~1. Is identical to, or confusingly similar to, the name of an existing noncannabidiol oil or THC-A oil product;~~

~~2. Is identical to, or confusingly similar to, the name of an unlawful product or substance;~~

~~3. Is confusingly similar to the name of another cannabidiol oil or THC-A oil product name;~~

~~4. Is obscene or indecent;~~

~~5. May encourage the use of cannabidiol oil or THC-A oil for recreational purposes;~~

~~6. May encourage the use of cannabidiol oil or THC-A oil for a condition other than intractable epilepsy;~~

~~7. Is customarily associated with persons younger than the age of 18 years; or~~

~~8. Is related to the benefits, safety, or efficacy of the cannabidiol oil or THC-A oil product unless supported by substantial evidence or substantial clinical data.~~

~~E. A pharmaceutical processor shall label each cannabidiol oil or THC-A oil product prior to dispensing by a pharmacist and shall securely affix to the package a label that states in legible English:~~

~~1. The name of the cannabidiol oil or THC-A oil;~~

~~2. A unique serial number that will match the product with a pharmaceutical processor batch and lot number so as to facilitate any warnings or recalls the board or pharmaceutical processor deem appropriate;~~

~~3. The date of final testing and packaging;~~

~~4. An appropriate expiration date, not to exceed six months;~~

~~5. The quantity of cannabidiol oil or THC-A oil contained therein;~~

~~6. A terpenes profile and a list of all active ingredients, including:~~

~~a. Tetrahydrocannabinol (THC);~~

~~b. Tetrahydrocannabinol acid (THC-A); and~~

~~c. Cannabidiol (CBD); and~~

~~7. A pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, and chemical residue analysis.~~

~~F. A pharmaceutical processor shall not label cannabidiol oil or THC-A oil products as "organic" unless the Cannabis plants have been organically grown and the cannabidiol oil or THC-A oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.~~

18VAC110-60-295. Labeling of dispensed cannabidiol oil or THC-A oil.

A. A pharmaceutical processor shall label each cannabidiol oil or THC-A oil product prior to dispensing by a pharmacist and shall securely affix to the package a label that states in legible English:

1. The brand name of the cannabidiol oil or THC-A oil that was registered with the board pursuant to 18VAC110-20-285;

2. A serial number as assigned by the pharmaceutical processor;

3. The date of dispensing the cannabidiol oil or THC-A oil;

4. An appropriate expiration date, not to exceed six months;

5. The quantity of cannabidiol oil or THC-A oil contained therein;

6. A terpenes profile and a list of all active ingredients, including:

a. Tetrahydrocannabinol (THC);

b. Tetrahydrocannabinol acid (THC-A); and

c. Cannabidiol (CBD);

7. A pass or fail rating based on the laboratory's microbiological, mycotoxins, heavy metals, and chemical residue analysis;

8. The name and registration number of the qualifying patient;

9. The name of the certifying practitioner;

10. Such directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;

11. Name and address of the pharmaceutical processor; and

12. Any cautionary statement as may be required by statute or regulation.

B. No person except a pharmacist or pharmacist technician under the direct supervision of a pharmacist at the pharmaceutical processor shall alter, deface, or remove any label so affixed.

C. A pharmaceutical processor shall not label cannabidiol oil or THC-A oil products as "organic" unless the Cannabis plants have been organically grown and the cannabidiol oil or THC-A oil products have been produced, processed, manufactured, and certified to be consistent with organic standards in compliance with 7 CFR Part 205.]

18VAC110-60-310. Dispensing of cannabidiol oil or THC-A oil.

A. A pharmacist, in good faith, may dispense cannabidiol oil or THC-A oil to any registered patient, parent, or legal guardian as indicated on the written certification.

[~~A pharmacist or pharmacy technician shall require the presentation of a current registration for the patient and parent or legal guardian, if applicable, current written certification and current valid photographic identification issued to a registered patient, parent, or legal guardian, prior to selling oil to such registered patient, parent, or legal guardian.~~ 1. Prior to the initial dispensing of oil pursuant to each written certification, the pharmacist or pharmacy technician at the location of the pharmaceutical processor shall view a current photo identification of the patient, parent, or legal guardian.] The pharmacist or pharmacy technician shall verify in the prescription monitoring program or other program recognized by the board that the registrations are current, the written certification has not expired, and the date and quantity of the last dispensing of cannabidiol oil or THC-A oil to the registered patient.

[2. The pharmacist or pharmacy technician shall make and maintain for two years a paper or electronic copy of the current written certification that provides an exact image of the document that is clearly legible.

3. Prior to any subsequent dispensing, the pharmacist, pharmacy technician, or delivery agent shall view the current written certification and a current photo identification and current registration of the patient, parent, or legal guardian and shall maintain record of such viewing in accordance with policies and procedures of the processor.]

B. A pharmacist may dispense a portion of a registered patient's [~~one month~~ 90-day] supply of cannabidiol oil or THC-A oil. The pharmacist may dispense the remaining portion of the [~~one month~~ 90-day] supply of cannabidiol oil or THC-A oil at any time except that no registered patient, parent, or legal guardian shall receive more than a [~~one month~~ 90-day] supply of cannabidiol oil or THC-A oil in a [~~one month~~ 90-day] period from any pharmaceutical processor.

C. A dispensing record shall be maintained for three years from the date of dispensing, and the pharmacist or pharmacy technician under the direct supervision of the pharmacist shall affix a label to the container of oil which contains:

1. A serial number assigned to the dispensing of the oil;

2. The name or kind of cannabidiol oil or THC-A oil and its strength;

3. The serial number assigned to the oil during production;

4. The date of dispensing the cannabidiol oil or THC-A oil;

5. The quantity of cannabidiol oil or THC-A oil dispensed, which cannot exceed [~~20~~ 60] fluid ounces;

6. The name and registration number of the registered patient;

7. The name and registration number of the certifying practitioner;

8. Such directions for use as may be included in the practitioner's written certification or otherwise provided by the practitioner;

9. The name or initials of the dispensing pharmacist;

10. Name, address, and telephone number of the pharmaceutical processor;

11. Any cautionary statement as may be necessary; and

12. A prominently printed expiration date based on the pharmaceutical processor's recommended conditions of use and storage that can be read and understood by the ordinary individual.

D. The dispensed cannabidiol oil or THC-A oil shall be dispensed in child-resistant packaging, except as provided in 18VAC110-60-210 A. A package shall be deemed child-resistant if it satisfies the standard for "special packaging" as set forth in the Poison Prevention Packaging Act of 1970 Regulations, 16 CFR 1700.1(b)(4).

E. No person except a pharmacist, or a pharmacy technician operating under the direct supervision of a pharmacist, shall alter, deface, or remove any label so affixed.

F. A pharmacist shall be responsible for verifying the accuracy of the dispensed oil in all respects prior to dispensing and shall document that each verification has been performed.

G. A pharmacist shall document a registered patient's self-assessment of the effects of cannabidiol oil or THC-A oil in treating the registered patient's [~~intractable epilepsy~~ diagnosed condition or disease] or the symptoms thereof. A pharmaceutical processor shall maintain such documentation in writing or electronically for two years from the date of dispensing and such documentation shall be made available in accordance with regulation.

H. A pharmacist shall exercise professional judgment to determine whether to dispense cannabidiol oil or THC-A oil to a registered patient, parent, or legal guardian if the pharmacist suspects that dispensing cannabidiol oil or THC-A oil to the registered patient, parent, or legal guardian may have negative health or safety consequences for the registered patient or the public.

VA.R. Doc. No. R17-4878; Filed October 1, 2018, 12:28 p.m.

BOARD OF COUNSELING

Proposed Regulation

Title of Regulation: **18VAC115-30. Regulations Governing the Certification of Substance Abuse Counselors and Substance Abuse Counseling Assistants (amending 18VAC115-30-10 through 18VAC115-30-62, 18VAC115-30-110 through 18VAC115-30-150; adding 18VAC115-30-15, 18VAC115-30-63, 18VAC115-30-111; repealing 18VAC115-30-90).**

Statutory Authority: §§ 54.1-2400 and 54.1-3505 of the Code of Virginia.

Public Hearing Information:

November 1, 2018 - 10:05 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA 23233

Public Comment Deadline: December 28, 2018.

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

Basis: Regulations of the Board of Counseling are promulgated under the general authority of § 54.1-2400 of the Code of Virginia. The scope of practice for professions regulated by the board is found in §§ 54.1-3507.1 and 54.1-3507.2 of the Code of Virginia.

Purpose: The board has added more specificity to the supervised experience requirements and limits the amount of time a person may take to obtain experience and certification. By doing so, clients receiving substance abuse counseling services are more assured of the oversight for those working under supervision and of the competency of their counselors once certified. Additional standards of conduct and causes for disciplinary action will provide further guidance to counselors and assistants on the expectations for ethical practice and give the board more explicit grounds on which to discipline practitioners for the purpose of protecting the health, safety, and welfare of the public they serve.

Substance: The proposed amendments (i) update several definitions and fee requirements and add a section for rules on maintaining current name and address with the board; (ii) clarify prerequisites for certification, including changing "documentation" or "affidavit" to "verification" or "attestation" to accommodate online applications; (iii) change requirements for endorsement to include verification of a passing score on a board-approved examination; (iv) update course content listed in 18VAC115-30-50 and move hours of experience in performing certain therapies from 18VAC115-30-50 to18VAC115-30-60; (v) require completion of half of one's education and for registration of supervision approved by the board prior to the start of supervised practice; (vi) set a time limit on the acquisition of hours of supervision with an allowance for an appeal to the board for an extension; (vii) clarify the minimum hours of supervision by the supervisor; (viii) require some professional training in supervision for supervisors; (ix) specify how supervisees are to identify themselves to clients and how long documentation of supervision must be maintained; (x) clarify requirements for substance abuse counseling assistants; (xi) give a candidate approved to sit for an examination two years to take the exam and pass it, but after the applicant has applied twice and not passed the examination, the applicant would be required to complete an additional six months of supervision; (xii) add requirements for continuing education and more specific requirements for persons who are seeking reinstatement, including demonstration of continued competence and submission of a report from the National Practitioner Data Bank; (xiii) include standards from other behavioral sciences professions that are currently missing in the certified substance abuse counselor regulations, such as maintenance of client records, informed consent, and confidentiality provisions; and (xiv) revise grounds for disciplinary action for more specificity and to include such things as performance of an act likely to deceive, defraud, or harm the public.

Issues: The primary advantage of the proposed amendments for the public is more assurance of competency for certified substance abuse counselors who are increasingly important practitioners in working with persons who have substance abuse issues. There are no disadvantages for the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Counseling (Board) proposes several amendments concerning the certification of substance abuse counselors and substance abuse counseling assistants. The proposed changes are about: 1) new continuing education requirements, 2) a time limit to pass the certification exam, 3) didactic[1] training, 4) supervised experience, 5) attestation of having read and understood laws and regulations, 6) fees, 7) reports from the U.S. Department of Health and Human Services (USDHHS) National Practitioner Data Bank, and 8) standards of practice, 9) grounds for discipline, and 10) clarifying amendments.

Result of Analysis. The benefits likely exceed the costs for the majority of proposed changes. For other proposed amendments it is uncertain.

Estimated Economic Impact:

Continuing Education. Continuing education (CE) is not currently required for certification renewal. The Board proposes to require certified substance abuse counselors (CSAC) to have completed a minimum of 10 contact hours of CE in substance abuse and certified substance abuse counseling assistants (CSAC-A) to have completed a minimum of 5 contact hours of CE in substance abuse prior to renewal each year.

The median hourly wage for substance abuse counselors in the Commonwealth is $19.83 per hour.[2] If we assess the value of their time as their median wage, then the time cost for the proposed required 10 contact hours of continuing education for CSACs would be about $200 annually. Data is not available for the median hourly wage for substance abuse counseling assistants. Since their wage is presumably lower, the time cost for the proposed required 5 contact hours of continuing education for CSAC-As would be less than $100 annually.

Members of NAADAC,[3] the Association for Addiction Professionals (annual membership cost of $139 for national and state affiliate in Virginia[4]) can take all of the required CE through webinars at no costs.[5] Many employers of CSACs, such as community services boards, offer continuing education through in-service programs at no costs.[6] Thus for some CSACs and CSAC-As CE can be obtained for few if any fees, while others may need to spend up to $139 annually.

CE can potentially be valuable for maintaining or increasing competency of professionals. Individuals who actively seek continuing education on their own are likely to benefit in that they will likely be active learners. When there are no examinations or other concrete indications of learning taking place, the value of requiring CE for those who would otherwise not have participated is uncertain; they may not pay attention and gather or reinforce knowledge. Thus we cannot say whether the benefits of the proposed CE requirements exceed the costs.

Certification Exam Time Limit. The Board proposes to require that the certification exam be passed within 2 years of board approval to sit for the exam for both CSAC and CSAC-A applicants. The applicant can take the exam every 90 days within the two-year period or potentially 8 times in 2 years. If he does not pass within the two years, the applicant must reapply in accordance with regulations in effect at that time. If the applicant has applied twice and has still not passed, he will not be approved to sit for the examination again unless he can provide evidence of extenuating circumstances for failure to pass within a four-year period. The Board is concerned about applicants who attempt passage multiple times over a period of years.[7] If they do finally pass, there may be a large gap between their education and supervised experience and exam passage, which raises questions about competency to practice.

Didactic Training. Applicants for certification as a substance abuse counselor by examination must, among other requirements, have completed didactic training in substance abuse education. The Board proposes to increase the required total number of clock hours of substance abuse didactic training from 220 to 240. This would not add to the net required time required as the Board is also proposing to reduce required supervised experience training by 20 clock hours. Within the 240 hours, the required topics and number of hours per topic in didactic training are proposed to change as well. Further, the Board proposes to add governmental agencies, public school systems and licensed health facilities to the list of approved providers of didactic training. This would be beneficial for applicants as it provides greater flexibility in obtaining qualified education.

Supervised Experience. Applicants for certification as a substance abuse counselor by examination must also obtain supervised experience training to perform specified tasks with substance abuse clients. As alluded to above, the Board proposes to reduce the required total number of clock hours from 180 to 160. Additionally, the Board proposes to require that supervisors have professional training in supervision. Training for supervisors is required for other professions under the Board. The Board believes it is necessary since it is aware of situations in which the supervisor did not understand his role and responsibility and did not appropriately provide training and oversight for a supervisee. Clinical supervisors can obtain professional training in supervision consisting of

three credit hours or four quarter hours in graduate-level coursework in supervision. Alternatively, the supervisor could satisfy this requirement with at least two hours of CE in supervision offered by a board-approved provider.

Understanding Laws and Regulations. The current regulation requires that applicants for certification by endorsement submit an affidavit of having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia. An affidavit requires a notary public signature. Under the proposed regulation the applicant only must attest to having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia. This change would be beneficial in that it would save time for the applicant without introducing any risk to the public. The Board also proposes to require that applicants for certification by examination attest to having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia.

Fees. The Board proposes to introduce a $25 fee for verification of an individual's certification to another state or entity. Such verification can be obtained at no cost online through License Lookup at the Department of Health Professions' (DHP) website. Some states will not accept an online verification from DHP's website and require an official paper verification of licensure/certification form completed by the Board. That requires staff time to complete the form and costs for mailing. These costs are currently paid for through other fees not directly linked to this service. Charging this proposed fee directly linked to the service provided is beneficial.

National Practitioner Data Bank. The current regulation requires that applicants for certification as a substance abuse counselor by examination and applicants for certification as a substance abuse counselor by endorsement submit a current report from the USDHHS National Practitioner Data Bank. The Board proposes to also require that applicants for certification by examination for substance abuse counseling assistant applicants for reinstatement submit the report. The report costs only $4 and provides information that may indicate that some applicants have acted previously in a manner that are grounds for denial of certification. Given the low cost and potential to prevent unsafe future situations, these proposed amendments likely produce a net benefit.

Businesses and Entities Affected. The proposed amendments affect the 1,784 certified substance abuse counselors and 218 certified substance abuse counseling assistants in the Commonwealth, as well as potential applicants.

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

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

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

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

Small Businesses:

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

Costs and Other Effects. The proposed CE requirements require CSACs and CSAC-As to spend time and perhaps fees on completing the requirement. This may produce a small cost for small businesses that employ them in terms of time away from work and potentially in some cases reimbursed fees.

Alternative Method that Minimizes Adverse Impact. Encouraging but not requiring CE would potentially reduce the small potential adverse impact for small businesses.

Adverse Impacts:

Businesses. The proposed CE requirements require CSACs and CSAC-As to spend time and perhaps fees on completing the requirement. This may produce a small cost for businesses that employ them in terms of time away from work and potentially in some cases reimbursed fees.

Localities. The proposed amendments do not adversely affect localities.

Other Entities. The proposed CE requirements increase costs for CSACs and CSAC-As who otherwise would not have taken the required hours of CE.

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[1]"Didactic" means teaching-learning methods that impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

[2]Source: U.S. Bureau of Labor Statistics May 2016 State Occupational Employment and Wage Estimates: https://www.bls.gov/oes/2016/may/oes_va.htm

[3]National Association for Alcoholism and Drug Abuse Counselors

[4]Source: Department of Health Professions

[5]Ibid

[6]Ibid

[7]Source: Department of Health Professions

Agency's Response to Economic Impact Analysis: The Board of Counseling concurs with the economic impact analysis (EIA) of the Department of Planning and Budget with the exception of the statement in the EIA that the time cost for the proposed required 10 contact hours of continuing

education for certified substance abuse counselors (CSACs) would be about $200. The EIA notes that "many employers of CSACs, such as community services boards, offer continuing education through in-service programs at no costs." A CSAC who completes in-service programs or continuing education offered by or required by an employer would not lose pay for the time spent in such a course. Therefore, the agency does not concur that there would be a loss of income of $200 as asserted by the EIA.

Summary:

The proposed amendments include (i) clarifying and specifying requirements for supervised practice, (ii) adding time limits for completion of experience, (iii) adding requirements for continuing education for renewal, and (iv) adding standards of practice.

Part I
General Provisions

18VAC115-30-10. Definitions.

A. The following words and terms when used in this chapter shall have the meaning ascribed to them in § 54.1-3500 of the Code of Virginia:

"Board"

"Certified substance abuse counselor"

"Certified substance abuse counseling assistant"

"Licensed substance abuse treatment practitioner"

"Practice of substance abuse treatment"

"Substance abuse" and "substance dependence"

"Substance abuse treatment"

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

"Applicant" means an individual who has submitted a completed application with documentation and the appropriate fees to be examined for certification as a substance abuse counselor or substance abuse counseling assistant.

"Candidate" means a person who has been approved to take the examinations for certification as a substance abuse counselor or substance abuse counseling assistant.

"Clinical supervision" means the ongoing process performed by a clinical supervisor who monitors the performance of the person supervised and provides regular, documented face-to-face consultation, guidance and education with respect to the clinical skills and competencies of the person supervised.

"Clinical supervisor" means one who provides case-related supervision, consultation, education and guidance for the applicant. The supervisor must be credentialed as defined in 18VAC115-30-60 C.

"Competency area" means an area in which a person possesses knowledge and skill and the ability to apply them in the clinical setting.

"Contact hour" means the amount of credit awarded for 60 minutes of participation in and successful completion of a continuing education program.

"Didactic" means teaching-learning methods that impart facts and information, usually in the form of one-way communication (includes directed readings and lectures).

~~"Endorsement" means the waiver of the examination requirement for certification as a substance abuse counselor for persons currently certified or licensed in another jurisdiction.~~

"Group supervision" means the process of clinical supervision of no less than two nor more than six persons in a group setting provided by a ~~qualified~~ clinical supervisor.

"NAADAC" means the ~~National Association of Alcoholism and Drug Abuse Counselors~~ Association of Addiction Professionals.

"NCC AP" means the National Certification Commission for Addiction Professionals, an affiliate of NAADAC.

"Regionally accredited" means accredited by one of the regional accreditation agencies recognized by the U.S. Department of Education as responsible for accrediting senior postsecondary institutions.

