



Virginia Register of Regulations

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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to

provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*.

During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

STATEMENT

The foregoing constitutes a generalized statement of the procedures to be followed. For specific statutory language, it is suggested that Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia be examined carefully.

CITATION TO THE VIRGINIA REGISTER

The *Virginia Register* is cited by volume, issue, page number, and date. **23:7 VA.R. 1023-1140 December 11, 2006**, refers to Volume 23, Issue 7, pages 1023 through 1140 of the *Virginia Register* issued on December 11, 2006.

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

Members of the Virginia Code Commission: **R. Steven Landes**, Chairman; **John S. Edwards**, Vice Chairman; **Ryan T. McDougle**; **William R. Janis**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**; **Jane M. Roush**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.state.va.us>).

January 2010 through November 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
INDEX 1 Volume 26		
January 2010		
26:10	December 29, 2009 (Tuesday)	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
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26:20	May 19, 2010	June 7, 2010
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26:21	June 2, 2010	June 21, 2010
26:22	June 16, 2010	July 5, 2010
26:23	June 30, 2010	July 19, 2010
26:24	July 14, 2010	August 2, 2010
26:25	July 28, 2010	August 16, 2010
26:26	August 11, 2010	August 30, 2010
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October 2010		
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27:4	October 6, 2010	October 25, 2010
27:5	October 20, 2010	November 8, 2010
27:6	November 3, 2010	November 22, 2010

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF OPTOMETRY

Initial Agency Notice

Title of Regulation: 18VAC105-20. Regulations Governing the Practice of Optometry.

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

Name of Petitioner: Dennis M. Garcia.

Nature of Petitioner's Request: To amend regulations to prohibit provisions in a lease that control or attempt to control malpractice liability coverage, patient records, and scheduling of patient appointments.

Agency's Plan for Disposition of the Request: After a 21-day comment period, the board will consider the petition and related comment at its meeting on May 5, 2010, and decide whether it is necessary and appropriate to amend its regulations.

Public Comment Deadline: February 8, 2010.

Agency Contact: Leslie Knackel, Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4508, FAX (804) 527-4466, or email leslie.knackel@dhp.virginia.gov.

VA.R. Doc. No. R10-32; Filed December 21, 2009, 4:20 p.m.

Agency's Plan for Disposition of the Request: The regulation will be put out for a 21-day period for acceptance of written public comment on the petition to amend the regulation. The State Board of Social Services (board) will review and consider the written public comment received during the 21-day public comment period at its February 17-18, 2010, meeting. The board will issue a written decision to grant or deny the petitioner's request on February 18, 2010.

Public Comment Deadline: February 8, 2010.

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

VA.R. Doc. No. R10-31; Filed December 18, 2009, 3:04 p.m.

TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Initial Agency Notice

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

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

Name of Petitioner: J. Thompson Shrader.

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

NOTICES OF INTENDED REGULATORY ACTION

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider promulgating the following regulations: **9VAC25-870, Plasticulture Operations Regulation**; and amending **9VAC25-20, Fees for Permits and Certificates**; **9VAC25-31, Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation**; **9VAC25-32, Virginia Pollution Abatement (VPA) Permit Regulation**; and **9VAC25-151, General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Storm Water Associated with Industrial Activity**. The purpose of the proposed action is to adopt a new regulation or amend one or more existing regulations to establish pollutant management requirements for agriculture operations utilizing plasticulture production methods in order to protect water quality.

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

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

Public Comment Deadline: March 29, 2010.

Agency Contact: Melanie Davenport, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4038, or email melanie.davenport@deq.virginia.gov.

VA.R. Doc. No. R10-2273; Filed December 28, 2009, 10:04 a.m.

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

Public Comment Deadline: March 3, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

VA.R. Doc. No. R10-2004; Filed December 30, 2009, 1:30 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 the following regulations: **12VAC30-120, Waivered Services**. The purpose of the proposed action is to change the Medicaid managed care recipients' provider choice options when only one managed care program operates in rural areas. In such situations, managed care recipients will not have open enrollment periods during which to change managed care programs.

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

REGULATIONS

For information concerning the different types of regulations, see the Information Page.

Symbol Key

Roman type indicates existing text of regulations. Underscored language indicates proposed new text. Language that has been stricken indicates proposed text for deletion. Brackets are used in final regulations to indicate changes from the proposed regulation.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Final Regulation

Title of Regulation: **9VAC25-720. Water Quality Management Planning Regulation (amending 9VAC25-720-50).**

Statutory Authority: § 62.1-44.15 of the Code of Virginia; 33 USC § 1313(e) of the Clean Water Act.

Effective Date: February 18, 2010.

Agency Contact: John M. Kennedy, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4312, FAX (804) 698-4116, TTY (804) 698-4021, or email jmkennedy@deq.virginia.gov.

Summary:

The proposed amendments to the Nutrient Waste Load Allocations in the Water Quality Management Planning Regulation, 9 VAC 25-720-50 C (Potomac, Shenandoah

River Basin), provided increases for total nitrogen (TN) and total phosphorus (TP) for two facilities:

- 1. Frederick-Winchester S.A. (FWSA) - Opequon WRF (VPDES #VA0065552).*
- 2. Merck WWTP (VPDES #VA0002178).*

However, the final amendments are modified from the proposed as follows:

- 1. The allocation increase for FWSA - Opequon is not changed in the allocation table.*
- 2. The allocation for Merck WWTP is not changed in the allocation table. However, a footnote is added that among other things grants an allocation increase effective January 1, 2011.*

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.

9VAC25-720-50. Potomac-Shenandoah River Basin.

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	WBID	Pollutant	WLA	Units
1.	Muddy Creek	Nitrate TMDL Development for Muddy Creek/Dry River, Virginia	Rockingham	B21R	Nitrate	49,389.00	LB/YR
2.	Blacks Run	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	32,844.00	LB/YR
3.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Sediment	69,301.00	LB/YR
4.	Cooks Creek	TMDL Development for Blacks Run and Cooks Creek	Rockingham	B25R	Phosphorus	0	LB/YR
5.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Sediment	286,939.00	LB/YR
6.	Muddy Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham	B22R	Phosphorus	38.00	LB/YR

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7.	Holmans Creek	TMDL Development for Muddy Creek and Holmans Creek, Virginia	Rockingham/Shenandoah	B45R	Sediment	78,141.00	LB/YR
8.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Sediment	276.00	LB/YR
9.	Mill Creek	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B29R	Phosphorus	138.00	LB/YR
10.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Sediment	0.00	LB/YR
11.	Pleasant Run	TMDL Development for Mill Creek and Pleasant Run	Rockingham	B27R	Phosphorus	0.00	LB/YR
12.	Linville Creek	Total Maximum Load Development for Linville Creek: Bacteria and Benthic Impairments	Rockingham	B46R	Sediment	5.50	TONS/YR
13.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Ammonia	7,185.00	KG/YR
14.	Quail Run	Benthic TMDL for Quail Run	Rockingham	B35R	Chlorine	27.63	KG/YR
15.	Shenandoah River	Development of Shenandoah River PCB TMDL (South Fork and Main Stem)	Warren & Clarke	B41R B55R B57R B58R	PCBs	179.38	G/YR
16.	Shenandoah River	Development of Shenandoah River PCB TMDL (North Fork)	Warren & Clarke	B51R	PCBs	0.00	G/YR
17.	Shenandoah River	Development of Shenandoah River PCB TMDL (Main Stem)	Warren & Clarke	WV	PCBs	179.38	G/YR
18.	Cockran Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Augusta	B10R	Organic Solids	1,556.00	LB/YR
19.	Lacey Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Rockingham	B47R	Organic Solids	680.00	LB/YR
20.	Orndorff Spring	Benthic TMDL Reports for Six Impaired Stream Segments in the Potomac-Shenandoah and James River Basins	Shenandoah	B52R	Organic Solids	103.00	LB/YR
21.	Toms Brook	Benthic TMDL for Toms Brook in Shenandoah County, Virginia	Shenandoah	B50R	Sediment	8.1	T/YR

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22.	Goose Creek	Benthic TMDLs for the Goose Creek Watershed	Loudoun, Fauquier	A08R	Sediment	1,587	T/YR
23.	Little River	Benthic TMDLs for the Goose Creek Watershed	Loudoun	A08R	Sediment	105	T/YR
24.	Christians Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B14R	Sediment	145	T/YR
25.	Moffett Creek	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B13R	Sediment	0	T/YR
26.	Upper Middle River	Fecal Bacteria and General Standard Total Maximum Daily Load Development for Impaired Streams in the Middle River and Upper South River Watersheds, Augusta County, VA	Augusta	B10R	Sediment	1,355	T/YR
27.	Mossy Creek	Total Maximum Daily Load Development for Mossy Creek and Long Glade Run: Bacteria and General Standard (Benthic) Impairments	Rockingham	B19R	Sediment	0.04	T/YR
28.	Smith Creek	Total Maximum Daily Load (TMDL) Development for Smith Creek	Rockingham, Shenandoah	B47R	Sediment	353,867	LB/YR
29.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick	B09R	Sediment	478	T/YR
30.	Lower Opequon Creek	Opequon Watershed TMDLs for Benthic Impairments: Abrams Creek and Lower Opequon Creek, Frederick and Clarke counties, Virginia	Frederick, Clarke	B09R	Sediment	1,039	T/YR
31.	Mill Creek	Mill Creek Sediment TMDL for a Benthic Impairment, Shenandoah County, Virginia	Shenandoah	B48R	Sediment	0.9	T/YR
32.	South Run	Benthic TMDL Development for South Run, Virginia	Fauquier	A19R	Phosphorus	0.038	T/YR

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33.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Sediment	40	T/YR
34.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	Lead	0	KG/YR
35.	Lewis Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Augusta	B12R	PAHs	0	KG/YR
36.	Bull Run	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Loudoun, Fairfax, and Prince William counties, and the Cities of Manassas and Manassas Park	A23R-01	Sediment	5,986.8	T/TR
37.	Popes Head Creek	Total Maximum Daily Load Development for Lewis Creek, General Standard (Benthic)	Fairfax County and Fairfax City	A23R-02	Sediment	1,594.2	T/YR
38.	Accotink Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15R	PCBs	0.0992	G/YR
39.	Aquia Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A28E	PCBs	6.34	G/YR
40.	Belmont Bay/ Occoquan Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	0.409	G/YR
41.	Chopawamsic Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26E	PCBs	1.35	G/YR
42.	Coan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Northumberland	A34E	PCBs	0	G/YR
43.	Dogue Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	20.2	G/YR

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44.	Fourmile Run	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Arlington	A12E	PCBs	11	G/YR
45.	Gunston Cove	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A15E	PCBs	0.517	G/YR
46.	Hooff Run & Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A13E	PCBs	36.8	G/YR
47.	Little Hunting Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A14E	PCBs	10.1	G/YR
48.	Monroe Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A31E	PCBs	.0177	G/YR
49.	Neabsco Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	6.63	G/YR
50.	Occoquan River	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A25E	PCBs	2.86	G/YR
51.	Pohick Creek/Pohick Bay	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Fairfax	A16E	PCBs	13.5	G/YR
52.	Potomac Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Stafford	A29E	PCBs	0.556	G/YR
53.	Potomac River, Fairview Beach	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A29E	PCBs	0.0183	G/YR
54.	Powells Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.0675	G/YR

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55.	Quantico Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	Prince William	A26R	PCBs	0.742	G/YR
56.	Upper Machodoc Creek	PCB Total Maximum Daily Load Development in the tidal Potomac and Anacostia Rivers and their tidal tributaries	King George	A30E	PCBs	0.0883	G/YR
57.	Difficult Creek	Benthic TMDL Development for Difficult Run, Virginia	Fairfax	A11R	Sediment	3,663.2	T/YR
58.	Abrams Creek	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR
59.	Lower Opequon	Opequon Watershed TMDLs for Benthic Impairments	Frederick and Clark	B09R	Sediment	1039	T/YR

B. Non-TMDL waste load allocations.

Water Body	Permit No.	Facility Name	Outfall No.	Receiving Stream	River Mile	Parameter Description	WLA	Units WLA
VAV-B02R	VA0023281	Monterey STP	001	West Strait Creek	3.85	CBOD ₅	11.4	KG/D
VAV-B08R	VA0065552	Opequon Water Reclamation Facility	001	Opequon Creek	32.66	BOD ₅ , JUN-NOV	207	KG/D
		AKA Winchester - Frederick Regional				CBOD ₅ , DEC-MAY	1514	KG/D
VAV-B14R	VA0025291	Fishersville Regional STP	001	Christians Creek	12.36	BOD ₅	182	KG/D
VAV-B23R	VA0060640	North River WWTF	001	North River	15.01	CBOD ₅ , JAN-MAY	700	KG/D
	7.23.04	AKA Harrisonburg - Rockingham Reg. Sewer Auth.				CBOD ₅ , JUN-DEC	800	KG/D
						TKN, JUN-DEC	420	KG/D
						TKN, JAN-MAY	850	KG/D
VAV-B32R	VA0002160	INVISTA - Waynesboro Formerly Dupont - Waynesboro	001	South River	25.3	BOD ₅	272	KG/D
VAV-B32R	VA0025151	Waynesboro STP	001	South River	23.54	CBOD ₅	227	KG/D
						CBOD ₅ , JUN-OCT	113.6	KG/D
VAV-B32R	VA0028037	Skyline Swannanoa STP	001	South River UT	2.96	BOD ₅	8.5	KG/D

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VAV-B35R	VA0024732	Massanutten Public Service STP	001	Quail Run	5.07	BOD ₅	75.7	KG/D
VAV-B37R	VA0002178	Merck & Company	001	S.F. Shenandoah River	88.09	BOD ₅	1570	KG/D
						AMMONIA, AS N	645.9	KG/D
VAV-B49R	VA0028380	Stoney Creek Sanitary District STP	001	Stoney Creek	19.87	BOD ₅ , JUN-NOV	29.5	KG/D
VAV-B53R	VA0020982	Middletown STP	001	Meadow Brook	2.19	CBOD ₅	24.0	KG/D
VAV-B58R	VA0020532	Berryville STP	001	Shenandoah River	24.23	CBOD ₅	42.6	KG/D

C. Nitrogen and phosphorus waste load allocations to restore the Chesapeake Bay and its tidal rivers. The following table presents nitrogen and phosphorus waste load allocations for the identified significant dischargers and the total nitrogen and total phosphorus waste load allocations for the listed facilities.

Virginia Waterbody ID	Discharger Name	VPDES Permit No.	Total Nitrogen (TN) Waste Load Allocation (lbs/yr)	Total Phosphorus (TP) Waste Load Allocation (lbs/yr)
B37R	Coors Brewing Company	VA0073245	54,820	4,112
B14R	Fishersville Regional STP	VA0025291	48,729	3,655
B32R	INVISTA - Waynesboro (Outfall 101)	VA0002160	78,941	1,009
B39R	Luray STP	VA0062642	19,492	1,462
B35R	Massanutten PSA STP	VA0024732	18,273	1,371
B37R	Merck - Stonewall WWTP (Outfall 101) [(11) (10)]	VA0002178	[14,619 43,835]	[1,096 4,384]
B12R	Middle River Regional STP	VA0064793	82,839	6,213
B23R	North River WWTF (2)	VA0060640	253,391	19,004
B22R	VA Poultry Growers -Hinton	VA0002313	27,410	1,371
B38R	Pilgrims Pride - Alma	VA0001961	18,273	914
B31R	Stuarts Draft WWTP	VA0066877	48,729	3,655
B32R	Waynesboro STP	VA0025151	48,729	3,655
B23R	Weyers Cave STP	VA0022349	6,091	457
B58R	Berryville STP	VA0020532	8,528	640
B55R	Front Royal STP	VA0062812	48,729	3,655
B49R	Georges Chicken LLC	VA0077402	31,065	1,553
B48R	Mt. Jackson STP (3)	VA0026441	8,528	640
B45R	New Market STP	VA0022853	6,091	457
B45R	North Fork (SIL) WWTF	VA0090263	23,390	1,754

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B49R	Stoney Creek SD STP	VA0028380	7,309	548
B50R	North Fork Regional WWTP (1)	VA0090328	9,137	685
B51R	Strasburg STP	VA0020311	11,939	895
B50R	Woodstock STP	VA0026468	24,364	1,827
A06R	Basham Simms WWTF (4)	VA0022802	18,273	1,371
A09R	Broad Run WRF (5)	VA0091383	134,005	3,350
A08R	Leesburg WPCF	MD0066184	121,822	9,137
A06R	Round Hill Town WWTF	VA0026212	9,137	685
A25R	DSC - Section 1 WWTF (6)	VA0024724	42,029	2,522
A25R	DSC - Section 8 WWTF (7)	VA0024678	42,029	2,522
A25E	H L Mooney WWTF	VA0025101	219,280	13,157
A22R	UOSA - Centreville	VA0024988	1,315,682	16,446
A19R	Vint Hill WWTF (8)	VA0020460	8,680	868
B08R	Opequon WRF [410]	VA0065552	[102,336 115,122]	[7,675 11,506]
B08R	Parkins Mills STP (9)	VA0075191	60,911	4,568
A13E	Alexandria SA WWTF	VA0025160	493,381	29,603
A12E	Arlington County Water PCF	VA0025143	365,467	21,928
A16R	Noman M Cole Jr PCF	VA0025364	612,158	36,729
A12R	Blue Plains (VA Share)	DC0021199	581,458	26,166
A26R	Quantico WWTF	VA0028363	20,101	1,206
A28R	Aquia WWTF	VA0060968	73,093	4,386
A31E	Colonial Beach STP	VA0026409	18,273	1,827
A30E	Dahlgren WWTF	VA0026514	9,137	914
A29E	Fairview Beach	MD0056464	1,827	183
A30E	US NSWC-Dahlgren WWTF	VA0021067	6,578	658
A31R	Purkins Corner STP	VA0070106	1,096	110
	TOTALS:		[5,156,169 5,198,171]	[246,635 253,753]

NOTE: (1) Shenandoah Co. - North Fork Regional WWTP waste load allocations (WLAs) based on a design flow capacity of 0.75 million gallons per day (MGD). If plant is not certified to operate at 0.75 MGD design flow capacity by December 31, 2010, the WLAs will be deleted and facility removed from Significant Discharger List.

(2) Harrisonburg-Rockingham Regional S.A.-North River STP: waste load allocations (WLAs) based on a design flow capacity of 20.8 million gallons per day (MGD). If plant is not certified to operate at 20.8 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 194,916 lbs/yr; TP = 14,619 lbs/yr, based on a design flow capacity of 16.0 MGD.

(3) Mount Jackson STP: waste load allocations (WLAs) based on a design flow capacity of 0.7 million gallons per day (MGD). If plant is not certified to operate at 0.7 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 7,309 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(4) Purcellville-Basham Simms STP: waste load allocations (WLAs) based on a design flow capacity of 1.5 million gallons per day (MGD). If plant is not certified to operate at 1.5 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 12,182 lbs/yr; TP = 914lbs/yr, based on a design flow capacity of 1.0 MGD.

(5) Loudoun Co. S.A.-Broad Run WRF: waste load allocations (WLAs) based on a design flow capacity of 11.0 million gallons per day (MGD). If plant is not certified to operate at 11.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 121,822 lbs/yr; TP = 3,046 lbs/yr, based on a design flow capacity of 10.0 MGD.

(6) Dale Service Corp.-Section 1 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(7) Dale Service Corp.-Section 8 WWTF: waste load allocations (WLAs) based on a design flow capacity of 4.6 million gallons per day (MGD). If plant is not certified to operate at 4.6 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,193 lbs/yr, based on a design flow capacity of 4.0 MGD.

(8) Fauquier Co. W&SA-Vint Hill STP: waste load allocations (WLAs) based on a design flow capacity of 0.95 million gallons per day (MGD). If plant is not certified to operate at 0.95 MGD design flow capacity by December 31, 2011, the WLAs will decrease to TN = 5,482 lbs/yr; TP = 548 lbs/yr, based on a design flow capacity of 0.6 MGD.

(9) Parkins Mill STP: waste load allocations (WLAs) based on a design flow capacity of 5.0 million gallons per day (MGD). If plant is not certified to operate at 5.0 MGD design flow capacity by December 31, 2010, the WLAs will decrease to TN = 36,547 lbs/yr; TP = 2,741 lbs/yr, based on a design flow capacity of 3.0 MGD.

~~[(10) Opequon WRF - waste load allocations (WLAs) based on a design flow of 12.6 MGD. If the plant is not certified to operate at 12.6 MGD design flow by December 31, 2010, the WLAs will decrease to TN = 102,331 lbs/yr; TP = 7,675 lbs/yr, based on a design flow of 8.4 MGD.]~~

~~[(11) (10)] Merck-Stonewall - [(a) on January 1, 2011, the following waste load allocations (WLAs) are effective and supersede the existing WLAs: total nitrogen of 43,835 lbs/yr and total phosphorus of 4,384 lbs/yr; (b)] waste load allocations will be reviewed and possibly [modified reduced] based on "full-scale" results showing the [optimal] treatment capability of the 4-stage Bardenpho technology at this facility [consistent with the level of effort by other dischargers in the region. The "full scale" evaluation will be completed by December 31, 2011, and the results submitted to DEQ for review and subsequent board action; (c) in any year when credits are available after all other exchanges within the Shenandoah-Potomac River Basin are completed in accordance with § 62.1-44.19:18 of the Code of Virginia, Merck shall acquire credits for total nitrogen discharged in excess of 14,619 lbs/yr and total phosphorus discharged in excess of 1,096 lbs/yr; and (d) the allocations are not transferable and compliance credits are only generated if discharged loads are less than the loads identified in paragraph (c)].~~

VA.R. Doc. No. R07-128; Filed December 28, 2009, 11:16 a.m.

TITLE 11. GAMING

VIRGINIA RACING COMMISSION

Final Regulation

REGISTRAR'S NOTICE: The Virginia Racing Commission is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 12 of the Code of Virginia, which exempts agency action relating to instructions for application or renewal of a license, certificate, or registration required by law.

Title of Regulation: 11VAC10-60. Participants (amending 11VAC10-60-15).

Statutory Authority: § 59.1-369 of the Code of Virginia.

Effective Date: January 1, 2010.

Agency Contact: David S. Lermond, Jr., Regulatory Coordinator, Virginia Racing Commission, 10700 Horsemen's Lane, New Kent, VA 23024, telephone (804) 966-7404, FAX (804) 966-7418, or email david.lermond@vrc.virginia.gov.

Background: The amendments allow the Virginia Racing Commission to collect a higher fee for permits issued to the participants of horse racing. The fee schedule has remained constant since the first Satellite Wagering Facility began operation in 1996. A cost per permit issued analysis was performed and it was determined that it costs the Virginia Racing Commission \$58.80 for each permit that is issued, which is down from \$64.31 in the prior year. It is the intent of the Virginia Racing Commission to increase the amount charged for a permit and at the same time reduce our costs so that the commission will break even on the issuance of permits in the future. The increase in fees will make Virginia's fees consistent with that of the surrounding jurisdictions.

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Summary:

The amendments increase permit holder fees issued to participants of horse racing.

11VAC10-60-15. Fee schedule for permit holders.