"Substance abuse counseling" means applying a counseling process, treatment strategies and rehabilitative services to help an individual to:

1. Understand his substance use, abuse or dependency; and

2. Change his drug-taking behavior so that it does not interfere with effective physical, psychological, social or vocational functioning.

18VAC115-30-15. Maintenance of current name and address.

A. Certified substance abuse counselors or counseling assistants shall notify the board of any change of name, email address, or address of record within 60 days.

B. Failure to receive a renewal notice and application forms shall not excuse the certified substance abuse counselor or counseling assistant from the renewal requirement.

18VAC115-30-30. Fees required by the board.

A. The board has established the following fees applicable to the certification of substance abuse counselors and substance abuse counseling assistants:

Substance abuse counselor annual certification renewal	$65
Substance abuse counseling assistant annual certification renewal	$50
Substance abuse counselor initial certification by examination: Application processing and initial certification	$115
Substance abuse counseling assistant initial certification by examination: Application processing and initial certification	$115
Initial certification by endorsement of substance abuse counselors: Application processing and initial certification	$115
Registration of supervision	$65
Add or change ~~supervisor~~ to supervision	$30
Duplicate certificate	$10
Certificate verification	$25
Late renewal	$25
Reinstatement of a lapsed certificate	$125
Replacement of or additional wall certificate	$25
Returned check	$35
Reinstatement following revocation or suspension	$600

B. All fees are nonrefundable.

C. Examination fees shall be paid directly to the examination services according to its requirements.

Part II
Requirements for Certification

18VAC115-30-40. Prerequisites for certification by examination for substance abuse counselors.

A. ~~A candidate~~ Every applicant for certification as a substance abuse counselor ~~shall meet all the requirements of this section and~~ by examination shall pass ~~the~~ a written examination ~~prescribed in 18VAC115-30-90~~ approved by the board. The board shall determine the passing score on the examination.

1. If an applicant fails to achieve a passing score within two years of board approval to sit for the examination, the applicant shall reapply according to regulations in effect at that time.

2. An applicant who has applied twice and has not passed the examination shall not be approved to retake the examination, unless the applicant can provide evidence of extenuating circumstances for failure to pass the examination within the four-year period.

B. Every applicant for examination for certification by the board shall:

1. Meet the educational and experience requirements prescribed in 18VAC115-30-50 and 18VAC115-30-60;

2. Submit the following to the board:

a. A completed application form;

b. Official transcript documenting coursework and attainment of a bachelor's or post-baccalaureate degree;

c. Official transcripts or certificates verifying completion of the didactic training requirement set forth in subsection B of 18VAC115-30-50;

d. ~~Verification~~ Attestation of supervisor's education and experience as required under 18VAC115-30-60 if supervised experience was not previously approved by the board;

e. Verification of supervision forms documenting fulfillment of the experience requirements of 18VAC115-30-60;

f. ~~Documentation~~ Verification of any other health or mental health license or certificate ever held in Virginia or in another jurisdiction. In order to qualify for certification by examination, the applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis;

g. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB); ~~and~~

h. The application processing and initial certification fee; and

i. Attestation of having read and understood the laws and regulations governing the practice of substance abuse counseling in Virginia.

18VAC115-30-45. Prerequisites for certification by endorsement for substance abuse counselors.

Every applicant for certification by endorsement shall submit:

1. A completed application;

2. The application processing and initial certification fee;

3. Verification of all health or mental health licenses or certificates ever held in Virginia or in any other jurisdiction. In order to qualify for endorsement, the

applicant shall have no unresolved action against a license or certificate. The board will consider history of disciplinary action on a case-by-case basis. The board will also determine whether any or all other professional licenses or certificates held in another jurisdiction are substantially equivalent to those sought in Virginia;

4. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB);

5. ~~Affidavit~~ Attestation of having read and understood the regulations and laws governing the practice of substance abuse counseling in Virginia; ~~and~~

6. Further documentation of one of the following:

a. ~~Licensure~~ Active, unrestricted licensure or certification as a substance abuse counselor in another jurisdiction ~~in good standing~~ obtained by standards substantially equivalent to the education and experience requirements set forth in this chapter as verified ~~by a certified copy of the original application submitted~~ directly from the out-of-state licensing agency~~,~~ or a copy of the regulations in effect at the time of initial licensure or certification ~~and verification of a passing score on a licensure examination in the jurisdiction in which licensure or certification was obtained, and that is deemed substantially equivalent by the board~~; or

b. Verification of a current certification in good standing issued by ~~NAADAC~~ NCC AP or other board-recognized national certification in substance abuse counseling obtained by educational and experience standards substantially equivalent to those set forth in this chapter; and

7. Verification of a passing score on an examination in the jurisdiction in which licensure or certification was obtained or on a board-approved national examination at the level for which the applicant is seeking certification in Virginia.

18VAC115-30-50. Educational requirements for substance abuse counselors.

A. An applicant for examination for certification as a substance abuse counselor shall:

1. Have a bachelor's or post-baccalaureate degree; and

2. Have completed ~~400~~ 240 clock hours of didactic training in substance abuse education from one of the following programs:

a. ~~An~~ A regionally accredited university or college; or

b. Seminars and workshops that meet the requirements of subsection B of this section and are offered or approved by one of the following:

(1) ~~The American Association of Marriage and Family Counselors and its state affiliates~~ Federal, state, or local governmental agencies; public school systems; or licensed health facilities.

(2) The American Association of Marriage and Family Therapists and its state affiliates.

(3) The American Association of State Counseling Boards.

(4) The American Counseling Association and its state and local affiliates.

(5) The American Psychological Association and its state affiliates.

(6) The Commission on Rehabilitation Counselor Certification.

(7) NAADAC~~, The Association for Addiction Professionals~~ and its state and local affiliates.

(8) National Association of Social Workers.

(9) National Board for Certified Counselors.

(10) A national behavioral health organization or certification body recognized by the board.

(11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

B. Substance abuse education.

1. ~~The education will include 220~~ Of the 240 hours ~~spent in receiving~~ of didactic training in substance abuse counseling, a minimum of 120 hours shall be completed prior to registration of supervision.

2. Each applicant shall have received a minimum of ~~10~~ 16 clock hours in each of the following ~~eight~~ 13 areas:

a. ~~Understanding the dynamics~~ Dynamics of human behavior;

b. Signs and symptoms of substance abuse;

c. ~~Treatment approaches~~ Counseling theories and techniques;

d. Continuum of care and case management skills;

e. Recovery process and relapse prevention methods;

f. ~~Ethics~~ Professional orientation and ethics;

g. ~~Professional identity in the provision of substance abuse services~~ Pharmacology of abused substances; ~~and~~

h. ~~Crisis~~ Trauma and crisis intervention~~.~~;

i. Co-occurring disorders;

j. Cultural competency;

~~In addition, each applicant shall have at least 20 hours in each of the following two areas:~~

~~(i)~~ k. Substance abuse counseling approaches and treatment planning ~~and substance abuse research~~; ~~and~~

~~(ii)~~ l. Group counseling; and

m. Prevention, screening, and assessment of substance use and abuse.

~~2. The education shall also consist of 180 hours of experience performing the following tasks with substance abuse clients:~~

~~a. Screening clients to determine eligibility and appropriateness for admission to a particular program;~~

~~b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program;~~

~~c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client;~~

~~d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan;~~

~~e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes;~~

~~f. Counseling the client utilizing specialized skills in both individual and group approaches to achieve treatment goals and objectives;~~

~~g. Case management activities that bring services, agencies, people and resources together in a planned framework of action to achieve established goals;~~

~~h. Crisis intervention responses to clients' needs during acute mental, emotional or physical distress;~~

~~i. Education of clients by providing information about drug abuse and available services and resources;~~

~~j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources;~~

~~k. Reporting and charting information about client's assessment, treatment plan, progress, discharge summaries and other client related data; and~~

~~l. Consultation with other professionals to assure comprehensive quality care for the client.~~

~~Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.~~

C. Groups and classes attended as a part of a therapy or treatment program will not be accepted as any part of the educational experience.

18VAC115-30-60. Experience requirements for substance abuse counselors.

A. Registration. Supervision in Virginia shall be registered and approved by the board prior to the beginning of supervised experience in order to be counted toward certification. Supervision ~~obtained without prior board approval~~ will not be accepted if it does not meet the requirements set forth in subsections B and C of this section. To register supervision for board approval prior to obtaining the supervised experience, an applicant shall submit in one package:

1. A supervisory contract;

2. ~~Verification~~ Attestation of the supervisor's education and experience as required under ~~subsection~~ subsections C and D of this section; ~~and~~

3. The registration fee;

4. An official transcript documenting attainment of a bachelor's or post-baccalaureate degree; and

5. Evidence of completion of at least 120 hours of didactic education as required by 18VAC115-30-50 B.

B. Experience requirements.

1. An applicant for certification as a substance abuse counselor shall have had 2,000 hours of supervised experience in the ~~delivery of clinical~~ practice of substance abuse counseling services.

2. The supervised experience shall include a minimum of one hour and a maximum of four hours per ~~week of supervision~~ 40 hours of work experience between the supervisor and the applicant to total 100 hours within the required experience. No more than half of these hours may be satisfied with group supervision. One hour of group supervision will be deemed equivalent to one hour of individual supervision.

3. ~~Applicants must document successful completion of their~~ The supervised experience ~~on the Verification of Supervision Form at the time of application~~ shall be completed in not less than 12 months and not more than 60 months.

a. Supervisees who began a supervised experience before (insert effective date of this regulation) shall complete the supervised experience by (insert 60 months after the effective date).

b. An individual who does not complete the supervised experience within 60 months may request an extension and shall submit evidence to the board demonstrating the

extenuating circumstances that prevented completion of the supervised experience within the required timeframe.

4. Supervised experience obtained more than 10 years from (insert effective date of this regulation) shall not be accepted for certification by examination. The board may make an exception for an applicant who has been providing substance abuse counseling for a minimum of 2,000 hours within the past 60 months and who can submit evidence of such experience.

5. During the supervised experience, supervisees shall use their names and the title "supervisee" in all written communications. Clients shall be informed in writing of the supervisee's status and the supervisor's name, professional address, and phone number.

6. The supervised experience shall consist of 160 hours of experience performing the following tasks with substance abuse clients. Each of the following tasks shall be performed for at least eight hours under supervision as verified by the supervisor on an application for certification:

a. Screening clients to determine eligibility and appropriateness for admission to a particular program;

b. Intake of clients by performing the administrative and initial assessment tasks necessary for admission to a program;

c. Orientation of new clients to program's rules, goals, procedures, services, costs, and the rights of the client;

d. Assessment of client's strengths, weaknesses, problems, and needs for the development of a treatment plan;

e. Treatment planning with the client to identify and rank problems to be addressed, establish goals, and agree on treatment processes;

f. Counseling the client utilizing specialized skills in both individual and group approaches to achieve treatment goals and objectives;

g. Case management activities that bring services, agencies, people, and resources together in a planned framework of action to achieve established goals;

h. Crisis intervention responses to a client's needs during acute mental, emotional, or physical distress;

i. Education of clients by providing information about drug abuse and available services and resources;

j. Referral of clients in order to meet identified needs unable to be met by the counselor and assisting the client in effectively utilizing those resources;

k. Reporting and charting information about a client's assessment, treatment plan, progress, discharge summaries, and other client-related data; and

l. Consultation with other professionals to assure comprehensive quality care for the client.

C. Supervisor qualifications. A board-approved clinical supervisor shall hold an active, unrestricted license or certification and shall be:

1. A licensed substance abuse treatment practitioner;

2. A licensed professional counselor, licensed clinical psychologist, licensed clinical social worker, licensed marriage and family therapist, medical doctor, or registered nurse~~, and possess either~~ who has either:

~~a~~ a. A board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter~~.~~;

b. A certification as a substance abuse counselor issued by this board; or

~~a~~ c. A minimum of one year experience in substance abuse counseling and at least 100 hours of didactic training covering the areas outlined in 18VAC115-30-50 B ~~1~~ 2 a through ~~h~~ 2 m; or

3. A substance abuse counselor certified by the Virginia Board of Counseling who has~~: a. Board-recognized national certification in substance abuse counseling obtained by standards substantially equivalent to those set forth in this chapter; or b. Two~~ two years of experience as a Virginia board-certified substance abuse counselor.

D. Supervisor training. In order to be approved by the board after (insert 12 months after the effective date of this regulation), a clinical supervisor shall obtain professional training in supervision consisting of three credit hours or four quarter hours in graduate-level coursework in supervision or at least 20 hours of continuing education in supervision offered by a provider approved under 18VAC115-30-50.

E. Supervisory responsibilities.

1. Supervisors shall assume responsibility for the professional activities of the ~~prospective applicants~~ supervisee under their supervision.

2. Supervisors shall not provide supervision for activities for which ~~prospective applicants~~ supervisees have not had appropriate education.

3. Supervisors shall provide supervision only for those substance abuse counseling services that they are qualified to render.

4. At the time of ~~formal~~ the application for certification by examination, the board-approved supervisor shall document minimal competencies in the areas in

18VAC115-30-60 B 6, the ~~applicant's~~ total hours of supervision, ~~length of work experience, competence in substance abuse counseling~~ and any needs for additional supervision or training. The supervisor shall document successful completion of the applicant's supervised experience on the Verification of Supervision Form and shall maintain documentation for five years post supervision.

5. Supervision by any individual whose relationship to the supervisee compromises the objectivity of the supervisor is prohibited.

18VAC115-30-61. Prerequisites for certification by examination for substance abuse counseling assistant.

A. ~~A candidate~~ Every applicant for certification as a substance abuse counseling assistant shall ~~meet all the requirements of this section, including passing~~ pass a written examination approved by the board. The board shall determine the passing score on the examination ~~prescribed in 18VAC115-30-90~~.

1. If an applicant fails to achieve a passing score within two years of board approval to sit for the examination, the applicant shall reapply according to regulations in effect at that time.

2. An applicant who has applied twice and has not passed the examination shall not be approved to retake the examination, unless the applicant can provide evidence of extenuating circumstances for failure to pass the examination within the four-year period.

B. Every applicant for examination for certification by the board shall:

1. Meet the educational and experience requirements prescribed in 18VAC115-30-62 and 18VAC115-30-63; and

2. Submit the following to the board within the ~~time frame~~ timeframe established by the board:

a. A completed application form;

b. Official transcript documenting attainment of a high school diploma ~~or~~, a general education development (GED) certificate, or a post-secondary degree; ~~and~~

c. The application processing and initial certification fee;

d. Verification of all health or mental health licenses or certificates ever held in Virginia or in any other jurisdiction. In order to qualify for certification, the applicant shall have no unresolved action against a license or certificate. The board will consider the history of disciplinary action on a case-by-case basis; and

e. A current report from the U.S. Department of Health and Human Services National Practitioner Data Bank (NPDB).

18VAC115-30-62. Educational requirements for substance abuse counseling assistants.

A. An applicant for certification as a substance abuse counseling assistant shall:

1. Have ~~an official~~ obtained a high school diploma ~~or~~, a general educational development (GED) certificate, or a post-secondary degree; and

2. Have completed ~~300 clock hours of~~ substance abuse education from one of the following programs:

a. ~~An~~ A regionally accredited university or college; or

b. Seminars and workshops that meet the educational requirements specified in subsection B of this section and are offered or approved by one of the following:

(1) ~~The American Association of Marriage and Family Counselors and its state affiliates~~ Federal, state, or local governmental agencies; public school systems; or licensed health facilities.

(2) The American Association of Marriage and Family Therapists and its state affiliates.

(3) The American Association of State Counseling Boards.

(4) The American Counseling Association and its state and local affiliates.

(5) The American Psychological Association and its state affiliates.

(6) The Commission on Rehabilitation Counselor Certification.

(7) NAADAC~~, The Association for Addiction Professionals~~ and its state and local affiliates.

(8) National Association of Social Workers.

(9) National Board for Certified Counselors.

(10) A national behavioral health organization or certification body recognized by the board.

(11) Individuals or organizations that have been approved as continuing competency sponsors by the American Association of State Counseling Boards or a counseling board in another state.

B. Substance abuse education. ~~1.~~ The education will include 120 hours spent in receiving didactic training in substance abuse counseling. Each applicant shall have received a minimum of ~~10~~ eight clock hours in each of the following ~~eight~~ 13 areas:

a. Understanding the dynamics of human behavior;

b. Signs and symptoms of substance abuse;

c. ~~Treatment approaches~~ Counseling theories and techniques;

d. Case management skills and continuum of care;

e. Recovery process and relapse prevention methods;

f. ~~Ethics~~ Professional orientation and ethics;

g. ~~Professional identity in the provision of substance abuse services~~ Cultural competency; ~~and~~

h. ~~Crisis~~ Trauma and crisis intervention;

i. Pharmacology of abused substances;

j. Co-occurring disorders;

k. Substance abuse counseling approaches and treatment planning;

l. Group counseling; and

m. Prevention, screening, and assessment of substance use and abuse.

~~2. The education shall include 180 hours of experience performing the following tasks with substance abuse clients while under supervision:~~

~~a. Screening clients and gathering information used in making the determination for the need for additional professional assistance;~~

~~b. Intake of clients by performing the administrative tasks necessary for admission to a program;~~

~~c. Orientation of new clients to program's rules, goals, procedures, services, costs and the rights of the client;~~

~~d. Assisting the client in identifying and ranking problems to be addressed, establish goals, and agree on treatment processes;~~

~~e. Implementation of a substance abuse treatment plan as directed by the supervisor;~~

~~f. Implementation of case management activities that bring services, agencies, people and resources together in a planned framework of action to achieve established goals;~~

~~g. Assistance in identifying appropriate crisis intervention responses to clients' needs during acute mental, emotional or physical distress;~~

~~h. Education of clients by providing information about drug abuse and available services and resources;~~

~~i. Facilitating the client's utilization of available support systems and community resources to meet needs identified in clinical valuation or treatment planning;~~

~~j. Reporting and charting information about client's treatment, progress, and other client-related data; and~~

~~k. Consultation with other professionals to assure comprehensive quality care for the client.~~

~~Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.~~

~~C. Groups and classes attended as a part of a therapy or treatment program shall not be accepted as any part of the educational experience.~~

18VAC115-30-63. Experience requirements for substance abuse counseling assistants.

A. In addition to the didactic training required in 18VAC115-30-62, the education shall include 180 hours of experience in a practicum or internship consistent with § 54.1-3507.2 C of the Code of Virginia performing the following tasks with substance abuse clients while under supervision:

1. Screening clients and gathering information used in making the determination for the need for additional professional assistance;

2. Intake of clients by performing the administrative tasks necessary for admission to a program;

3. Orientation of new clients to program's rules, goals, procedures, services, costs, and the rights of the client;

4. Assisting the client in identifying and ranking problems to be addressed, establishing goals, and agreeing on treatment processes;

5. Implementation of a substance abuse treatment plan as directed by the supervisor;

6. Implementation of case management activities that bring services, agencies, people, and resources together in a planned framework of action to achieve established goals;

7. Assistance in identifying appropriate crisis intervention responses to a client's needs during acute mental, emotional, or physical distress;

8. Education of clients by providing information about drug abuse and available services and resources;

9. Facilitating the client's utilization of available support systems and community resources to meet needs identified in clinical valuation or treatment planning;

10. Reporting and charting information about the client's treatment, progress, and other client-related data; and

11. Consultation with other professionals to assure comprehensive quality care for the client.

B. Each of these tasks shall be performed for at least eight hours under supervision and shall be verified as a part of the application by the supervisor.

C. Groups and classes attended as a part of a therapy or treatment program shall not be accepted as any part of the educational experience.

~~Part III~~
~~Examinations~~

18VAC115-30-90. ~~General examination requirements for substance abuse counselors and substance abuse counseling assistants.~~ (Repealed.)

~~A. Every applicant for certification as a substance abuse counselor or substance abuse counseling assistant by examination shall pass a written examination approved by the board. The board shall determine the passing score on the examination.~~

~~B. Every applicant for certification by endorsement shall have passed an examination deemed by the board to be substantially equivalent to the Virginia examination.~~

Part ~~IV~~ III
Renewal and Reinstatement

18VAC115-30-110. Annual renewal of certificate.

A. Every certificate issued by the board shall expire on June 30 of each year.

B. Along with the renewal form, the certified substance abuse counselor or certified substance abuse counseling assistant shall submit the renewal fee prescribed in 18VAC115-30-30 and shall attest to completion of continuing education as required by 18VAC115-30-111.

~~C. Certified individuals shall notify the board of a change in the address of record or the public address, if different from the address of record within 60 days. Failure to receive a renewal notice and application forms shall not excuse the certified substance abuse counselor from the renewal requirement.~~

18VAC115-30-111. Continuing education requirements.

A. Certified substance abuse counselors shall be required to have completed a minimum of 10 contact hours of continuing education in substance abuse and certified substance abuse counseling assistants shall be required to have completed a minimum of five contact hours of continuing education in substance abuse prior to renewal each year.

1. Continuing education hours shall be offered by an approved provider listed in 18VAC115-30-50 A or 18VAC115-30-62 A, and the course content shall be consistent with 18VAC115-30-50 B or 18VAC115-30-62 B.

2. Attestation of completion of continuing education is not required for the first renewal following initial certification in Virginia.

B. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the certificate holder prior to the renewal date. Such extension shall not relieve the certificate holder of the continuing education requirement.

C. The board may grant an exemption for all or part of the continuing education requirements due to circumstances beyond the control of the certificate holder such as temporary disability, mandatory military service, or officially declared disasters upon written request from the certificate holder prior to the renewal date.

D. All certificate holders are required to maintain original documentation, including official transcripts showing credit hours earned or certificates of participation, for a period of three years following renewal.

E. The board may conduct an audit of certificate holders to verify compliance with the requirement for a renewal period. Upon request, a certificate holder shall provide documentation of credit hours or participation.

F. Continuing education hours required by disciplinary order shall not be used to satisfy renewal requirements.

18VAC115-30-120. Reinstatement.

A. A person whose certificate has expired may renew it within one year after its expiration date by paying the late renewal fee prescribed in 18VAC115-30-30 and the certification fee prescribed for the year the certificate was not renewed.

B. A person who fails to renew a certificate after one year or more shall ~~apply~~:

1. Apply for reinstatement~~, pay~~;

2. Pay the reinstatement fee for a lapsed certificate ~~and~~;

3. Submit verification of any other health or mental health license or certificate ever held in another jurisdiction;

4. Submit a current report from the U.S. Department of Health and Human Services National Practitioner Data Bank; and

~~submit~~ 5. Submit evidence of a minimum of 20 hours of substance abuse education that is consistent with course content specified in ~~subsection B of~~ 18VAC115-30-50 B for substance abuse counselors and in 18VAC115-30-62 for substance abuse counseling assistants to demonstrate the continued ability to perform the functions within the scope of practice of the certificate. Courses shall be offered or approved by a provider listed in 18VAC115-30-50 A or 18VAC115-30-62 A.

Part V
Standards of Practice; Disciplinary Actions; Reinstatement

18VAC115-30-140. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board.

B. Persons certified by the board shall:

1. Practice in a manner that is in the best interest of the public and does not endanger the public health, safety, or welfare.

2. Be able to justify all services rendered to clients as necessary for diagnostic or therapeutic purposes.

3. Practice only within the competency area for which they are qualified by training or experience.

4. Report to the board known or suspected violations of the laws and regulations governing the practice of certified substance abuse counselors or certified substance abuse counseling assistants.

5. Neither accept nor give commissions, rebates, or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals based on the best interest of clients.

6. Stay abreast of new developments, concepts, and practices that are necessary to providing appropriate services.

7. Document the need for and steps taken to terminate a counseling relationship when it becomes clear that the client is not benefiting from the relationship. Document the assistance provided in making arrangements for the continuation of treatment for clients when necessary, following termination of a counseling relationship.

8. Not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

C. In regard to client records, persons certified by the board shall:

~~6.~~ 1. Disclose counseling records to others only in accordance with ~~the requirements of state and federal statutes and regulations, including, but not limited to §§ 32.1-127.1:03 (Patient Health Records Privacy Act), 2.2-3704 (Virginia Freedom of Information Act), and 54.1-2400.1 (Mental Health Service Providers; Duty to Protect Third Parties; Immunity) of the Code of Virginia; 42 USC § 290dd-2 (Confidentiality of Drug and Alcohol Treatment Records); and 42 CFR Part 2 (Alcohol and Drug Abuse Patient Records and Regulations)~~ applicable law.

2. Maintain client records securely, inform all employees of the requirements of confidentiality, and provide for the destruction of records that are no longer useful in a manner that ensures client confidentiality.

3. Ensure confidentiality in the usage of client records and clinical materials by obtaining informed consent from the client or the client's legally authorized representative before (i) videotaping, (ii) audio recording, (iii) permitting third-party observation, or (iv) using identifiable client records and clinical materials in teaching, writing, or public presentations.

4. Maintain timely, accurate, legible, and complete written or electronic records for each client, to include counseling dates and identifying information to substantiate the substance abuse counseling plan, client progress, and termination.

5. Maintain client records for a minimum of five years or as otherwise required by law from the date of termination of the counseling relationship with the following exceptions:

a. At minimum, records of a minor child shall be maintained for five years after attaining the age of majority (18 years);

b. Records that are required by contractual obligation or federal law to be maintained for a longer period of time; or

c. Records that have been transferred to another mental health service provider or given to the client or the client's legally authorized representative.

D. In regard to dual relationships, persons certified by the board shall:

~~7.~~ 1. Not engage in dual relationships with clients, former clients, supervisees, and supervisors that are harmful to the client's or supervisee's ~~well-being,~~ well-being or ~~which~~ that would impair the substance abuse counselor's, substance abuse counseling assistant's, or supervisor's objectivity and professional judgment~~,~~ or increase the risk of client or supervisee exploitation. This prohibition includes~~, but is not limited to,~~ such activities as counseling close friends, former sexual partners, employees, or relatives~~;~~ or engaging in business relationships with clients.

~~Engaging~~ 2. Not engage in sexual intimacies or romantic relationships with current clients or supervisees ~~is strictly prohibited~~. For at least five years after cessation or termination of professional services, certified substance abuse counselors and certified substance abuse counseling assistants shall not engage in sexual intimacies or romantic relationships with a client or those included in collateral therapeutic services. ~~Since~~ Because sexual or romantic relationships are potentially exploitative, certified substance abuse counselors and certified substance abuse

counseling assistants shall bear the burden of demonstrating that there has been no exploitation. A client's consent to, initiation of, or participation in sexual behavior or involvement with a certified substance abuse counselor or certified substance abuse counseling assistants does not change the nature of the conduct nor lift the regulatory prohibition.

~~8.~~ 3. Recognize conflicts of interest and inform all parties of obligations, responsibilities, and loyalties to third parties.

E. Upon learning of evidence that indicates a reasonable probability that another mental health provider is or may be guilty of a violation of standards of conduct as defined in statute or regulation, persons certified by the board shall advise their clients of their right to report such misconduct to the Department of Health Professions in accordance with § 54.1-2400.4 of the Code of Virginia.

18VAC115-30-150. Grounds for ~~revocation, suspension, restriction or denial of certificate; petition for rehearing~~ disciplinary action, denial of initial certification, or denial of renewal of certification.

In accordance with subdivision 7 of § ~~54.1-2400(7)~~ 54.1-2400 and § 54.1-2401 of the Code of Virginia, the board may revoke, suspend, restrict, impose a monetary penalty, or decline to issue or renew a certificate based upon the following conduct:

1. Conviction of a felony or of a misdemeanor involving moral turpitude, or violation of or aid to another in violating any provision of Chapter 35 (§ 54.1-3500 et seq.) of Title 54.1 of the Code of Virginia, any other statute applicable to the practice of substance abuse counseling, or any provision of this chapter;

2. Procuring a certificate, including submission of an application or supervisory forms, by fraud or misrepresentation;

3. Conducting one's practice in such a manner so as to make it a danger to the health and welfare of one's clients or to the public; or if one is unable to practice substance abuse counseling with reasonable skill and safety to clients by reason of illness, abusive use of alcohol, drugs, narcotics, chemicals, or any other type of material or as a result of any mental or physical condition;

4. ~~Negligence in professional conduct or nonconformance with the standards of practice outlined in 18VAC115-30-140 or~~ Violating or abetting another person in the violation of any provision of any statute applicable to the practice of substance abuse counseling or any regulation in this chapter;

5. Performance of functions outside the board-certified area of competency in accordance with regulations set forth in this chapter and §§ 54.1-3507.1 and 54.1-3507.2 of the Code of Virginia;

6. Performance of an act likely to deceive, defraud, or harm the public;

7. Intentional or negligent conduct that causes or is likely to cause injury to a client;

8. Failure to cooperate with an employee of the Department of Health Professions in the conduct of an investigation;

9. Failure to report evidence of child abuse or neglect as required in § 63.2-1509 of the Code of Virginia or elder abuse or neglect as required in § 63.2-1606 of the Code of Virginia; or

10. Action taken against a health or mental health license, certification, registration, or application in Virginia or another jurisdiction.

VA.R. Doc. No. R17-4945; Filed October 6, 2018, 6:56 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Final Regulation

Title of Regulation: **22VAC40-201. Permanency Services - Prevention, Foster Care, Adoption and Independent Living (amending 22VAC40-201-10, 22VAC40-201-35, 22VAC40-201-40, 22VAC40-201-70 through 22VAC40-201-110, 22VAC40-201-130, 22VAC40-201-140, 22VAC40-201-161; adding 22VAC40-201-105).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Effective Date: December 1, 2018.

Agency Contact: Em Parente, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7895, FAX (804) 726-7538, or email em.parente@dss.virginia.gov.

Summary:

The amendments incorporate changes to ensure consistency with the Code of Virginia and federal law. Specifically, the amendments add a definition for "sibling" and "prior family" and a requirement that, in most cases, parents of siblings be notified when a child enters foster care; add definitions for "reasonable and prudent parenting standard" and "normalcy" for children in foster care and establish rules for permanency goals for foster children 16 years old and older. In addition, amendments specify how individuals older than 14 years may be involved in meetings affecting future plans for them and

add rules for adoption and foster care subsidies dispersed for individuals over the age of 18 years under Virginia's "Fostering Futures" program.

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.

22VAC40-201-10. Definitions.

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

"Administrative panel review" means a review of a child in foster care that the local board conducts on a planned basis pursuant to § 63.2-907 of the Code of Virginia to evaluate the current status and effectiveness of the objectives in the service plan and the services being provided for the immediate care of the child and the plan to achieve a permanent home for the child. The administrative review may be attended by the birth parents or prior custodians and other interested individuals significant to the child and family as appropriate.

"Adoption" means a legal process that entitles the person being adopted to all of the rights and privileges, and subjects the person to all of the obligations of a birth child.

"Adoption assistance" means a money payment provided to adoptive parents or other persons on behalf of a child with special needs who meets federal or state requirements to receive such payments.

"Adoption assistance agreement" means a written agreement between the local board and the adoptive parents of a child with special needs or in cases in which the child is in the custody of a licensed child-placing agency, an agreement between the local board, the licensed child-placing agency, and the adoptive parents that sets out the payment and services that will be provided to benefit the child in accordance with Chapter 13 (§ 63.2-1300 et seq.) of Title 63.2 of the Code of Virginia.

"Adoption Progress Report" means a report filed with the juvenile court on the progress being made to place the child in an adoptive home. Section 16.1-283 of the Code of Virginia requires that an Adoption Progress Report be submitted to the juvenile court every six months following termination of parental rights until the adoption is final.

"Adoptive home" means any family home selected and approved by a parent, local board, or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive home study" means an assessment of a family completed by a child-placing agency to determine the family's suitability for adoption.

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult adoption" means the adoption of any person 18 years of age or older, carried out in accordance with § 63.2-1243 of the Code of Virginia.

"Agency placement adoption" means an adoption in which a child is placed in an adoptive home by a child-placing agency that has custody of the child.

"AREVA" means the Adoption Resource Exchange of Virginia that maintains a registry and photo-listing of children waiting for adoption and families seeking to adopt.

"Assessment" means an evaluation of the situation of the child and family to identify strengths and services needed.

"Birth family" means the child's biological family.

"Birth parent" means the child's biological parent and for purposes of adoptive placement means a parent by previous adoption.

"Birth sibling" means the child's biological sibling.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes, or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child with special needs" as it relates to adoption assistance means a child who meets the definition of a child with special needs set forth in §§ 63.2-1300 or 63.2-1301 B of the Code of Virginia.

"Children's Services Act" or "CSA" means a collaborative system of services and funding that is child centered, family focused, and community based when addressing the strengths and needs of troubled and at-risk youth and their families in the Commonwealth.

"Claim for benefits," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means (i) foster care maintenance, including enhanced maintenance; (ii) the services set forth in a court approved foster care service plan, the foster care services identified in an individual family service plan developed by a family assessment and planning

team or other multi-disciplinary team pursuant to the Children's Services Act (§ 2.2-5200 et seq. of the Code of Virginia), or a transitional living plan for independent living services; (iii) the placement of a child through an agreement with the child's parents or guardians, where legal custody remains with the parents or guardians; (iv) foster care prevention services as set out in a prevention service plan; or (v) placement of a child for adoption when an approved family is outside the locality with the legal custody of the child, in accordance with 42 USC § 671(a)(23).

"Close relative" means a grandparent, great-grandparent, adult nephew or niece, adult brother or sister, adult uncle or aunt, or adult great uncle or great aunt.

"Commissioner" means the commissioner of the department, his designee, or his authorized representative.

"Community Policy and Management Team" or "CPMT" means a team appointed by the local governing body pursuant to Chapter 52 (§ 2.2-5200 et seq.) of Title 2.2 of the Code of Virginia. The powers and duties of the CPMT are set out in § 2.2-5206 of the Code of Virginia.

"Concurrent permanency planning" means utilizing a structured case management approach in which reasonable efforts are made to achieve a permanency goal, usually a reunification with the family, simultaneously with an established alternative permanent plan for the child.

"Department" means the state Department of Social Services.

"Denied," as used in § 63.2-915 of the Code of Virginia and 22VAC40-201-115, means the refusal to provide a claim for benefits.

"Dually approved" means applicants have met the required standards to be approved as a foster and adoptive family home provider.

"Entrustment agreement" means an agreement that the local board enters into with the parent, parents, or guardian to place the child in foster care either to terminate parental rights or for the temporary care and placement of the child. The agreement specifies the conditions for the care of the child.

"Family assessment and planning team" or "FAPT" means the local team created by the CPMT (i) to assess the strengths and needs of troubled youths and families who are approved for referral to the team and (ii) to identify and determine the complement of services required to meet their unique needs. The powers and duties of the FAPT are set out in § 2.2-5208 of the Code of Virginia.

"Foster care" means 24-hour substitute care for children in the custody of the local board or who remain in the custody of their parents, but are placed away from their parents or guardians and for whom the local board has placement and care responsibility through a noncustodial agreement.

"Foster care maintenance payments" means payments to cover those expenses made on behalf of a child in foster care including the cost of, and the cost of providing, food, clothing, shelter, daily supervision, school supplies, a child's incidentals, reasonable travel to the child's home for visitation, and reasonable travel to remain in the school in which the child is enrolled at the time of the placement. The term also includes costs for children in institutional care and costs related to the child of a child in foster care as set out in 42 USC § 675.

"Foster care plan" means a written document filed with the court in accordance with § 16.1-281 of the Code of Virginia that describes the programs, care, services, and other support that will be offered to the child and his parents and other prior custodians. The foster care plan defined in this definition is the case plan referenced in 42 USC § 675.

"Foster care prevention" means the provision of services to a child and family to prevent the need for foster care placement.

"Foster care services" means the provision of a full range of casework, treatment, and community services, including independent living services, for a planned period of time to a child meeting the requirements as set forth in § 63.2-905 of the Code of Virginia.

"Foster child" means a child for whom the local board has assumed placement and care responsibilities through a noncustodial foster care agreement, entrustment, or court commitment before 18 years of age.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. Independent living services may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local department of social services. Such

services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Individual family service plan" or "IFSP" means the plan for services developed by the FAPT in accordance with § 2.2-5208 of the Code of Virginia.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate Compact on the Placement of Children" or "ICPC" means a uniform law that has been enacted by all 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, which establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement, or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Investigation" means the process by which the child-placing agency obtains information required by § 63.2-1208 of the Code of Virginia about the placement and the suitability of the adoption. The findings of the investigation are compiled into a written report for the circuit court containing a recommendation on the action to be taken by the court.

"Local board" means the local board of social services in each county and city in the Commonwealth required by § 63.2-300 of the Code of Virginia.

"Local department" means the local department of social services of any county or city in the Commonwealth.

"Nonagency placement adoption" means an adoption in which the child is not in the custody of a child-placing agency and is placed in the adoptive home directly by the birth parent or legal guardian.

"Noncustodial foster care agreement" means an agreement that the local department enters into with the parent or guardian of a child to place the child in foster care when the parent or guardian retains custody of the child. The agreement specifies the conditions for placement and care of the child.

"Nonrecurring expenses" means expenses of adoptive parents directly related to the adoption of a child with special needs as set out in § 63.2-1301 D of the Code of Virginia.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in Public Law 113-183 (42 USC §§ 671 and 675) when making decisions regarding extracurricular, enrichment, and social activities.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Permanency" means establishing family connections and placement options for a child to provide a lifetime of commitment, continuity of care, a sense of belonging, and a legal and social status that go beyond a child's temporary foster care placements.

"Permanency planning" means a social work practice philosophy that promotes establishing a permanent living situation for every child with an adult with whom the child has a continuous, reciprocal relationship within a minimum amount of time after the child enters the foster care system.

"Prior custodian" means the person who had custody of the child and with whom the child resided, other than the birth parent, before custody was transferred to or placement made with the child-placing agency when that person had custody of the child.

"Prior family" means the family with whom the child resided, including birth parents, relatives, or prior custodians, before custody was transferred to or placement made with the child-placing agency.

"Putative Father Registry" means a confidential database designed to protect the rights of a putative father who wants to be notified in the event of a proceeding related to termination of parental rights or adoption for a child he may have fathered.

"Reasonable and prudent parent standard," in accordance with 42 USC § 675(10), means the standard characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child while at the same time encouraging the emotional and developmental growth of the child that foster parents and congregate care staff shall use when determining whether to allow a child in foster care to participate in extracurricular, enrichment, cultural, and social activities.

"Residential placement" means a placement in a licensed publicly or privately owned facility, other than a private family home, where 24-hour care is provided to children separated from their families. A residential placement

includes placements in children's residential facilities as defined in § 63.2-100 of the Code of Virginia.

"Reunification" means the return of the child to his home after removal for reasons of child abuse and neglect, abandonment, child in need of services, parental request for relief of custody, noncustodial agreement, entrustment, or any other court-ordered removal.

"Service worker" means a worker responsible for case management or service coordination for prevention, foster care, or adoption cases.

"Sibling" means each of two or more children having one or more parents in common.

"SSI" means Supplemental Security Income.

"State pool funds" means the pooled state and local funds administered by CSA and used to pay for services authorized by the CPMT.

"Step-parent adoption" means the adoption of a child by a spouse or the adoption of a child by a former spouse of the birth or adoptive parent in accordance with § 63.2-1201.1 of the Code of Virginia.

"Title IV-E" means the title of the Social Security Act that authorizes federal funds for foster care and adoption assistance.

"Visitation and report" means the visits conducted pursuant to § 63.2-1212 of the Code of Virginia and the written report of the findings made in the course of the visitation. The report is filed in the circuit court in accordance with § 63.2-1212 of the Code of Virginia.

"Wrap around services" means an individually designed set of services and supports provided to a child and his family that includes treatment services, personal support services or any other supports necessary to achieve the desired outcome. Wrap around services are developed through a team approach.