Type of Permit	Fee
Apprentice Jockey	\$10 \$50
Assistant General Manager	\$10 \$25
Assistant Racing Secretary	\$10 \$25
Assistant Starter	\$5 \$25
Assistant Trainer	\$10 \$50
Authorized Agent	\$10 \$50
Claims Clerk	\$10 \$25
Clerk of Scales	\$10 \$25
Clerk of the Course	\$10 \$25
Clocker	\$10 \$25
Concessionaire/Vendor	\$25
Concessionaire/Vendor Employee	\$5 \$25
Corporate Horse Owner	\$25
Custodian of Jockeys' Room	\$10 \$25
Director of Security	\$10 \$25
Driver	\$10 \$50
Entry Clerk	\$10 \$25
Exercise Rider	\$10 \$25
Farrier	\$10 \$50
Foreman	\$10 \$50
Gap Attendant	\$10 \$25
General Manager	\$10 \$25
Groom/Hotwalker	\$5 \$25
Horse Identifier	\$10 \$25
Horsemen's Bookkeeper	\$10 \$25
Horse Owner	\$10 \$50
Jockey	\$10 \$50
Jockey Agent	\$10 \$50
Lease	\$25
Licensee-Administrative Employee	\$10 \$25
Licensee-Marketing Employee	\$10 \$25

Licensee-Medical Employee	\$10 \$25
Licensee-Operations Employee	\$10 \$25
Licensee-Plant Employee	\$10 \$25
Licensee-Staff Employee	\$10 \$25
Mutuel Clerk	\$10 \$25
Mutuel Manager	\$10 \$25
Night Watchman	\$10
Other	\$10
Outrider	\$10 \$25
Paddock Judge	\$10 \$25
Partnership	\$25
Patrol Judge	\$10 \$25
Photo-Finish Camera Operator	\$10 \$25
Placing Judge	\$10 \$25
Pony Rider	\$10 \$25
Program Director	\$10 \$25
Racing Secretary	\$10 \$25
Security Officer	\$10 \$25
Stable Name	\$25
Stall Superintendent	\$10 \$25
Starter	\$10 \$25
Timer	\$10 \$25
Track Superintendent	\$10 \$25
Trainer	\$10 \$50
<u>Trainer/Driver (Harness Racing)</u>	\$50
Valet	\$5 \$25
Veterinarian (Licensee)	\$10 \$25
Veterinarian (Private Practice)	\$10 \$50
Video Patrol Personnel	\$10 \$25

VA.R. Doc. No. R10-2225; Filed December 18, 2009, 10:33 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Proposed Regulation

Title of Regulation: **12VAC5-31. Virginia Emergency Medical Services Regulations (amending 12VAC5-31-10, 12VAC5-31-20, 12VAC5-31-50, 12VAC5-31-60, 12VAC5-31-80, 12VAC5-31-90, 12VAC5-31-100, 12VAC5-31-120, 12VAC5-31-160, 12VAC5-31-170, 12VAC5-31-180, 12VAC5-31-200, 12VAC5-31-210, 12VAC5-31-220, 12VAC5-31-230, 12VAC5-31-240, 12VAC5-31-290, 12VAC5-31-370, 12VAC5-31-380, 12VAC5-31-390, 12VAC5-31-400, 12VAC5-31-430, 12VAC5-31-480, 12VAC5-31-500, 12VAC5-31-510, 12VAC5-31-520, 12VAC5-31-530, 12VAC5-31-540, 12VAC5-31-560, 12VAC5-31-570, 12VAC5-31-590, 12VAC5-31-700, 12VAC5-31-710, 12VAC5-31-750, 12VAC5-31-760, 12VAC5-31-800, 12VAC5-31-810, 12VAC5-31-820, 12VAC5-31-830, 12VAC5-31-860, 12VAC5-31-870, 12VAC5-31-880, 12VAC5-31-890, 12VAC5-31-900, 12VAC5-31-910, 12VAC5-31-950, 12VAC5-31-960, 12VAC5-31-1010, 12VAC5-31-1030, 12VAC5-31-1040, 12VAC5-31-1140, 12VAC5-31-1210, 12VAC5-31-1250, 12VAC5-31-1260, 12VAC5-31-1270, 12VAC5-31-1810, 12VAC5-31-1820, 12VAC5-31-1830, 12VAC5-31-1840, 12VAC5-31-1850, 12VAC5-31-1860, 12VAC5-31-1880, 12VAC5-31-1890, 12VAC5-31-1950, 12VAC5-31-2330, 12VAC5-31-2570, 12VAC5-31-2740; adding 12VAC5-31-610, 12VAC5-31-875, 12VAC5-31-885, 12VAC5-31-940, 12VAC5-31-970, 12VAC5-31-1050, 12VAC5-31-1165, 12VAC5-31-1305 through 12VAC5-31-1615; repealing 12VAC5-31-840, 12VAC5-31-1060, 12VAC5-31-1280, 12VAC5-31-1290, 12VAC5-31-1300, 12VAC5-31-1310 through 12VAC5-31-1710).**

Statutory Authority: §§ 32.1-12 and 32.1-111.4 of the Code of Virginia.

Public Hearing Information:

February 3, 2010 - 7 p.m. - Fauquier Hospital, 500 Hospital Drive, Sycamore Room, Warrenton, VA

February 4, 2010 - 7 p.m. - Central Virginia Community College, Merritt Building, 3506 Wards Road, Lynchburg, VA

February 10, 2010 - 1 p.m. - Prince William County Complex, #1 Count Complex Court, Woodbridge, VA

February 10, 2010 - 7 p.m.- Abingdon Volunteer Fire and Rescue, 2676 Hayes Road, Hayes, VA

February 17, 2010 - 7 p.m. - Rockingham County Training Center, 20 East Gay Street, Harrisonburg, VA

February 20, 2010 - 10 a.m. - Southwest Virginia Higher Education Executive Auditorium, P.O. Box 1987, One Partnership Circle, Abingdon, VA

February 23, 2010 - 7 p.m. - Centra Southside Community Hospital, 800 Oak Street, Farmville, VA

February 25, 2010 - 7 p.m. - Virginia Beach Convention Center, 1000 19th Street, Virginia Beach, VA

Public Comments: Public comments may be submitted until March 19, 2010.

Agency Contact: Michael Berg, Regulatory and Compliance Manager, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7615, or email michael.berg@vdh.virginia.gov.

Basis: Section 32.1-12 of the Code of Virginia provides the Board of Health (board) the authority to promulgate regulations to carry out the provisions of Title 32.1 of the Code of Virginia. Section 32.1-111.4 directs the board to establish requirements regarding emergency medical services.

Purpose: The purpose of these regulations is to protect the health, safety, and welfare of Virginia's citizens by ensuring that a quality standard for the provision of emergency medical services (EMS) exists throughout the Commonwealth. The rules and regulations governing EMS were last revised and adopted by the Board of Health six years ago. The provision of EMS is dynamic and the proposed regulations address the many associated changes arising from improved practice and technology as well as increased public expectations and awareness. These regulations contain criteria, standards, and requirements for EMS agencies, personnel, vehicles, training programs, medical direction, designation of regional EMS councils, and financial assistance for EMS agencies. Many guidelines and procedures that historically have been separated are consolidated in the proposed regulation.

Substance: Substantive changes include: (i) amending definitions; (ii) adding civil penalties to the enforcement provisions; (iii) adding a local EMS response plan for designated emergency response agencies; (iv) adding a National Crime Information Center (NCIC) background check on affiliated EMS personnel; (v) amending personnel conduct standards to reflect requirements similar to that of the National Registry of Emergency Medical Technicians (EMTs); (vi) requiring compliance with the Virginia Interoperability Plan with regards to the communications section; (vii) revising the rotor and fixed wing operations requirements for licensure, training, personnel, and equipment; (viii) updating the various EMS vehicle equipment requirements; (ix) updating signature requirements for medication administration and use of epinephrine by the EMT as well as use of oxygen in personally owned vehicles; (x) defining a scope of practice for EMS providers; (xi) requiring reporting of mutual aid deployments under the Emergency Management Assistance Compact (EMAC) or for

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out-of-state EMS agencies; (xii) revising more succinctly the training provisions to include new national training and instructor levels along with testing and accreditation; (xiii) adjusting the EMS physician initial and re-endorsement process; and (xiv) making minor adjustments to the Regional EMS Council Designation process.

Issues: The primary advantage to the public, the Commonwealth, and all who travel through is a more concise and representative set of regulations allowing EMS agencies to conduct their activities using current and any future advances in the delivery of emergency medical care for the emergent and nonemergent patient. These regulations also address basic public health issues to include minimum training standards, EMS personnel requirements, selection of specialty centers for the acutely ill patient, and reporting requirements to provide real-time information to monitor resources and trends both on a state and national level thereby increasing the protection of the health, safety, and welfare of the citizens and visitors to the Commonwealth. There are no disadvantages to the public or the Commonwealth.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Health is proposing numerous changes to its emergency medical services (EMS) regulations to incorporate new definitions, legislative changes, federal mandates, to clarify certain provisions, and to include recommended practices.

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

Estimated Economic Impact. The State Board of Health is proposing numerous changes to its emergency medical services (EMS) regulations to incorporate new definitions, legislative changes, and federal mandates, to clarify certain provisions, and to include recommended practices.

One of the significant proposed changes is allowing localities to develop their own emergency response agency standards. Under the proposed changes, localities would be able to set their own individual response time standards which must be met in at least 90 percent of the cases. Ability to develop individual standards will allow flexibility for localities that have relatively limited resources and may not be able to meet the standards of other localities.

The proposed regulations will also require a National Crime Information Center background check on affiliated EMS personnel. Currently, only a statewide criminal background check is performed. With the proposed regulations, a nationwide background check will be performed. The department does not anticipate any additional costs as a result of this requirement since a fixed amount of funding (\$25,000) is provided to the State Police to cover the background checks will not be affected.

Another significant change is the increase in the required supply count of triage tags. The proposed language would require each EMS vehicle to have 25 triage tags on supply. Currently, the language permits EMS agencies to maintain a total supply of 75 tags in a location accessible by all agency personnel. To comply with the proposed change, some agencies may need to maintain a larger supply of triage tags. The unit cost of the tags is believed to be minimal.

Finally, the proposed changes remove the prohibition on firearms, weapons, and explosives. This change would allow for any emergency response personnel to carry any of the aforementioned artillery.

Businesses and Entities Affected. The proposed changes apply to approximately 800 EMS agencies with over 34,000 certified personnel.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations are not anticipated to have any significant impact on employment.

Effects on the Use and Value of Private Property. The proposed regulations are not anticipated to have any significant impact on the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed regulations are not anticipated to have any significant cost and other effects on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed regulations are not anticipated to have any significant adverse impact on small businesses.

Real Estate Development Costs. The proposed regulations are not anticipated to create any significant real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation,

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

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

Summary:

The provision of emergency medical services (EMS) is a dynamic process that is continually changing due to advances in science, technology, legislation, federal mandates, evidence-based practices, and other factors. The proposed revisions incorporate changes in terminology, testing practices, enforcement, agency responsibilities, certification levels, reporting requirements, and training and EMS physician requirements. Additional proposed changes include adding civil penalties to the enforcement provisions, allowing localities to develop their own emergency response agency standards, requiring a National Crime Information Center background check on affiliated EMS personnel, increasing the required supply count of triage tags, and removing the prohibition on firearms, weapons, and explosives.

Part I
General Provisions

Article 1
Definitions

12VAC5-31-10. Definitions.

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

"Abandonment" means the termination of a health care provider-patient relationship without assurance that an equal or higher level of care meeting the assessed needs of the patient's condition is present and available.

"Accreditation" means approval granted to an entity by the Office of Emergency Medical Services (EMS) after the institution has met specific requirements enabling the institution to conduct basic or advanced life support training and education programs. There are four levels of accreditation: interim, provisional, full, and probationary.

"Accreditation cycle" means the term or cycle at the conclusion of which accreditation expires unless a full self-study is performed. Accreditation cycles are typically quinquennial (five-year) but these terms may be shorter.

triennial (three-year) or biennial (two-year), if the Office of EMS deems it necessary.

"Accreditation date" means the date of the accreditation decision that is awarded to an entity following its full site visit and review.

"Accreditation decision" means the conclusion reached about an entity status after evaluation of the results of the onsite survey, recommendations of the site review team, and any other relevant information such as documentation of compliance with standards, documentation of plans to correct deficiencies, or evidence of recent improvements.

"Accreditation denied" means an accreditation decision that results when an entity has been denied accreditation. This accreditation decision becomes effective only when all available appeal procedures have been exhausted.

"Acute" means a medical condition having a rapid onset and a short duration.

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

"Administrative Process Act" or "APA" means Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia.

"Advanced life support" or "ALS" means the application provision of care by EMS personnel of invasive and noninvasive medical procedures or the administration of medications that is authorized by the Office of Emergency Medical Services, or both who are certified as an Emergency Medical Technician (EMT) - Enhanced, Advanced EMT, EMT-Intermediate, or EMT-Paramedic or equivalent as approved by the Board of Health.

Advanced life support in the air medical environment is a mission generally defined as the transport of a patient who receives care during a transport that includes an invasive medical procedure or the administration of medications, including IV infusions, in addition to any noninvasive care that is authorized by the Office of EMS.

"Advanced life support certification course" means a training program that allows a student to become eligible for a new ALS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective advanced life support curriculum. Initial certification courses include:

1. Emergency Medical Technician-Enhanced;
2. Advanced EMT;
3. Advanced EMT to EMT Paramedic Bridge;
- ~~2- 4.~~ EMT-Enhanced to EMT-Intermediate Bridge;
- ~~3- 5.~~ Emergency Medical Technician-Intermediate;
4. ~~6.~~ EMT-Intermediate to EMT-Paramedic Bridge;

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- 5. 7. Emergency Medical Technician-Paramedic;
- 6. 8. Registered Nurse to EMT-Paramedic Bridge; and
- 7. 9. Other programs approved by the Office of EMS.

"Advanced life support (ALS) coordinator" means a person who has met the criteria established by the Office of EMS to assume responsibility for conducting ALS training programs.

"Advanced life support transport" means the transportation of a patient who is receiving ALS level care.

"Affiliated" means a person who is employed by or a member of an EMS agency.

"Air medical specialist" means a person trained in the concept of flight physiology and the effects of flight on patients through documented completion of a program approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Ambulance" means (as defined by § 32.1-111.1 of the Code of Virginia) any vehicle, vessel or craft that holds a valid permit issued by the Office of EMS and that is specially constructed, equipped, maintained and operated, and intended to be used for emergency medical care and the transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless. The word "ambulance" may not appear on any vehicle, vessel or aircraft that does not hold a valid EMS vehicle permit.

"Approved locking device" means a mechanism that prevents removal or opening of a ~~medication~~ drug kit by means other than securing the ~~medication~~ drug kit by the handle only.

"Assistant director" means the Assistant Director of the Office of Emergency Medical Services.

"Attendant-in-charge" or "AIC" means the certified or licensed person who is qualified and designated to be primarily responsible for the provision of emergency medical care.

"Attendant" means a certified or licensed person qualified to assist in the provision of emergency medical care.

"Basic life support" or "BLS" means the ~~application provision of care by EMS personnel of invasive and noninvasive medical procedures or administration of medications that is authorized by the Office of EMS who are certified as First Responder, Emergency Medical Responder (EMR), or Emergency Medical Technician or equivalent as approved by the Board of Health.~~

Basic life support in the air medical environment means a mission generally defined as the transport of a patient who

receives care during a transport that is commensurate with the scope of practice of an EMT. In the Commonwealth of Virginia care that is provided in the air medical environment must be assumed at a minimum by a Virginia certified EMT-Paramedic who is a part of the regular air medical crew. (fixed wing excluded)

"BLS certification course" means a training program that allows a student to become eligible for a new BLS certification level. Programs must meet the educational requirements established by the Office of EMS as defined by the respective basic life support curriculum. Initial certification courses include:

1. EMS First Responder;
2. EMS First Responder Bridge to EMT;
3. Emergency Medical Responder;
4. Emergency Medical Responder Bridge to EMT;
- ~~3.~~ 5. Emergency Medical Technician; and
4. 6. Other programs approved by the Office of EMS.

"Board" or "state board" means the State Board of Health.

~~"Bypass" means to transport a patient past a commonly used medical care facility to another hospital for accessing a more readily available or appropriate level of medical care.~~

"Candidate status" means the status awarded to a program that has made application to the Office of EMS for accreditation but that is not yet accredited.

"CDC" means the United States Centers for Disease Control and Prevention.

"Certification" means a credential issued by the Office of EMS for a specified period of time to a person who has successfully completed an approved training program.

"Certification candidate" means a person seeking EMS certification from the Office of EMS.

"Certification candidate status" means any candidate or provider who becomes eligible for certification testing but who has not yet taken the certification test using that eligibility.

"Certification examiner" means an individual designated by the Office of EMS to administer a state certification examination.

"Certification transfer" means the issuance of certification through reciprocity, legal recognition, challenge or equivalency based on prior training, certification or licensure.

"Chief executive officer" means the person authorized or designated by the agency or service as the highest in administrative rank or authority.

~~"Chief operations officer" means the person authorized or designated by the agency or service as the highest operational officer.~~

"Commercial mobile radio service" or "CMRS" as defined in §§ 3 (27) and 332 (d) of the Federal Telecommunications Act of 1996, 47 USC § 151 et seq., and the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, 107 USC § 312. It includes the term "wireless" and service provided by any wireless real time two-way voice communication device, including radio-telephone communications used in cellular telephone service or personal communications service (e.g., cellular telephone, 800/900 MHz Specialized Mobile Radio, Personal Communications Service, etc.).

"Commissioner" means the State Health Commissioner, the commissioner's duly authorized representative, or in the event of the commissioner's absence or a vacancy in the office of State Health Commissioner, the Acting Commissioner or Deputy Commissioner.

"Continuing education" or "CE" means an instructional program that enhances a particular area of knowledge or skills beyond compulsory or required initial training.

"Course" means a basic or advanced life support training program leading to certification or award of continuing education credit hours.

"Critical care" or "CC" in the air medical environment is a mission defined as an interfacility transport of a critically ill or injured patient whose condition warrants care commensurate with the scope of practice of a physician or registered nurse.

"Critical criteria" means an identified essential element of a state practical certification examination that must be properly performed to successfully pass the station.

"Defibrillation" means the discharge of an electrical current through a patient's heart for the purpose of restoring a perfusing cardiac rhythm. For the purpose of these regulations, defibrillation includes cardioversion.

"Defibrillator -- automated external" or "AED" means an automatic or semi-automatic device, or both, capable of rhythm analysis and defibrillation after electronically detecting the presence of ventricular fibrillation and ventricular tachycardia, approved by the United States Food and Drug Administration.

~~"Defibrillator -- combination unit" means a single device designed to incorporate all of the required capabilities of both an Automated External Defibrillator and a Manual Defibrillator.~~

"Defibrillator -- manual" means a monitor/defibrillator that has no capability for rhythm analysis and will charge and deliver a shock only at the command of the operator. For the purpose of compliance with these regulations, a manual

defibrillator must be capable of synchronized cardioversion and noninvasive external pacing. A manual defibrillator must be approved by the United States Food and Drug Administration.

"Designated infection control officer" means a liaison between the medical facility treating the source patient and the exposed employee. This person has been formally trained for this position and is knowledgeable in proper post exposure medical follow up procedures and current regulations and laws governing disease transmission.

"Designated emergency response agency" means an EMS agency recognized by an ordinance or a resolution of the governing body of any county, city or town as an integral part of the official public safety program of the county, city or town with a responsibility for providing emergency medical response.

"Director" means the Director of the Office of Emergency Medical Services.

"Diversion" means a change in the normal or established pattern of patient transport at the direction of a medical care facility.

"Emergency medical services" or "EMS" means the services used in responding to an individual's perceived needs for immediate medical care in order to prevent loss of life or aggravation of physiological or psychological illness or injury including any or all of the services that could be described as first response, basic life support, advanced life support, neonatal life support, communications, training and medical control.

"EMS Advisory Board" means the Emergency Medical Services Advisory Board as appointed by the Governor.

"EMS education coordinator" means any EMS provider, registered nurse, physician assistant, doctor of osteopathic medicine, or doctor of medicine who possesses Virginia certification as an EMS education coordinator. Such certification does not confer authorization to practice EMS.

"Emergency medical services agency" or "EMS agency" means a person licensed by the Office of EMS to engage in the business, service, or regular activity, whether or not for profit, of transporting or rendering immediate medical care to persons who are sick, injured, or otherwise incapacitated.

"EMS agency status report" means a report submitted on forms specified by the Office of EMS that documents the operational capabilities of an EMS agency including data on personnel, vehicles and other related resources.

~~"Emergency medical services communications plan" or "EMS communications plan" means the state plan for the coordination of electronic telecommunications by EMS agencies as approved by the Office of EMS.~~

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"Emergency medical services personnel" or "EMS personnel" means a person, affiliated with an EMS agency, responsible for the provision of emergency medical services including any or all persons who could be described as an attendant, attendant-in-charge, operator or operational medical director.

"Emergency medical services physician" or "EMS physician" means a physician who holds current endorsement from the Office of EMS and may serve as an EMS agency operational medical director or training program physician course director.

"Emergency medical services provider" or "EMS provider" means a person who holds a valid certification issued by the Office of EMS.

"Emergency medical services system" or "EMS system" means a system that provides for the arrangement of personnel, facilities, equipment, and other system components for the effective and coordinated delivery of emergency medical services in an appropriate geographical area that may be local, regional, state or national.

"Emergency medical services vehicle" or "EMS vehicle" means any vehicle, vessel, aircraft, or ambulance that holds a valid emergency medical services vehicle permit issued by the Office of EMS that is equipped, maintained or operated to provide emergency medical care or transportation of patients who are sick, injured, wounded, or otherwise incapacitated or helpless.

"Emergency medical services vehicle permit" means an authorization issued by the Office of EMS for any vehicle, vessel or aircraft meeting the standards and criteria established by regulation for emergency medical services vehicles.

"Emergency medical technician instructor" means an EMS provider who holds a valid certification issued by the Office of EMS to announce and coordinate BLS programs.

~~"Emergency operations plan" means the Commonwealth of Virginia Emergency Operations Plan.~~

"Emergency vehicle operator's course" or "EVOC" means an approved course of instruction for EMS vehicle operators that includes safe driving skills, knowledge of the state motor vehicle code affecting emergency vehicles, and driving skills necessary for operation of emergency vehicles during response to an incident or transport of a patient to a health care facility. This course must include classroom and driving range skill instruction. An approved course of instruction includes the course objectives as identified within the U.S. Department of Transportation Emergency Vehicle Operator curriculum or as approved by OEMS.

"Exam series" means a sequence of opportunities to complete a certification examination with any allowed retest.

"FAA" means the U.S. Federal Aviation Administration.

"FCC" means the U.S. Federal Communications Commission.

"Financial Assistance Review Committee" or "FARC" means the committee appointed by the EMS Advisory Board to administer the Rescue Squad Assistance Fund.

"Full accreditation" means an accreditation decision awarded to an entity that demonstrates satisfactory compliance with applicable Virginia standards in all performance areas.

"Fund" means the Virginia Rescue Squad Assistance Fund.

~~"Grant administrator" means the Office of EMS personnel directly responsible for administration of the Rescue Squad Assistance Fund program.~~

"Institutional self study" means a document whereby training programs seeking accreditation answer questions about their program for the purpose of determining their level of preparation to conduct initial EMS training programs.

"Instructor" means the teacher for a specific class or lesson of an EMS training program.

"Instructor aide" means providers certified at or above the level of instruction.

"Interfacility transport" in the air medical environment means as a mission for whom an admitted patient (or patients) was transported from a hospital or care giving facility (clinic, nursing home, etc) to a receiving facility or airport.

"Interim accreditation" means an accreditation decision that results when a previously unaccredited EMS entity has been granted approval to operate one training program, for a period not to exceed 120 days, during which its application is being considered and before a provisional or full accreditation is issued, providing the following conditions are satisfied: (i) a complete application for accreditation is received by the Office of EMS and (ii) a complete institutional self study is submitted to the Office of EMS. Students attending a program with interim accreditation will not be eligible to sit for state testing until the entity achieves official notification of accreditation at the provisional or full level.