"Youth" means any child in foster care between ~~16~~ 14 and 18 years of age or any person 18 to 21 years of age transitioning out of foster care and receiving independent living services pursuant to § 63.2-905.1 of the Code of Virginia. "Youth" may also mean an individual older than the age of 16 years who is the subject of an adoption assistance agreement.

22VAC40-201-35. Reentry into foster care from commitment.

A. In the event the ~~youth~~ child was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice (DJJ) and has not attained the age of 18 years, the local board shall resume custody upon the ~~youth's~~ child's release from commitment, unless an alternative arrangement for the custody of the ~~youth~~ child has been made and communicated in writing to DJJ. At least 90 days prior to the ~~youth's~~ child's release from commitment on parole supervision the local department shall consult with the court service unit on the ~~youth's~~ child's return to the locality and collaborate to develop a foster care plan that prepares the ~~youth~~ child for successful transition back to the custody of the local department or to an alternative custody arrangement, if applicable. The plan shall identify services necessary for the transition and how the services are to be provided. If an alternative custody arrangement has been identified, such arrangement shall be described in the foster care plan to be considered and approved by the court. Any transfer of custody of the child must be by order of the court.

B. The foster care plan shall be submitted to the court for approval within 45 days of the ~~youth's~~ child's reentry into foster care. Submission of a petition for approval of the foster care plan to the juvenile and domestic relations district court shall be made in accordance with § 16.1-281 of the Code of Virginia.

22VAC40-201-40. Foster care placements.

A. Within 30 days of the child being placed in the custody of the local board, the local department shall exercise due diligence to identify and notify in writing all adult relatives, including the parents of siblings who have legal custody of such siblings, that the child has been removed and explain the options to relatives to participate in the care and placement of the child including eligibility as a kinship foster parent and the services and supports that may be available for children placed in such a home. The local department may determine it is not in the child's best interest to notify relatives who have a history of domestic violence; have been convicted of barrier crimes as defined in § 63.2-1719 of the Code of Virginia other than those described in subsections E, F, G, and H of § 63.2-1721 of the Code of Virginia; or are listed on the Virginia State Police Sex Offender Registry. Additionally, if the birth father is unknown, the local department shall search the Virginia Birth Father Registry within 30 days of the child entering foster care.

B. The local department shall ensure a child in foster care is placed in an approved home or licensed facility that complies with all applicable federal and state requirements for safety and child well-being. Placements shall be made subject to the requirements of § 63.2-901.1 of the Code of Virginia. The following requirements shall be met when placing a child in an approved home or licensed facility:

1. The local department shall exercise due diligence to locate and assess relatives as a foster home placement for the child, including in emergency situations.

2. The local department shall place the child in the least restrictive, most family like setting consistent with the best interests and needs of the child.

3. The local department shall attempt to place the child in as close proximity as possible to the birth parent's or prior custodian's home to facilitate visitation, provide continuity of connections, and provide educational stability for the child.

4. The local department shall take reasonable steps to place the child with siblings unless such a joint placement would be contrary to the safety or well-being of the child or siblings.

5. The local department shall, when appropriate, consider placement in a dually approved home so that if reunification fails, the placement is the best available placement to provide permanency through adoption for the child.

6. The local department shall not delay or deny placement of a child into a foster or adoptive family placement on the basis of race, color, or national origin of the foster or ~~resource~~ adoptive parent or child.

7. When a child being placed in foster care is of ~~native~~ Native American, Alaskan Eskimo, or Aleut heritage and is a member of a nationally recognized tribe, the local department shall follow all federal laws, regulations, and policies regarding the referral of the child. The local department may contact the Department of Historic Resources for information on contacting Virginia tribes and shall consider tribal culture and connections in the placement and care of a child of Virginia Indian heritage.

8. If a child is placed in a kinship foster placement pursuant to § 63.2-900.1 of the Code of Virginia, the child shall not be removed from the physical custody of the kinship foster parent, provided the child has been living with the kinship foster parent for six consecutive months and the placement continues to meet approval standards for foster care, unless (i) the kinship foster parent consents to the removal; (ii) removal is agreed upon at a family partnership meeting; (iii) removal is ordered by a court of competent jurisdiction; or (iv) removal is warranted pursuant to § 63.2-1517 of the Code of Virginia.

C. A service worker shall make a preplacement visit to any out-of-home placement to observe the environment where the child will be living and ensure that the placement is safe and capable of meeting the needs of the child. The preplacement visit shall precede the placement date except in cases of emergency. In cases of emergency, the visit shall occur on the same day as the placement.

D. Foster or adoptive homes shall meet standards established by the board and shall be approved by child-placing agencies. Prior to the placement of a child in a licensed child-placing agency (LCPA) foster home, the local department shall verify that the LCPA approved the foster home. Prior to the placement of a child in a children's residential facility, the local department shall verify that the facility is licensed to operate by the appropriate state regulatory authority.

E. Local departments shall receive notice of the approval from the department's office of the ICPC prior to placing a child out of state.

F. When the local department is considering placement of a child in a foster or adoptive home approved by another local department within Virginia, the local department intending to place the child shall consult with the approving local department about the placement of the child and shall also verify that the home is still approved.

G. When a child is moving with a foster or adoptive family from one jurisdiction to another, the local department holding custody shall notify the local department in the jurisdiction to which the foster or adoptive family is moving.

H. When a child moves with a foster or adoptive family from one jurisdiction to another in Virginia, the local department holding custody shall continue supervision of the child unless supervision is transferred to the other local department.

I. A local department may petition the court to transfer custody of a child to another local department when the birth parent or prior custodian has moved to that locality.

J. In planned placement changes or relocation of foster parents, birth parents with residual parental rights or prior custodians and all other relevant parties shall be notified that a placement change or move is being considered if such notification is in the best interest of the child. The service worker shall consider the child's best interest and safety needs when involving the birth parent or prior custodian and all other relevant parties in the decision-making process regarding placement change or notification of the new placement.

K. In the case where an emergency situation requires an immediate placement change, the birth parent with residual parental rights or prior custodian and all other relevant parties shall be notified immediately of the placement change. The local department shall inform the birth parent or prior custodian why the placement change occurred and why the birth parent or prior custodian and all other relevant parties could not be involved in the decision-making process.

22VAC40-201-70. Foster care goals.

A. Foster care goals are established to assure permanency is achieved for the child. Permissible foster care goals are:

1. Transfer custody of the child to his prior family;

2. Transfer custody of the child to a relative other than his prior family;

3. Finalize adoption of the child;

4. Place the child in permanent foster care;

5. Transition to independent living if the child is admitted to the United States as a refugee or asylee or is 18 years of age or older; or

6. Place the child in another planned permanent living arrangement in accordance with § 16.1-282.1 A2 of the Code of Virginia.

B. When the permanency goal is changed to adoption, the local department shall file petitions with the court 30 days prior to the hearing to:

1. Approve the foster care service plan seeking to change the permanency goal to adoption; and

2. Terminate parental rights.

Upon termination of parental rights, the local department shall provide an array of adoption services to support obtaining a finalized adoption.

C. The local department shall engage in concurrent permanency planning in order to achieve timely permanency for the child. Permanency goals shall be considered and addressed from the beginning of placement and continuously evaluated.

D. The goal of another planned permanent living arrangement may be chosen when the court has found that:

1. The child has a severe and chronic emotional, physical, or neurological disabling condition;

2. The child requires long-term residential care for the condition; ~~and~~

3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in another planned permanent living arrangement is approved as the permanent goal for the child; and

4. The youth is 16 years of age or older.

E. The goal of permanent foster care may be chosen when the court has found that:

1. The child is placed in a foster home;

2. The child has developed a clearly established and documented significant relationship with a foster parent;

3. None of the alternatives listed in clauses (i) through (v) of § 16.1-282.1 A of the Code of Virginia is achievable for the child at the time placement in permanent foster care is approved as the permanent goal for the child; and

4. The youth is 16 years of age and older.

F. If either the goal of permanent foster care or another planned permanent living arrangement is selected, the local department shall continue to search for relatives and significant individuals as permanent families throughout the child's involvement with the child welfare system. The local department shall ~~continue to~~ continuously evaluate the best ~~interest~~ interests of the child in light of the changing circumstances of the child and extended family to determine whether a change in goal to return home, placement with relatives, or adoption can achieve permanency.

~~F.~~ G. The goal of independent living services shall only be selected for those children admitted to the United States as a refugee or asylee ~~or~~, those youth age 18 years leaving foster care and meeting the requirements to receive independent living services, or youth participating in the Fostering Futures program, as described in 22VAC40-201-105. For those youth with this goal, the service worker shall continue diligent efforts to search for a relative or other interested adult who will provide a permanent long-term family relationship for the youth.

22VAC40-201-80. Foster care plans.

A. Every child in foster care longer than 45 days shall have a written foster care plan approved by the court within 60 days of entry into foster care. The foster care plan shall specify the permanency goal and the concurrent permanency goal and shall meet all requirements set forth in federal law or ~~state law~~ § 16.1-282 of the Code of Virginia. ~~In the development of the foster care plan, the local department shall consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, and any other interested individuals, who may include service providers. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.~~

B. The foster care plan shall be written after the completion of the assessment. Foster care plans shall directly reference how the strengths identified in the foster care assessment will support the plan and the needs to be met to achieve the permanency goal, including the identified concurrent permanency goal, in a timely manner.

C. A plan for visitation with the birth parents or prior custodians and siblings for all children in foster care shall be developed and presented to the court as part of the foster care plan in accordance with § 63.2-900.2 of the Code of Virginia.

22VAC40-201-90. Service delivery.

A. Services shall be provided to support the safety and well-being of the child. Services to children and birth parents or prior custodians shall continue until evidence indicates the services are either not effective to reach the child's goal or no longer necessary because the goal has been achieved, or the birth parent or prior custodian has refused services.

B. Permanency planning for children and birth parents or prior custodians shall be an inclusive process providing full disclosure to the birth parents or prior custodians of the establishment of a concurrent permanency goal and the implications of concurrent permanency planning for the child

and birth parents or prior custodians. Local departments shall notify the birth parents or prior custodians concerning placement changes, hearings and meetings regarding the child, and assessments of needs and case progress and shall be responsive to the requests of the child and birth parents or prior custodians.

C. In order to ensure that permanency is achieved for the child, services may be provided to relatives or other interested individuals who are assessed to be potential permanency options for the child and may continue until an assessment indicates the services are no longer necessary.

D. Developmental and medical examinations shall be provided for the child in foster care in accordance with the Virginia Department of Medical Assistance Services' Early Periodic Screening Diagnosis and Treatment (EPSDT) schedule in the Virginia EPSDT Periodicity Chart. Dental examinations shall be provided for the child in accordance with the American Academy of Pediatric Dentistry's Periodicity and Anticipatory Guidance Recommendations (Dental Health Guidelines-Ages 0-18 Years, Recommendations for Preventive Pediatric Dental Care (AAPD Reference Manual 2002-2003)) as determined by the Virginia Department of Medical Assistance Services. As indicated through assessment, appropriate health care services shall include trauma, developmental, mental health, psychosocial, and substance abuse services and treatments. Local departments shall follow the protocols for appropriate and effective use of psychotropic medications for children in foster care disseminated by the department.

E. All children in foster care shall have a face-to-face contact with an approved service worker at least once per calendar month regardless of the child's permanency goal or placement. More than 50% of each child's visits shall be in his place of residency.

1. The purpose of the visits shall be to assess the child's progress, needs, adjustment to placement, and other significant information related to the health, safety, and well-being of the child.

2. The visits shall be made by individuals who meet the department's requirements consistent with 42 USC § 622(b).

F. The local department shall enter into a placement agreement developed by the department with the foster or adoptive parents. As required by § 63.2-900 of the Code of Virginia, the placement agreement shall include, at a minimum, a code of ethics and mutual responsibilities for all parties to the agreement.

1. Services to prevent placement disruptions shall be provided to the foster and adoptive parents.

2. Foster and adoptive parents who have children placed with them shall be contacted by a service worker as often as needed in accordance with 22VAC40-211-100 to assess service needs and progress.

3. Foster and adoptive parents shall be given full factual information about the child, including ~~but not limited to,~~ circumstances that led to the child's removal and complete educational, medical, and behavioral information. All information shall be kept confidential by the foster and adoptive parents.

4. Foster and adoptive parents shall be given the foster care plan.

5. Respite care for foster and adoptive parents may be provided on an emergency or planned basis.

6. The department shall make funds available to provide reimbursement to local departments' foster parents for damages to property caused by children placed in the home. Provision of reimbursement is contingent upon the availability of funds.

G. Pursuant to § 63.2-904 of the Code of Virginia, the local department shall implement policies and procedures to support normalcy for children in foster care. Foster parents and group home and residential providers shall make day-to-day decisions regarding a child's participation in age-appropriate extracurricular, enrichment, cultural, and social activities based on the reasonable and prudent parent standard and in accordance with the agreement entered into between the provider and local department.

1. Pursuant to 42 USC § 671(a)(10)(B), the department shall ensure that foster parents and group home and residential providers are trained in normalcy and how to use and apply the reasonable and prudent parent standard. Each group home and residential provider shall designate at least one official staff member on site to be the caregiver who is authorized to apply the reasonable and prudent parent standard.

2. No other policy or procedure shall interfere with the ability to implement normalcy.

22VAC40-201-100. Providing independent living services: service for youth 14 years of age and older.

A. Independent living services shall be identified by the youth~~;~~, foster or adoptive family~~;~~, local department~~;~~, service providers~~;~~, legal community~~;~~, and other interested individuals and shall be included in the service plan. Input from the youth in assembling these individuals and developing the services is required.

B. Independent living services shall be provided to all youth ages 14 to 18 years and shall be offered to any person between 18 and 21 years of age who is in the process of transitioning from foster care to self-sufficiency.

C. Independent living services include education, vocational training, employment, mental and physical health services,

transportation, housing, financial support, daily living skills, counseling, and development of permanent connections with adults.

D. Local departments shall assess the youth's independent living skills and needs and incorporate the assessment results into the youth's service plan.

E. A youth placed in foster care before the age of 18 years who turns age 18 years prior to July 1, 2016, may continue to receive independent living services from the local department between the ages of 18 and 21 years if:

1. The youth is making progress in an educational or vocational program, has employment, or is in a treatment or training program; and

2. The youth agrees to participate with the local department in (i) developing a service agreement and (ii) signing the service agreement. The service agreement shall require~~, at a minimum, that the youth's living arrangement shall be approved by the local department and~~ that the youth shall cooperate with all services; or

3. The youth is in permanent foster care and is making progress in an educational or vocational program, has employment, or is in a treatment or training program.

F. A youth age 16 years and older is eligible to live in an independent living arrangement provided the local department utilizes the independent living arrangement placement criteria developed by the department to determine that such an arrangement is in the youth's best interest. An eligible youth may receive an independent living stipend to assist him with the costs of maintenance. The eligibility criteria for receiving an independent living stipend will be developed by the department.

G. Any person who was committed or entrusted to a local department, turned 18 years of age prior to July 1, 2016, and chooses to discontinue receiving independent living services after age 18 years may request a resumption of independent living services provided that (i) the person has not yet reached 21 years of age and (ii) the person has entered into a written agreement, less than 60 days after independent living services have been discontinued, with the local board regarding the terms and conditions of his receipt of independent living services. Local departments shall provide any person who chooses to leave foster care or terminate independent living services before his 21st birthday written notice of his right to request restoration of independent living services in accordance with § 63.2-905.1 of the Code of Virginia by including such written notice in the person's transition plan.

H. Local departments shall assist eligible youth in applying for educational and vocational financial assistance. Educational and vocational specific funding sources shall be used prior to using other sources.

I. Local departments shall provide independent living services to any person between 18 and 21 years of age who:

1. Turned 18 years of age prior to July 1, 2016;

2. Was in the custody of the local board immediately prior to his commitment to the Department of Juvenile Justice;

~~2.~~ 3. Is in the process of transitioning from a commitment to the Department of Juvenile Justice to self-sufficiency; and

~~3.~~ 4. Provides written notice of his intent to receive independent living services and enters into a written agreement which sets forth the terms and conditions for the provision of independent living services with the local board within 60 days of his release from commitment.

J. Every six months a supervisory review of service plans for youth receiving independent living services after age 18 years shall be conducted to assure the effectiveness of service provision.

K. A youth who has been in care six months or more and turns 18 years of age while in foster care shall receive a certified copy of his birth certificate, social security card, health insurance information, medical records, and state-issued identification or driver's license.

L. The local department shall run annual credit checks on all youth in foster care who are 14 years of age and older. The local department shall assist a youth in resolving any discrepancies in the youth's credit report. The local department shall assist a youth in foster care over 18 years of age in obtaining the youth's annual credit report.

22VAC40-201-105. Foster care for youth 18 to 21 years of age (Fostering Futures program).

A. Foster care services shall be provided to youth who turn 18 years of age while still in foster care on or after July 1, 2016, until they reach 21 years of age if they qualify and have chosen to participate in the Fostering Futures program.

B. Youth who qualify for the Fostering Futures program are those youth who (i) turn 18 years of age on or after July 1, 2016, and were in the custody of a local Virginia department of social services but have not yet turned 21 years of age, including those who were in foster care under an entrustment agreement and (ii) are:

1. Completing secondary education or an equivalent credential;

2. Enrolled in an institution that provides post-secondary or vocational education;

3. Participating in a program or activity designed to promote employment or remove barriers to employment;

4. Employed at least 80 hours a month; or

5. Are incapable of doing any of the activities described in subdivisions 1 through 4 of this subsection due to a medical condition, which incapability is supported by regularly updated information in the program participant's case plan.

C. Fostering Futures program participants are eligible for independent living services as well as placement services; placements in congregate care are not allowable.

D. Entry into the Fostering Futures program is considered a new foster care episode, and the youth shall be evaluated for Title IV-E funding or eligibility upon entering the program.

E. There is no limit to the number of times a youth may exit and reenter the Fostering Futures program prior to his 21st birthday.

F. Youth in foster care who are committed to the Department of Juvenile Justice prior to 18 years of age, turn 18 years of age on or after July 1, 2016, and are not yet 21 years of age, are eligible to enter the Fostering Futures program upon discharge from commitment.

22VAC40-201-110. Court hearings and case reviews.

A. For all court hearings, local departments shall:

1. Facilitate a meeting prior to the development of the foster care service plan and foster care service plan review to ensure participation and consider input from the child, the birth parents or prior custodians, the foster or adoptive parents, and any other interested individuals, who may include service providers, in the development of the service plan and service plan review. All youth 14 years of age and older shall be given the opportunity to choose up to two people to attend the meeting who are not the foster parent or caseworker. All of these persons shall be involved in sharing information for the purposes of well-informed decisions and planning for the child with a focus on safety and permanence.

2. File petitions in accordance with the requirements for the type of hearing.

~~2.~~ 3. Obtain and consider the child's input as to who should be included in the court hearing. If persons identified by the child will not be included in the court hearing, the service worker shall explain the reasons to the child for such a decision consistent with the child's developmental and psychological status.

~~3.~~ 4. Inform the court of reasonable efforts made to achieve concurrent permanency goals.

5. Document the appropriateness of the placement, including the continued appropriateness of an out-of-state placement if applicable.

6. Ensure the child or youth is present for the permanency planning hearing unless the court determines this not to be in the child's best interest.

B. The child or youth shall be consulted in an age-appropriate manner about his permanency plan at the permanency planning hearing and subsequent administrative panel reviews.

C. An administrative panel review shall be held six months after a permanency planning hearing when the goal of permanent foster care has been approved by the court. A foster care review hearing will be held annually. The child will continue to have administrative panel reviews or review hearings every six months until the child reaches age 18 years.

~~C.~~ D. The local department shall invite the child; the child's birth parents or prior custodians when appropriate; and the child's foster or adoptive parents, placement providers, guardian ad litem, court appointed special advocate ~~(CASA)~~, relatives~~;~~, and service providers to participate in the administrative panel reviews.

~~D.~~ E. The local department shall consider all recommendations made during the administrative panel review in planning services for the child and birth parents or prior custodians and document the recommendations on the department approved form. Individuals who were invited, including those not in attendance, shall be given a copy of the results of the administrative panel review as documented on the department approved form.

~~E.~~ F. A supervisory review is required every six months for youth ages 18 to 21 years who are receiving independent living services only.

G. An administrative panel review is required every six months for Fostering Futures program participants unless a court review is held.

~~F.~~ H. In accordance with § 16.1-242.1 of the Code of Virginia, when a case is on appeal for termination of parental rights, the juvenile and domestic relations district court retains jurisdiction on all matters not on appeal. The circuit court appeal hearing may substitute for a review hearing if the circuit court addresses the future status of the child.

~~G.~~ I. An adoption progress report shall be prepared every six months after a permanency planning hearing when the goal of adoption has been approved by the court. The adoption progress report shall be entered into the automated child welfare data system. The child will continue to have annual review hearings in addition to adoption progress reports until a final order of adoption is issued or the child reaches age 18 years.

~~H.~~ J. If a child is in the custody of the local department and a preadoptive family has not been identified and approved for the child, the child's guardian ad litem or the local board of

social services may file a petition to restore the previously terminated parental rights of the child's parent in accordance with § 16.1-283.2 of the Code of Virginia.

K. If a child has been in foster care 15 out of the last 22 months, the local department shall file a petition to terminate the parental rights.

22VAC40-201-130. Closing the foster care case.

A. Foster care cases are closed or transferred to another service category under the following circumstances:

1. When the foster care child turns 18 years of age and objects to continuing to receive foster care services for which he is eligible;

2. When the court releases the child from the local department's custody prior to the age of 18 years;

3. When a temporary entrustment or noncustodial agreement has expired, been revoked, or been terminated by the court;

4. When the foster care child is committed to the Department of Juvenile Justice; or

5. When the final order of adoption is issued.

B. When the foster care case is closed for services, the case record shall be maintained according to the record retention schedules established by the Library of Virginia.

C. Any foster care youth who has reached age 18 years has the right to request information from his records in accordance with state law.

22VAC40-201-140. Other foster care requirements.

~~A. The director of a local department or his designee may grant approval for a child to travel out of state and out of country. The approval must be in writing and maintained in the child's file.~~

~~B.~~ A. Pursuant to § 63.2-908 of the Code of Virginia, a foster parent may consent to a marriage or entry into the military if the child has been placed with him through a permanent foster care agreement that has been approved by the court.

~~C.~~ B. An employee of a local department, including a relative, cannot serve as a foster, adoptive, or licensed child-placing agency parent for a child in the custody of that local department. In the event it is in the child's best interest that a local employee be the foster parent, the child's custody may be transferred to another local department.

~~D.~~ C. The child of a foster child remains the responsibility of his parent, unless custody has been removed by the court.

1. The child is not subject to requirements for foster care plans, reviews, or hearings. However, the needs and safety of the child shall be considered and documented in the foster care plan for the foster child (parent).

2. The child is eligible for maintenance payments in accordance with 42 USC § 675(4)(B) and Medicaid in accordance with 42 USC § 672(h).

~~E.~~ D. When a child in foster care is committed to the Department of Juvenile Justice, the local department no longer has custody or placement and care responsibility for the child. As long as the discharge or release plan for the child is to return to the local department prior to reaching age 18 years, the local department shall maintain a connection with the child.

~~F.~~ E. At least 90 days prior to a ~~youth's~~ child's release from commitment to the Department of Juvenile Justice, the local department shall:

1. Consult with the court services unit concerning the ~~youth's~~ child's return to the locality; and

2. Work collaboratively with the court services unit to develop a plan for the ~~youth's~~ child's successful transition back to the community, which will identify the services necessary to facilitate the transition and will describe how the services will be provided.

22VAC40-201-161. Adoption assistance.

A. The purpose of adoption assistance is to facilitate adoptive placements and ensure permanency for children with special needs.

B. For a child to be eligible for adoption assistance he must have been determined to be a child with special needs in accordance with §§ 63.2-1300 and 63.2-1301 of the Code of Virginia and meet the following criteria:

1. Be younger than 18 years of age and meet the requirements set forth in § 473 of Title IV-E of the Social Security Act (42 USC § 673); or

2. Be younger than 18 years of age and in the placement and care of a child-placing agency at the time the petition for adoption is filed and be placed by the child-placing agency with the prospective adoptive parents for the purpose of adoption, except for those situations in which the foster parents have filed a petition for adoption under § 63.2-1229 of the Code of Virginia.

C. Adoption assistance may include the following payments or services where appropriate:

1. Title IV-E maintenance payments if the child meets federal eligibility requirements.

2. State-funded maintenance payments when the local department determines that (i) the child does not meet the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) and (ii) the child is a child with

special needs pursuant to § 63.2-1301 B of the Code of Virginia.

3. State-funded special service payments used to help meet the child's physical, mental, emotional, or dental needs (i) when the child is in the custody of the local board or in the custody of a licensed child-placing agency and placed for adoption, (ii) when the child meets the criteria of a child with special needs set out in § 63.2-1300 of the Code of Virginia, and (iii) when the adoptive parents are capable of providing permanent family relationships needed by the child in all respects except financial.

4. Nonrecurring expense payments when an adoption assistance agreement is entered into prior to or at the time of the finalization of the adoption. Claims for nonrecurring expense payments must be filed within two years of the date of the final decree of adoption.

D. For the child who meets the requirements in § 473 of Title IV-E of the Social Security Act (42 USC § 673) or who is receiving state-funded maintenance payments and has a special medical need as specified in § 32.1-325 of the Code of Virginia and in the Virginia DSS Medicaid Eligibility manual, M0310.102 2b, the adoption assistance agreement shall include a statement indicating the child's Medicaid eligibility status.

E. Additional criteria for the payments and services specified in subsection C of this section are as follows:

1. A maintenance payment, whether under Title IV-E or state funded, shall be approved for a child who is eligible for adoption assistance unless the adoptive parent indicates, or it is determined through negotiation, that the payment is not needed.

a. The amount of all payments shall be negotiated by a representative of the department with the adoptive parents, taking into consideration the needs of the child and circumstances of the adoptive parents.

b. The amount of maintenance payments made shall not exceed the foster care maintenance payment that would have been paid during the period if the child had been in a foster family home.

c. The maintenance payments shall not be reduced below the amount specified in the adoption assistance agreement without the concurrence of the adoptive parents or a statewide reduction.

d. The maintenance payment specified in the adoption assistance agreement may only be increased if the child is already receiving the maximum amount allowed and (i) the child reaches an age at which the foster care maintenance rate would increase or (ii) statewide increases are approved for foster care maintenance rates.

e. The adoptive parents shall be required under the adoption assistance agreement to keep the local department informed of the circumstances that would make them ineligible for a maintenance payment or eligible for a different amount of maintenance payment than that specified in the adoption assistance agreement.

f. Maintenance payments shall cease being made to the adoptive parents for the child who has not yet reached the age of 18 years if (i) the adoptive parents are no longer legally responsible for the support of the child or (ii) the child is no longer receiving any support from the adoptive parents.

2. The special service payment shall be directly related to the child's special needs listed on the adoption assistance agreement. Special service payments shall be time limited based on the needs of the child and can be modified beyond the original provision of the agreement when the local department and the adoptive parents agree to the modification in a signed and dated addendum. Subsection K of this section addresses addendums to an existing agreement.

a. A special service payment may be used for a child eligible for Medicaid to supplement payments not covered by Medicaid.

b. Payments for special services are negotiated by a representative of the department with the adoptive parents, taking into consideration:

(1) The special needs of the child;

(2) Alternative resources available to fully or partially defray the cost of meeting the child's special needs; and

(3) The circumstances of the adoptive family, including the family's income.

c. The rate of payment shall not exceed the prevailing rate for the provision of such special services within the child's community.

d. The special services adoption assistance payments shall be separate and distinct from the maintenance payments and nonrecurring expenses on the adoption assistance form.

3. The adoptive parent shall be reimbursed, upon request, for the nonrecurring expenses of adopting a child with special needs.

a. The total amount of reimbursement shall be based on actual costs and shall not exceed $2,000 per child per placement or an amount established by federal law.

b. Payment of nonrecurring expenses may begin as soon as the child is placed in the adoptive home and the adoption assistance agreement has been signed.

c. Nonrecurring expenses include those items set out in § 63.2-1301 D of the Code of Virginia.

4. When the adoptive parents decline a specific payment or agree to a reduced payment amount and their family circumstances or the child's needs change, the adoptive parents may request a change to the agreement and an addendum to the adoption assistance agreement can be negotiated. The requirements for addendums to an existing adoption assistance agreement are in subsection K of this section.

F. All adoption assistance payments, services, and agreements shall be negotiated with the adoptive parents by a representative of the department, taking into consideration the needs of the child, the circumstances of the family, and the limitations specified in subsections B, C, and E of this section. Documentation supporting the requests for payments and services shall be provided by the adoptive parents and for consideration in the negotiation of the adoption assistance agreement. Income shall not be the sole factor in considering the family's circumstances during the negotiations. Available family and community resources shall be explored as an alternative or supplement to the adoption assistance payment.

G. An adoption assistance agreement shall be entered into by the local board and the adoptive parents or a child who has been determined eligible for adoption assistance. Local departments shall use the adoption assistance agreement form developed by the department. In cases in which the child is in the custody of a licensed child-placing agency, the agreement shall be entered into by the local board, the licensed child-placing agency, and the adoptive parents. All adoption assistance agreements shall be negotiated by a representative of the department.

H. When a child is determined to be eligible for adoption assistance prior to the adoption being finalized, the adoption assistance agreement shall:

1. Be signed prior to or at the time of entry of the final order of adoption;

2. Specify the payment types, monthly amounts, special services to be provided; and

3. Remain in effect and governed by the laws of the Commonwealth of Virginia regardless of the state to which the adoptive parents may relocate.

I. Application for adoption assistance after finalization of the adoption shall be for state-funded maintenance payments as set out in § 63.2-1301 B of the Code of Virginia. The application for adoption assistance shall be submitted within one year of diagnosis of the condition that establishes the child as a child with special needs.

J. The adoptive parents shall annually submit a signed adoption assistance affidavit to the local department by the end of the month in which the adoption assistance agreement was effective pursuant to § 63.2-1302 C of the Code of Virginia.

K. Adoption assistance agreements may be modified beyond the original provisions of the agreement to the extent provided by law when the local department and the adoptive parents agree in writing to new or renewed special services or provisions in an addendum signed and dated by the local department and the adoptive parents. The local departments shall use the addendum form provided by the department and the changes to the agreement shall be negotiated by a representative of the department.

L. The local department is responsible for:

1. Maintaining payments and services identified in the adoption assistance agreement and any addendum in effect, regardless of where the family resides;

2. Notifying adoptive parents who are receiving adoption assistance that the annual affidavit is due;

3. Discussing with the adoptive parents the child's unique needs and their ability to manage the needs of the child;

4. Assisting the adoptive parents in coordinating services to meet the child's special needs related to adoption assistance upon request;

5. Providing services to prevent disruption and strengthen family well-being, when requested by the adoptive parents; and

6. Providing training, when requested, to the adoptive parents as part of an already established local department curriculum. If the local department does not provide the necessary training when requested, the local department shall identify potential training sources and assist the adoptive parent in accessing the training.

M. Adoption assistance shall be terminated when the child reaches the age of 18 years unless ~~the~~:

1. The child has a physical or mental disability or an educational delay resulting from the child's disability that warrants continuation of the adoption assistance. If a child has a physical or mental disability that warrants continuation of the adoption assistance, the adoption assistance payments may continue until the child reaches the age of 21 years if the local department and adoptive parents sign an addendum to the agreement to extend the agreement to the specified age. If the sole reason for continuing the agreement beyond the age of 18 years is educational delay, then state-funded adoption assistance may continue until the youth graduates from high school or until the youth's 21st birthday, whichever is earlier, if the local department and the adoptive parents sign an addendum to the agreement to extend the agreement to the end of the month of high school graduation or until the youth's 21st birthday, whichever is earlier~~.~~ or

2. The initial adoption assistance agreement became effective on or after the youth's 16th birthday and the youth turned 18 years of age on or after July 1, 2016. Adoption assistance may continue until the youth reaches 21 years of age if the youth meets one of the following criteria:

a. Completing secondary education or an equivalent credential;

b. Enrolled in an institution that provides post-secondary or vocational education;

c. Participating in a program or activity designed to promote employment or remove barriers to employment;

d. Employed at least 80 hours a month; or

e. Is incapable of doing any of the activities described in subdivisions 2 a through 2 d of this subsection due to a medical condition, which incapability is supported by regularly updated information in the program participant's case record.

N. Adoption assistance shall not be terminated before the child's 18th birthday without the consent of the adoptive parents unless:

1. The child is no longer receiving support from the adoptive parents; or

2. The adoptive parents are no longer legally responsible for the support of the child.

O. Local boards of social services are responsible for informing adoptive parents in writing of their right to appeal decisions relating to the child's eligibility for adoption assistance and decisions relating to payments and services to be provided within 30 days of receiving written notice of such decisions. In accordance with § 63.2-1304 of the Code of Virginia applicants for, and recipients of, adoption assistance shall have the right to appeal adoption assistance decisions by a local board or licensed child-placing agency in granting, denying, changing, or discontinuing adoption assistance.

VA.R. Doc. No. R17-4957; Filed October 9, 2018, 9:26 a.m.

Final Regulation

Title of Regulation: **22VAC40-211. Resource, Foster and Adoptive Family Home Approval Standards (amending 22VAC40-211-10 through 22VAC40-211-100).**

Statutory Authority: §§ 63.2-217 and 63.2-319 of the Code of Virginia.

Effective Date: December 1, 2018.

Agency Contact: Em Parente, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7538, FAX (804) 726-7895, or email em.parente@dss.virginia.gov.

Summary:

The amendments require (i) foster and adoptive parents to report substantial changes to their homes or circumstances; (ii) local departments of social services (LDSS) to provide mandated reporter training to foster and adoptive parents; (iii) approved foster and adoptive parents to complete in-service training annually; and (iv) training for LDSS staff and other child welfare staff who complete mutual family assessments of prospective foster and adoptive family homes. Other amendments include clarifying that waivers are restricted to relative or kinship foster homes, updating procedures for maintaining foster and adoptive provider approval status, and clarifying or updating terms and definitions.

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

CHAPTER 211
~~RESOURCE,~~ FOSTER AND ADOPTIVE ~~FAMILY~~ HOME APPROVAL STANDARDS FOR LOCAL DEPARTMENTS OF SOCIAL SERVICES

22VAC40-211-10. Definitions.

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

"Adoptive parent" means any provider selected and approved by a parent or a ~~child-placing agency~~ local department for the placement of a child with the intent of adoption.

"Adult" means any person 18 years of age or over.

"Applicant" means an individual or couple applying to be approved as a ~~resource,~~ foster ~~and/or~~ or adoptive home provider or to provide respite services.

"Background checks" means a sworn statement or affirmation disclosing whether the individual has a criminal conviction, is the subject of any pending charges within or outside the Commonwealth of Virginia, and is the subject of a founded complaint of abuse or neglect within or outside the Commonwealth; criminal history record information~~,~~; child abuse and neglect central registry check~~,~~; and any other requirement as set forth in § 63.2-901.1 of the Code of Virginia.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) ~~any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person~~ an adult who by law, social custom, express or implied acquiescence, collective consensus,

agreement, or any other legally recognizable basis has an obligation to look after the well-being of a child left in his care; and (iii) ~~person~~ persons responsible by virtue of their ~~position~~ positions of conferred authority~~; or (iv) adult person residing in the home with the child~~.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on an individual named as an abuser ~~and/or~~ or neglector in founded child abuse ~~and/or~~ or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster ~~homes,~~ or adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board of social services that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903 or 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child abuse and neglect information system" means the computer system that collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the central registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through actions such as, but not limited to, (i) striking, or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

~~"Dual approval process"~~ "Dually approved" means ~~a process that includes a home study, mutual selection, interviews, training and background checks to be completed on all~~ applicants have met the required standards to be ~~considered for approval~~ approved as a ~~resource,~~ foster~~, or~~ and adoptive family home provider.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board of social services where the legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board of social services or licensed child-placing agency.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

~~"Fully approved" means a decision by the local department that the provider has met all requirements to be approved as a resource, foster, adoptive, or respite home provider.~~

"In-service training" means the ongoing instruction received by providers after they complete their preservice training.

"Interstate Compact on the Placement of Children" means a uniform law that has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Kinship foster parent" means an approved relative provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Local department" means the local department of social services of any county or city in ~~this~~ the Commonwealth.

"Parent" means the birth or adoptive parent of a child.

"Preservice training" means the instruction received by providers during the initial approval process.

"Provider" means ~~a resource,~~ an approved foster, adoptive, or ~~respite family~~ kinship foster parent, or an individual approved to provide respite services. Individuals who wish to provide only respite services must meet all standards in this chapter unless there is a noted exception for respite providers.

~~"Resource parent" means an approved provider who is committed both to support reunification and also to be prepared to adopt the child if the child and family do not reunify.~~

"Respite care" means the provision of the service of temporary care for children on an emergency or planned basis for the purposes of providing placement stability, supporting the achievement of timely permanency, and promoting connections to relatives. Respite care services shall not exceed 14 consecutive days.

~~"Respite parent" means an approved provider who gives temporary care to children on an emergency or planned basis.~~

22VAC40-211-20. Approval of provider homes.

A. When applicants are approved in accordance with ~~these~~ the standards of this chapter, they are approved as ~~foster families, adoptive families, resource families, or respite~~

~~families~~ foster or adoptive providers. The approved provider shall~~, however,~~ be allowed to choose to provide only foster ~~care,~~ or adoptive care~~, or respite care should they not wish to serve as a resource family~~.

B. If the relative provider cannot meet the standards described in ~~these sections~~ this chapter, the local department may, upon its discretion, request a ~~variance~~ waiver on certain standards in accordance with 22VAC40-211-90. If the ~~variance~~ waiver is not allowed, the local department shall not approve the home for the placement of children.

C. ~~These~~ The standards of this chapter apply to adoptive home providers until the final order of adoption is issued for a specific child. The standards continue to apply after the final order of adoption if the provider wishes to continue as an approved foster care provider.

D. ~~Respite care families shall not serve as foster, adoptive, or resource families without completion of all requirements to be fully approved as foster, adoptive, or resource families~~.

~~E. Emergency approval of a provider may be granted in accordance with guidance developed by the department~~ Local departments may grant emergency approval of a provider.

1. Emergency approvals shall include:

a. ~~Background~~ Completed background checks; and

b. A home visit by the local department prior to or on the day of the placement.

2. Emergency approvals shall not exceed 60 days.

3. Emergency approval of a provider may be granted when the placement:

a. Is with a relative;

b. Is with an adult known to the family; or

c. Will facilitate the child remaining in the community.

~~F.~~ E. All local department-approved ~~resource, foster, adoptive, and respite~~ providers shall:

1. Be at least 18 years of age;

2. Agree not to use corporal punishment with the child in their care or allow others to do so and shall sign an agreement to that effect; and

3. Sign a ~~statement~~ confidentiality agreement indicating ~~their understanding of the confidentiality of information related to the child in their care~~ that the individual completing the mutual family assessment for the local department explained the confidential nature of the information related to the child in his care and of the requirement to maintain that confidentiality.

~~G.~~ F. If the approval process results in the local department's denial of the application, the local department shall notify the applicant in writing of its decision. A copy of the letter shall be filed in the applicant's record.

22VAC40-211-30. Background checks, ~~and~~ health standards, and driving record.

A. All background checks must be in accordance with applicable federal and state laws and regulations. Convictions of offenses as set out in § 63.2-1719 of the Code of Virginia shall preclude approval of an application to become a provider.

B. Documentation of the results of the background check shall be maintained in the applicant's record. Background check information shall not be disseminated to any other party~~,~~ nor shall it be archived except in the local department's provider file.