"Invasive procedure" means a medical procedure that involves entry into the living body, as by incision or by insertion of an instrument.

"License" means an authorization issued by the Office of EMS to provide emergency medical services in the state as an EMS agency.

"Local EMS resource" means a person recognized by the Office of EMS to perform specified functions for a designated geographic area. This person may be designated to perform one or more of the functions otherwise provided by regional EMS councils.

"Local EMS response plan" means a written document that details the primary service area, the unit mobilization interval and responding interval standards as approved by the local government; ~~and the operational medical director and the Office of EMS.~~

"Local governing body" or "governing body" means members of the governing body of a city, county, or town in the Commonwealth who are elected to that position or their designee.

"Major medical emergency" means an emergency that cannot be managed through the use of locally available emergency medical resources and that requires implementation of special procedures to ensure the best outcome for the greatest number of patients as determined by the EMS provider in charge or incident commander on the scene. This event includes local emergencies declared by the locality's government and states of emergency declared by the Governor.

"Medic" means an EMS provider certified at the level of ~~EMT-Cardiac~~ Advanced EMT, EMT-Intermediate or EMT-Paramedic.

"Medical care facility" means (as defined by ~~§ 32.1-123~~ § 32.1-102.1 of the Code of Virginia) any institution, place, building or agency, whether licensed or required to be licensed by the board or the State ~~Mental Health, Mental Retardation and Substance Abuse Services~~ Board of Behavioral Health and Developmental Services, whether operated for profit or nonprofit and whether privately owned or privately operated or owned or operated by a local governmental unit, by or in which health services are furnished, conducted, operated or offered for the prevention, diagnosis or treatment of human disease, pain, injury, deformity or physical condition, whether medical or surgical.

~~"Medical community" means the physicians and allied healthcare specialists located and available within a definable geographic area.~~

"Medical control" means the direction and advice provided through a communications device (on-line) to on-site and in-transit EMS personnel from a designated medical care facility staffed by appropriate personnel and operating under physician supervision.

"Medical direction" means the direction and supervision of EMS personnel by the Operational Medical Director of the EMS agency with which he is affiliated.

"Medical emergency" means the sudden onset of a medical condition that manifests itself by symptoms of sufficient severity, including severe pain, that the absence of immediate medical attention could reasonably be expected by a prudent layperson who possesses an average knowledge of health and medicine to result in (i) serious jeopardy to the mental or physical health of the individual, (ii) danger of serious

impairment of the individual's bodily functions, (iii) serious dysfunction of any of the individual's bodily organs, or (iv) in the case of a pregnant woman, serious jeopardy to the health of the fetus.

"Medical practitioner" means a physician, dentist, podiatrist, licensed nurse practitioner, licensed physician's assistant, or other person licensed, registered or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to, a controlled substance in the course of professional practice or research in this Commonwealth.

~~"Medical protocol" means preestablished written physician authorized procedures or guidelines for medical care of a specified clinical situation based on patient presentation.~~

"Mutual aid agreement" means a written document specifying a formal understanding to lend aid to an EMS agency.

~~"Neonatal life support" means a sophisticated and specialized level of out of hospital and interfacility emergency and stabilizing care that includes basic and advanced life support functions for the newborn or infant patient.~~

"Neonatal" or "neonate" means, for the purpose of interfacility transportation, any infant who is deemed a newborn within a hospital, has not been discharged since the birthing process, and is currently receiving medical care under a physician.

"Nonprofit" means without the intention of financial gain, advantage, or benefit as defined by federal tax law.

"OSHA" means the U.S. Occupational Safety and Health Administration or Virginia Occupational Safety and Health, the state agency designated to perform its functions in Virginia.

"Office of EMS" means the Office of Emergency Medical Services within the Virginia Department of Health.

"Operational medical director" or "OMD" means an EMS physician, currently licensed to practice medicine or osteopathic medicine in the Commonwealth, who is formally recognized and responsible for providing medical direction, oversight and quality improvement to an EMS agency and personnel.

"Operator" means a person qualified and designated to drive or pilot a specified class of permitted EMS vehicle.

"Patient" means a person who needs immediate medical attention or transport, or both, whose physical or mental condition is such that he is in danger of loss of life or health impairment, or who may be incapacitated or helpless as a result of physical or mental condition or a person who requires medical attention during transport from one medical care facility to another.

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"Person" means (as defined in the Code of Virginia) any person, firm, partnership, association, corporation, company, or group of individuals acting together for a common purpose or organization of any kind, including any government agency other than an agency of the United States government.

"Physician" means an individual who holds a valid, unrestricted license to practice medicine or osteopathy in the Commonwealth.

"Physician assistant" means an individual who holds a valid, unrestricted license to practice as a Physician Assistant in the Commonwealth.

"Physician course director" or "PCD" means an EMS physician who is responsible for the clinical aspects of emergency medical care training programs, including the clinical and field actions of enrolled students.

"Prehospital patient care report" or "PPCR" means a document used to summarize the facts and events of an EMS incident and includes, but is not limited to, the type of medical emergency or nature of the call, the response time, the treatment provided and other minimum data items as prescribed by the board. "PPCR" includes any supplements, addenda, or other related attachments that document patient information or care provided.

~~"Prehospital patient data report" or "PPDR" means a document designed to be optically scanned that may be used to report to the Office of EMS, the minimum patient care data items as prescribed by the board.~~

"Prehospital scene" means, in the air medical environment, the direct response to the scene of incident or injury, such as a roadway, etc.

"Primary retest status" means any candidate or provider who failed his primary certification attempt. Primary retest status expires 90 days after the primary test date.

"Primary service area" means the specific geographic area designated or prescribed by a locality (county, city or town) in which an EMS agency provides prehospital emergency medical care or transportation. This designated or prescribed geographic area served must include all locations for which the EMS agency is principally dispatched (i.e., first due response agency).

"Private Mobile Radio Service" or "PMRS" as defined in § 20.3 of the Federal Communications Commission's Rules, 47 CFR 20.3. (For purposes of this definition, PMRS includes "industrial" and "public safety" radio services authorized under Part 90 of the Federal Communications Commission's Rules, 47 CFR 90.1 et seq., with the exception of certain for-profit commercial paging services and 800/900 MHz Specialized Mobile Radio Services that are interconnected to the public switched telephone network and are therefore classified as CMRS.)

"Probationary status" means the Office of EMS will place an institution on publicly disclosed probation when it has not completed a timely, thorough, and credible root cause analysis and action plan of any sentinel event occurring there. When the entity completes an acceptable root cause analysis and develops an acceptable action plan, the Office of EMS will remove the probation designation from the entity's accreditation status.

~~"Program site accreditation" means the verification that a training program has demonstrated the ability to meet criteria established by the Office of EMS to conduct basic or advanced life support certification courses.~~

"Provisional accreditation" means an accreditation decision that results when a previously unaccredited entity has demonstrated satisfactory compliance with a subset of standards during a preliminary on-site evaluation. This decision remains in effect for a period not to exceed 365 days, until one of the other official accreditation decision categories is assigned based upon an a follow-up site visit against all applicable standards.

"Public safety answering point" or "PSAP" means a facility equipped and staffed on a 24-hour basis to receive requests for emergency medical assistance for one or more EMS agencies.

"Quality management program" or "QM" means the continuous study of and improvement of an EMS agency or system including the collection of data, the identification of deficiencies through continuous evaluation, the education of personnel and the establishment of goals, policies and programs that improve patient outcomes in EMS systems.

"Reaccreditation date" means the date of the reaccreditation decision that is awarded to an entity following a full site visit and review.

"Recertification" means the process used by certified EMS personnel to maintain their training certifications.

"Reentry" means the process by which EMS personnel may regain a training certification that has lapsed within the last two years.

"Reentry status" means any candidate or provider whose certification has lapsed within the last two years.

"Regional EMS council" means an organization designated by the board that is authorized to receive and disburse public funds in compliance with established performance standards and whose function is to plan, develop, maintain, expand and improve an efficient and effective regional emergency medical services system within a designated geographical area pursuant to § 32.1-111.11 of the Code of Virginia.

"Regional trauma triage plan" means a formal written plan developed by a regional EMS council or local EMS resource and approved by the commissioner that incorporates the

region's geographic variations, trauma care capabilities and resources for the triage of trauma patients pursuant to § 32.1-111.3 of the Code of Virginia.

"Registered nurse" means ~~an individual who holds a valid, unrestricted license to practice as a registered nurse in the Commonwealth~~ a person who is licensed or holds a multistate privilege under the provisions of Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 of the Code of Virginia to practice professional nursing.

"Regulated medical device" means equipment or other items that may only be purchased or possessed upon the approval of a physician and that the manufacture or sale of which is regulated by the U.S. Food and Drug Administration (FDA).

"Regulated waste" means liquid or semi-liquid blood or other potentially infectious materials; contaminated items that would release blood or other potentially infectious materials in a liquid or semi-liquid state if compressed; items that are caked with dried blood or potentially infectious materials and are capable of releasing these materials during handling; items dripping with liquid product; contaminated sharps; pathological and microbiological waste containing blood or other potentially infectious materials.

"Regulations" means (as defined in the Code of Virginia) any statement of general application, having the force of law, affecting the rights or conduct of any person, promulgated by an authorized board or agency.

"Rescue" means a service that may include the search for lost persons, gaining access to persons trapped, extrication of persons from potentially dangerous situations and the rendering of other assistance to such persons.

"Rescue vehicle" means a vehicle, vessel or aircraft that is maintained and operated to assist with the location and removal of victims from a hazardous or life-threatening situation to areas of safety or treatment.

"Responding ~~interval time~~" means the elapsed time in minutes between the "dispatch" time and the "arrive scene" time (i.e., ~~when the wheels of the EMS vehicle stop~~) time a call for emergency medical services is received by the PSAP until the appropriate emergency medical response unit arrives on the scene.

"Responding ~~interval time~~ standard" means a time standard in minutes for the responding interval, established by the EMS agency, the locality and OMD, in which the EMS agency will comply with 90% or greater reliability.

"Response obligation to locality" means a requirement of a designated emergency response agency to lend aid to all other designated emergency response agencies within the locality or localities in which the EMS agency is based.

"Revocation" means the permanent removal of an EMS agency license, vehicle permit, training certification, ALS

coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Safety apparel" means personal protective safety clothing that is intended to provide conspicuity during both daytime and nighttime usage and that meets the Performance Class 2 or 3 requirements of the ANSI/ISEA 107-2004 publication entitled "American National Standard for High-Visibility Safety Apparel and Headwear."

"Secondary certification status" means any candidate or provider who is no longer in primary retest status.

"Secondary retest status" means any candidate or provider who failed their secondary certification attempt. Secondary retest status expires 90 days after the secondary test date.

"Sentinel event" means any significant occurrence, action, or change in the operational status of the entity from the time when it either applied for candidate status or was accredited. The change in status can be based on but not limited to one or all of the events indicated below:

Entering into an agreement of sale of an accredited entity or an accreditation candidate.

Entering into an agreement to purchase or otherwise directly or indirectly acquire an accredited entity or accreditation candidate.

Financial impairment of an accredited entity or candidate for accreditation, which affects its operational performance or entity control.

Insolvency or bankruptcy filing.

Change in ownership or control greater than 25%.

Disruption of service to student body.

Discontinuance of classes or business operations.

Failure to report a change in program personnel, location, change in training level or Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) accreditation status.

Failure to meet minimum examination scores as established by the Office of EMS.

Loss of CoAEMSP or CAAHEP accreditation.

Company fine or fines of greater than \$100,000 for regulatory violation, marketing or advertising practices, antitrust, or tax disputes.

"Special conditions" means a notation placed upon an EMS agency or registration, variance or exemption documents that modifies or restricts specific requirements of these regulations.

"Specialized air medical training" means a course of instruction and continuing education in the concept of flight

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physiology and the effects of flight on patients that has been approved by the Office of EMS. This training must include but is not limited to aerodynamics, weather, communications, safety around aircraft/ambulances, scene safety, landing zone operations, flight physiology, equipment/aircraft familiarization, basic flight navigation, flight documentation, and survival training specific to service area.

"Specialty care mission" in the air medical environment means the transport of a patient requiring specialty patient care by one or more medical professionals who are added to the regularly scheduled medical transport team.

"Specialty care provider" in the air medical environment means a provider of specialized medical care, to include but not limited to neonatal, pediatric, and perinatal.

"Standard of care" means the established approach to the provision of basic and advanced medical care that is considered appropriate, prudent and in the best interests of patients within a geographic area as derived by consensus among the physicians responsible for the delivery and oversight of that care. The standard of care is dynamic with changes reflective of knowledge gained by research and practice.

"Standard operating procedure" or "SOP" means preestablished written agency authorized procedures and guidelines for activities performed by affiliated EMS agency.

"Supplemented transport" means an interfacility transport for which the sending physician has determined that the medically necessary care and equipment needs of a critically injured or ill patient is beyond the scope of practice of the available EMS personnel of the EMS agency.

"Suspension" means the temporary removal of an EMS agency license, vehicle permit, training certification, ALS coordinator endorsement, EMS education coordinator, EMS physician endorsement or any other designation issued by the Office of EMS.

"Test site coordinator" means an individual designated by the Office of EMS to coordinate the logistics of a state certification examination site.

"Training officer" means an individual who is responsible for the maintenance and completion of agency personnel training records and who acts as a liaison between the agency, the operational medical director, and a participant in the agency and regional quality assurance process.

"Trauma center" means a specialized hospital facility distinguished by the immediate availability of specialized surgeons, physician specialists, anesthesiologists, nurses, and resuscitation and life support equipment on a 24-hour basis to care for severely injured patients or those at risk for severe injury. In Virginia, trauma centers are designated by the Virginia Department of Health as Level I, II or III.

"Trauma center designation" means the formal recognition by the board of a hospital as a provider of specialized services to meet the needs of the severely injured patient. This usually involves a contractual relationship based on adherence to standards.

"Triage" means the process of sorting patients to establish treatment and transportation priorities according to severity of injury and medical need.

~~"Unit mobilization interval" means the elapsed time (in minutes) between the "dispatched" time of the EMS agency and the "responding" time (the wheels of the EMS vehicle start moving).~~

~~"Unit mobilization interval standard" means a time standard (in minutes) for the unit mobilization interval, established by a designated emergency response agency, the locality and OMD, in which the EMS agency will comply.~~

"USDOT" means the United States Department of Transportation.

"Vehicle operating weight" means the combined weight of the vehicle, vessel or craft, a full complement of fuel, and all required and optional equipment and supplies.

"Virginia Statewide Trauma Registry" or "Trauma Registry" means a collection of data on patients who receive hospital care for certain types of injuries. The collection and analysis of such data is primarily intended to evaluate the quality of trauma care and outcomes in individual institutions and trauma systems. The secondary purpose is to provide useful information for the surveillance of injury morbidity and mortality.

~~"Wheelchair" means a chair with wheels specifically designed and approved for the vehicular transportation of a person in an upright, seated (Fowler's) position.~~

Article 2

Purpose and Applicability

12VAC5-31-20. Responsibility for regulations; application of regulations.

A. These regulations shall be administered by the following:

1. State Board of Health. The Board of Health has the responsibility to promulgate, amend, and repeal, as appropriate, regulations for the provision of emergency medical services per Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1 of the Code of Virginia.
2. State Health Commissioner. The commissioner, as executive officer of the board, will administer these regulations per § 32.1-16 of the Code of Virginia.
3. The Virginia Office of EMS. The director, assistant director and specified staff positions will have designee privileges for the purpose of enforcing these regulations.

4. Emergency Medical Services Advisory Board. The EMS Advisory Board has the responsibility to review and advise the board regarding EMS policies and programs.

B. These regulations have general application throughout Virginia to include:

1. No person may establish, operate, maintain, advertise or represent themselves, any service or any organization as an EMS agency or as EMS personnel without a valid license or certification, or in violation of the terms of a valid license or certification issued by the Office of EMS.

2. A person providing EMS to a patient received within Virginia and transported to a location within Virginia must comply with these regulations unless exempted in these regulations.

12VAC5-31-50. Variances.

A. The ~~Office of EMS commissioner~~ is authorized to grant variances for any part or all of these regulations in accordance with the procedures set forth herein. A variance permits temporary specified exceptions to these regulations. An applicant, licensee, or permit or certificate holder may file a written request for a variance with the Office of EMS on specified forms. If the applicant, licensee, or permit or certificate holder is an EMS agency, the following additional requirements apply:

1. The written variance request must be submitted for review and recommendations to the governing body of the locality in which the principal office of the EMS agency is located prior to submission to the Office of EMS.

2. An EMS agency operating in multiple localities will be required to notify all other localities in writing of conditions of approved variance requests.

3. Issuance of a variance does not obligate other localities to allow the conditions of such variance if they conflict with local ordinances or regulations.

B. Both the written request and the recommendation of the governing body must be submitted together to the Office of EMS.

12VAC5-31-60. Issuance of a variance.

A request for a variance may be approved and issued by the ~~Office of EMS commissioner~~ provided all of the following conditions are met:

1. The information contained in the request is complete and correct;

2. The agency, service, vehicle or person concerned is licensed, permitted or certified by the Office of EMS;

3. The ~~Office of EMS commissioner~~ determines the need for such a variance is genuine, and extenuating circumstances exist;

4. The ~~Office of EMS commissioner~~ determines that issuance of such a variance would be in the public interest and would not present any risk to, or threaten or endanger the public health, safety or welfare;

5. If the request is made by an EMS agency, the ~~Office of EMS commissioner~~ will consider the recommendation of the governing body provided all of the above conditions are met; and

6. The person making the request will be notified in writing of the approval and issuance within 30 days of receipt of the request unless the request is awaiting approval or disapproval of a license or certificate. In such case, notice will be given within 30 days of the issuance of the license or certificate.

12VAC5-31-80. Conditions of variance.

A variance shall be issued and remain valid with the following conditions:

1. A variance will be valid for a period not to exceed one year unless and until terminated by the ~~Office of EMS commissioner~~; and

2. A variance is neither transferable nor renewable under any circumstances.

12VAC5-31-90. Termination of variance.

A. The ~~Office of EMS commissioner~~ may terminate a variance at any time based upon any of the following:

1. Violations of any of the conditions of the variance;

2. Falsification of any information;

3. Suspension or revocation of the license, permit or certificate affected; or

4. A determination by the Office of EMS to the commissioner that continuation of the variance would present a risk to or threaten or endanger the public health, safety or welfare.

B. The ~~Office of EMS commissioner~~ will notify the license, permit or certificate holder of the termination by certified mail to his last known address.

C. Termination of a variance will take effect immediately upon receipt of notification unless otherwise specified.

12VAC5-31-100. Denial of a variance.

A request for a variance will be denied by the ~~Office of EMS commissioner~~ if any of the conditions of 12VAC5-31-60 fail to be met.

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12VAC5-31-120. Public notice of request for exemption.

Upon receipt of a request for an exemption, the Office of EMS will cause notice of such request to be ~~published in a newspaper of general circulation in the area wherein the person making the request resides and in other major newspapers of general circulation in major regions of the Commonwealth. The cost of such public notice will be borne by the person making the request~~ posted on the Office of EMS section of the Virginia Department of Health's website.

12VAC5-31-160. Conditions of exemption.

A. An exemption remains valid for an indefinite period of time unless and until terminated by the ~~board or the Office of EMS commissioner~~, or unless an expiration date is specified.

B. An exemption is neither transferable nor renewable.

12VAC5-31-170. Termination of exemption.

A. The ~~Office of EMS commissioner~~ may terminate an exemption at any time based upon any of the following:

1. Violation of any of the conditions of the exemption;
2. Suspension or revocation of any licenses, permits or certificates involved; or
3. A determination by the ~~Office of EMS commissioner~~ that continuation of the exemption would present risk to, or threaten or endanger the public health, safety or welfare.

B. The ~~Office of EMS commissioner~~ will notify the person to whom the exemption was issued of the termination by certified mail to his last known address.

C. Termination of an exemption takes effect immediately upon receipt of notification unless otherwise specified.

12VAC5-31-180. Denial of an exemption.

A request for an exemption will be denied by the ~~Office of EMS commissioner~~ if any of the conditions of these regulations fail to be met.

Article 4 Enforcement Procedures

12VAC5-31-200. Right to enforcement.

A. The Office of EMS may use the enforcement procedures provided in this article when dealing with any deficiency or violation of these regulations or any action or procedure that varies from the intent of these regulations.

B. The Office of EMS may determine that a deficiency or violation of these regulations or any action or procedure that varies from the intent of these regulations occurred.

C. The enforcement procedures provided in this article are not mutually exclusive. The Office of EMS may invoke as many procedures as the situation may require.

D. The commissioner empowers the Office of EMS to enforce the provisions of these regulations.

E. An agency and all places of operation shall be subject to inspection by the Office of EMS for compliance with these regulations. The inspection may include any or all of the following:

1. All fixed places of operations, including all offices, stations, repair shops, or training facilities.
2. All applicable records maintained by the agency.
3. All EMS vehicles and required equipment used by the agency.

12VAC5-31-210. Enforcement actions.

An enforcement action must be delivered to the affected person and must specify information concerning the violations, the actions required to correct the violations and the specific date by which correction must be made as follows:

1. Warning: a verbal notification of an action or situation potentially in violation of these regulations.
2. Citation: a written notification for violations of these regulations.
3. Suspension: a written notification of the deactivation and removal of authorization issued under a license, permit, certification, endorsement or designation.
4. Civil penalty: The commissioner or designee may impose a civil penalty on an agency or entity that fails or refuses compliance with these regulations. Civil penalties may be assessed up to \$1,000 per offense. Violations shall be single, different occurrence for each calendar day the violation occurs and remains uncorrected.

~~4. 5.~~ Action of the commissioner: the commissioner may command a person operating in violation of these regulations or state law pursuant to the commissioner's authority under § 32.1-27 of the Code of Virginia and the Administrative Process Act to halt such operation or to comply with applicable law or regulation. A separate and distinct offense will be deemed to have been committed on each day during which any prohibited act continues after written notice to the offender.

~~5. 6.~~ Criminal enforcement: the commissioner may elect to enforce any part of these regulations or any provision of Title 32.1 of the Code of Virginia by seeking to have criminal sanctions imposed. The violation of any of the provisions of these regulations constitutes a misdemeanor. A separate and distinct offense will be deemed to have been committed on each day during which any prohibited act continues after written notice by the commissioner to the offender.

12VAC5-31-220. Suspension of a license, permit, certificate, endorsement or designation.

A. The ~~Office of EMS~~ commissioner may suspend an EMS license, permit, certificate, endorsement or designation without a hearing, pending an investigation or revocation procedure.

1. Reasonable cause for suspension must exist before such action is taken by the ~~Office of EMS~~ commissioner. The decision must be based upon a review of evidence available to the ~~Office of EMS~~ commissioner.
2. The ~~Office of EMS~~ commissioner may suspend an agency or service license, vehicle permit, personnel certificate, endorsement or designation for failure to adhere to the standards set forth in these regulations.
3. An EMS agency license or registration may be suspended if the agency, service or any of its vehicles or personnel are found to be operating in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare.
4. An EMS vehicle permit may be suspended if the vehicle is found to be operated or maintained in a manner that presents a risk to, threatens, or endangers the public health, safety or welfare, or if the EMS agency license has been suspended.
5. EMS personnel may be suspended if found to be operating or performing in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare.
6. An EMS training certification may be suspended if the certificate holder is found to be operating or performing in a manner that presents a risk to, or threatens, or endangers the public health, safety or welfare.

B. Suspension of an EMS agency license shall result in the simultaneous and concurrent suspension of the vehicle permits.

C. The ~~Office of EMS~~ commissioner will notify the licensee, or permit or certificate holder of the suspension in person or by certified mail to his last known address.

D. A suspension takes effect immediately upon receipt of notification unless otherwise specified. A suspension remains in effect until the ~~Office of EMS~~ commissioner further acts upon the license, permit, certificate, endorsement or designation or until the order is overturned on appeal as specified in the Administrative Process Act.

E. The licensee, or permit or certificate holder shall abide by any notice of suspension and shall return all suspended licenses, permits and certificates to the Office of EMS within 10 days of receipt of notification.

F. The Office of EMS may invoke any procedure set forth in this part to enforce the suspension.

12VAC5-31-230. Revocation of a license, permit or certificate.

A. The ~~Office of EMS~~ commissioner may revoke an EMS license, permit, certificate, endorsement, or designation after a hearing or waiver thereof.

1. Reasonable cause for revocation must exist before such action by the ~~Office of EMS~~ commissioner.
2. The ~~Office of EMS~~ commissioner may revoke an EMS agency license, EMS vehicle permit, vehicle permit, certification, endorsement or designation for failure to adhere to the standards set forth in these regulations.
3. The ~~Office of EMS~~ commissioner may revoke an EMS agency license, an EMS vehicle permit, or EMS personnel certificate for violation of a correction order or for engaging in or aiding, abetting, causing, or permitting any act prohibited by these regulations.
4. The ~~Office of EMS~~ commissioner may revoke an EMS training certificate for failure to adhere to the standards as set forth in these regulations ~~and the "Training Program Administration Manual" in effect for the level of instruction concerned,~~ or for lack of competence at such level as evidenced by lack of basic knowledge or skill, or for incompetent or unwarranted acts inconsistent with the standards in effect for the level of certification concerned.
5. The ~~Office of EMS~~ commissioner may revoke an EMS agency license for violation of federal or state laws resulting in a civil monetary penalty.

B. Revocation of an EMS agency license shall result in the simultaneous and concurrent revocation of vehicle permits.

C. The ~~Office of EMS~~ commissioner will notify the holder of a license, certification, endorsement or designation of the intent to revoke by signed receipt in person or certified mail to his last known address.

D. The holder of a license, certification, endorsement or designation will have the right to a hearing.

1. If the holder of a license, certification, endorsement or designation desires to exercise his right to a hearing, he must notify the Office of EMS in writing of his intent within 10 days of receipt of notification. In such cases, a hearing must be conducted and a decision rendered in accordance with the Administrative Process Act.
2. Should the holder of a license, certification, endorsement or designation fail to file such notice, he will be deemed to have waived the right to a hearing. In such case, the ~~Office of EMS~~ commissioner may revoke the license or certificate.

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E. A revocation takes effect immediately upon receipt of notification unless otherwise specified. A revocation order is permanent unless and until overturned on appeal.

F. The holder of a license, certification, endorsement or designation shall abide by any notice of revocation and shall return all revoked licenses, permits and certificates to the Office of EMS within 10 days of receipt of the notification of revocation.

G. The Office of EMS may invoke any procedures set forth in this part to enforce the revocation.

12VAC5-31-240. Correction order.

A. The Office of EMS may order the holder of a license, certification, endorsement or designation to correct a deficiency, cease any violations or comply with these regulations by issuing a written correction order as follows:

1. Correction orders may be issued in conjunction with any other enforcement action in response to individual violations or patterns of violations.
2. The Office of EMS will determine that a deficiency or violation exists before issuance of any correction order.

B. The Office of EMS will send a correction order to the licensee or permit or certificate holder by a signed receipt in person or certified mail to his last known address. Notification will include, but not be limited to, a description of the deficiency or violation to be corrected, and the period within which the deficiency or situation must be corrected, which shall not be less than 30 days from receipt of such order, unless an emergency has been declared by the Office of EMS.

C. A correction order takes effect upon receipt and remains in effect until the deficiency is corrected or until the license, permit, certificate, endorsement or designation is suspended, revoked, or allowed to expire or until the order is overturned or reversed.

D. Should the licensee or permit, certificate, endorsement or designation holder be unable to comply with the correction order by the prescribed date, he may submit a request for modification of the correction order with the Office of EMS. The Office of EMS will approve or disapprove the request for modification of the correction order within 10 days of receipt.

E. The licensee or permit, certificate, endorsement or designation holder shall correct the deficiency or situation within the period stated in the order.

1. The Office of EMS will determine whether the correction is made by the prescribed date.
2. Should the licensee or permit, certificate, endorsement or designation holder fail to make the correction within the time period cited in the order, the Office of EMS may

invoke any of the other enforcement procedures set forth in this part.

12VAC5-31-290. Exclusions from these regulations.

A. Any person or privately owned vehicle not engaged in the business, service, or regular activity of providing medical care or transportation of persons who are sick, injured, wounded, or otherwise disabled.

B. Any person or vehicle rendering emergency medical services or medical transportation in the case of a major medical emergency when the EMS agencies, vehicles and personnel based in or near the location of such major emergency are insufficient to render services required.

C. EMS agencies, vehicles or personnel based outside of Virginia, except that any agency, vehicle or person responding from outside Virginia to an emergency within Virginia and providing emergency medical services to a patient within Virginia, whether or not the service includes transportation, shall comply with the provisions of these regulations.

D. An agency of the United States government providing emergency medical services in Virginia and any EMS vehicles operated by the agency.

E. Any vehicle owned by an EMS agency ~~vehicle~~ used exclusively for the provision of rescue services.

F. Any medical facility, but only with respect to the provision of emergency medical services within the facility.

G. Personnel employed by, or associated with, a medical facility who provides emergency medical services within the medical facility, but only with respect to the services provided therein.

H. Wheelchair interfacility transport services and wheelchair interfacility transport service vehicles that are engaged, whether or not for profit, in the business, service, or regular activity of and exclusively used for transporting wheelchair bound passengers between medical facilities in the Commonwealth when no ancillary medical care or oversight is necessary. However, such services and vehicles shall comply with Department of Medical Assistance Services regulations regarding the transportation of Medicaid recipients to covered services.

12VAC5-31-370. Designated emergency response agency.

An EMS agency that responds to medical emergencies for its primary service area shall be a designated emergency response agency. A designated emergency response agency shall provide services within its primary service area as defined by the local EMS response plan.

12VAC5-31-380. EMS agency availability.

A. An EMS agency shall provide service within its primary service area ~~on a 24 hour continuous basis~~ as defined by the local EMS response plan.

B. Licensed EMS agencies that meet the criteria stated in 12VAC5-31-370 but that operate under special conditions, i.e., time of year, etc., must also meet the criteria outlined in 12VAC5-31-430 A 2 and C 4.

12VAC5-31-390. ~~Destination/trauma triage~~ Destination to specialty care hospitals.

An EMS agency shall ~~participate in the regional Trauma Triage Plan~~ follow specialty care hospital triage plans for trauma, stroke, and others as recognized by OEMS established in accordance with § 32.1-111.3 of the Code of Virginia. EMS agencies' OMD approved patient care protocols shall have a triage component consistent with Code of Virginia mandated state specialty care hospital triage plans.

12VAC5-31-400. Nondiscrimination.

An EMS agency ~~may~~ shall not discriminate due to a patient's race, gender, creed, color, national origin, location, medical condition or any other reason.

12VAC5-31-430. Issuance of an EMS agency license.

A. An EMS agency license may be issued by the Office of EMS provided the following conditions are met:

1. All information contained in the application is complete and correct; and
2. The applicant is determined by the Office of EMS to be eligible for licensure in accordance with these regulations.

B. The issuance of a license hereunder may not be construed to authorize any agency to operate any emergency medical services vehicle without a franchise or permit in any county or municipality which has enacted an ordinance pursuant to § 32.1-111.14 of the Code of Virginia making it unlawful to do so.

C. An EMS agency license may include the following information:

1. The name and address of the EMS agency;
2. The expiration date of the license;
3. The types of services for which the EMS agency is licensed; and
4. Any special conditions that may apply.

D. An EMS agency license will be issued and remain valid with the following conditions:

1. An EMS agency license is valid for a period of no longer than two years from the last day of the month of

issuance unless and until revoked or suspended by the ~~Office of EMS commissioner.~~

2. An EMS agency license is not transferable.

3. An EMS agency license issued by the Office of EMS remains the property of the Office of EMS and may not be altered or destroyed.

12VAC5-31-480. Termination of EMS agency licensure.

A. An EMS agency terminating service shall surrender the EMS agency license to the Office of EMS.

B. An EMS agency terminating service shall submit written notice to the Office of EMS at least 90 days in advance. Written notice of intent to terminate service must verify the following:

1. Notification of the applicable OMDs, regional EMS councils or local EMS resource agencies, PSAPs and governing bodies of each locality served.
2. Termination of all existing contracts for EMS services, Mutual Aid Agreements, or both.
3. Advertised notice of its intent to discontinue service has been published in a newspaper of general circulation in its service area and to be posted on the Office of EMS section of the Virginia Department of Health's website.

C. Within 30 days following the termination of service, the EMS agency shall provide written verification to the Office of EMS of the following:

1. The return of its EMS agency license and all associated vehicle permits to the Office of EMS.
2. The removal of all signage or insignia that advertise the availability of EMS to include but not be limited to facility and roadway signs, vehicle markings and uniform items.
3. The return of all ~~medication drug~~ kits that are part of a local or regional ~~medication drug kit~~ exchange program or provision for the proper disposition of ~~medications drugs~~ maintained under a Board of Pharmacy controlled substance registration.
4. The maintenance and secure storage of required agency records and prehospital patient care reports (~~PPCRs~~) for a minimum of ~~five~~ six years from the date of termination of service.

12VAC5-31-500. Place of operations.

A. An EMS agency shall maintain a fixed physical location. Any change in the address of ~~this location~~ requires the primary business location and any satellite location require notification to the Office of EMS before relocation of the office space.

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B. Adequate, clean and enclosed storage space for linens, equipment and supplies shall be provided at each place of operation.

C. The following sanitation measures are required at each place of operation ~~in accordance with standards established by the Centers for Disease Control and Prevention (CDC) established by the CDC~~ and the Virginia occupational safety and health laws (Title ~~40.1-1~~ 40.1 of the Code of Virginia):

1. All areas used for storage of equipment and supplies shall be kept neat, clean, and sanitary.
2. All soiled supplies and used disposable items shall be stored or disposed of in plastic bags, covered containers or compartments provided for this purpose. Regulated waste shall be stored in a red or orange bag or container clearly marked with a biohazard label.

12VAC5-31-510. Equipment and supplies.

A. An EMS agency shall hold the permit to an EMS vehicle or have a written agreement for the access to and use of an EMS vehicle.

An EMS agency that does not use an EMS vehicle shall maintain the required equipment and supplies for a nontransport response vehicle.

B. Adequate stocks of supplies and linens shall be maintained as required for the classes of vehicles in service at each place of operations. An EMS agency shall maintain a supply of at least ~~75~~ 25 triage tags of a design approved by the Office of EMS on each permitted EMS vehicle. These tags must be maintained in a location readily accessible by all agency personnel.

12VAC5-31-520. Storage and security of medications drugs and related supplies.

A. An area used for storage of ~~medications~~ drugs and administration devices and a ~~medication drug~~ drug kit used on an EMS vehicle shall comply with requirements established by the Virginia Board of Pharmacy and the applicable drug manufacturer's recommendations for climate-controlled storage.

B. ~~Medications~~ Drugs and ~~medication drug~~ drug kits shall be maintained within their expiration date at all times.

C. ~~Medications~~ Drugs and ~~medication drug~~ drug kits shall be removed from vehicles and stored in a properly maintained and locked secure area when the vehicle is not in use unless the ambient temperature of the vehicle's interior ~~medication drug~~ drug storage compartment is maintained within the climate requirements specified in this section.

D. An EMS agency shall notify the Office of EMS in writing of any diversion of (i.e., loss or theft) or tampering with any controlled substances, ~~medication drug~~ drug delivery devices, or other regulated medical devices from an agency

facility or vehicle. Notification shall be made within 15 days of the discovery of the occurrence.

E. An EMS agency shall protect EMS vehicle contents from climate extremes.

12VAC5-31-530. Preparation and maintenance of records and reports.

An EMS agency is responsible for the preparation and maintenance of records that shall be available for inspection by the Office of EMS as follows:

1. Records and reports shall at all times be stored in a manner to ensure reasonable safety from water and fire damage and from unauthorized disclosure to persons other than those authorized by law.
2. EMS agency records shall be prepared and securely maintained at the principal place of operations or a secured storage facility for a period of not less than five years.

12VAC5-31-540. Personnel records.

A. An EMS agency shall have a current personnel record for each individual affiliated with the EMS agency. Each file shall contain documentation of certification (~~copy of EMS certification, healthcare provider license or EVOC, or both~~), training and qualifications for the positions held.

B. An EMS agency shall have a record for each individual affiliated with the EMS agency documenting the results of a criminal history background check conducted through the Central Criminal Records Exchange ~~operated by and the National Crime Information Center~~ via the Virginia State Police, a driving record transcript from the individual's state Department of Motor Vehicles office, and any documents required by the Code of Virginia, no more than 60 days prior to the individual's affiliation with the EMS agency.

12VAC5-31-560. Patient care records.

A. An original ~~prehospital patient care report (PPCR)~~ PPCR shall specifically identify by name the personnel who meet the staffing requirements of the EMS vehicle.

B. The PPCR shall include the name and identification number of all EMS Personnel on the EMS vehicle and the signature of the attendant-in-charge.

C. The required minimum data set shall be submitted on a schedule established by the Office of EMS as authorized in § 32.1-116.1 of the Code of Virginia. This requirement for data collection and submission shall not apply to patient care rendered during local emergencies declared by the locality's government and states of emergency declared by the Governor. During such an incident, an approved triage tag shall be used to document patient care provided unless a standard patient care report is completed.

12VAC5-31-570. EMS Agency Status Report.

A. An EMS agency must submit an "EMS Agency Status Report" to the Office of EMS within 30 days of a request or change in status of the following:

1. Chief executive officer.
- ~~2. Chief of operations.~~
- ~~3. 2. Training officer.~~
- ~~4. 3. Designated infection control officer.~~
- ~~5. Other information as required.~~

B. The EMS agency shall provide the leadership position held, to include title, term of office, mailing address, home and work telephone numbers ~~and~~ other available electronic addresses for each individual, and other information as required.

12VAC5-31-590. Operational Medical Director requirement.

A. An EMS agency shall have a minimum of one operational medical director (OMD) who is a licensed physician holding endorsement as an EMS physician from the Office of EMS.

An EMS agency shall enter into a written agreement with an EMS physician to serve as OMD with the EMS agency. This agreement shall at a minimum specify the following responsibilities and authority:

1. This agreement must describe the process or procedure by which the OMD or EMS agency may discontinue the agreement with prior notification of the parties involved ~~in accordance with these regulations~~ pursuant to 12VAC5-31-1910.
2. This agreement must identify the specific responsibilities of each EMS physician if an EMS agency has multiple OMDs.
3. This agreement must specify that EMS agency personnel may only provide emergency medical care and participate in associated training programs while acting ~~under~~ with the ~~authority~~ authorization of the operational medical ~~director's~~ license director and within the scope of the EMS agency license in accordance with these regulations.
4. This agreement must provide for EMS agency personnel to have ~~direct~~ access to the agency OMD in regards to discussion of issues relating to provision of patient care, application of patient care protocols or operation of EMS equipment used by the EMS agency.
5. This agreement must ensure that the adequate indemnification ~~exists~~ or insurance coverage exists for:
 - a. Medical malpractice; and
 - b. Civil ~~liability~~ claims.

B. EMS agency and OMD conflict resolution.

1. In the event of an unresolved conflict between an EMS agency and its OMD, the issues involved shall be brought before the regional EMS council or local EMS resource's medical direction committee (or approved equivalent) for review and resolution.
2. When an EMS agency determines that the OMD presents an immediate significant risk to the public safety or health of citizens, the EMS agency shall attempt to resolve the issues in question. If an immediate risk remains unresolved, the EMS agency shall contact the Office of EMS for assistance.

C. Change of operational medical director.

1. An EMS agency choosing to secure the services of another OMD shall provide a minimum of 30 days advance written notice of intent to the current OMD and the Office of EMS.
2. An OMD choosing to resign shall provide the EMS agency and the Office of EMS with a minimum of 30 days written notice of such intent.
3. When extenuating circumstances require an immediate change of an EMS agency's OMD (e.g., death, critical illness, etc.), the Office of EMS shall be notified by the OMD within one business day so that a qualified replacement may be approved. In the event that the OMD is not capable of making this notification, the EMS agency shall be responsible for compliance with this requirement. Under these extenuating circumstances, the Office of EMS will make a determination whether the EMS agency will be allowed to continue its operations pending the approval of a permanent or temporary replacement OMD.
4. When temporary circumstances require a short-term change of an EMS agency's OMD for a period not expected to exceed one year (e.g., military commitment, unexpected clinical conflict, etc.), the Office of EMS shall be notified by the OMD within 15 days so that a qualified replacement may be approved.
5. The Office of EMS may delay implementation of a change in an EMS agency's OMD pending the completion of any investigation of an unresolved conflict or possible violation of these regulations or the Code of Virginia.

12VAC5-31-610. Designated emergency response agency standards.

A. A designated emergency response agency shall develop or participate in a written local EMS response plan that addresses the following items:

1. The designated emergency response agency shall develop and maintain, in coordination with their locality, a written plan to provide 24-hour coverage of the agency's

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primary service area with the available personnel to achieve the approved responding interval standard.

2. A designated emergency response agency shall conform to the local responding interval, or in the absence of a local standard the EMS agency shall develop a standard in conjunction with OMD and local government in the best interests of the patient and the community. The EMS agency shall use the response time standard to establish a time frame the EMS agency complies with on a 90% basis within its primary service area (i.e., a time frame in which the EMS agency can arrive at the scene of a medical emergency in 90% or greater of all calls).

a. If the designated emergency response agency finds it is unable to respond within the established unit mobilization interval standard, the call shall be referred to the closest available mutual aid EMS agency.

b. If the designated emergency response agency finds it is able to respond to the patient location sooner than the mutual aid EMS agency, the EMS agency shall notify the PSAP of its availability to respond.

c. If the designated emergency response agency is unable to respond (e.g., lack of operational response vehicle or available personnel), the EMS agency shall notify the PSAP.

d. If a designated emergency response agency determines in advance that it will be unable to respond for emergency service for a specified period of time, it shall notify its PSAP.

B. A designated emergency response agency shall have available for review a copy of the local EMS response plan that shall include the established EMS Responding Interval standards.

C. A designated emergency response agency shall document its compliance with the established EMS response capability, unit mobilization interval, and responding interval standards.

D. A designated emergency response agency shall document an annual review of exceptions to established EMS response capability and time interval standards. The results of this review shall be provided to the agency's operational medical director and local governing body.

Article 3

Emergency Medical Services Vehicle Classifications and Requirements

12VAC5-31-700. EMS vehicle safety.

An EMS vehicle shall be maintained in good repair and safe operating condition and shall meet the same motor vehicle, vessel or aircraft safety requirements as apply to all vehicles, vessels or craft in Virginia:

1. Virginia motor vehicle safety inspection, FAA Airworthiness Permit or Coast Guard Safety Inspection or approved equivalent must be current.

2. Exterior surfaces of the vehicle including windows, mirrors, warning devices and lights shall be kept clean of dirt and debris.

3. Ground vehicle operating weight shall be no more than the manufacturer's gross vehicle weight (GVW) minus 700 pounds (316 kg).

4. Emergency operating privileges including the use of audible and visible emergency warning devices shall be exercised in compliance with the Code of Virginia and local motor vehicle ordinances.

5. ~~Smoking Tobacco use~~ is prohibited in an EMS transport vehicle at all times.

6. ~~Possession of a firearm, weapon, or explosive or incendiary device on any EMS vehicle is prohibited, except:~~

~~a. A sworn law enforcement officer authorized to carry a concealed weapon pursuant to § 18.2-308 of the Code of Virginia.~~

~~b. Any rescue line gun or other rescue device powered by an explosive charge carried on a nontransport response vehicle.~~

12VAC5-31-710. EMS vehicle occupant safety.

A. An occupant shall use mechanical restraints as required by the Code of Virginia. Stretcher patients shall be secured on the stretcher utilizing a minimum of three straps unless contraindicated by patient condition.

B. Equipment and supplies in the patient compartment shall be stored within a closed and latched compartment or fixed securely in place while not in use.

~~C. While the vehicle is in motion, equipment and supplies at or above the level of the patient's head while supine on the primary ambulance stretcher shall be secured in place to prevent movement.~~

12VAC5-31-750. EMS vehicle warning lights and devices.

An EMS vehicle shall have emergency warning lights and audible devices as approved by the Superintendent of Virginia State Police, Virginia Department of Game and Inland Fisheries or the Federal Aviation Administration (FAA) as applicable.

1. A ~~Ground ground~~ EMS vehicle shall have flashing or blinking lights installed to provide adequate visible warning from all four sides.

2. A ~~Ground ground~~ EMS vehicle shall have flashing or blinking red or red and white lights installed on or above the front bumper and below the bottom of the windshield.

3. ~~A~~ A ground EMS vehicle shall have an audible warning device installed to project sound forward from the front of the EMS vehicle.

12VAC5-31-760. EMS vehicle communications.

A. An EMS vehicle shall have fixed communications equipment that provides direct two-way voice communications capabilities between the EMS vehicle, other EMS vehicles of the same agency, and either the agency's base of operations (dispatch point) or a governmental public safety answering point (PSAP). This communication capability must be available within the agency's primary service area ~~or within a 25 mile radius of its base of operations, whichever is greater.~~ Service may be provided by private mobile radio service (PMRS) or by commercial mobile radio service (CMRS), but shall have direct and immediate communications via push-to-talk technology.

B. An ambulance transporting outside its primary service area shall have fixed or portable communications equipment that provides two-way voice communications capabilities between the EMS vehicle and either the agency's base of operations (dispatch point) ~~or a governmental public safety answering point (PSAP)~~ PSAP during the period of transport. Service may be provided by private mobile radio service (PMRS) or by commercial mobile radio service (CMRS). ~~When operating outside the agency's primary service area or a 25 mile radius of its base of operations of routine responsibility or in areas where CMRS is not available, the requirement for direct and immediate communications via push-to-talk technology does not apply. This requirement does not apply in areas where CMRS is not available. If an agency is licensed as a DERA, it is required to have direct and immediate communications via push-to-talk technology for either the agency's base of operations, dispatch point, or PSAP for which the EMS agency vehicle is used for emergency response to the public in the jurisdiction where a memorandum of understanding or memorandum of agreement is in place or is contractually obligated to provide emergency response.~~

C. An ambulance or an advanced life support-equipped, nontransport response vehicle shall have communications equipment that provides two-way voice communications capabilities between the EMS vehicle's attendant-in-charge and the receiving medical facilities to which it regularly transports or a designated central medical control on one or more of the following frequencies:

- 155.340 MHz (statewide HEAR);
- 155.400 MHz (Tidewater HEAR);
- 155.280 MHz (Inter-Hospital HEAR);
- 462.950/467.950 (MED 9 or CALL 1);
- 462.975/467.975 (MED 10 or CALL 2);

462.950-463.19375/467.950-468.19375 (UHF MED CHANNELS ~~1-103~~ 1-10); and

220 MHz, 700MHz, 800MHz, or 900MHz frequency and designated talkgroup or channel identified as part of an agency, jurisdictional, or regional communications plan for ambulance to hospital communications.

1. Patient care communications with medical facilities may not be conducted on the same frequencies or talkgroups as those used for dispatch and on-scene operations.