C. The ~~provider~~ applicant and all other household members who come in contact with children shall submit to tuberculosis assessment, screening, or tests in compliance with Virginia Department of Health requirements. The applicant and other caretakers residing in the home shall submit the results of a physical examination administered within the ~~12 month~~ 13-month period prior to approval, from a licensed health care professional that comments on each applicant's or caretaker's mental or physical condition relative to taking care of a child.

D. The local department shall obtain a Department of Motor Vehicle driver record check for ~~any provider~~ all applicants or other adults in the home who are expected to transport children and shall consider the results of the driver record check in the approval process.

1. If an applicant will transport children, the applicant shall have a valid driver's license and automobile liability insurance.

2. The vehicle used to transport the child shall have a valid registration and inspection sticker.

22VAC40-211-40. ~~Home study~~ Mutual family assessment requirements.

A. An applicant ~~to become a provider~~ shall complete and submit an application in accordance with department requirements and on department-approved forms or other forms that address all of the department's requirements.

B. Upon submission of a completed provider application, the local department is responsible for ensuring the initiation of the approval process. If at any point in the approval process the local department determines the home may not be approved, the application may be denied, and the process ended.

C. Local departments shall conduct a minimum of three face-to-face interviews on three separate days with each applicant, at least one interview shall be in the applicant's home. If there are two individuals listed as applicants, at least

one interview must be with both individuals. At least one interview shall be with all individuals who reside in the home.

D. The local department shall obtain at least three references from persons who have knowledge of each applicant's character and applicable experience with children and caretaking of others. At least one reference per ~~person~~ applicant shall be from a nonrelative.

E. Local departments shall ask if ~~a prospective resource, foster, adoptive, or respite provider~~ an applicant previously applied to, or was approved by, another local department or licensed child-placing agency. The local department shall have the applicant sign a request to release information from the other agency in order to obtain information about previous applications and performance and shall use that information in considering approval of the applicant.

F. As part of the approval process, the local department shall conduct a ~~home study~~ mutual family assessment (MFA). The ~~home study~~ MFA shall address all elements required by this standard and be documented by a combination of narrative and other data collection formats, and shall be signed and dated by the individual completing the ~~home study~~ MFA and the director of the local department or his designee. The information contained in the ~~home study~~ MFA shall include:

1. Demographic information including:

a. Age of applicant;

b. Marital status and history including verifications; and

c. Family composition and history.

2. Financial information (not required for applicants to be only respite providers) including:

a. Employment information on applicant;

b. Assets and resources of applicant; and

c. Debts and obligations of applicant.

3. List of individuals involved in completing the ~~home study~~ MFA process and their roles.

4. Narrative documentation shall include information from the interviews, references, observations and other available information~~,~~ and shall be used to assess and document that the applicant:

a. Is knowledgeable about the necessary care for children and physically and mentally capable of providing the necessary care for children;

b. Is able to articulate a reasonable process for managing emergencies and ensuring the adequate care, safety, and protection of children;

c. Expresses attitudes that demonstrate the capacity to love and nurture a child born to someone else;

d. Expresses appropriate motivation to foster ~~or~~ and adopt;

e. Shows stability in all household relationships;

f. Has the financial resources to provide for current and ongoing household needs; and

g. Has complied with 22VAC40-211-70.

G. The individual completing the MFA for the local department shall have met the training requirements. The local department worker shall have knowledge related to foster care and adoption policy and the skills and standards for developing the MFA and approving a foster or adoptive home.

22VAC40-211-50. Approval period and documentation of approval.

A. The approval period for a provider is 36 months.

B. The approved provider shall be given an approval certificate specifying the following:

1. Type of approval ~~(resource, foster, adoptive, or respite family home provider)~~;

2. Date when the approval became effective and the date when the approval lapses; ~~and~~

3. Gender, age, and number of children recommended for placement; and

4. The signature and title of the individual or individuals approving the home.

C. Documentation shall be maintained on the provider and child:

1. The local department's file on the child shall contain:

a. A copy of the provider's approval certificate; or

b. A copy of the licensed child-placing agency license, documentation verifying that required background checks have been received by the child-placing agency and providing the dates of such, and the provider home approval certificate or letter if the provider is approved by a licensed child placing agency.

2. All information on the provider able to be maintained in the department's official child welfare data system shall be maintained in that system.

3. The local department's file on the provider shall contain but not be limited to:

a. A copy of the provider's approval certificate;

b. A copy of the background check results;

c. A copy of the Child Protective Services check;

d. The application;

e. Reference letters;

f. A copy of the ~~home study~~ mutual family assessment (MFA) and supporting documentation;

g. Documentation of orientation and training;

h. Documentation of contacts and visits in the provider's home;

i. Medical information;

j. A copy of the signed confidentiality agreement and the corporal punishment agreement; and

k. Any other documents set out in guidance as part of the approval process.

4. Local departments shall require the provider to maintain legible written information on each child in ~~their~~ the provider's care including:

a. Identifying information on the child;

b. Name, address, and work telephone number of the local department caseworker and local department after hours emergency contact information;

c. Name, address, and home ~~and/or~~ or work telephone numbers of persons authorized to pick up the child;

d. Name of persons not authorized to call or visit the child;

e. Educational records, report cards and other school-related documentation;

f. Medical information pertinent to the health care of the child including all licensed health care providers' names, addresses and telephone numbers and medical care authorization form;

g. Correspondence related to the child;

h. The service plan as well as other written child information provided by the local department;

i. The placement agreement between the provider and the local department; and

j. A copy of the signed confidentiality statement.

5. ~~Providers~~ The provider shall maintain files in a secure location in order to protect the confidentiality of that information. The file and its contents shall not be shared with anyone other than those approved by the local department and shall be returned to the local department if the child leaves the provider's home.

6. The local department and its representatives shall have access to all records.

7. The provider shall notify the local department of any significant changes in the provider's circumstances that impact the conditions of the original approval.

~~7.~~ 8. Significant changes in the circumstances of the provider that would impact the conditions of ~~their~~ provider approval require an addendum updating the ~~home study~~ MFA.

~~8.~~ 9. The local department shall revoke or suspend the approval of a provider when a change in the circumstances of the provider results in the provider's temporary inability to meet standards. Reinstating the approval requires resolution of the circumstances that caused the suspension and shall be documented in an addendum to the provider's record. Any child placed with a provider at the time approval is suspended shall be immediately removed. No other children may be placed with the provider during the period of suspension. A suspension does not change the approval period. A provider whose approval has been revoked must submit a new application.

22VAC40-211-60. Training.

A. The local department shall ensure that preservice training is provided for ~~resource,~~ foster and adoptive ~~family home~~ providers. This training shall address but not be limited to the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;

2. Conditions and experiences that may cause developmental delays and affect attachment;

3. Stages of normal human growth and development;

4. Concept of permanence for children and selection of the permanency goal;

5. Reunification as the primary child welfare goal, the process and experience of reunification;

6. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;

7. Legal and social processes and implications of adoption;

8. Support of older youth's transition to independent living;

9. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;

10. Relationship between child welfare laws, the local department's mandates, and how the local department carries out its mandates;

11. Purpose of service planning;

12. Impact of multiple placements on a child's development;

13. Types of and response to loss, and the factors that influence the experience of separation, loss, and placement;

14. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

15. Preparing a child for family visits and helping him manage his feelings in response to family contacts;

16. Developmentally appropriate, effective and nonphysical disciplinary techniques;

17. Promoting a child's sense of identity, history, culture, and values;

18. Respecting a child's connection to his birth family, previous foster families ~~and/or~~ or adoptive families;

19. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team;

20. Roles, rights, and responsibilities of foster parents and adoptive parents; ~~and~~

21. Maintaining a home and community environment that promotes safety and well-being; and

22. Mandated child abuse and neglect reporter laws and responsibilities.

B. Local departments shall ensure that each foster and adoptive home provider receives annual in-service training.

1. Training shall be relevant to the needs of children and families and may be structured to include multiple types of training modalities (for example, online foster parent training courses; seminars and conferences).

2. The department shall provide opportunities for training on an annual basis.

C. The provider is required to complete preservice and annual in-service trainings. As a condition of reapproval each provider shall complete in-service training.

D. Local departments shall explain confidentiality requirements to providers and require providers to keep confidential all information regarding the child, his family, and the circumstances that resulted in the child coming into care.

22VAC40-211-65. Training for individuals providing only respite care ~~providers~~.

A. The local department shall ensure that preservice training is provided for respite care providers. This training shall address, but not be limited to, the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;

2. Conditions and experiences that may cause developmental delays and affect attachment;

3. Reunification as the primary child welfare goal, the process and experience of reunification;

4. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;

5. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;

6. Impact of multiple placements on a child's development;

7. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

8. Preparing a child for family visits and helping him manage his feelings in response to family contacts;

9. Developmentally appropriate, effective, and nonphysical disciplinary techniques;

10. Maintaining a home and community environment that promotes safety and well-being;

11. Promoting a child's sense of identity, history, culture, and values;

12. Respecting a child's connection to his birth family, previous foster families, and adoptive families; and

13. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team.

B. The department shall provide opportunities annually for in-service training.

22VAC40-211-70. Standards for the home of the provider.

A. The home shall have sufficient appropriate space and furnishings for each child receiving care in the home including:

1. Space to keep clothing and other personal belongings;

2. Accessible basin and toilet facilities;

3. Safe, comfortable sleeping furnishings;

4. Sleeping space on the first floor of the home for a child unable to use stairs unassisted, other than a child who can easily be carried; and

5. Space for recreational activities.

B. All rooms used by the child shall be heated in winter, dry, and well-ventilated and have appropriate access to exits in case of emergency.

C. Rooms and study space used by the child shall have adequate lighting.

D. The provider and children shall have access to a working telephone in the home.

E. Multiple children sharing a bedroom shall each have adequate space including closet and storage space. Bedrooms shall have adequate square footage for each child to have personal space.

F. Children over the age of two years shall not share a bed.

G. Children over the age of two shall not share a bedroom with an adult unless the local department approves and documents a plan to allow the child to sleep in the adult's bedroom due to documented needs, disabilities or other specified conditions. Children of any age cannot share a bed with an adult.

H. Children of the opposite sex over the age of three shall not sleep in the same room.

I. Children under age seven or children with significant and documented cognitive or physical disabilities shall not use the top bunk of bunk beds.

J. The home and grounds shall be free from litter and debris and present no hazard to the safety of the child receiving care.

1. The provider shall permit a fire inspection of the home by appropriate authorities if conditions indicate a need and the local department requests such an inspection.

2. Possession of any weapons, including firearms, in the home shall comply with federal and state laws and local ordinances. The provider shall store any firearms and other weapons with the activated safety mechanisms, in a locked closet or cabinet. Ammunition shall be stored in a separate and locked area. The key or combination to the locked closet or cabinet shall be maintained out of the reach of all children in the home.

3. Providers shall ensure that household pets are not a health or safety hazard in accordance with state laws and local ordinances and the local department shall request verification of provider compliance.

4. Providers shall keep cleaning supplies and other toxic substances stored away from food and locked as appropriate. Medications shall be out of reach of children and locked as appropriate. Medications shall be stored separately from food, except those medicines that require refrigeration.

5. Every home shall have an operable smoke detector, the specific requirements of which shall be coordinated through the local fire marshal. If a locality does not have a local fire marshal, the state fire marshal shall be contacted.

6. Every home shall contain basic first aid supplies.

K. The number of children in the provider's home shall not exceed eight. Factors to consider in determining capacity include, but are not limited to:

1. The physical accommodations of the home;

2. The capabilities and skills of the provider to manage the number of children;

3. The needs and special requirements of the child;

4. Whether the child's best interest requires placement in a certain type of home;

5. Whether any individuals in the home, including the provider's children, require special attention or services of the provider that interfere with the provider's ability to ensure the safety of all children in the home; and

6. Whether the foster care provider is also a child care provider.

L. During the approval process, the provider shall develop a written emergency plan that includes, but is not limited to, fire and natural disasters. The plan shall include:

1. How the provider plans to maintain the safety and meet the needs of the child in ~~their~~ the provider's home during a disaster;

2. How the provider shall evacuate the home, if necessary, in a disaster; and

3. How the provider shall relocate in the event of a large scale evacuation.

M. Providers shall arrange for responsible adults to be available who can serve in the caretaker's role in case of an emergency. If the planned or long-term absence of the provider is required, the local department shall be notified of and approve any substitute arrangements the provider wishes to make.

N. In the event of a large scale evacuation due to a disaster, if the provider cannot reach the local department, the provider shall call the State Child Abuse Hotline to notify the department of the provider's location and contact information.

22VAC40-211-80. Standards of care for continued approval.

A. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, political beliefs, sexual orientation, disability, or family status.

B. The provider shall ensure the child receives meals and snacks appropriate to his daily nutritional needs. The child shall receive a special diet if prescribed by a licensed health

care provider or designee or in accordance with religious or ethnic requirements or other special needs.

C. The provider shall ensure that he can be responsive to the special mental health ~~or~~ and medical needs of the child.

D. The provider shall establish rules that encourage desired behavior and discourage undesired behavior. The provider shall not use corporal punishment or give permission to others to do so and shall sign an agreement to this effect.

E. The provider shall provide clean and seasonal clothing appropriate for the age and size of the child.

~~F. If a provider transports the child, the provider shall have a valid driver's license and automobile liability insurance. These will be checked at approval and reapproval but verification may be required at any time deemed necessary.~~

~~G. The vehicle used to transport the child shall have a valid registration and inspection sticker.~~

~~H.~~ F. Providers and any other adults who transport children shall use functioning child restraint devices in accordance with requirements of Virginia law.

G. In the reapproval process the local department shall verify that the requirements for approval, including background checks, are still being met by the provider.

22VAC40-211-90. Allowing a ~~variance~~ waiver.

A. The local department may request and the provider may receive a ~~variance~~ waiver from the department on a standard if the ~~variance~~ waiver does not jeopardize the safety and proper care of the child or violate federal or state laws or local ordinances.

B. If a provider is granted a ~~variance~~ waiver and is in compliance with all other requirements of this chapter, the provider is considered fully approved.

C. Any ~~variances~~ waivers granted are considered on a case-by-case basis and must be reviewed on an annual basis by the department.

22VAC40-211-100. Monitoring and reapproval of providers.

A. The local department's representative shall visit the home of the approved provider as often as necessary but at least quarterly to provide support to and monitor the performance of the provider and shall document these visits in the provider record.

1. When a child is placed in the home, these visits may coincide with the monthly visits to the child.

2. If there is no child placed in the home, the quarterly visit may be replaced by telephone contact.

B. The reapproval process shall include a minimum of one interview with the provider in his home and the following activities:

1. A review of the previous home approval information;

2. Updating the ~~home study~~ mutual family assessment (MFA) and any information that has changed and consideration of new information since the previous approval;

3. Completing state criminal record and child protective services background checks;

4. Obtaining the results of a new tuberculosis assessment, screening, or tests in compliance with Virginia Department of Health requirements and documenting the absence of tuberculosis in a communicable form;

5. Reviewing the confidentiality and the corporal punishment requirements and completing new confidentiality and corporal punishment agreements;

6. A reassessment of the above information to determine reapproval;

7. A case record addendum indicating that the above requirements were met; and

8. Documentation of in-service training received.

C. If the reapproval process results in the local department's decision to revoke or suspend the provider's approval, the local department shall notify the provider in writing of its decision. A copy of the notification letter shall be stored in the provider's record.

D. If monitoring efforts indicate that significant changes in the circumstances of the provider have occurred and would impact the conditions of ~~their~~ the provider's approval, an addendum shall be completed and included with ~~home study~~ the MFA and appropriate action taken.

E. The case record addendum (i) shall contain all requirements of this chapter and be documented by a combination of narrative and other data collection formats~~,~~ and (ii) shall be signed and dated by the individual completing the addendum and the director of the local department or his designee.

VA.R. Doc. No. R13-3458; Filed October 9, 2018, 9:24 a.m.

Proposed Regulation

Title of Regulation: **22VAC40-211. Resource, Foster and Adoptive Family Home Approval Standards (amending 22VAC40-211-10, 22VAC40-211-40, 22VAC40-211-60, 22VAC40-211-80; adding 22VAC40-211-120).**

Statutory Authority: §§ 63.2-217 and 63.2-319 Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: December 28, 2018.

Agency Contact: Keisha Williams, Program Consultant, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7550, FAX (804) 819-7173, or email k.williams@dss.virginia.gov.

Basis: The legal authority for this regulatory action can be found in §§ 63.2-217 and 63.2-901.1 of the Code of Virginia. These sections provide general authority to the State Board of Social Services for developing regulations for foster and adoptive home approval standards.

Additionally, this regulatory action is necessary to comply with Chapter 194 of the 2016 Acts of Assembly, which requires children 18 years old or older in foster care to have background checks for the purpose of determining the placement of other children in the same home; Chapter 193 of the 2017 Acts of Assembly, which requires the use of the mutual family assessment home study template when approving foster and adoptive homes; and Chapter 631 of the 2016 Acts of Assembly, which requires the board to adopt regulations that promote normalcy for children in foster care.

Purpose: The proposed regulatory action clarifies that the results of background checks conducted on Fostering Future program participants will be used for the sole purpose of determining current and future placements in the foster home, which is essential in protecting the health, safety, and welfare of all children.

The regulatory action also requires local departments of social services to use the mutual family assessment (MFA) home study template when approving foster and adoptive homes. By requiring one uniform template, the agency will attain consistency among the numerous localities and ensure that all foster and adoptive homes are held to the same high standard; thereby, protecting the health, safety, and welfare of children in these homes.

Requiring foster and adoptive parents to complete the Normalcy for Youth in Foster Care training is essential to ensure that children placed in foster care will be provided the most normal life experience as possible.

Substance: Substantive proposed changes to the regulation include adding a new subsection clarifying that results of background checks conducted for youth over 18 years old in the Fostering Futures program be used for the sole purpose of determining current and future placements of children in that particular foster home, amending standards for foster and adoptive home approval by requiring the application of the MFA template when approving provider homes, and requiring Normalcy for Youth in Foster Care training for all prospective and current providers.

Issues: This regulatory action proposes amendments, which provide for the safety of children and foster families by requiring youth participating in the Fostering Futures program to submit to background checks for the sole purpose of deciding current and future placements in the foster home. Additionally, this regulatory action promotes consistency amongst different localities when approving foster and adoptive homes by the use of a standard home study template. Normalcy training requirements will improve the skills and knowledge of approved providers and will ensure that youth in foster care have the same opportunities as children who are not in foster care. The regulatory action poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation The State Board of Social Services (Board) proposes to incorporate into the regulation three recent legislative changes: Chapter 631 of the 2016 Acts of Assembly and Chapters 193 and 194 of the 2017 Acts of Assembly.

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

Estimated Economic Impact. This regulation addresses standards for foster and adoptive homes approved by Local Departments of Social Services (LDSS). The proposed action incorporates three recent legislative changes as they apply to such homes.

Chapter 631 of the 2016 Acts of Assembly[1] mandated normalcy training as a part of the pre-service training for prospective foster and adoptive providers. The purpose of the normalcy training is to encourage age and developmentally appropriate childhood activities, such as extracurricular activities, social activities in and out of school, and employment opportunities by educating foster and adoptive parents. The Virginia Department of Social Services (VDSS) has already developed online training, which is available to prospective parents free of charge. The training takes about one hour to complete. There are approximately 1,900 already approved adoptive and foster parents who will be required to complete this training. In a given year, there are about 700-800 new applicants wishing to be an adoptive or foster parent who will be required to complete this training. The normalcy training will likely improve the skills and knowledge of existing and new providers and will make it more likely that youth in foster care have similar opportunities as children who are not in foster care.

Additionally, Chapter 193 of the 2017 Acts of Assembly[2] mandated LDSS to use the Mutual Family Assessment home study template developed by VDSS when approving foster and adoptive homes. Prior to this legislative mandate, LDSS used mostly similar but unidentical assessments to make approval decisions. The proposed change conforms to the

legislative mandate and requires all LDSS to use the same template. VDSS already developed the template without any significant costs and it is currently being used. As mentioned above, there are about 700-800 new applicants wishing to be an adoptive or foster parent in a given year. This change will likely improve consistency among numerous localities without imposing any significant costs.