2. Before establishing direct push-to-talk communications with the receiving medical facility or central medical control, EMS vehicles may be required to dial an access code. Radios in ambulances or advanced life support-equipped, nontransport response vehicles must be programmed or equipped with encoding equipment necessary to activate tone-coded squelched radios at medical facilities to which they transport on a regular basis.

3. Nothing herein prohibits the use of CMRS for primary or secondary communications with medical facilities, provided that the requirements of this section are met.

D. Mutual aid interoperability. An EMS vehicle must have ~~fixed~~ communications equipment that provides direct two-way voice communications capabilities between the EMS vehicle and EMS vehicles of other EMS agencies within the jurisdiction and those EMS agencies with which it has mutual aid agreements. Service may be provided by private mobile radio service (PMRS) or by commercial mobile radio service (CMRS), but requires direct and immediate communications via push-to-talk technology. This requirement may be met by interoperability on a common radio frequency or talkgroup, or by fixed or interactive cross-patching under supervision of an agency dispatch center or governmental PSAP. The means of communications interoperability must be identified in any mutual aid agreements required by these regulations and must comply with the Virginia Interoperability Plan as defined by the Governor's Office of Commonwealth Preparedness.

E. Air ambulance interoperability. A nontransport EMS vehicle or ground ambulance must have ~~fixed~~ communications equipment that provides direct two-way voice communications capabilities between the EMS vehicle and air ambulances designated to serve its primary response area by the State Medevac Plan. An air ambulance must have fixed communications equipment that provides direct two-way voice communications capabilities between the air ambulance, other EMS vehicles in its primary response area, and public safety vehicles or personnel at landing zones on frequencies adopted in accordance with this section. Radio communications must be direct and immediate via push-to-talk technology. This requirement may be met by interoperability on a common radio frequency or talkgroup, or by fixed or interactive cross-patching under supervision of an

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agency dispatch center or governmental PSAP. The frequencies used for this purpose will be those set forth by an agreement among air ambulance providers and EMS agencies for a specific jurisdiction or region, and must be identified in agency, jurisdictional, or regional protocols for access and use of air ambulances. Any nontransport EMS vehicle or ground ambulance not participating in such an agreement must be capable of operating on VHF frequency 155.205 MHz (carrier squelch), which is designated as the Statewide EMS Mutual Aid Frequency. An air ambulance must be capable of operating on VHF frequency 155.205 MHz (carrier squelch) in addition to any other frequencies adopted for jurisdictional or regional interoperability.

F. FCC licensure. An EMS agency shall maintain appropriate FCC radio licensure for all radio equipment operated by the EMS agency. If the FCC radio license for any radio frequency utilized is held by another person, the EMS agency shall have written documentation on file of their assigned authority to operate on such frequencies.

G. In-vehicle communications. An ambulance shall have a means of voice communications (opening, intercom, or radio) between the patient compartment and operator's compartment.

12VAC5-31-800. Nontransport response vehicle specifications.

A. A vehicle maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level (excluding patient transport) shall be permitted as a nontransport response vehicle ~~unless specifically authorized under Part VI (12VAC5-31-2100 et seq.) of this chapter.~~

A nontransport response vehicle may not be used for the transportation of patients except in the case of a major medical emergency. In such an event, the circumstances of the call shall be documented.

B. A nontransport response vehicle must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.

A nontransport response vehicle used for the delivery of advanced life support must have a locking storage compartment or approved locking bracket for the security of ~~medications drugs and medication drug kits.~~ When not in use, ~~medications drugs and medication drug kits~~ must be kept locked in the required storage compartment or approved bracket at all times. The EMS agency shall maintain ~~medications drugs and medication drug kits~~ as specified in these regulations.

1. Sedan/zone car must have an approved locking device attached within the passenger compartment or trunk, inaccessible by the public.

2. Utility vehicle/van must have an approved locking device attached within the vehicle interior, inaccessible by the public.

3. Rescue vehicle/fire apparatus must have an approved locking device attached within the vehicle interior or a locked compartment, inaccessible by the public.

C. A nontransport response vehicle must have a motor vehicle safety inspection performed following completion of conversion and before applying for an EMS vehicle permit.

12VAC5-31-810. Ground ambulance specifications.

A. A vehicle maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level and for the transportation of patients shall be permitted as a ground ambulance.

B. A ground ambulance must be commercially constructed and certified to comply with the current federal specification for the Star of Life ambulance (U.S. General Services Administration KKK-A-1822 standards) as of the date of vehicle construction, with exceptions as specified in these regulations.

C. A ground ambulance must be constructed to provide sufficient space for the safe storage of all required equipment and supplies. ~~+~~ A ground ambulance must have a locking interior storage compartment or approved locking bracket used for the secure storage of ~~medications drugs and medication drug kits~~ that is accessible from within the patient compartment. ~~Medications Drugs and medication drug kits~~ must be kept in a locked storage compartment or approved bracket at all times when not in use. The EMS agency must maintain ~~medications drugs and medication drug kits~~ as specified in these regulations.

~~2. Required equipment and supplies specified in these regulations, excluding those in 12VAC5-31-860 I, J and K, must be available for access and use from inside the patient compartment.~~

12VAC5-31-820. Advanced Life Support Equipment Package life support equipment package.

A. An EMS agency licensed to operate nontransport response vehicles or ground ambulances with ALS personnel shall maintain a minimum of one vehicle equipped with an ALS equipment package of the highest category licensed. ALS equipment packages consist of the following categories:

1. ALS – EMT-enhanced equipment package; and
2. ALS – ~~EMT-intermediate/EMT-paramedic~~ Advanced EMT/EMT-Intermediate/EMT-Paramedic equipment package.

B. ALS equipment packages shall consist of the equipment and supplies as specified in these regulations.

12VAC5-31-830. Neonatal ambulance specifications.

A. A vehicle maintained and operated exclusively for the transport of neonatal patients between medical facilities shall be permitted as a neonatal ambulance. A neonatal ambulance shall not be used for response to out-of-hospital medical emergencies.

B. A neonatal ambulance must be commercially constructed and certified to comply with the current U.S. General Services Administration KKK-A-1822 standards as of the date of vehicle construction.

C. A neonatal ambulance must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.

1. A neonatal ambulance must be equipped to transport two incubators using manufacturer-approved vehicle mounting devices.
2. A neonatal ambulance must have an installed auxiliary power unit that is capable of supplying a minimum of 1.5 Kw of 110VACelectric power. The auxiliary power unit must operate independent of the vehicle with starter and power controls located in the patient compartment.
3. A neonatal ambulance must have a locking interior storage compartment or approved locking bracket used for the secure storage of medications drugs and medication drug kits that is accessible from within the patient compartment. Medications Drugs and medication drug kits

must be kept in a locked storage compartment or approved bracket at all times when not in use. The EMS agency must maintain medications drugs and medication drug kits as specified in these regulations.

4. Required equipment and supplies specified in these regulations must be available for access and use from inside the patient compartment.

12VAC5-31-840. ~~Air ambulance specifications.~~ (Repealed.)

~~A. An aircraft maintained and operated for response to the location of a medical emergency to provide immediate medical care at the basic or advanced life support level and for the transportation of patients shall be permitted as an air ambulance.~~

~~B. An air ambulance must be commercially constructed and certified to comply with the current U.S. Federal Aviation Administration standards as of the date of aircraft construction. An air ambulance must be constructed to provide sufficient space for safe storage of required equipment and supplies specified in these regulations.~~

~~C. Required equipment and supplies specified in these regulations, excluding those in 12VAC5 31 860 I and J, must be available for access and use from inside the patient compartment. A rotary wing air ambulance must be equipped with a 180 degree controllable searchlight of at least 400,000 candle power.~~

12VAC5-31-860. Required vehicle equipment.

REQUIRED VEHICLE EQUIPMENT	Nontransport Vehicle	Ambulance	EMT E Package	EMT I/P Package	Air Ambulance	Neonatal Ambulance
A. Basic life support equipment.						
Automated external defibrillator (AED) with a set of patient pads. This may be a combination device that also has manual defibrillation capability.	1	1				
Pocket mask or disposable airway barrier device with one-way valve.	2	2			1	2
Oropharyngeal airways, set of 6, nonmetallic in infant, child and adult sizes, ranging from 43mm to 100 mm (sizes 0-5).	2	2			1	2
Nasopharyngeal airways, set of 4, varied sizes, with water-soluble lubricant.	1	1			1	1

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Self-inflating bag-valve mask resuscitator with oxygen reservoir in adult size with transparent mask in adult size.	1	1			1	1
Self-inflating bag-valve mask resuscitator with oxygen reservoir in child size with transparent masks in infant and child sizes.	1	1			1	1
B. Oxygen apparatus.						
Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the appropriate flow rate for the period of time it is anticipated oxygen will be needed, but not less than 10 liters per minute for 15 minutes. This unit must be capable of being manually controlled and have an appropriate flowmeter.	1	1			1	1
Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the appropriate flow rate for the period of time it is anticipated oxygen will be needed, but not less than 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single-use humidification device.		1			1	1
High concentration oxygen masks (80% or higher delivery) in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber.	2	4			2	4
Oxygen nasal cannulae, in infant, child and adult sizes. These cannulae must be made of single use soft see-through plastic or rubber.	2	4			2	4

C. Suction apparatus:						
Portable suction apparatus capable of providing a minimum of twenty minutes of continuous operation at a vacuum of 300 millimeters of mercury or greater and free air flow of over 30 liters per minute at the delivery tube. A manually powered device does not meet this requirement.	1	1			1	1
Installed suction apparatus capable of providing a minimum of twenty minutes of continuous operation at a vacuum of 500 millimeters of mercury or greater and free air flow of over 30 liters per minute at the delivery tube.		1			1	1
Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid Tonsil Tip, FR18, FR14, FR 8 and FR 6.	2	2			2	2
D. Patient assessment equipment:						
Stethoscope in adult size.	1	2			1	1
Stethoscope in pediatric size.	1	1			1	1
Stethoscopes in infant and neonate sizes.						2
Sphygmomanometer in child, adult and large adult sizes.	1	1			1	1
Sphygmomanometer in infant size.						2
Vinyl triage tape, rolls, minimum of 150 ft. each of red, black, green and yellow.	1	1				
E. Dressings and supplies:						
First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part.	1	1			1	1

Regulations

Trauma dressings, a minimum of 8" x 10" 5/8 ply when folded, sterile and individually wrapped.	4	4			2	4
4" x 4" gauze pads, sterile and individually wrapped.	24	24			10	24
Occlusive dressings, sterile 3" x 8" or larger.	4	4			2	4
Roller or conforming gauze of assorted widths.	12	12			12	12
Cloth Triangular bandages, 36" x 36" x 51", triangle unfolded.	10	10				
Medical adhesive tape, rolls of 1" and 2".	4	4			4	4
Trauma scissors.	1	1			1	1
Alcohol preps.	12	12			12	12
Emesis basin containers or equivalents.	2	2			2	2
Suspension of Activated Charcoal, 50 grams.	1	1				1
Sterile normal saline for irrigation, 1000-ml containers (or the equivalent volume in other container sizes).	1	4			2	4
F. Obstetrical kits, containing the following:	1	2			1	2
Sterile surgical gloves (pairs).	2	2			2	2
Scissors or other cutting instrument.	1	1			1	1
Umbilical cord ties (10" long) or disposable cord clamps.	4	4			4	4
Sanitary pads.	1	1			1	1
Cloth or disposable hand towels.	2	2			2	2
Soft tipped bulb syringe.	1	1			1	1
G. Personal protection equipment.						
Waterless antiseptic handwash.	1	1			1	1
Exam gloves, nonsterile, pairs in sizes small through extra large.	5	10			5	10

Disposable gowns/coveralls, each in assorted sizes if not one size fits all style.	2	4				4
Faceshield/eyewear.	2	4			2	4
Infectious waste trash bags.	2	4			2	4
H. Linen and bedding.						
Towels, cloth.	2	2			2	2
Pillows.		2				
Pillow cases.		2				
Sheets.		4			2	4
Blankets.	2	2			2	2
Male urinal.		1				
Bedpan with toilet paper.		1				
I. Splints and immobilization devices.						
Rigid cervical collars in sizes small adult, medium adult, large adult and pediatric. If adjustable type adult collars are used, then a minimum of three are sufficient.	2	2			1	2
Traction splint with ankle hitch and stand, or equivalent. Capable of adult and pediatric application.		1				
Padded board splints or equivalent for splinting fractures of the upper extremities.		2			1	
Padded board splints or equivalent for splinting fractures of the lower extremities.		2			1	
Long spineboards 16" x 72" minimum size, with at least four (4) appropriate restraint straps, cravats or equivalent restraint devices for each spine board.		2			1	
Short spineboard 16" x 34" minimum size or equivalent spinal immobilization devices.		1				
Pediatric immobilization device.		1				1

Regulations

Cervical immobilization devices (i.e., set of foam blocks/towels or other approved materials).		2			1	
J. Safety equipment.						
Wheeled ambulance cot with a minimum 350 lb. capacity, three restraint straps and the manufacturer approved vehicle mounting device.		1				
Removable cot or spineboard with a minimum of three restraint straps and the manufacturer approved aircraft mounting device.					1	
"D" Cell or larger flashlight.	1	2	2	2	1	2
Five pound ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket. One accessible to the patient compartment. *FAA requirements must be satisfied by Air Ambulances.*	1	2	2	2	1*	2
"No Smoking" sign located in the patient compartment.		1			1	1
K. Tools and hazard warning devices.						
Adjustable wrench, 10".	1	1				1
Screwdriver, regular #1 size blade.	1	1				1
Screwdriver, Phillips #1 size blade.	1	1				1
Hammer, minimum 2 lb.	1	1				1
Locking pliers, (vise grip type) 10".	1	1				1
Spring loaded center punch.	1	1				
Hazard warning devices (reflective cone, triangle or approved equivalent).	3	3				3
Current U.S. D.O.T. approved Emergency Response Guidebook.	1	1			1	1

L. Advanced life support equipment:						
ECG monitor/manual defibrillator capable of synchronized cardioversion and noninvasive external pacing with capability for monitoring and defibrillating adult and pediatric patients.				1	1	1
ECG monitoring electrodes, set, in adult and pediatric sizes as required by device used.				2	2	
ECG monitoring electrodes, set, in infant size as required by device used.						2
Defibrillation and pacing electrodes in adult and pediatric sizes as required by device used.				2	2	2
Medication kit with all controlled medications authorized for use by the EMS agency's EMT-enhanced personnel and other appropriately licensed advanced level personnel. The medication kit may contain additional medications if the kit is a standardized box utilized by multiple EMS agencies operating under a joint box exchange program.			1			
Medication kit with all controlled medications authorized for use by the EMS agency's EMT-intermediate, EMT-paramedic and other authorized licensed personnel. The medication kit may contain additional medications if the kit is a standardized box utilized by multiple EMS agencies operating under a joint box exchange program.				1	1	1
Assorted intravenous, intramuscular, subcutaneous and other medication delivery devices and supplies as specified by the agency OMD.			1	1	1	1

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M. Advanced airway equipment that must consist of:						
Dual lumen airway device (e.g., EOA, Combi-tube, PTL) or laryngeal mask airway (LMA).			±	±		
Intubation kit to include all of the following items as indicated:			±	±	±	±
Laryngoscope handle with two sets of batteries, adult and pediatric blades in sizes 0-4.			±	±	±	
Laryngoscope handle with two sets of batteries, blades in sizes 0-1.						±
McGill forceps, in adult and pediatric sizes.			±	±	±	
Single use disposable endotracheal tubes in sizes 8.0, 7.0, 6.0, 5.0, 4.0, 3.0 and 2.5mm or equivalent sizes.			≥	≥	≥	
Single use disposable endotracheal tubes in sizes 4.0, 3.0 and 2.5mm or equivalent sizes.						≥
Rigid adult stylettes.			≥	≥	≥	
10-cc disposable syringes.			≥	≥	≥	≥
5-ml of water soluble surgical lubricant.			±	±	±	±

A. A nontransport vehicle shall carry the following:

1. Basic life support equipment.

- a. Automated external defibrillator (AED) with two sets of patient pads. This may be a combination device that also has manual defibrillation capability (1).
- b. Pocket mask or disposable airway barrier device with one-way valve (2).
- c. Oropharyngeal airways set of six, nonmetallic in infant, child, and adult sizes ranging from 43mm to 100mm (sizes 0-5) (1 each).
- d. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant (1).
- e. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in adult size with transparent mask in adult and child sizes (1).

- f. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in infant size with transparent masks in infant size (1).

2. Oxygen apparatus.

- a. Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the approximate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 15 minutes. The unit must be capable of being manually controlled and have an appropriate flowmeter (1).
- b. High concentration oxygen masks, 80% or higher delivery, in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber (2 each).
- c. Oxygen nasal cannula in child and adult sizes. This cannula must be made of single use soft see-through plastic or rubber (2 each).

3. Suction apparatus.

- a. Battery powered portable suction apparatus. A manually powered device does not meet this requirement (1).
- b. Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid tonsil tip, FR18, FR14, FR8 and FR6 (2 each).

4. Patient assessment equipment.

- a. Stethoscope in adult size (1).
- b. Stethoscope in pediatric size (1).
- c. Sphygmomanometer in child, adult, and large adult sizes (1 each).
- d. Vinyl triage tape rolls of red, black, green, and yellow (1 each).
- e. 25 OEMS approved triage tags.
- f. Penlight (1).
- g. Medical protocols (1).

5. Dressing and supplies.

- a. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part (1).
- b. Trauma dressings, a minimum of 8" x 10" - 5/8 ply when folded, sterile and individually wrapped (4).
- c. 4" x 4" gauze pads, sterile and individually wrapped (24).
- d. Occlusive dressings, sterile 3" x 8" or larger (4).
- e. Roller or conforming gauze of assorted widths (12).
- f. Cloth triangular bandages, 36" x 36" x 51", triangle unfolded (10).
- g. Medical adhesive tape, rolls of 1" and 2" (4).
- h. Trauma scissors (1).
- i. Emesis basin containers or equivalents (2).
- j. Sterile normal saline for irrigation, 1000 ml containers (or equivalent volume in other container sizes) (1).
- k. Oral glucose (1).

6. Obstetrical kit (1). It must contain the following:

- a. Pairs of sterile surgical gloves (2).
- b. Scissors or other cutting instrument (1).
- c. Umbilical cord ties (10" long) or disposable cord clamps (4).

- d. Sanitary pads (1).
- e. Cloth or disposable hand towels (2).
- f. Soft-tipped bulb syringe (1).

7. Personal protection equipment.

- a. Waterless antiseptic hand wash (1).
- b. Exam gloves, nonsterile, pairs in sizes small through extra large (5 each).
- c. Disposable gowns or coveralls, each in assorted sizes if not one size fits all style (2).
- d. Face shield or eyewear (2).
- e. Infectious waste trash bags (2).

8. Linen and bedding.

- a. Towels, cloth (2).
- b. Blankets (2).

9. Splints and immobilization devices.

Rigid cervical collars in sizes small adult, medium adult, large adult, and pediatric (2 each). If adjustable type collars are used, then a minimum of three are sufficient.

10. Safety equipment.

- a. "D" cell or larger flashlight (1).
- b. Five-pound Class ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket (1).
- c. Safety apparel (2).
- d. Sharps container (1).

11. Tools and hazard warning devices.

- a. Adjustable wrench, 10" (1).
- b. Screwdriver, regular #1 size blade (1).
- c. Screwdriver, Phillips #1 size blade (1).
- d. Spring loaded center punch (1).
- e. Hazard warning devices such as a reflective cone, triangle, or approved equivalent (3 each).
- f. Current USDOT approved Emergency Response Guidebook (1).

B. A ground ambulance shall carry the following:

1. Basic life support equipment.

- a. Automated external defibrillator (AED) with two sets of patient pads. This may be a combination device that also has manual defibrillation capability (1).

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b. Pocket mask or disposable airway barrier device with one-way valve (2).

c. Oropharyngeal airways set of six, nonmetallic in infant, child, and adult sizes ranging from 43mm to 100mm (sizes 0-5) (1 each).

d. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant (1).

e. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in adult size with transparent mask in adult and child sizes (1 each).

f. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in infant size with transparent masks in infant size (1).

2. Oxygen apparatus.

a. Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the approximate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 15 minutes. The unit must be capable of being manually controlled and have an appropriate flowmeter (1).

b. Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the appropriate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single-use humidification device (1).

c. High concentration oxygen masks, 80% or higher delivery, in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber (4 each).

d. Oxygen nasal cannula in child and adult sizes. This cannula must be made of single use soft see-through plastic or rubber (4 each).

3. Suction apparatus.

a. Battery powered portable suction apparatus. A manually powered device does not meet this requirement (1).

b. Installed suction apparatus capable of providing a minimum of 20 minutes of continuous operation (1).

c. Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid tonsil tip, FR18, FR14, FR8 and FR6 (2 each).

4. Patient assessment equipment.

a. Stethoscope in adult size (2).

b. Stethoscope in pediatric size (1).

c. Sphygmomanometer in child, adult, and large adult sizes (1 each).

d. Vinyl triage tape rolls of red, black, green, and yellow (1 each).

e. 25 OEMS approved triage tags.

f. Penlight (1).

g. Medical protocols (1).

5. Dressing and supplies.

a. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part (1).

b. Trauma dressings, a minimum of 8" x 10" - 5/8 ply when folded, sterile and individually wrapped (4).

c. 4" x 4" gauze pads, sterile and individually wrapped (24).

d. Occlusive dressings, sterile 3" x 8" or larger (4).

e. Roller or conforming gauze of assorted widths (12).

f. Cloth triangular bandages, 36" x 36" x 51", triangle unfolded (10).

g. Medical adhesive tape, rolls of 1" and 2" (4).

h. Trauma scissors (1).

i. Alcohol preps (12).

j. Emesis basin containers or equivalents (2).

k. Sterile normal saline for irrigation, 1000 ml containers (or equivalent volume in other container sizes) (4).

l. Oral glucose (2).

6. Obstetrical kit (2). It must contain the following:

a. Pairs of sterile surgical gloves (2).

b. Scissors or other cutting instrument (1).

c. Umbilical cord ties (10" long) or disposable cord clamps (4).

d. Sanitary pads (1).

e. Cloth or disposable hand towels (2).

f. Soft-tipped bulb syringe (1).

7. Personal protection equipment.

a. Waterless antiseptic hand wash (1).

b. Exam gloves, nonsterile, pairs in sizes small through extra large (10 each).

c. Disposable gowns or coveralls, each in assorted sizes if not one size fits all style (4).

d. Face shield or eyewear (4).

e. Infectious waste trash bags (4).

8. Linen and bedding.

a. Towels, cloth (2).

b. Pillows (2).

c. Pillow cases (2).

d. Sheets (4).

e. Blankets (2).

f. Male urinal (1).

g. Bedpan with toilet paper (1).

9. Splints and immobilization devices.

a. Rigid cervical collars in sizes small adult, medium adult, large adult, and pediatric (2 each). If adjustable type collars are used, then a minimum of three are sufficient.

b. Traction splint with ankle hitch and stand in adult and pediatric size (1 each) or an equivalent traction splint device capable of adult and pediatric application.

c. Padded board splints or equivalent for splinting fractures of the upper extremities (2).

d. Padded board splints or equivalent for splinting fractures of the lower extremities (2).

e. Long spine boards 16" x 72" minimum size with at least four appropriate restraint straps, cravats, or equivalent restraint devices for each spine board (2).

f. Short spine board 16" x 34" minimum size or equivalent spinal immobilization devices (1).

g. Pediatric immobilization device (1).

h. Cervical immobilization devices (i.e., set of foam blocks, towels or other approved materials) (2).

10. Safety equipment.

a. Wheeled ambulance cot with a minimum 350 lb. capacity, three restraint straps, and the manufacturer-approved vehicle mounting device (1).

b. "D" cell or larger flashlight (2).

c. Five-pound Class ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket. One must be accessible to the patient compartment (2).

d. Safety apparel (2).

e. Sharps container, mounted or commercially secured (1).

f. "No Smoking" sign located in the patient compartment (1).

11. Tools and hazard warning devices.

a. Adjustable wrench, 10" (1).

b. Screwdriver, regular #1 size blade (1).

c. Screwdriver, Phillips #1 size blade (1).

d. Spring loaded center punch (1).

e. Hazard warning device (i.e., reflective cone, triangle, or approved equivalent) (3 total).

f. Current USDOT approved Emergency Response Guidebook (1).

C. A neonatal ambulance shall carry the following:

1. Basic life support equipment.

a. Pocket mask or disposable airway barrier device with one-way valve (2).

b. Oropharyngeal airways set of six, nonmetallic in infant, child, and adult sizes ranging from 43mm to 100mm (sizes 0-5) (2 each).

c. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant (1).

d. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in adult size with transparent mask in adult size (1).

e. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in child size with transparent masks in child size (1).

f. Self-inflating bag-valve-mask resuscitation with oxygen reservoir in infant size with transparent masks in infant size (1).

2. Oxygen apparatus.

a. Portable oxygen unit containing a quantity of oxygen sufficient to supply the patient at the approximate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 15 minutes. The unit must be capable of being manually controlled and have an appropriate flowmeter (1).

b. Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the appropriate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single-use humidification device (1).

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c. High concentration oxygen masks, 80% or higher delivery, in child and adult sizes. These masks must be made of single use soft see-through plastic or rubber (4 each).

d. Oxygen nasal cannula in child and adult sizes. This cannula must be made of single use soft see-through plastic or rubber (4 each).

3. Suction apparatus.

a. Battery powered portable suction apparatus. A manually powered device does not meet this requirement (1).

b. Installed suction apparatus capable of providing a minimum of 20 minutes of continuous operation (1).

c. Suction catheters that are sterile, individually wrapped, disposable, and made of rubber or plastic in sizes as follows: Rigid tonsil tip, FR18, FR14, FR8 and FR6 (2 each).

4. Patient assessment equipment.

a. Stethoscope in adult size (1).

b. Stethoscope in pediatric size (1).

c. Stethoscopes in infant and neonate sizes (2 each).

d. Sphygmomanometer in child, adult, and large adult sizes (1 each).

e. Sphygmomanometer in infant size (2).

5. Dressing and supplies.

a. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part (1).

b. Trauma dressings, a minimum of 8" x 10" - 5/8 ply when folded, sterile and individually wrapped (4).

c. 4" x4" gauze pads, sterile and individually wrapped (24).

d. Occlusive dressings, sterile 3" x 8" or larger (4).

e. Roller or conforming gauze of assorted widths (12).

f. Medical adhesive tape, rolls of 1" and 2" (4).

g. Trauma scissors (1).

h. Alcohol preps (12).

i. Emesis basin containers or equivalents (2).

j. Sterile normal saline for irrigation, 1000 ml containers (or equivalent volume in other container sizes) (4).

6. Obstetrical kit (2). It must contain the following:

a. Pairs of sterile surgical gloves (2).

b. Scissors or other cutting instrument (1).

c. Umbilical cord ties (10" long) or disposable cord clamps (4).

d. Sanitary pads (1).

e. Cloth or disposable hand towels (2).

f. Soft-tipped bulb syringe (1).

7. Personal protection equipment.

a. Waterless antiseptic hand wash (1).

b. Exam gloves, nonsterile, pairs in sizes small through extra large (10 each).

c. Disposable gowns or coveralls, each in assorted sizes if not one size fits all style (4).

d. Face shield or eyewear (4).

e. Infectious waste trash bags (4).

8. Linen and bedding.

a. Towels, cloth (2).

b. Sheets (4).

c. Blankets (2).

9. Splints and immobilization devices.

a. Rigid cervical collars in sizes small adult, medium adult, large adult, and pediatric (2 each). If adjustable type collars are used, then a minimum of three are sufficient.

b. Pediatric immobilization device (1).

10. Safety equipment.

a. "D" cell or larger flashlight (2).

b. Five-pound Class ABC or equivalent fire extinguisher securely mounted in the vehicle in a quick release bracket. One must be accessible to the patient compartment (2).

c. Safety apparel (2).

d. Sharps container, mounted or commercially secured (1).

e. "No Smoking" sign located in the patient compartment (1).

11. Tools and hazard warning devices.

a. Adjustable wrench, 10" (1).

b. Screwdriver, regular #1 size blade (1).

c. Screwdriver, Phillips #1 size blade (1).

d. Spring loaded center punch (1).

e. Hazard warning devices (reflective cone, triangle or approved equivalent) (3 each).

f. Current USDOT approved Emergency Response Guidebook (1).

D. Advanced life support equipment package.

1. EMT enhanced package.

a. Drug kit with all controlled drugs authorized for use by the EMS agency's EMT-Enhanced personnel and other appropriately certified advanced level personnel. The drug kit may contain additional drugs if the kit is a standardized box utilized by multiple EMS agencies operating under a joint drug exchange program (1).

b. Assorted intravenous, intramuscular, subcutaneous, and other drug delivery devices and supplies as specified by the agency OMD (1).

2. Advanced EMT/EMT-Intermediate/Paramedic package.

a. Electrocardiogram (ECG) monitor and manual defibrillator capable of synchronized cardioversion and noninvasive external pacing with capability for monitoring and defibrillating adult and pediatric patients (1).

b. ECG monitoring electrodes in adult and pediatric sizes as required by device used. (2 set each).

c. Defibrillation and pacing electrodes in adult and pediatric sizes as required by device used (2 set each).

d. Drug kit with all controlled drugs authorized for use by the EMS agency's Advanced EMT, EMT-Intermediate, EMT-Paramedic, and other authorized licensed personnel. The drug kit may contain additional drugs if the kit is a standardized box utilized by multiple EMS agencies operating under a joint drug exchange program (1).

e. Assorted intravenous, intramuscular, subcutaneous, and other drug delivery devices and supplies as specified by the agency OMD (1).

f. Pediatric assessment guides.

3. Neonatal ambulance.

a. ECG monitor and manual defibrillator capable of synchronized cardioversion and noninvasive external pacing with capability for monitoring and defibrillating adult and pediatric patients (1).

b. ECG monitoring electrodes in infant size as required by device used (2 sets).

c. Defibrillation and pacing electrodes in adult and pediatric sizes as required by device used (2 set each).

d. Drug kit with all controlled drugs authorized for use by the EMS agency's Advanced EMT, EMT-

Intermediate, EMT-Paramedic and other authorized licensed personnel. The drug kit may contain additional drugs if the kit is a standardized box utilized by multiple EMS agencies operating under a joint drug exchange program (1).

e. Assorted intravenous, intramuscular, subcutaneous, and other drug delivery devices and supplies as specified by the agency OMD (1).

4. Advanced airway equipment (EMT-Enhanced, Advanced EMT, EMT-Intermediate/Paramedic package).

a. Secondary airway device (e.g., combitube type or supra-glottic devices) or laryngeal mask airway (LMA) (1).

b. Intubation kit to include all of the following items as indicated:

(1) Laryngoscope handle with two sets of batteries, adult and pediatric blades in sizes 0-4 (1 set each).

(2) Magill forceps in adult and pediatric sizes (1 each).

(3) Single use disposable endotracheal tubes in sizes 8.0, 7.0, 6.0, 5.0, 4.0, 3.0, and 2.5m or equivalent sizes (2 each).

(4) Rigid adult stylettes (2).

(5) 10 cc disposable syringes (2).

(6) 5 ml of water soluble surgical lubricant (1).

(7) Secondary confirmation device such as esophageal detection devices, colorimetric evaluation devices, or equivalent (2).

5. Advanced airway neonatal equipment. Intubation kit to include all of the following items as indicated:

a. Laryngoscope handle with two sets of batteries, blades in sizes 0-1 (1 set each).

b. Single-use disposable endotracheal tubes in sizes 4.0, 3.0, and 2.5mm or equivalent sizes (2 each).

c. 10 cc disposable syringes (2).

d. 5 ml of water soluble surgical lubricant (1).

e. Secondary confirmation device such as esophageal detection devices, colorimetric evaluation devices, or equivalent (2).

Article 4

Air Medical Regulations, Rotor and Fixed Wing Operations

12VAC5-31-870 to 12VAC5-31-890. [Reserved]
Application for agency licensure.

A. General provisions. Air medial public service agencies will meet or exceed Federal Aviation Regulations, 14 CFR

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Part 91, and commercial operators will meet or exceed 14 CFR Part 135.

B. Interruption of service (rotor wing only). The air medical service shall notify the Office of EMS of temporary discontinuation of service from any base expected to last 24 hours or greater.

12VAC5-31-875. Operations and safety.

Operational policies must be present to address the following areas pursuant to medical flight personnel:

1. Hearing protection.
2. Protective clothing and dress codes relative to:
 - a. Mission type; and
 - b. Infection control.
3. Flight status during pregnancy.
4. Flight status during acute illness.
5. Flight status while taking medications.

12VAC5-31-880. [Reserved] Air medical service personnel classifications.

Air medical service personnel classifications are as follows:

1. Air medical crew (rotary).
 - a. A pilot-in-command in accordance with current FAA requirements.
 - b. An attendant-in-charge shall be an air medical specialist who must be one of the following:
 - (1) A physician;
 - (2) A registered nurse or physician assistant licensed for a minimum of two years with specialized air medical training and possessing the equivalent skills of an Emergency Medical Technician-Paramedic;
 - (3) An Emergency Medical Technician-Paramedic, certified for a minimum of two years with specialized air medical training; or
 - (4) Any other health care personnel with equivalent training or experience as approved by the Office of EMS.
 - c. An attendant shall be at a minimum a certified EMT-Paramedic.
2. Air medical crew (fixed wing).
 - a. A pilot-in-command in accordance with current FAA requirements.
 - b. An attendant-in-charge shall be an air medical specialist who shall be one of the following:
 - (1) A physician;

(2) A registered nurse or physician assistant licensed for a minimum of two years with specialized air medical training;

(3) An Emergency Medical Technician certified for a minimum of two years with specialized air medical training; or

(4) Any other health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant shall be an Emergency Medical Technician-Paramedic or an equivalent approved by the Office of EMS.

3. Specialty care mission providers.

a. The agency shall have in place policies that identify the crew composition for each specialty mission type that it is willing to perform and are consistent with industry standards. These policies shall be approved by the agency OMD and have a method of continuously monitoring adherence to those policies.

b. The specialty care team must minimally consist of a physician, registered nurse or other specialist as the primary caregiver whose expertise must be consistent with the needs of the patient, per the agency's policy required in subdivision 3 a of this section.

c. All specialty care team members must have received an orientation to the air medical service which includes (i) in-flight treatment protocols, (ii) general aircraft safety and emergency procedures, (iii) operational policies, and (iv) infection control, altitude physiology, and emergency procedures annually.

d. Specialty care mission personnel must be accompanied by at least one regularly scheduled air medical staff member of the air medical service.

4. Staffing for specific mission types.

a. Prehospital scene responses - consists of the pilot-in-command, attendant-in-charge who shall be an EMT-Paramedic, and an attendant.

b. Inter-facility transports.

(1) ALS - consists of the pilot-in-command, attendant-in-charge, and an attendant.

(2) For fixed wing, the attendant may be a BLS provider.

(3) Critical care - consists of the pilot-in-command, attendant-in-charge, and an attendant. A member of the medical crew shall be a physician, physician assistant, or a registered nurse.

12VAC5-31-885. Training.

A. The air medical agency shall have a planned and structured program in which all medical transport personnel

must participate. Competency and currency must be ensured and documented through relevant continuing education programs or certification programs listed in this section. Training and continuing education programs will be guided by each air medical transport service's mission statement and medical direction. Measurable objectives shall be developed and documented for each experience.

B. Pilot initial training requirements. In addition to FAA requirements pilots must have the following:

1. Orientation to the hospital or health care system associated with the air medical service.
2. Orientation to infection control, medical systems installed on the aircraft, and patient loading and unloading procedures.
3. Orientation to the EMS and public service agencies unique to the specific coverage area (fixed wing excluded).

C. Registered nurse training requirements.

1. Valid unrestricted license to practice nursing in Virginia.
2. Cardio-Pulmonary Resuscitation (CPR) - documented evidence of current CPR certification according to the American Heart Association (AHA) standards or equivalent as approved by OEMS.
3. Advanced Cardiac Life Support (ACLS) - documented evidence of current ACLS according to the AHA or equivalent as approved by OEMS.
4. Pediatric Advanced Life Support (PALS) - documented evidence of current PALS or equivalent education.
5. Neonatal Resuscitation Program (NRP) - documented evidence of current NRP according to the AHA or American Academy of Pediatrics (AAP) or equivalent education within one year of hire. (fixed wing, mission specific).
6. EMT-B or equivalent education within six months of hire (fixed wing excluded).

D. Paramedic training requirements.

1. Valid Virginia Paramedic certification.
2. CPR - documented evidence of current CPR certification according to the AHA standards or equivalent as approved by OEMS.
3. ACLS - documented evidence of current ACLS certification according to the AHA or equivalent as approved by OEMS.
4. PALS - documented evidence of current PALS or equivalent education.
5. NRP - documented evidence of current NRP according to the AHA or AAP or equivalent education. (fixed wing, mission specific).

E. Minimum initial training for air medical crew members.

1. Didactic component of initial education - shall be specific for the mission statement and scope of care of the medical transport service. Measurable objectives shall be developed and documented for each experience by the program.

Minimum training for all air medical crew members, including the OMD, shall include:

- a. Altitude physiology and stressors of flight.
- b. Air medical resource management.
- c. Aviation - aircraft orientation, safety, in-flight procedures, and general aircraft safety including depressurization procedures for fixed wing.
- d. Cardiology.
- e. Disaster and triage.
- f. EMS radio communications.
- g. Hazardous materials recognition and response.
- h. External pacemakers, automatic implantable cardiac defibrillator (AICD), and central lines.
- i. High risk obstetric emergencies (bleeding, medical, trauma).
- j. Infection control.
- k. Mechanical ventilation and respiratory physiology for adult, pediatric, and neonatal patients as it relates to the mission statement and scope of care of the medical transport service specific to the equipment.
- l. Metabolic or endocrine emergencies.
- m. Multi-trauma (adult trauma and burns).
- n. Neuro.
- o. Pediatric medical emergencies.
- p. Pediatric trauma.
- q. Pharmacology (specialty application).
- r. Quality management - didactic education that supports the medical transport services mission statement and scope of care of the medical transport service.
- s. Respiratory emergencies.
- t. Scene management, rescue and extrication.
- u. Survival training.
- v. Toxicology.

2. Additional training for critical care air medical crew members, including paramedics, RNs, MDs, and the air

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medical services OMD shall include within their mission profile:

- a. Hemodynamic monitoring.
- b. Intra-aortic balloon pump.
- c. Pulmonary and arterial catheters.
- d. Ventricular assist devices.
- e. Extracorporeal membrane oxygenation (ECMO).

3. Clinical component of initial education. Clinical experiences shall include the following points (experiences shall be specific to the mission statement and scope of care of the medical transport service). Measurable objectives shall be developed and documented for each experience listed below reflecting hands-on experience versus observation only (fixed wing excluded).

- a. Advanced airway management.
- b. Basic care for pediatrics, neonatal and obstetrics.
- c. Critical care.
- d. Emergency care.
- e. Invasive procedures on mannequin equivalent for practicing invasive procedures.
- f. Pediatric critical care.
- g. Prehospital care.

4. Annual continuing education requirements. Continuing education or staff development programs shall include reviews or updates for all air medical crew members and the agency OMD on the following areas:

- a. Aviation safety issues.
- b. Altitude physiology.
- c. Air medical resource management.
- d. Hazardous materials recognition and response.
- e. Invasive procedures labs.
- f. Management of emergency or critical care adults, pediatric, and neonatal patients (medical and trauma).
- g. Survival training.

12VAC5-31-890. [Reserved] Equipment.

A. Aircraft equipment.

- 1. General aircraft inspection requirements.
 - a. Current FAA documented compliance.
 - b. Current EMS permit posted.
 - c. Interior and supplies clean and sanitary.
 - d. Exterior clean.

- e. Equipment in good working order.
- f. Current USDOT Emergency Response Book.

2. Aircraft warning devices.

180 degree controllable searchlight 400,000 candle power (fixed wing excluded).

3. Design and dimensions.

- a. All interior edges and corners padded.
- b. Surfaces easily cleaned and nonstainable.
- c. Security restraints for stretcher to aircraft.
- d. Climate controlled environment for operator and patient care compartments.
- e. The service's mission and ability to transport two or more patients shall not compromise the airway or stabilization or the ability to perform emergency procedures on any on-board patient.

4. Aircraft markings.

- a. Lettering is minimum three inches in height.
- b. Name of agency aircraft is permitted on both sides, three inches in height, contrasting color.

5. Aircraft communications.

- a. The aircraft shall be equipped with a functioning emergency locator transmitter (ELT).
- b. Attendant-in-charge to medical control (fixed wing excluded).
- c. Patient compartment to pilot.
- d. The pilot must be able to control and override radio transmissions from the cockpit in the event of an emergency situation.
- e. The flight crew must be able to communicate internally.
- f. Cellular phones may not be used to satisfy these requirements.

6. Aircraft safety equipment.

- a. Head strike envelope - Helmets shall be worn by all routine flight crews and scheduled specialty teams.
- b. Seatbelts for all occupants.
- c. Flashlight.
- d. Fire extinguisher mounted in a quick release bracket or other FAA approved fire suppression system.
- e. All items secured to prevent movement while the air ambulance is in motion.
- f. "No Smoking" sign posted.

g. The aircraft shall be equipped with survival gear specific to the coverage area and the number of occupants.

h. Survival kit to include signaling capabilities and shelter.

i. Safety apparel. (3 minimum)

j. All items shall be capable of being secured.

B. Medical equipment. Any in-service air ambulance shall be configured in such a way that the medical transport personnel can provide patient care consistent with the mission statement and scope of care of the medical transport service.

1. General patient care equipment.

a. A minimum of one stretcher shall be provided that can be carried to the patient and properly secured to the aircraft.

(1) The stretcher shall be age appropriate and full length in the supine position.

(2) The stretcher shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available. (1)

(3) The head of the stretcher shall be capable of being elevated for patient care and comfort.

b. Biohazard container for contaminated sharp objects (ALS), secured or mounted. (1)

c. Waterless antiseptic hand wash. (1)

d. Exam gloves, nonsterile, pairs in sizes small through extra large (small, medium, large, and extra large), if not one size fits all. (5)

e. Face shield or eyewear. (2)

f. Infectious waste trash bags. (2)

g. Linen: towels, blankets, and sheets. (2 each)

2. Basic life support air ambulance equipment requirements.

a. Roller or conforming gauze of assorted widths. (12)

b. Medical adhesive tape, rolls of 1" and 2". (4)

c. Trauma scissors. (1)

d. Trauma dressings, minimum of 8" x 10"-5/8 ply, sterile, individually wrapped. (2)

e. Sterile 4" x 4" gauze pads, individually wrapped. (10)

f. Occlusive dressings, sterile 3" x 8" or larger. (2)

g. Oropharyngeal airways, one of each sizes 0-5 wrapped or in closed container. (1 set)

h. Nasopharyngeal airways set of four, varied sizes, with water soluble lubricant. (1 set)

i. Bag valve mask with oxygen attachment, adult size, with transparent mask. (1)

j. Bag valve mask with oxygen attachment, child size, with transparent mask. (1)

k. BVM infant mask. (1)

l. Pocket mask. (1)

m. Portable O₂ unit containing a quantity of oxygen sufficient to supply the patient at the appropriate flow rate for the period of time it is anticipated oxygen will be needed but not less than 10 liters per minute for 15 minutes. The unit must be manually controlled and have an approved flow meter.

n. Installed oxygen system containing a sufficient quantity of oxygen to supply two patient flowmeters at the approximate flow rate for the period of time it is anticipated oxygen will be needed, but not less than 10 liters per minute for 30 minutes. This unit must be capable of being manually controlled, have two flowmeters, and have an attachment available for a single use humidification device.

o. O₂ high concentrate mask and cannula, child and adult. (2 each)

p. Pocket mask. (1)

q. Installed suction apparatus capable of providing a minimum of 20 minutes of continuous operation. (1)

r. Battery powered portable suction apparatus. A manually powered device does not meet this requirement. (1)

s. Suction catheters, wrapped, rigid tonsil tip, FR18, FR14, FR8 and FR6. (2 each)

t. Stethoscope, adult, and pediatric sizes. (1 each)

u. BP cuff, pediatric, adult, and large adult. (1 each)

v. Obstetrics kit containing sterile surgical gloves (2 pair), scissors or other cutting instrument (1), umbilical cord ties (10" long) or disposable cord clamps (4), sanitary pad (1), cloth or disposable hand towels (2), and soft tip bulb syringe (1).

w. Emesis basin or equivalent container. (2)

x. Removable stretcher or spine board with a minimum of 3 restraint straps and manufacturer approved aircraft mounting device. (1)

y. Rigid cervical collars in small adult, medium adult, large adult, and pediatric sizes (1 each). If adjustable adult collars are utilized, a minimum of three.

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z. Cervical immobilization device. (1)

aa. Pediatric immobilization device. (1)

bb. Immobilization devices for upper and lower extremities. (1 each)

cc. First aid kit of durable construction and suitably equipped. The contents of this kit may be used to satisfy these supply requirements completely or in part. (1)

3. Advanced life support air ambulance equipment requirements.

a. A drug kit with controlled medications authorized by the agency's OMD for use by paramedic personnel. (1)

b. Lockable storage for drug kit and supplies.

c. All drugs shall be in date.

d. Intubation kit with two sets of batteries, adult and pediatric blades and handles (sizes 0-4) (1 set), Magill forceps in adult and pediatric sizes (1 each), disposable tubes in sizes 8.0, 7.0, 6.0, 5.0, 4.0, 3.0, 2.5, or equivalent (2 each), rigid adult stylettes (2 each), 10cc disposable syringe (2), and 5ml of water soluble lubricant (1).

e. There shall be an approved secondary airway device as prescribed by the agency's OMD. (1)

f. Assorted IV, IM, subcutaneous, and other drug and IV fluid administration delivery devices and supplies as specified by agency's OMD.

g. IV infusion pump. (1)

h. Defibrillator, cardioversion and external pacing capable. (1)

i. EKG monitor. (1)

j. Monitor electrodes, with adult and pediatric defibrillation pads. (2 each)

k. Adult and pediatric external pacing pads. (2 each)

l. Noninvasive blood pressure monitoring device capable of adult and pediatric use. (1)

m. Continuous end tidal CO₂ monitoring device. (1)

n. Pulse oximetry monitoring device. (1)

4. Critical care package air ambulance equipment requirements. Items listed are in addition to the air ambulance ALS package.

a. Invasive pressure monitoring equipment. (1)

b. Internal pacemaker and pulse generator immediately available. (1)

c. Ventilator as appropriate for mission.

d. IV infusion pumps. (2)

Article 4 5

EMS Personnel Requirements and Standard of Conduct

12VAC5-31-900. General requirements.

EMS personnel shall meet and maintain compliance with the following general requirements:

1. Be a minimum of 16 years of age. (An EMS agency may have associated personnel who are less than 16 years of age. This person is not allowed to participate in any EMS response; or ~~any training program~~ or other activity that may involve exposure to a communicable disease, hazardous chemical or other risk of serious injury.)