Lastly, Chapter 194 of the 2017 Acts of Assembly[3] established that background checks conducted for youth over 18 years old in the Fostering Futures program be used for the sole purpose of determining whether other children should be placed or remain in the same foster home and not as a basis for terminating or suspending the approval of the foster home. Generally, foster care ends when the youth reaches the age of 18, the legal age of adulthood. Fostering Futures however is Virginia's program that extends foster care maintenance and services (and adoption assistance) to age 21. When a youth in the program turns 18, a background check must be conducted under the current law. There are approximately 500 individuals who turn 18 in foster or adoptive care annually. In some of these cases, such a background check may reveal a past criminal record. The legislation clarifies that background of a youth turning 18 (e.g., discovery of a criminal record) should not be used as a basis to terminate or suspend the approval of the foster home. According to VDSS, discovery of a criminal record of a youth may be useful consideration for arrangements for other children, but should not have a bearing on the safety of the foster home. This is a clarifying change and is not expected to create any significant economic effect other than improving the clarity of the regulatory language.

Businesses and Entities Affected. Currently, there are approximately 1,900 approved individual foster and adoptive parents. Approximately 700-800 new applications to become a foster or adoptive parent are received in a typical year. Lastly, approximately 500 youth in foster or adoptive care turn 18 per year.

Localities Particularly Affected. The proposed amendments do not affect any particular locality more than others.

Projected Impact on Employment. The proposed amendments should not have any significant effect on employment.

Effects on the Use and Value of Private Property. The proposed amendments should not have any significant effect on the use and value of private property.

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 amendments do not affect small businesses.

Alternative Method that Minimizes Adverse Impact. The proposed amendment does not have adverse effects on small businesses.

Adverse Impacts:

Businesses: The proposed amendments do not have adverse impacts on businesses.

Localities: The proposed amendments will not adversely affect localities.

Other Entities: The proposed amendments will not adversely affect other entities.

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[1]http://lis.virginia.gov/cgi-bin/legp604.exe?161+ful+CHAP0631
[2]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0193
[3]http://lis.virginia.gov/cgi-bin/legp604.exe?171+ful+CHAP0194

Agency's Response to Economic Impact Analysis: The Department of Social Services reviewed the economic impact analysis prepared by the Department of Planning and Budget and concurs.

Summary:

The proposed amendments (i) clarify that background checks conducted for youth age 18 years and older in the Fostering Futures program are used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the Fostering Futures program participant and are not to be used as a basis for terminating or suspending the approval of the foster home (Chapter 194 of the 2017 Acts of Assembly); (ii) require local departments of social services to use the mutual family assessment home study template for foster home assessment (Chapter 193 of the 2017 Acts of Assembly); and (iii) update training requirements for current and prospective foster and adoptive providers by requiring the Normalcy for Youth in Foster Care training as part of preservice training (Chapter 631 of the 2016 Acts of Assembly).

22VAC40-211-10. Definitions.

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

"Adoptive parent" means any provider selected and approved by a parent or a child-placing agency for the placement of a child with the intent of adoption.

"Adult" means any person 18 years of age or over.

"Applicant" means an individual or couple applying to be approved as a resource, foster ~~and/or~~ or adoptive home provider.

"Background checks" means a sworn statement or affirmation, criminal history record information, child abuse and neglect central registry check, and any other requirement as set forth in § 63.2-901.1 of the Code of Virginia.

"Caretaker" means any individual having the responsibility of providing care for a child and includes the following: (i) parent or other person legally responsible for the child's care; (ii) any other person who has assumed caretaking responsibility by virtue of an agreement with the legally responsible person; (iii) person responsible by virtue of their position of conferred authority; or (iv) adult person residing in the home with the child.

"Central registry" means a subset of the child abuse and neglect information system and is the name index with identifying information on an individual named as an abuser ~~and/or~~ or neglector in founded child abuse ~~and/or~~ or neglect complaints or reports not currently under administrative appeal, maintained by the department.

"Child" means any natural person under 18 years of age.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 of the Code of Virginia or a local board that places children in foster homes or adoptive homes pursuant to § 63.2-900, 63.2-903 or 63.2-1221 of the Code of Virginia. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child abuse and neglect information system" means the computer system that collects and maintains information regarding incidents of child abuse and neglect involving parents or other caretakers. The computer system is composed of three parts: the statistical information system with nonidentifying information, the central registry of founded complaints not on appeal, and a database that can be accessed only by the department and local departments that contains all nonpurged child protective services reports. This system is the official state automated system.

"Commissioner" means the commissioner of the department, his designee or authorized representative.

"Corporal punishment" means punishment administered through the intentional infliction of pain or discomfort to the body through actions such as, but not limited to, (i) striking, or hitting with any part of the body or with an implement; (ii) pinching, pulling, or shaking; or (iii) any similar action that normally inflicts pain or discomfort.

"Department" means the State Department of Social Services.

"Dual approval process" means a process that includes a home study, mutual selection, interviews, training and background checks to be completed on all applicants to be considered for approval as a resource, foster, or adoptive family home provider.

"Foster parent" means an approved provider who gives 24-hour substitute family care, room and board, and services for children or youth committed or entrusted to a child-placing agency.

"Fully approved" means a decision by the local department that the provider has met all requirements to be approved as a resource, foster, adoptive, or respite home provider.

"In-service training" means the ongoing instruction received by providers after they complete their preservice training.

"Interstate Compact on the Placement of Children" means a uniform law that has been enacted by all 50 states, the District of Columbia, and the U.S. Virgin Islands that establishes orderly procedures for the interstate placement of children and sets responsibility for those involved in placing those children.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Normalcy" means allowing children and youth in foster care to experience childhood and adolescence in ways similar to their peers who are not in foster care by empowering foster parents and congregate care staff to use the reasonable and prudent parent standard as referenced in 42 USC § 675(10)(A) when making decisions regarding extracurricular, enrichment, and social activities.

"Parent" means the birth or adoptive parent of a child.

"Preservice training" means the instruction received by providers during the initial approval process.

"Provider" means a resource, foster, adoptive, or respite family.

"Resource parent" means an approved provider who is committed both to support reunification and also to be prepared to adopt the child if the child and family do not reunify.

"Respite care" means the provision of temporary care for children on an emergency or planned basis for the purposes of providing placement stability, supporting the achievement of timely permanency, and promoting connections to relatives.

"Respite parent" means an approved provider who gives temporary care to children on an emergency or planned basis.

22VAC40-211-40. Home study requirements.

A. An applicant to become a provider shall complete and submit an application in accordance with department

requirements and on department-approved forms or other forms that address all of the department's requirements.

B. Upon submission of a completed provider application, the local department is responsible for ensuring the initiation of the approval process. If at any point in the approval process the local department determines the home may not be approved, the application may be denied and the process ended.

C. Local departments shall conduct a minimum of three face-to-face interviews with each applicant, at least one shall be in the applicant's home. If there are two individuals listed as applicants, at least one interview must be with both individuals. At least one interview shall be with all individuals who reside in the home.

D. The local department shall obtain at least three references from persons who have knowledge of each applicant's character and applicable experience with children and caretaking of others. At least one reference per person shall be from a nonrelative.

E. Local departments shall ask if a prospective resource, foster, adoptive, or respite provider previously applied to, or was approved by, another local department or licensed child-placing agency. The local department shall have the applicant sign a request to release information from the other agency in order to obtain information about previous applications and performance and shall use that information in considering approval of the applicant.

F. As part of the approval process, the local department shall conduct a home study. The home study shall be completed on the approved mutual family assessment template and address all elements required by this standard and be documented by a combination of narrative and other data collection formats, and shall be signed and dated by the individual completing the home study and the director of the local department or his designee. The information contained in the home study shall include:

1. Demographic information including:

a. Age of applicant;

b. Marital status and history; and

c. Family composition and history.

2. Financial information (not required for applicants to be respite providers) including:

a. Employment information on applicant;

b. Assets and resources of applicant; and

c. Debts and obligations of applicant.

3. List of individuals involved in completing the home study process and their roles.

4. Narrative documentation shall include information from the interviews, references, observations and other available information, and shall be used to assess and document that the applicant:

a. Is knowledgeable about the necessary care for children and physically and mentally capable of providing the necessary care for children;

b. Is able to articulate a reasonable process for managing emergencies and ensuring the adequate care, safety, and protection of children;

c. Expresses attitudes that demonstrate the capacity to love and nurture a child born to someone else;

d. Expresses appropriate motivation to foster or adopt;

e. Shows stability in all household relationships;

f. Has the financial resources to provide for current and ongoing household needs; and

g. Has complied with 22VAC40-211-70.

22VAC40-211-60. Training.

A. The local department shall ensure that preservice training is provided for resource, foster and adoptive family home providers. This training shall address but not be limited to the following core competencies:

1. Factors that contribute to neglect, emotional maltreatment, physical abuse, and sexual abuse, and the effects thereof;

2. Conditions and experiences that may cause developmental delays and affect attachment;

3. Stages of normal human growth and development;

4. Concept of permanence for children and selection of the permanency goal;

5. Reunification as the primary child welfare goal, the process and experience of reunification;

6. Importance of visits and other contacts in strengthening relationships between the child and his birth family, including his siblings;

7. Legal and social processes and implications of adoption;

8. Support of older youth's transition to independent living;

9. The professional team's role in supporting the transition to permanency and preventing unplanned placement disruptions;

10. Relationship between child welfare laws, the local department's mandates, and how the local department carries out its mandates;

11. Purpose of service planning;

12. Impact of multiple placements on a child's development;

13. Types of and response to loss, and the factors that influence the experience of separation, loss, and placement;

14. Cultural, spiritual, social, and economic similarities and differences between a child's primary family and foster or adoptive family;

15. Preparing a child for family visits and helping him manage his feelings in response to family contacts;

16. Developmentally appropriate, effective and nonphysical disciplinary techniques;

17. Promoting a child's sense of identity, history, culture, and values;

18. Respecting a child's connection to his birth family, previous foster families ~~and/or~~ or adoptive families;

19. Being nonjudgmental in caring for the child, working with his family, and collaborating with other members of the team;

20. Roles, rights, and responsibilities of foster parents and adoptive parents; ~~and~~

21. Maintaining a home and community environment that promotes safety and well-being; and

22. Normalcy for youth in foster care.

B. Local departments shall ensure that each provider receives annual in-service training.

1. Training shall be relevant to the needs of children and families and may be structured to include multiple types of training modalities (for example, online foster parent training courses; seminars and conferences).

2. The department shall provide opportunities for training on an annual basis.

C. The provider is required to complete preservice and annual in-service trainings.

D. Local departments shall explain confidentiality requirements to providers and require providers to keep confidential all information regarding the child, his family and the circumstances that resulted in the child coming into care.

22VAC40-211-80. Standards of care for continued approval.

A. The provider shall provide care that does not discriminate on the basis of race, color, sex, national origin, age, religion, political beliefs, sexual orientation, disability, or family status.

B. The provider shall ensure the child receives meals and snacks appropriate to his daily nutritional needs. The child shall receive a special diet if prescribed by a licensed health care provider or designee or in accordance with religious or ethnic requirements or other special needs.

C. The provider shall ensure that he can be responsive to the special mental health or medical needs of the child.

D. The provider shall establish rules that encourage desired behavior and discourage undesired behavior. The provider shall not use corporal punishment or give permission to others to do so and shall sign an agreement to this effect.

E. The provider shall provide clean and seasonal clothing appropriate for the age and size of the child.

F. If a provider transports the child, the provider shall have a valid driver's license and automobile liability insurance. These will be checked at approval and reapproval but verification may be required at any time deemed necessary.

G. The vehicle used to transport the child shall have a valid registration and inspection sticker.

H. Providers and any other adults who transport children shall use functioning child restraint devices in accordance with requirements of Virginia law.

I. Results of background checks for Fostering Futures program participants shall be used for the sole purpose of determining whether other children should be placed or remain in the same foster home as the participant.

22VAC40-211-120. Normalcy for children in foster care.

Local departments will support the foster parent in exercising the reasonable and prudent parent standard in decisions regarding the child's participation in age-appropriate activities, in accordance with subsection D of § 63.2-904 of the Code of Virginia and with this chapter.

NOTICE: Forms used in administering the regulation 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 a form with a hyperlink to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia 23219.

FORMS (22VAC40-211)

Resource Family Assessment Template, 032-04-0060-01-eng (eff. 10/2010)

VA.R. Doc. No. R18-5306; Filed October 10, 2018, 10:36 a.m.

EXECUTIVE ORDER NUMBER TWENTY-ONE (2018)

Establishing the Governor's Advisory Commission on Opioids and Addiction

Importance of the Initiative

The disease of addiction is devastating our communities and taking the lives of too many Virginians. Since 2013, drug overdoses have been the leading cause of accidental death in the Commonwealth. Over 1,500 individuals in Virginia died as a result of drug overdoses just last year. Of those 1,500 fatalities, nearly 80 percent involved prescription opioid painkillers, heroin, or synthetic opioids like fentanyl. Opioid and heroin abuse continues to pose an immense public health and safety threat to Virginians and remains a public health emergency for the Commonwealth.

In addition to opioids and heroin, data shows that abuse of other potentially deadly drugs, particularly stimulants, is on the rise. In addition to maintaining a focus on opioids, Virginia's leaders must also focus on the biological, psychological, and social factors that foster addiction in an individual so that those factors can be addressed and mitigated. The disease of addiction is not exclusive to any substance and addiction will always find another drug.

Virginia cannot solve these problems through state intervention alone. The knowledge and experiences of providers, peers, local leadership, and other community partners is imperative as we work to reduce the impact of addiction and reduce the number of those who die from it. Under the authority established by Executive Directive Nine (2016), the Governor's Executive Leadership Team on Opioids and Addiction implements strategies, programs, and policies aimed at reducing overdose deaths. It is necessary to look to our partners to strengthen our understanding of the issue and share learned successes. Therefore, I direct relevant secretariats, agencies, health and behavioral health providers and organizations, education professionals, law enforcement, and other stakeholders to work together to identify and execute strategies to increase harm reduction opportunities, intensify prevention activities, enhance access to evidence-based treatment, and support individuals in recovery in Virginia.

Key Objectives

This advisory commission shall provide comments to the co-chairs of the Governor's Executive Leadership Team on Opioids and Addiction regarding the development of policies, programs, and other initiatives designed to impact the ongoing drug overdose epidemic in Virginia.

The advisory commission shall meet upon the call of the co-chairs. The co-chairs shall call the advisory commission to meet no less than twice per year. At such meeting, the Executive Leadership Team on Opioids and Addiction shall provide updates and metrics regarding opioid and addiction initiatives. Therefore, supplemental meetings may be held to review specific topics, initiatives, and programs.

Establishment of the Opioid and Addiction Commission

Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia under the laws of the Commonwealth, including, but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Advisory Commission on Opioids and Addiction (Opioid and Addiction Commission).

The Opioid and Addiction Commission will serve in a consultative role, in accordance with § 2.2-2100 of the Code of Virginia, and will be responsible for advising the Governor's Executive Leadership Team on Opioids and Addiction and providing guidance on the following initiatives related to addressing the opioid and addiction public health emergency in the Commonwealth:

a. Building the capacity of Virginia's communities to address the addiction epidemic through community mobilization and coalition development;

b. Limiting availability of prescription opioids for misuse;

c. Establishing pathways to treatment and recovery supports in Virginia;

d. Establishing operational comprehensive harm reduction programs in Virginia; and

e. Developing model protocols for Medication Assisted Treatment (MAT) for individuals being released from correctional settings that local/regional jails and community services boards can use.

Composition of the Opioid and Addiction Commission

The Opioid and Addiction Commission's membership shall be appointed by the Governor. The Secretaries of Health and Human Resources and Public Safety and Homeland Security will co-chair the Opioid and Addiction Commission. Membership for the Opioid and Addiction Commission will be composed of representatives from the Office of the Attorney General, the General Assembly, and the judiciary, as well as community leaders in prevention, harm reduction, treatment, and recovery, including individuals with lived experiences. The Governor may appoint any other person(s) deemed necessary and proper to carry out the assigned functions.

The Secretariat of Health and Human Resources shall provide a Staff Director to support the Opioid and Addiction Commission. The Secretariats of Public Safety and Homeland Security and Health and Human Resources shall provide other staff support as necessary. An estimated 100 hours of

staff time will be required to support the work of the Opioid and Addiction Commission.

Effective Date

This Executive Order shall be effective upon its signing and, pursuant to §§ 2.2-134 and 2.2-135 of the Code of Virginia, shall remain in full force and effect for a year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 26th day of September, 2018.

/s/ Ralph S. Northam
Governor

EXECUTIVE ORDER NUMBER TWENTY-TWO (2018)

Establishment of the Governor's Conservation Cabinet:

A United Effort to Protect and Conserve Virginia's Natural Resources

Importance of the Initiative

Conservation of natural resources and protection of the environment are key components of my plan as Governor to ensure that Virginia becomes an even better place to live, work, play, start a business, and raise a family. While many of our conservation responsibilities fall under the Secretary of Natural Resources, state agencies overseen by other secretariats play important roles, as well.

Coordination across state government is critical to ensuring that state sponsored or permitted activities do not harm the environment. Systemic coordination is also imperative to identifying and engaging in conservation-related economic development and community enhancement opportunities. Many service or functional areas, like agriculture and forestry, transportation and local infrastructure, energy use and development, and outdoor recreation and tourism, interact with our land, air, water, and related ecosystems. It is up to us to determine what impacts such interactions will have.

Establishment of the Cabinet

Accordingly, by virtue of the authority vested in me as Chief Executive by Article V of the Constitution of Virginia and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish Virginia's Conservation Cabinet ("Conservation Cabinet").

The Conservation Cabinet shall be established within the Office of the Governor, to better protect Virginia's natural resources and to improve environmental quality across the Commonwealth. Through increased coordination of Virginia agencies, departments and programs the Conservation Cabinet will work to ensure a healthy environment and continued economic opportunity for all Virginians.

The Conservation Cabinet shall meet on a quarterly basis to discuss conservation issues related to the responsibilities of multiple secretariats, including but not limited to: clean air, clean water, energy, climate change, land conservation, tourism, and sustainable natural resource use. The Secretary of Natural Resources shall be the chair of the Conservation Cabinet, and, in consultation with other members of the Conservation Cabinet, shall develop and deliver to the Governor, no later than June 30th of 2019, a report describing collaboration across state government on conservation issues. Such report shall be made available digitally to the public.

Composition of the Conservation Cabinet

The members of the Conservation Cabinet shall be appointed by the Governor. The Conservation Cabinet shall be comprised of the Secretaries of Agriculture and Forestry, Commerce and Trade, Finance, Natural Resources, and Transportation. The Secretary of Natural Resources shall serve as the Chair of the Cabinet.

The members of the Conservation Cabinet, in addition to discussing topics detailed above, shall share updates on programs, projects and opportunities to protect and improve conservation of Virginia's natural resources, public health, and other relevant topics as they arise.

The Conservation Cabinet shall consult with the Secretary of Health and Human Resources on issues of the environment and public health, particularly with respect to environmental justice and the impacts of air pollution, drinking water contamination, and adverse effects of climate change.

The Conservation Cabinet shall consult with the Secretary of Education on issues related to environmental education and on conservation initiatives at public schools, colleges, and universities to teach environmental sciences and to ensure students have meaningful outdoor experiences.

The Conservation Cabinet will consult with experts and stakeholders within the scientific, economic, and other fields as necessary to carry out its mission.

Effective Date of the Executive Order

This Executive Order shall be effective upon its signing and shall remain in full force and effect unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 4th day of October, 2018.

/s/ Ralph S. Northam
Governor

STATE AIR POLLUTION CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board conducted a small business impact review of **9VAC5-220, Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated October 1, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandate as efficiently and cost-effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation.

This regulation was last reviewed in 2012. Over time, it generally becomes less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

During the periodic review Aerojet Rocketdyne Inc., contacted the agency concerning updating the facility name in the regulation. The agency presented an amendment to the Air Pollution Control Board on September 28, 2018, to update the name of the facility in this regulation.

Contact Information: Gary Graham, Regulatory Analyst, Office of Regulatory Affairs, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4103, FAX (804) 698-4319, or email gary.graham@deq.virginia.gov.

ALCOHOLIC BEVERAGE CONTROL AUTHORITY

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Alcoholic Beverage Control Authority is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

3VAC5-11, Public Participation Guidelines

3VAC5-40, Requirements for Product Approval

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 November 12, 2018, and ends December 4, 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 LaTonya D. Hucks-Watkins, Legal Liaison, Alcoholic Beverage Control Authority, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4698, FAX (804) 213-4574, or email latonya.hucks@abc.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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF ENVIRONMENTAL QUALITY

SolarGen of Virginia LLC Notice of Intent for Small Renewable Energy Project (Solar) Permit by Rule - Isle of Wight County

SolarGen of Virginia LLC has provided the Department of Environmental Quality a notice of intent to submit the necessary application and documentation for a permit by rule for a small solar renewable energy project in Isle of Wight County. The Ho-Fel Solar Project is located in southern Isle of Wight County, just northeast of the Town of Franklin. Specific location coordinates are: 36.673561, -76.882285. The property is irregularly shaped, consisting of approximately 292 acres, more or less, and is located on the north side of Route 616 (Lees Mill Road) and east of Highway 258. The project is planned to be a 50 megawatts direct current and 38.7 megawatts alternating current solar facility, on a single axis tracker system. This project is being submitted for local land use approvals shortly, through Isle of

Wight County, and anticipates approvals to be complete in the first quarter of 2019. This project is also in queue with PJM, the multistate grid operator, for appropriate interconnect studies and approvals.

Contact Information: Mary E. Major, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4423, or email mary.major@deq.virginia.gov.

BOARD OF JUVENILE JUSTICE

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Juvenile Justice is conducting a periodic review and small business impact review of each of the regulations listed below. The review of each regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018).

6VAC35-150, Regulation for Nonresidential Services

6VAC35-180, Regulations Governing Mental Health Services Transition Plans for Incarcerated Juveniles

The purpose of this review is to determine whether each regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to each 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 29, 2018, and ends November 28, 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 Kristen Peterson, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804) 588-3902, FAX (804) 371-6497, or email kristen.peterson@djj.virginina.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 Virginia Regulatory Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

DEPARTMENT OF LABOR AND INDUSTRY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Labor and Industry conducted a small business impact review of **16VAC15-21, Maximum Garnishment Amounts**, and determined that this regulation should be retained in its current form. The Department of Labor and Industry is publishing its report of findings dated October 9, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for this regulation as the requirements are mandated by state law. The regulation, as written, continues to protect the safety, health, and welfare of the public by preventing garnishment that would reduce a person's income to less than minimum wage, with the least cost to citizens and businesses of the Commonwealth. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community. The regulation was last reviewed in 2013. There have been little or no changes in technology, economic conditions, and other factors which would affect the regulation.

Contact Information: Holly Raney, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, or email holly.raney@doli.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Labor and Industry conducted a small business impact review of **16VAC15-30, Virginia Rules and Regulations Declaring Hazardous Occupations**, and determined that this regulation should be retained in its current form. The Department of Labor and Industry is publishing its report of findings dated October 9, 2018, to support this decision in accordance with § 2.2-4007.1 F of the Code of Virginia.

There is a continued need for this regulation as the requirements are mandated by state law. The regulation, as written, continues to protect the safety, health, and welfare of the public by restricting minors younger than the age of 18 from exposure to hazardous industries, with the least cost to citizens and businesses of the Commonwealth. No comments were received during this periodic review. The regulation is not overly complex and is clearly written. It does not duplicate, overlap, or conflict with state or federal laws or regulations, and there is no apparent negative impact on the regulated community. The regulation was last reviewed in 2014. There have been little or no changes in technology,

economic conditions, and other factors that would affect the regulation.

Contact Information: Holly Raney, Regulatory Coordinator, Virginia Department of Labor and Industry, 600 East Main Street, Richmond, VA 23219, or email holly.raney@doli.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 26, 2018. The orders may be viewed at the Virginia Lottery, 600 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 900 East Main Street, 11th Floor, Richmond, Virginia.

Director's Order Number One Hundred (18)

Virginia Lottery's "7Rewards App Retailer Incentive Promotion" (effective December 1, 2018)

Director's Order Number One Hundred Thirty-Three (18)

Virginia Lottery's "345 Fall Cash" Promotion Final Rules for Operation (effective October 1, 2018)

Director's Order Number One Hundred Thirty-Six (18)

Virginia Lottery's Scratch Game 1928 "Diamond Multiplier" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Thirty-Seven (18)

Virginia Lottery's Scratch Game 1927 "2X The Money" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Thirty-Eight (18)

Virginia Lottery's Scratch Game 1940 "Blackjack" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Thirty-Nine (18)

Virginia Lottery's Scratch Game 1947 "Blazing 7s Crossword" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Forty (18)

Virginia Lottery's Scratch Game 1946 "7X The Money" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Forty-One (18)

Virginia Lottery's Scratch Game 1917 "Holiday Sparkle" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Forty-Two (18)

Virginia Lottery's Scratch Game 1918 "Gingerbread Doubler" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Forty-Three (18)

Virginia Lottery's Scratch Game 1919 "Winter Luck" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Forty-Four (18)

Virginia Lottery's Scratch Game 1924 "2019" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Forty-Five (18)

Certain Virginia Instant Game Lotteries: End of Games.

The following Virginia Lottery instant games will officially end at midnight on October 5, 2018:

Game 1885	Blazing Hot 7s (TOP)
Game 1884	Sizzling Hot 7s (TOP)
Game 1862	Seven (TOP)
Game 1857	7X The Money (TOP)
Game 1823	$500 Winfall
Game 1820	Lucky 13
Game 1817	Chocolate
Game 1814	EZ $1040
Game 1798	Quick $100
Game 1795	Super Crossword (TOP)
Game 1742	Triple Series
Game 1697	100X The Money (TOP)

The last day for lottery retailers to return for credit unsold tickets from any of these games will be November 16, 2018. The last day to redeem winning tickets for any of these games will be April 3, 2019, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation April 3, 2019, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games. (effective on October 1, 2018)

Director's Order Number One Hundred Forty-Seven (18)

Virginia Lottery's Computer-Generated Game "Virginia's New Year's Millionaire Raffle" Final Rules for Game Operation (effective November 6, 2018)

Director's Order Number One Hundred Forty-Eight (18)

Virginia Lottery's Scratch Game 1909 "Cash Payout" Final Rules for Game Operation (effective September 28, 2018)

Director's Order Number One Hundred Forty-Nine (18)

Virginia Lottery's Scratch Game 1908 "Straight 8s" Final Rules for Game Operation (effective September 28, 2018)

Director's Order Number One Hundred Fifty (18)

Virginia Lottery's Scratch Game 1944 "Combo Play" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Fifty-One (18)

Virginia Lottery's Scratch Game 1921 "$250,000 Fortune" Final Rules for Game Operation (effective October 1, 2018)

Director's Order Number One Hundred Fifty-Five (18)

Virginia Lottery's Super Bonus Crossword Promotion Final Rules for Operation (effective October 2, 2018)

VIRGINIA WASTE MANAGEMENT BOARD

Notice of Periodic Review and Small Business Impact Review

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Department of Environmental Quality is conducting a periodic review and small business impact review of **9VAC20-110, Regulations Governing the Transportation of Hazardous Materials**. 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 29, 2018, and ends November 19, 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 Melissa Porterfield, Office of Regulatory Affairs, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4019, or email melissa.porterfield@deq.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.

STATE WATER CONTROL BOARD

Proposed Consent Order for Keswick Land Development Corporation

An enforcement action has been proposed for Keswick Land Development Corporation for violations of the State Water Control Law and regulations at the Keswick Mixed Use Development located in Spotsylvania County, Virginia. The State Water Control Board proposes to issue a consent order to resolve violations associated with the Keswick Mixed Use Development. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Benjamin Holland will accept comments by email at benjamin.holland@deq.virginia.gov, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from October 30, 2018, through November 29, 2018.

Proposed Enforcement Action for Department of the Navy, Commander, Navy Region Mid-Atlantic at Naval Air Station Oceana

An enforcement action has been proposed for Department of the Navy, Commander, Navy Region Mid-Atlantic at Naval Air Station Oceana for violations of the State Water Control Law in Virginia Beach, Virginia. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Jennifer Coleman will accept comments by email at jennifer.coleman@deq.virginia.gov, FAX at (757) 518-2009, or postal mail at Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA 23462, from October 29, 2018, to November 28, 2018.

Proposed Consent Order for Nielsen Builders Inc.

An enforcement action has been proposed for Nielsen Builders Inc. for violations at Kendal at Lexington Renovations and Expansion in the City of Lexington and Rockbridge County, Virginia. The State Water Control Board proposes to issue a consent order to Nielsen Builders Inc. to address noncompliance with State Water Control Law. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Tamara Ambler will accept comments by email at tamara.ambler@deq.virginia.gov, FAX at (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, from October 29, 2018, to November 30, 2018.

Notice of Community Meeting and Public Comment Period: Water Quality Study Total Maximum Daily Load for the North Fork Rivanna River

A public meeting will be held on October 30, 2018, at 6 p.m. at the Piedmont Virginia Community College Eugene Giuseppe Center in the Greene County Library Building, 222 South Main Street, Standardsville, VA 22973.

Purpose of notice: The Department of Environmental Quality (DEQ) and its contractors, James Madison University and 3E Consulting, will discuss the process that will be used to complete a water quality study known as a total maximum daily load (TMDL) for the North Fork Rivanna River and its tributaries. The river is listed on the § 303(d) TMDL Priority List and Report as impaired due to violations of Virginia's water quality standards for aquatic life use. This is an opportunity for local residents to learn about the condition of the river, share information about the area, and become involved in the process of local water quality improvement. In the case of inclement weather, the meeting will be held at the same location on November 7, 2018, at 5:30 p.m. and the 30-day public comment period will be extended accordingly.

Meeting description: A public informational meeting will be held to introduce the local community to the water quality improvement process in Virginia, known as the TMDL Process, provide information on biological monitoring efforts and sources, invite participation and solicit input, review the next steps, and accept volunteers to be part of a Technical Advisory Committee. Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia requires DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. The meeting will be open to the public and all are welcome.

Description of study: The North Fork Rivanna River and several of its tributaries in Greene and Albemarle Counties have been placed on Virginia's impaired waters list for failing to support the benthic water quality standard (Table 1). This standard is intended to protect the aquatic life designated use, which states that all of the Commonwealth's waterways will support a diverse and abundant population of aquatic life. This water quality study will include a benthic stressor analysis to determine the most likely pollutants responsible for the impairments, and it will report on the sources of these pollutants and recommend reductions to meet a total maximum daily load (TMDL) for the impaired stream segments. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality in the North Fork Rivanna River and its tributaries, pollutant levels will need to be reduced to the TMDL amount. Through this process, Virginia agencies will partner with a technical advisory committee (TAC) made up of local stakeholders to complete a benthic stressor analysis and identify pollutants of concern in the watershed in addition to pollutant sources and the reductions needed from these sources to meet the TMDL. All are welcome to participate in this committee and TAC meetings are open to the public.

Table 1. Benthic impairments in the North Fork Rivanna River included in TMDL study.

Waterbody name	Impaired Segment Description	Length (miles)	Initial listing date
Flat Branch, unnamed tributary	Headwaters downstream to confluence with Flat Branch	2.03	2010
Swift Run	Confluence with Welsh Run downstream to confluence with NF Rivanna River	1.91	2012
Preddy Creek	Headwaters downstream to confluence with NF Rivanna River	7.48	2016
Preddy Creek, North Branch	Headwaters downstream to confluence with Preddy Creek	6.24	2010
Marsh Run	Headwaters downstream to confluence with NF Rivanna River	3.65	2010
Blue Run	Headwaters downstream to confluence with Swift Run	8.72	2012
Standardsville Run	Headwaters downstream to confluence with Blue Run	5.7	2014
North Fork Rivanna River	Confluence with Swift Run downstream to the Rivanna Water and Sewer Authority NF Rivanna River Public Water Intake	3.82	2016

North Fork Rivanna River	Confluence with Lynch River downstream to confluence with Swift Run	3.51	2016
Quarter Creek	From dam outfall at Jonquil Road downstream to confluence with Swift Run	1.58	2016

How to comment and participate: All meetings in support of TMDL development are open to the public and all interested parties are welcome. Written comments will be accepted through November 29, 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 Nesha McRae, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7850, FAX (540) 574-7878, or email nesha.mcrae@deq.virginia.gov.

Notice of Public Comment Period and Public Meeting - Fiscal Year 2019 Virginia Clean Water Revolving Loan Fund Intended Use Plan and Project Priority List

Introduction: Section 606 of the Water Quality Act of 1987 requires Virginia to develop an intended use plan (IUP) that identifies the uses of its Clean Water Revolving Loan Fund and to prepare a list of projects targeted for financial assistance with those funds. Following public comment and final State Water Control Board action, the list of targeted projects for financial assistance becomes the state's yearly clean water revolving loan project priority list (PPL) in the IUP.

Funds available: With substantial revenues coming in from our large loan portfolio, continued federal and state match funding, and moderate loan demand over the last several years, the Virginia Clean Water Revolving Loan Fund (VCWRLF) continues to maintain very healthy account balances. Therefore, even with the potential for reduction in federal appropriations this year, the accumulation of monies that have and will occur in the fund through loan payments, interest earnings, and de-allocations from leverage accounts will result in enough funding being available during the fiscal year (FY) 2019 funding cycle to fund all of the applications received. Final board approval of the list will not be requested until the December board meeting.

FY 2019 program development: On June 1, 2018, the staff solicited applications from the Commonwealth's localities and wastewater authorities as well as potential land conservation applicants and Brownfield remediation clientele. July 20, 2018, was established as the deadline for receiving applications. The Department of Environmental Quality (DEQ) received nine wastewater improvement applications requesting $77,912,523, two applications for living shoreline projects ($2,937,800), and one land conservation application for an additional $20,125,000, bringing the total amount requested to $100,975,323. All nine wastewater applications were evaluated in accordance with the program's funding distribution criteria. In keeping with the program objectives and funding prioritization criteria, the staff reviewed project type and impact on state waters, the locality's compliance history and fiscal stress, and the projects' readiness-to-proceed. The land conservation application was reviewed using the board's evaluation criteria, and the staff also received input from the Department of Conservation and Recreation in accordance with the board's guidelines and state law. The two living shoreline applications are not ranked. The list of applications in Attachment A is shown in priority funding order based on the board's prioritization criteria for each project type. Note that each project type (wastewater and land conservation) has separate priority ranking point systems that are not intended to be numerically compared from one type to the other. The recommended project funding list shown in Attachments A and B provides funding for all the applications received. All applications are considered to be of good quality and should provide significant water quality or environmental improvement. The staff is recommending that the list be tentatively adopted, subject to the verification of information in the loan applications and public review and comment.

Public participation: DEQ is presenting the draft list of targeted FY 2019 loan recipients for public review and comment. A public meeting will be held at 10 a.m. on Wednesday, November 7, 2018, in the 3rd Floor Conference Room, 1111 East Main Street, Richmond, VA 23219. The public review and comment period will end immediately following the public meeting. Comments or questions should be directed to DEQ staff person listed below. Written comments should include the name, address, and telephone number of the presenter.

Attachment A:

FY 2019 Applicants	Amount Requested	Project Description	Points	Projected Construction Start
Wastewater Projects				
City of Lynchburg	$1,500,000.00	Redesign and construction of Combined Sewer Overflow (CSO) 56 Vault along the James River Interceptor to handle both dry weather and wet weather flows.	359.97	August 2019
City of Covington	$5,708,000.00	Construction of a flow equalization tank, with dedicated pump station and emergency generator along with plant modifications to handle storm events greater than a 1-year 24-hour storm. A Consent Order is being developed for the City and is expected by January 2019.	347.69	October 2019
City of Norfolk	$10,000,000.00	Sewer system improvements including six projects involving sewer replacement and one Supervisory Control and Data Acquisition (SCADA) System upgrade project.	286.89	July 2019
Town of Tazewell	$10,656,046.00	Replacement of outdated and failing equipment to change the current treatment process to a modified version of this process, allowing the plant to address lower nitrogen limits which are expected in future permits.	258.09	March 2020
Town of Honaker	$1,152,736.00	Upgrade the Town's existing Wastewater Treatment Plant with new equipment and technologies to replace outdated equipment and meet regulatory requirements.	241.54	June 2019

Harrisonburg/Rockingham Regional Sewer Authority	$37,524,000.00	Phase I: Replace 8,600 linear feet of Lower Black's Run Interceptor subject to inflow and infiltration (I & I) and construction Flow Equalization Basin at North River WWTP.	236.00	January 2020
Lee County Public Service Authority	$1,156,300.00	Extend Force Main from Cross Creek Plant to Dryden collection system and Pennington Gap WWTP. Upgrade existing wet well piping at Dryden pump stations, install new backup generator, and add telemetry system.	235.71	January 2020
Wise County Public Service Authority	$815,441.00	Extend sewer to the Banner Community to eliminate poor or failing drain fields and direct sewage discharges in the Clinch River watershed.	235.03	July 2020
Alexandria Renew Enterprises	$9,400,000.00	Design and construct wet weather pump station and storage tunnel, elimination of junction chamber sanitary sewer overflow (SSO) and relocation; SCADA System upgrade; and process air compressor (PAC) blower replacement.	186.54	July 2019
Wastewater Projects subtotal	$77,912,523.00			
Land Conservation Project				
The Nature Conservancy	$20,125,000.00	Purchase of conservation lands in the Clinch River Watershed.	460.00	January 2019
Stormwater Projects subtotal	$20,125,000.00			

Living Shoreline Projects				
James City County	$2,687,800.00	Living Shoreline installed on Chickahominy River in Chickahominy Riverfront Park; rock marsh sill and Coir log marsh sill on Gordon Creek; remove failed timber bulkhead and replace with living shoreline and marsh sill for the creation of 0.6 acres of wetland.	N/A	January 2019
Middle Peninsula Planning District Commission	$250,000.00	Continue to operate the Middle Peninsula PDC Living Shoreline Incentive Funding Program for homeowners within member localities to install living shorelines to stabilize the water's edge and reduce pollution of surface waters.	N/A	
Living Shoreline Projects subtotal	$2,937,800.00			
Total Requested	$100,975,323.00			

Attachment B:

Ranking Points	Applicant	Amount Requested	Projected Construction Start	Staff Recommendations
Wastewater				
359.97	City of Lynchburg	$1,500,000.00	August-19	$1,500,000
347.69	City of Covington	$5,708,000.00	October-19	$5,708,000
286.89	City of Norfolk	$10,000,000.00	July-19	$10,000,000
258.09	Town of Tazwell	$10,656,046.00	March-20	$10,656,046
241.54	Town of Honaker	$1,152,736.00	June-19	$1,152,736
236.00	Harrisonburg-Rockingham RSA	$37,524,000.00	January-20	$37,524,000
235.71	Lee County PSA	$1,156,300.00	January-20	$1,156,300
235.03	Wise County PSA	$815,441.00	July-20	$815,441

186.54	Alexandria Sanitation Authority	$9,400,000.00	July-19	$9,400,000
	subtotal	$77,912,523.00		
Land Conservation				
460.00	The Nature Conservancy	$20,125,000.00	January-19	$20,125,000
	subtotal	$20,125,000.00		
Living Shoreline				
N/A	James City County	$2,687,800.00	January-19	$2,687,800
N/A	Middle Peninsula PDC	$250,000.00		$250,000
	subtotal	$2,937,800.00		
			TOTAL ALL	$100,975,323

Contact Information: Karen Doran, Clean Water Financing and Assistance Program, Department of Environmental Quality. P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4133, or email karen.doran@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.