2. Be clean and neat in appearance;

3. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury and/or assess signs and symptoms.

4. Have no physical or mental impairment that would render him unable to perform all practical skills required for that level of training. Physical and mental performance skills include the ability of the individual to function and communicate independently to perform appropriate patient care, physical assessments and treatments without the need for an assistant.

5. Provide to the Office of EMS within 15 days, any change in contact information to include mailing address, electronic notification such as email, or telephone number.

12VAC5-31-910. Criminal or enforcement history.

~~EMS personnel shall meet and maintain compliance with the following general requirements~~ A. General denial. Application for or certification of individuals convicted of certain crimes present an unreasonable risk to public health and safety. Thus, applications for certification by individuals convicted of the following crimes will be denied in all cases:

1. ~~Has never been convicted or found guilty of any crime~~ Felonies involving sexual misconduct where the lack of affirmative victim's failure to affirmatively consent by the victim is an element of the crime, such as forcible rape.

2. ~~Has never been convicted of a felony~~ Felonies involving the sexual or physical abuse of children, the elderly or the infirm, such as sexual misconduct with a child, making or distributing child pornography or using a child in a sexual display, incest involving a child, or assault on an elderly or infirm person.

3. ~~Has never been convicted or found guilty of any~~ Any crime (including abuse, neglect, theft from, or financial exploitation) of a person entrusted to his care or protection in which the victim is a an out-of-hospital patient or is a patient or resident of a health care healthcare facility

including abuse of, neglect of, theft from, or financial exploitation of a person entrusted to the care or protection of the applicant.

4. Serious crimes of violence against persons such as assault or battery with a dangerous weapon, aggravated assault and battery, murder or attempted murder, manslaughter except involuntary manslaughter, kidnapping, robbery of any degree, or arson.

5. Has been subject to a permanent revocation of license or certification by another state EMS office or other recognized state or national healthcare provider licensing or certifying body.

B. Presumptive denial. Application for or current certification by individuals in the following categories will be denied except in extraordinary circumstances, and then will be granted only if the applicant or provider establishes by clear and convincing evidence that certification will not jeopardize public health and safety.

1. Application for certification by individuals who have been convicted of any crime and who are currently incarcerated, on work release, on probation, or on parole.

2. Application for or certification by individuals convicted of crimes in the following categories unless at least five years have passed since the conviction or five years have passed since release from custodial confinement whichever occurs later:

a. Crimes involving controlled substances or synthetics, including unlawful possession or distribution or intent to distribute unlawfully Schedule I through V drugs as defined by the Virginia Drug Control Act (§ 54.1-3400 seq. of the Code of Virginia).

b. Serious crimes against property, such as grand larceny, burglary, embezzlement, or insurance fraud.

c. Any other crime involving sexual misconduct.

4. Has never been convicted or found guilty of any crime involving the use, possession, or distribution of illegal drugs except that the person is eligible for affiliation five years after the date of final release if no additional crimes of this type have been committed during that time.

5. Has never been convicted or found guilty of any other act that is a felony except that the felon is eligible for affiliation five years after the date of final release if no additional felonies have been committed during that time.

6. ~~3.~~ Is not currently under any disciplinary or enforcement action from another state EMS office or other recognized state or national healthcare provider licensing or certifying body. Personnel subject to these disciplinary or enforcement actions may be eligible for certification provided there have been no further disciplinary or

enforcement actions for five years prior to application for certification in Virginia.

7. Has never been subject to a permanent revocation of license or certification by another state EMS office or other recognized state or national healthcare provider licensing or certifying body.

B. C. Permitted vehicle operations. Agencies are responsible for the monitoring of compliance with all driving criteria set forth in these regulations.

1. Personnel operating OEMS permitted vehicles shall possess a valid operator's or driver's license from his state of residence.

2. Personnel operating OEMS permitted vehicles shall not have been convicted on any charge that is a felony as described in subsections A and B of this section.

3. Personnel who as the proximate result of having operated an OEMS permitted vehicle are (i) convicted of driving under the influence of alcohol or drugs or (ii) sentenced or assigned to any alcohol safety action program or any driver alcohol rehabilitation program pursuant to the Code of Virginia shall be prohibited from operating any OEMS permitted vehicle. Personnel or agencies shall be required to report these situations to OEMS.

4. Agencies shall develop and maintain policies that address driver eligibility, record review, and vehicle operation. Such policies must minimally address:

a. Driving education or training required for personnel to include information on the agency's policy content;

b. Safe operation of vehicles;

c. Agency driving record review procedures;

d. Requirement for immediate agency notification by personnel regarding any convictions, regardless of the state where an infraction occurred or changes to his operator's or driver's license. The immediate agency notification shall be defined as no more than 10 calendar days following the conviction date; and

e. Identification of internal mechanisms regarding agency level actions for driver penalties (i.e., probation or suspension of driving privileges).

EMS personnel may not act as an operator of an EMS vehicle if he has been convicted upon a charge of driving under the influence of alcohol or drugs, convicted of a felony or assigned to any alcohol safety action program or driver alcohol rehabilitation program pursuant to § 18.2-271.1 of the Code of Virginia, hit and run, or operating on a suspended or revoked license within the past five years. A person having any of these convictions in Virginia or another state may be eligible for reinstatement as an operator after five years and after successful completion of an approved emergency

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~~vehicle operator's course (EVOC) within the year prior to reinstatement.~~

~~C. D.~~ All references to criminal acts or convictions under this section refer to substantially similar laws or regulations of any other state or the United States. Convictions include prior adult convictions, juvenile convictions and adjudications of delinquency based on an offense that would have been, at the time of conviction, a felony conviction if committed by an adult within or outside Virginia.

E. Agencies shall submit a report regarding items in this section to OEMS upon request.

12VAC5-31-940. Drugs and substance abuse.

A. EMS personnel may not be under the influence of any drugs or intoxicating substances that impairs his ability to provide patient care or operate a motor vehicle while on duty or when responding or assisting in the care of a patient.

B. The EMS agency shall have a drug and substance abuse policy which includes a process for testing for drugs or intoxicating substances.

12VAC5-31-950. Disclosure of patient information.

EMS personnel may not share or disclose medical information concerning the names, treatments, conditions or medical history of patients treated. This information must be maintained as confidential, except:

1. To provide a copy of the prehospital patient care report completed by the attendant-in-charge to the receiving facility for each patient treated or transported;
2. To provide a copy of the prehospital patient care report completed by the attendant-in-charge for each patient treated to the agency that responds and transports the patients. The prehospital patient care report copy ~~may~~ shall be released to the transporting agency upon request after the patient transport to complete the transporting agency's records of all care provided to the patients transported;
3. To provide for the continuing medical care of the patient;
4. To the extent necessary and authorized by the patient or his representative in order to collect insurance payments due;
5. To provide continuing medical education of EMS personnel who provide the care or assistance when patient identifiers have been removed; or
6. To assist investigations conducted by the board, department or Office of EMS.

12VAC5-31-960. Misrepresentation of qualifications.

EMS personnel ~~may~~ shall not misrepresent themselves as authorized to perform a level of care for which they are not currently qualified, licensed or certified. This requirement

does not prohibit the performance of patient care by students currently enrolled in a training program when properly supervised as required by these regulations.

12VAC5-31-970. Interference or obstruction of investigation.

Any EMS agency, personnel, or entity who attempts knowingly or willfully to interfere or obstruct an Office of EMS investigation may be subject to enforcement action.

12VAC5-31-1010. Misappropriation or theft of medications drugs.

EMS personnel may not possess, remove, use or administer any controlled substances, ~~medication~~ drug delivery devices or other regulated medical devices from any EMS agency, EMS vehicle, health care facility, academic institution or other location without proper authorization.

12VAC5-31-1030. Sexual harassment.

EMS personnel may not engage in sexual harassment ~~of patients or coworkers~~. Sexual harassment includes making unwelcome sexual advances, requesting sexual favors, and engaging in other verbal or physical conduct of a sexual nature as a condition of:

1. The provision or denial of emergency medical care to a patient;
2. The provision or denial of employment or course advancement;
3. The provision or denial of promotions to a coworker;
4. For the purpose or effect of creating an intimidating, hostile, or offensive environment for the patient or student or unreasonably interfering with a patient's ability to recover; or
5. For the purpose or effect of creating an intimidating, hostile or offensive classroom or working environment or unreasonably interfering with a coworker's or student's ability to perform his work.

12VAC5-31-1040. Operational medical director authorization to practice.

A. EMS personnel as defined in § 54.1-3408 of the Code of Virginia may only provide emergency medical care while acting under the authority of the operational medical director for the EMS agency for which they are affiliated and within the scope of the EMS agency license. Privileges to practice must be on the agency's official stationery or indicated in the agency records which are signed and dated by the OMD.

B. Agencies shall establish a written policy that identifies the selection, response criteria, utilization, and approval process for (i) EMS personnel to carry and administer an epinephrine auto injector or medically accepted equivalent for emergency cases of anaphylactic shock, and (ii) the

possession and administration of oxygen carried on personally owned vehicles (POV). The policy shall also include:

1. Annual approval and authorization by EMS agency and OMD.

2. Drug storage criteria to include:

a. Compliance with all applicable temperature requirements specified by the Virginia Board of Pharmacy.

b. Requirements that describe how the cylinder or device is to be secured in a manner to prevent any free movement within the occupant or storage compartment of the vehicle.

c. Evidence of approval by personal vehicle insurance carrier must be on file with EMS agency for all EMS personnel authorized to carry oxygen on personally owned vehicles.

3. The personal vehicle utilized to carry oxygen may be subject to inspection by the Office of EMS.

12VAC5-31-1050. Scope of practice.

EMS personnel shall only perform those procedures, treatments, or techniques for which he is currently licensed or certified, provided that he is acting in accordance with local medical protocols and medical direction provided by the OMD of the EMS agency with which he is affiliated and as authorized in the Emergency Medical Services Procedures and Medications Schedule as approved by OEMS.

12VAC5-31-1060. Transport without required personnel. (Repealed.)

An EMS provider may provide care in the event that the required EMS personnel do not respond to a call to fully staff the ambulance that has responded to the scene. The circumstances of the call must be documented in writing. Based on circumstances and documentation, the EMS agency or the EMS provider may be subject to enforcement action.

12VAC5-31-1140. Provision of patient care documentation.

A. EMS personnel and EMS agencies shall provide the receiving medical facility or transporting EMS agency with a copy of the prehospital patient care report for each patient treated, either with the patient or within 24 hours.

B. The signature of the medical practitioner who assumes responsibility for the patient shall be included on the prehospital patient care report for an incident when a ~~medication drug~~ is administered, or self-administration is assisted (excluding oxygen), or an invasive procedure is performed, except when standing orders from the OMD allows the administration of the drug or procedure. The medical practitioner's signature shall document that the

~~physician has been notified of the medications administered and procedures performed by the EMS personnel. EMS personnel shall not infer that the medical practitioner's signature denotes approval, authorization or verification of compliance with protocol, standing orders or medical control orders. The provider shall document on the PPCR indicating that the drug given was under the OMD's preapproved protocols for the agency. This includes instances where the patient is not transported or transported by another agency.~~

C. EMS personnel shall contact medical control (on-line) for approval of drug administration or procedures that are not included in their standing orders as authorized by the agency's OMD. Such events shall require the signature of the authorized practitioner as identified by the Virginia Board of Pharmacy (licensed physician, nurse practitioner, or physician assistant).

The receiving medical practitioner signature requirement above does not apply to ~~medications drugs~~ that are maintained by EMS personnel during transport of patients between healthcare facilities, provided adequate documentation of ongoing ~~medications drugs~~ are transferred with the patient by the sending facility.

~~If a patient is not transported to the hospital or if the attending medical practitioner at the hospital refuses to sign the prehospital patient care report, this prehospital patient care report the PPCR shall be signed by the agency's operational medical director within seven days of the administration event and a signed copy delivered to the hospital pharmacy that was responsible for any medication drug kit exchange.~~

12VAC5-31-1165. EMS agency mutual aid response.

An EMS agency providing resources, certified personnel, permitted vehicles, or equipment as a result of an Emergency Management Assistance Compact (EMAC), Federal Emergency Management Agency (FEMA), or any other out-of-state mutual aid request shall notify OEMS upon commitment of requested resources. Notification by direct verbal communication shall be made to the local OEMS program representative.

12VAC5-31-1210. Nontransport response vehicle staffing.

At a minimum, one person may satisfy both of the following requirements:

1. An operator shall at a minimum possess a valid motor vehicle operator's permit issued by Virginia or another state and have successfully completed an approved emergency vehicle operator's course (EVOC) training course or an equivalent.

2. Attendant-in-charge shall be currently certified as an EMS first responder, emergency medical responder, or emergency medical technician or an equivalent approved by the Office of EMS.

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12VAC5-31-1250. Advanced life support vehicle transport.

Advanced life support transport requirements:

1. A ground ambulance equipped with an ALS equipment package. An ALS equipment package may be transferred to a ground ambulance not otherwise equipped to provide the needed level of ALS patient care from another appropriately equipped EMS vehicle. This transfer must include all items required for the type of ALS equipment package that the attendant-in-charge is authorized to use.
2. The attendant-in-charge must be certified as an advanced life support level provider or an equivalent approved by the Office of EMS.
3. An attendant must be certified as an emergency medical technician or an equivalent approved by the Office of EMS in addition to the attendant-in-charge. The attendant must not serve as the attendant-in-charge. An operator may serve as the attendant if certified as an emergency medical technician or an equivalent approved by the Office of EMS.

4. An ALS provider may provide care in the event that the required EMS personnel do not respond to a call to fully staff the ambulance that has responded to the scene. The extenuating circumstances of the call must be documented in writing. Based on extenuating circumstances and documentation, the EMS agency or the EMS provider may be subject to enforcement action.

12VAC5-31-1260. Supplemented transport requirements.

A. Supplemented transports require the following:

1. An ambulance equipped with an ALS intermediate/paramedic equipment package;
2. A determination by the sending physician that the patient's medically necessary care exceeds the scope of practice of available personnel certified at an advanced life support level or an equivalent approved by the Office of EMS; or
3. A determination by the sending physician that the specific equipment needed to care for the patient exceeds that required for a ground ambulance equipped with an ALS Advanced EMT/intermediate/paramedic equipment package.

B. An attendant-in-charge who must be a physician, registered nurse or physician assistant who is trained and experienced in the care and the equipment needed for the patient being transported.

C. An attendant who must be certified as an emergency medical technician or an equivalent approved by the Office of EMS in addition to the attendant-in-charge. The attendant must be a third person who is not the Operator.

D. An EMS agency requested to perform a supplemented transport, is responsible for the following:

1. Obtaining a written statement from the sending physician detailing the specific nature of the patient's medical condition and the medical equipment necessary for the transport. The written statement may be in the form of transport orders documented in the patient's medical record.
2. Verifying that the individual acting as attendant-in-charge for the transport is experienced in the patient care required and the operation of all equipment to be used for the patient to be transported.

An EMS agency requested to perform a supplemented transport shall refuse to perform the transport if compliance with the requirements of this section cannot be satisfied. Refusal to provide the transport must be documented by the EMS agency.

12VAC5-31-1270. Neonatal transport requirements.

A. Neonatal transports require a neonatal ambulance. If a ground ambulance is utilized to perform an interfacility neonatal transport, the vehicle must be equipped with the additional items listed in 12VAC5-31-860 C, D 1 and M 3, and D 5 and staffed in compliance with this section.

B. A minimum of three persons is required:

1. An operator who at a minimum possesses a valid motor vehicle operator's permit issued by Virginia or another state, and who has successfully completed an approved emergency vehicle operator's course (EVOC) training course or an equivalent approved by the Office of EMS.
2. An attendant-in-charge who must be one of the following:
 - a. Physician;
 - b. Registered nurse or ~~physician's~~ physician assistant, licensed for a minimum of two years, with specialized neonatal transport training; or
 - c. Other health care personnel with equivalent training or experience as approved by the Office of EMS.
3. An attendant. The operator, attendant-in-charge or attendant must be certified as an emergency medical technician or an equivalent approved by the Office of EMS.

12VAC5-31-1280. Air ambulance transport requirements. (Repealed.)

~~An air ambulance transport requires a minimum of three persons, the aircraft flight crew and two air medical personnel.~~

- ~~1. Rotary Wing Air Ambulance.~~

a. A pilot in command shall meet all the requirements of the Federal Aviation Administration, including possession of a valid commercial pilot's certificate for rotor craft and must have a minimum of 1,000 hours in category, of which a minimum of 200 hours must be nighttime.

b. An attendant in charge shall be an air medical specialist who must be one of the following:

(1) Physician;

(2) Registered nurse or physician's assistant, licensed for a minimum of two years with specialized air medical training and possessing the equivalent skills of an emergency medical technician-paramedic;

(3) Emergency medical technician-paramedic, certified for a minimum of two years with specialized air medical training; or

(4) Other health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant who shall be an emergency medical technician or an equivalent approved by the Office of EMS.

d. The attendant in charge and the attendant shall not be members of the required flight crew.

2. Fixed-Wing Air Ambulance.

a. A pilot in command shall meet all the requirements of the Federal Aviation Administration Regulations Part 135.

b. An attendant in charge who at a minimum shall be an air medical specialist who shall be one of the following:

(1) A physician;

(2) A registered nurse or physician's assistant, licensed for a minimum of two years with specialized air medical training and possessing the equivalent skills of an emergency medical technician-paramedic;

(3) An emergency medical technician-paramedic, certified for a minimum of two years with specialized air medical training; or

(4) Any other health care personnel with equivalent training or experience as approved by the Office of EMS.

c. An attendant shall be an emergency medical technician or an equivalent approved by the Office of EMS.

d. The attendant in charge and the attendant shall not be members of the required flight crew.

12VAC5-31-1290. Exemptions. (Repealed.)

A. On January 1, 2003, an EMS vehicle must meet the requirements for vehicle construction and required markings

in effect at the time the EMS vehicle was permitted. This exception does not apply to the medication kit storage requirements or if the EMS vehicle permit is surrendered or expires.

B. An EMS vehicle permitted before January 1, 2003, is exempted as follows:

1. From 12VAC5-31-860 A (AED requirement) and 12VAC5-31-860 L (ECG monitor/manual defibrillator with synchronized cardioversion and non-invasive pacing requirement) until January 1, 2004.

2. From 12VAC5-31-760 (EMS vehicle communications requirement) until January 1, 2004. The communications requirements of 12VAC5-30-200 B e shall remain in effect until January 1, 2004.

C. On January 1, 2003, an EMS vehicle may be reclassified as follows:

1. An immediate response vehicle (Class A) becomes a nontransport response vehicle.

2. A basic life support vehicle (Class B) or an advanced life support vehicle (Class C) becomes a ground ambulance.

3. A specialized life support transport unit (Class D) becomes a ground ambulance unless the EMS agency applies for an EMS vehicle permit as a neonatal ambulance.

4. A life support vehicle for air transportation (Class F) becomes an air ambulance.

D. Existing forms, licenses, certificates, and other materials may be used by the Office of EMS or modified as considered necessary by the Office of EMS until existing stocks are depleted.

E. Current specialized air medical training programs as approved by the Office of EMS comply with these regulations:

F. A designated emergency response agency shall comply with 12VAC5-31-620 (staffing capability) by January 1, 2004.

Part III

EMS Education and Certification

12VAC5-31-1300. Applicability. (Repealed.)

This part applies to initial, refresher or bridge certification courses and EMS continuing education (CE) programs.

Regulations

Part III
EMS Education and Certification

Article 1
Certification Levels

12VAC5-31-1305. EMS First Responder (FR).

The certification is issued for a period of four years from the end of the month of issuance.

12VAC5-31-1307. Emergency Medical Responder (EMR).

The certification is issued for a period of four years from the end of the month of issuance.

12VAC5-31-1310. BLS certification programs. (Repealed.)

~~A. BLS certification programs authorized for issuance of certification in Virginia are:~~

- ~~1. EMS First Responder;~~
- ~~2. EMS First Responder Bridge to EMT; and~~
- ~~3. Emergency Medical Technician (EMT).~~

~~B. A course coordinator for a BLS certification program must be an EMT instructor.~~

~~C. A course coordinator for a BLS certification program must use the following curriculum:~~

- ~~1. The Virginia standard curriculum for the EMS first responder for an EMS First Responder certification program.~~
- ~~2. The U.S. Department of Transportation National Standard Curriculum for the EMT Basic for an EMS First Responder Bridge certification program or an EMT certification program.~~

12VAC5-31-1315. Emergency Medical Technician (EMT).

The certification is issued for a period of four years from the end of the month of issuance.

12VAC5-31-1320. ALS certification programs. (Repealed.)

~~A. ALS certification programs authorized for issuance of certification in Virginia are:~~

- ~~1. EMT Enhanced;~~
- ~~2. EMT Enhanced to EMT Intermediate Bridge;~~
- ~~3. EMT Intermediate;~~
- ~~4. EMT Intermediate to EMT Paramedic Bridge;~~
- ~~5. Registered Nurse to Paramedic Bridge; and~~
- ~~6. EMT Paramedic.~~

~~B. Transitional ALS certification programs that are authorized for issuance of certification in Virginia for six years from January 1, 2003, are:~~

- ~~1. EMT Shock Trauma to EMT Enhanced.~~
- ~~2. EMT Cardiac to EMT Intermediate.~~

~~a. After recertifying once at his current certification level, an EMS provider with EMT Shock Trauma or EMT Cardiac certification shall complete the designated "transition" program to certify at the corresponding replacement certification level listed in this subsection.~~

~~b. An EMS provider in an initial or bridge EMT Shock Trauma or EMT Cardiac certification program who completes the program and attains certification shall complete the designated "transition" program to certify at the corresponding replacement certification level listed in this subsection.~~

~~c. An EMS provider with EMT Shock Trauma or EMT Cardiac certification shall complete the requirements for the designated "transition" certification level by January 1, 2009.~~

~~C. A course coordinator for an ALS certification program shall be an ALS coordinator who is certified or licensed at or above the certification level of the course to be announced.~~

~~D. A course coordinator for an ALS certification program shall use the following curriculum:~~

- ~~1. The Virginia Standard Curriculum for the EMT Enhanced or an equivalent approved by the Office of EMS for an EMT Enhanced certification program.~~
- ~~2. The U.S. Department of Transportation National Standard Curriculum for the EMT Intermediate or a bridge certification program approved by the Office of EMS for an EMT Enhanced to EMT Intermediate Bridge or an EMT Intermediate certification program.~~
- ~~3. The U.S. Department of Transportation National Standard Curriculum for the EMT Paramedic or a bridge certification program approved by the Office of EMS for an EMT Intermediate to EMT Paramedic Bridge, a Registered Nurse to EMT Paramedic Bridge or EMT Paramedic certification program.~~

12VAC5-31-1325. Emergency Medical Technician-Enhanced (EMT-E).

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid EMT-E certification is simultaneously issued an EMT certification for an additional two years after his EMT-E expiration.

12VAC5-31-1330. EMT Instructor certification program. (Repealed.)

The EMS Instructor certification program authorized for issuance of certification in Virginia is EMT Instructor.

12VAC5-31-1335. Emergency Medical Technician-Intermediate (EMT-I).

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid EMT-I certification is simultaneously issued an EMT certification for an additional two years after his EMT-I expiration.

12VAC5-31-1337. Advanced Emergency Medical Technician (AEMT).

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid EMT certification is simultaneously issued an EMT certification for an additional two years after his EMT Advanced expiration.

12VAC5-31-1340. Program site accreditation. (Repealed.)

A. Program site accreditation. Training programs that lead to eligibility for initial certification at the EMT Intermediate and EMT Paramedic level shall hold a valid "Program Site Accreditation" issued by the Office of EMS. ("Program Site Accreditation" is not required when conducting continuing education programs for recertification purposes.)

B. All certification programs seeking accreditation in Virginia must comply with these regulations and the standards for an Accredited Educational Program for the Emergency Medical Technician Paramedic established by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) as initially adopted in 1978, and revised in 1989 and 1999, by the American Academy of Pediatrics, American College of Cardiology, American College of Emergency Physicians, American College of Surgeons, American Society of Anesthesiologists, Commission on Accreditation of Allied Health Education Programs, National Association of Emergency Medical Technicians, and National Registry of Emergency Medical Technicians.

C. The CoAEMSP standards are adopted by reference with the following provisions:

1. In any instance where the CoAEMSP standards conflict with these regulations, these regulations will prevail.
2. The CoAEMSP standards, as adopted by reference, will apply equally to all training programs required to hold accreditation by these regulations with these exclusions:
 - a. The following are optional components of the Virginia Paramedic Accreditation Standards:

(1) Section 1: General Requirements, A. Sponsorship, 1. Institutional Accreditation.

(2) Section 1: General Requirements, A. Sponsorship, 2. Institutional Authority.

(3) Section 1: General Requirements, A. Sponsorship, 4. Eligible Sponsors.

(4) Section 1: General Requirements, A. Sponsorship, 6. Institutional Commitment.

(5) Section 1: General Requirements, B. Resources, 1. Personnel, a. Administrative Personnel, (1) Program Director/Direction, (c) Qualifications or Equivalents, 1).

(6) Section 1: General Requirements, B. Resources, 1. Personnel, e. Support Staff.

(7) Section 1: General Requirements, B. Resources, 1. Personnel, d. Professional Development.

(8) Section 1: General Requirements, D. Operation Policies, 1. Fair Practices, j.

b. The following are optional components of the Virginia Intermediate Accreditation Standards:

(1) Section 1: General Requirements, A. Sponsorship, 1. Institutional Accreditation.

(2) Section 1: General Requirements, A. Sponsorship, 2. Institutional Authority.

(3) Section 1: General Requirements, A. Sponsorship, 4. Eligible Sponsors.

(4) Section 1: General Requirements, A. Sponsorship, 6. Institutional Commitment.

(5) Section 1: General Requirements, B. Resources, 1. Personnel, a. Administrative Personnel, (1) Program Director/Direction, (c) Qualifications or Equivalents, 1).

(6) Section 1: General Requirements, B. Resources, 1. Personnel, e. Support Staff.

(7) Section 1: General Requirements, B. Resources, 1. Personnel, d. Professional Development.

(8) Section 1: General Requirements, D. Operation Policies, 1. Fair Practices, j.

e. Training programs that hold current "Program Site Accreditation" to conduct EMT Paramedic programs may also conduct EMT Intermediate programs.

3. The program director for an EMT Intermediate program is not required to hold a bachelor's degree as specified in subsection B 1 a (1) (c) 1) of the CoAEMSP standards.

4. The medical director required by subsection B 1 a (2) of the CoAEMSP standards shall also meet the requirements for a physician course director (PCD) as required by these regulations.

Regulations

5. The guidelines accompanying the CoAEMSP standards and printed in that document in italics typeface provide examples intended to assist in interpreting the CoAEMSP standards. These guidelines are not regulations as defined by the Code of Virginia.

12VAC5-31-1345. Emergency Medical Technician-Paramedic (EMT-P).

A. The certification is issued for a period of three years from the end of the month of issuance.

B. An EMS provider who possesses a valid EMT-P certification is simultaneously issued an EMT certification for an additional two years after his EMT-P expiration.

12VAC5-31-1350. Training site accreditation process. (Repealed.)

A. The accreditation process will begin upon the receipt by the Office of EMS of a written request for accreditation.

B. The Office of EMS will forward the request to a site reviewer who will conduct the accreditation analysis. Independent site reviewers utilized by the Office of EMS shall be persons who are not affiliated with the applicant training program or another similar program located in the same geographical region.

C. The applicable regional EMS council or local EMS resource shall submit to the site reviewer an evaluation indicating its position toward the applicant program's accreditation request.

D. The Office of EMS will determine the suitability of the training site for program site accreditation upon review of the accreditation analysis submitted to the Office of EMS by the site reviewer. The Office of EMS may either accept or deny the application for accreditation.

1. If the accreditation analysis determines that the training program is in full compliance with the requirements for accreditation, the Office of EMS will issue full accreditation for a period of five years.

2. The Office of EMS will issue conditional accreditation for a period of less than five years if the accreditation analysis identifies deficiencies that are determined to be of concern but do not justify prohibiting the program from starting and completing an initial training program. Before starting any additional certification courses, the program site must receive full accreditation by correcting the identified deficiencies.

3. The Office of EMS will deny an application for accreditation if the accreditation analysis identifies deficiencies that are determined to be sufficient to prohibit the program from starting an initial training program.

12VAC5-31-1355. Emergency Medical Technician instructor.

A. The certification is valid for a period of two years from the end of the month of issuance.

B. An EMS provider who possesses a valid instructor certification is simultaneously issued an EMT certification valid for an additional two years after his instructor expiration.

12VAC5-31-1360. Renewal of program site accreditation. (Repealed.)

A. A training program site shall apply for renewal not less than 90 days before expiration of its current accreditation period. Reaccreditation will require review by a site reviewer of the program's performance and a recommendation to the Office of EMS for approval. However, programs conducting training courses leading to certification at the EMT-Paramedic level may be renewed only through compliance with the requirements of 12VAC5 31 1390. Renewal of a "Program Site Accreditation" will be valid for an additional five year period.

B. If the site reviewer does not recommend renewal of a program site's accreditation, the Office of EMS will review all supporting documentation and make a determination of suitability for "Program Site Accreditation" renewal.

12VAC5-31-1365. Advanced Life Support coordinator.

The certification is valid for a period of two years from the end of the month of issuance.

12VAC5-31-1370. Appeal of site accreditation application results. (Repealed.)

Appeals by a program concerning the denial of initial or renewal accreditation, or the issuance of conditional accreditation by the Office of EMS will be reviewed by a committee of the State EMS Advisory Board and follow the Administrative Process Act.

12VAC5-31-1375. EMS education coordinator.

The certification is valid for a period of two years from the end of the month of issuance.

12VAC5-31-1380. Program site accreditation administration. (Repealed.)

A. State accreditation will be administered through the process established in the "Training Program Administration Manual" for the certification levels of the training programs conducted by the program site.

B. Any program that has achieved accreditation issued by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) or an equivalent organization approved by the Office of EMS will be considered in compliance with this Section. State

~~"Program Site Accreditation" will be issued for a period concurrent with that issued by the CoAEMSP or other approved organization up to a maximum of five years.~~

~~1. As a condition for equivalent accreditation, a representative from the Office of EMS must be included with each visit by the CoAEMSP or any other approved accreditation organization.~~

~~2. The program must notify the Office of EMS immediately upon receiving the dates for any visits and include:~~

~~a. Dates;~~

~~b. Times; and~~

~~c. The schedule of events.~~

~~3. Accreditation issued by CoAEMSP or other organization approved by the Office of EMS must remain current during any certification training program that requires accreditation by the Office of EMS. Revocation, removal or expiration of accreditation issued by CoAEMSP or other another organization approved by the Office of EMS will invalidate the corresponding state accreditation of the training program.~~

~~C. Each program must meet all other requirements as outlined in these regulations and the state approved curriculum and course guide.~~

Article 2

Certification Process and Practice

12VAC5-31-1385. Certification periods.

An EMS certification is valid for the prescribed period as defined in Article 1 of this part for each level of certification unless suspended or revoked by the commissioner.

12VAC5-31-1387. Virginia EMS certification is required to practice.

In order to function as an EMS provider in the Commonwealth of Virginia, providers must hold a valid certification as issued by the commissioner and as defined in 12VAC5-31-1040.

12VAC5-31-1389. Initial course certification.

A. Candidates must successfully complete an approved Virginia certification course to be eligible for the certification examination.

B. Candidates must then successfully complete the certification examination to receive Virginia certification at the level for which the course is approved.

12VAC5-31-1390. Program site accreditation of EMT-Paramedic programs. (Repealed.)

~~A. A training program that leads to eligibility for certification at the EMT Paramedic level must be an accredited program before the course begins.~~

~~B. Initial accreditation can be issued by the Office of EMS pursuant to 12VAC5 31 1340 or by acceptance of accreditation issued by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) or another approved equivalent accreditation organization.~~

~~C. Following an initial five year state accreditation period, renewal of accreditation at the EMT Paramedic level will be issued only upon verification of accreditation issued by the CoAEMSP or another approved equivalent accreditation organization per 12VAC5 31 1380.~~

12VAC5-31-1391. Certification through reciprocity.

A person holding valid EMS certification from another state or a recognized EMS certifying body with which Virginia has a formal written agreement of reciprocity or possessing a National Registry certification at the intermediate 99 or paramedic level shall apply to the commissioner for reciprocity upon demonstration of Virginia residency, Virginia EMS agency affiliation, or a recognized need for Virginia EMS certification.

12VAC5-31-1393. Certification through legal recognition.

A person holding valid EMS certification from another state or a recognized EMS certifying body who does not meet the criteria in 12VAC5-31-1391 shall apply to the commissioner for legal recognition upon demonstration of Virginia residency, Virginia EMS agency affiliation, or a recognized need for Virginia EMS certification. Legal recognition may be issued for a period of one year or the duration of his current certification, whichever is shorter. Legal recognition is not available for any Virginia certification level if the Board of Health has determined that no equivalent exists at the level requested.

12VAC5-31-1395. EMT certification challenge.

A practical nurse, registered nurse to include those recognized through the Nurse Licensure Compact (§ 54.1-3030 et seq. of the Code of Virginia), physician assistant, dentist, or chiropractor who holds a current license to practice in Virginia; military corpsman with current credentials; and third or fourth year medical students shall apply to the commissioner for authorization to challenge at the EMT level. Upon completing the requirements for the EMT recertification and receiving notification of testing eligibility the candidate must complete the written and practical examination. Examination waivers are not allowed.

Regulations

12VAC5-31-1400. Course approval request. (Repealed.)

~~A. A course coordinator shall submit to the Office of EMS a complete course approval request form 30 days before the beginning date of a certification or continuing education course that includes the following:~~

- ~~1. The signature of the course coordinator.~~
- ~~2. The signature of the physician course director if requesting a BLS or ALS certification program or "Required (Category 1)" CE hours.~~

~~B. The course coordinator shall use the course number assigned by the Office of EMS to identify the certification or CE program.~~

~~C. The course coordinator shall only use those CE topic and subtopic numbers assigned for the specific course approved by the Office of EMS when submitting a CE record/scaneard.~~

~~D. In addition, training programs leading to certification at an initial or higher certification level shall also comply with the requirements for "Program Site Accreditation" listed in 12VAC5 31 1340 through 12VAC5 31 1390, if an accreditation process for the involved certification level has been adopted by the Office of EMS.~~

12VAC5-31-1401. General recertification requirements.

A. An EMS provider must complete the requirements for recertification and the Office of EMS must receive the required documentation within the issued certification period to maintain a current certification.

B. An EMS provider requesting recertification must complete the continuing education (CE) hour requirements for the level to be recertified.

C. An EMS provider requesting recertification must pass the written state certification examination.

1. An EMS provider affiliated with an EMS agency may be granted an exam waiver from the state written certification examination by the OMD of the EMS agency, provided:

- a. The EMS provider meets the recertification requirements including those established by the OMD; and
- b. The EMS provider must submit a completed Virginia EMS Certification Application with the exam waiver approval signed by the EMS agency OMD, which must be received by the Office of EMS within 30 days following the expiration of his certification.

(1) If the Virginia EMS Certification Application form is received by the Office of EMS after the EMS provider's certification expiration date, the EMS provider may not practice at the expired certification level until a valid certification is received from the Office of EMS.

(2) If the Virginia EMS Certification Application form is received by the Office of EMS more than 30 days after the EMS provider's certification expiration date, his certification will be in reentry and he will be required to test pursuant to 12VAC5-31-1407.

2. An EMS provider under legal recognition pursuant to 12VAC5-31-1393 must pass a written and practical EMS certification examination and is not eligible for examination waiver.

12VAC5-31-1403. EMS provider recertification required.

A. Recertification of EMS credentials requires each individual to complete continuing education requirements as approved by the Board of Health and fulfill the recertification process before the expiration date of an applicable certification or reentry period.

B. The Board of Health will determine the continuing education hour requirements for each certification level.

C. Evidence of completion of the continuing education requirements must be received by the Office of EMS prior to the certification expiration.

12VAC5-31-1405. Documentation of continuing education (CE).

A. Continuing education credit is only awarded to courses announced to the Office of EMS in a format as approved by the Office of EMS prior to the course being conducted and other programs approved by the Office of EMS for award of CE.

B. Award of credit for attendance in a CE program shall be submitted in a format approved by the Office of EMS.

12VAC5-31-1407. Recertification through reentry.

A. Individuals whose certification has expired may regain certification through completion of the reentry program within two years of the specific certification's expiration date. To reenter the person must fulfill the requirements as applicable in this chapter including all required testing within the two-year reentry period.

B. Individuals failing to complete the reentry process by the end of the two-year period following certification expiration will be required to complete an initial training program for the level lost.

Article 3

Educational Programs and Management

12VAC5-31-1409. Course curriculum.

A. Course coordinators (EMT instructor, ALS coordinator, or EMS education coordinator) shall utilize curricula or educational standards authorized and approved by the Office of EMS when conducting EMS education programs.

B. CE topics must be submitted for review and approval in a format as approved by the Office of EMS.

12VAC5-31-1410. Physician course director involvement. (Repealed.)

~~A course coordinator must inform the physician course director of the program schedule, progress of individual student performance, student or instructor complaints and the status of other program activities.~~

12VAC5-31-1411. BLS certification programs.

BLS certification programs authorized for issuance of certification in Virginia are:

1. EMS First Responder.
2. EMS First Responder Bridge to EMT.
3. Emergency Medical Responder (EMR).
4. Emergency Medical Responder Bridge to EMT.
5. Emergency Medical Technician (EMT).

12VAC5-31-1413. Advanced life support certification programs.

ALS certification programs authorized for issuance of certification in Virginia are:

1. EMT-Enhanced.
2. EMT-Enhanced Bridge to Intermediate.
3. Advanced EMT.
4. Advanced EMT Bridge to Paramedic.
5. EMT-Intermediate.
6. EMT-Intermediate Bridge to Paramedic.
7. EMT-Paramedic.

12VAC5-31-1415. Nationally recognized continuing education programs.

A. In order for a provider to receive continuing education in Virginia for a national program, the national parent organization must be recognized by the Board of Health.

B. The instructor approved by the national parent organization referenced in subsection A of this section may award Category 1 continuing education credit for providers successfully completing an approved course. The instructor is not required to be an EMT instructor, ALS coordinator, or an EMS education coordinator in order to submit for course approval.

12VAC5-31-1417. Approved courses in cardio-pulmonary resuscitation.

A. Recognized programs for certification in cardiopulmonary resuscitation (CPR) for the purposes of

testing for all certification levels are based upon programs approved by the Board of Health.

B. Completion of an approved course that tests the following skills is required:

1. One and two rescuer CPR – adult, child, infant resuscitation.
2. Complete airway obstruction – unconscious victim - adult, child, infant.
3. Complete airway obstruction – conscious victim - adult, child, infant.
4. Automated external defibrillation.

12VAC5-31-1419. Continuing education programs.

The programs must utilize the approved format for the corresponding level of certification as designed by the Office of EMS:

1. Category 1 (required) are topic areas that are required as part of the recertification criteria.
2. Category 2 (approved) are topic areas that support EMS activities.
3. Category 3 are topic areas that are delivered through a multimedia format as approved by the Board of Health.

12VAC5-31-1420. Course coordinator and instructor accountability. (Repealed.)

~~A. A course coordinator or instructor who violates these regulations is subject to enforcement action by the Office of EMS. The Office of EMS may suspend the instruction of an ongoing course or withhold issuance of certification until an investigation is concluded.~~

~~B. A course coordinator or instructor found to be in violation of these regulations following an investigation may be subject to the following:~~

- ~~1. Termination of the certification program.~~
- ~~2. Invalidation of certificates or CE hours issued to students.~~
- ~~3. Suspension or revocation of any or all certifications of the course coordinator.~~
- ~~4. Suspension or revocation of any or all certifications of an instructor.~~

12VAC5-31-1421. Teaching materials and approved texts.

A. EMT instructor, ALS coordinator, or an EMS education coordinator shall use teaching materials and textbooks that reflect current EMS practices.

B. All textbooks and primary teaching materials utilized in a program shall be reviewed and receive written approval prior to the start of the program by the physician course director

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(PCD) or OMD and shall be maintained with other course records in accordance with the Virginia Public Records Act (Chapter 7 (§ 42.1-76 et seq.) of Title 42.1 of the Code of Virginia).

12VAC5-31-1423. Course announcement requirements.

A. BLS certification courses and continuing education programs that award Category 1 (required) continuing education credits shall be announced by an EMT instructor or EMS education coordinator. An EMT instructor or EMS education coordinator shall be present in the classroom at all times except:

1. In courses offered by the Office of EMS accredited programs, or
2. In BLS continuing education programs.

B. ALS certification courses and continuing education programs that award Category 1 (required) continuing education credits shall be announced by an ALS coordinator or EMS education coordinator.

12VAC5-31-1425. EMT instructor, ALS coordinator, or EMS education coordinator responsibilities as employee or contractor.

A. An EMT instructor, ALS coordinator, or EMS education coordinator conducting a training program as an employee or contractor for any other person as defined in § 1-230 of the Code of Virginia, whether or not for profit, shall retain responsibility for compliance with the Office of EMS regulations.

B. Any other person as defined in § 1-230 of the Code of Virginia who operates an organization for the purpose of providing an EMS training program that employs or contracts with an EMT instructor, ALS coordinator, or EMS education coordinator to conduct a training program may not vary from or direct the EMT instructor, ALS coordinator, or EMS education coordinator to vary from compliance with Office of EMS regulations.

12VAC5-31-1427. Course approval request submission.

A. An EMT instructor, ALS coordinator, or EMS education coordinator shall submit a course approval request in a format approved by the Board of Health prior to the beginning date of a certification or continuing education course.

1. Any approved course requesting funding through the EMS training fund requires that the course approval request and funding contract must be post marked or received by the Office of EMS no less than 45 days prior to the begin date for the course.
2. Courses shall not start prior to receiving course number and topic or topics from the Office of EMS.

B. The EMT instructor, ALS coordinator, or EMS education coordinator shall use only those topic numbers assigned for the course as approved by the Office of EMS.

12VAC5-31-1429. Course approval request changes.

The course coordinator shall immediately notify the Office of EMS in writing of any changes in the information submitted on the Course Approval Request form.

12VAC5-31-1430. Certification examination. (Repealed.)

~~A Test Site Coordinator shall comply with the requirements for certification examinations. The Office of EMS will publish the "Virginia EMS Certification Examination Manual," a document that describes and provides guidance to a test site coordinator on how to comply with these regulations.~~

12VAC5-31-1431. Student course enrollment.

EMT instructor, ALS coordinator, or EMS education coordinator for courses leading to certification at a new or higher level shall have each student complete a "Virginia EMS Training Program Enrollment" form at the first meeting of the course.

These forms must be reviewed by the EMT instructor, ALS coordinator, or EMS education coordinator and submitted to the Office of EMS no later than five business days following the first meeting of the course.

Any student who starts the program at a later date shall complete an enrollment form the first date of attendance providing 15% or more of the entire course has not been completed.

12VAC5-31-1433. Instructor participation records.

The EMT instructor, ALS coordinator, or EMS education coordinator shall maintain records of attendance and participation of each certified EMT instructor, ALS course coordinator, EMS education coordinator, or other individual who instructs in the program.

12VAC5-31-1435. Student records for certification courses.

A. The EMT instructor, ALS coordinator, or EMS education coordinator shall maintain records of class dates, topics instructed, attendance and performance for all students attending a certification course.

B. Student records shall be maintained in accordance with the Virginia Public Records Act (Chapter 7 (§ 42.1-76 et seq.) of Title 42.1 of the Code of Virginia) from the end date of the program and shall include but not be limited to:

1. Signed student acknowledgment forms collected upon completion of review of the appropriate BLS or ALS enrollment requirements.
2. Student signed class roster.

3. Scores on all course quizzes, exams, and other didactic knowledge or practical skill evaluations.

4. Skill proficiency records on the applicable form:

a. For BLS programs, BLS individual age and clinical and skill performance verification information in a format as approved by the Office of EMS.

b. For ALS coordinator or EMS education coordinator programs, on forms or documents as approved by the ALS coordinator, EMS education coordinator, or an accredited program.

5. All hospital or field internship activities including dates, locations, competencies performed, student evaluations, preceptor name and certification level as applicable.

6. All corrective or disciplinary actions taken during the training program to include dates, findings supporting the need for corrective or disciplinary action, and all applicable details of steps taken to determine the degree and nature of the actions taken.

7. Copy of the course student disposition report (CSDR).

8. All other records requested to be maintained by the PCD or OMD for the program.

9. Any other records or reports as required by the Office of EMS.

12VAC5-31-1437. Continuing education record submission.

The course coordinator shall submit the CE records in a format approved by the Office of EMS within 15 days of the student's attendance.

12VAC5-31-1439. Verification of student course completion.

Verification of student eligibility on the CSDR by the EMT instructor, ALS coordinator, or EMS education coordinator for certification testing requires that each student successfully complete a certification program and meet the competency and performance requirements contained within the applicable course curriculum and all other guidelines and procedures for the course and state certification testing eligibility.

12VAC5-31-1440. Certification course enrollment. (Repealed.)

A. For all courses leading to certification at a new or higher level, the course coordinator shall have each student complete a "Virginia EMS Training Program Enrollment" form. These forms shall be reviewed by the course coordinator and submitted to the Office of EMS no later than 15 days following instruction of the third lesson of the training program and no later than 15 days prior to the course's end date. (Earlier submission is allowed and encouraged.)

B. Only students listed as enrolled in the designated training program will be allowed to test for certification using the assigned course number for the specified training program.

All students attending a certification course for recertification must submit the necessary CE record/scan form for award of CE credits and issuance of a "Recertification Eligibility Notice" from the Office of EMS.

12VAC5-31-1441. Communications with PCD or OMD.

A. The EMT instructor, ALS coordinator, or EMS education coordinator shall inform the PCD or OMD of the progress of the training program to include:

1. Any program schedule changes.
2. Individual student performances.
3. Any student or instructor complaints.
4. The general progress of program activities.

B. The EMT instructor, ALS coordinator, or EMS education coordinator will assist the PCD or OMD with fulfillment of their course duties as required by Office of EMS regulations.

12VAC5-31-1443. Alternative course presentation format.

EMS certification courses utilizing an approved alternative course presentation format using two-way video interactive technology shall comply with the following:

1. Use electronic media as real time two-way audio and video transmissions.
2. The EMT instructor, ALS coordinator, or EMS education coordinator must indicate in writing the desire to use such media which shall accompany the Course Approval Request form.
3. Any other requirements established by the Office of EMS and, if applicable, the Virginia Community College System (VCCS) and the Virginia Department of Education.
4. A proctor who is certified at or above the level of the program shall be present at each remote site during the entire broadcast for all didactic portions of the program.
5. Any lab activities at the remote site shall have direct on-site supervision by a course coordinator certified at or above the level of instruction. If the instructor acts as the remote site proctor, he assumes the responsibility of the class roster.
6. In cases where the remote site proctor is absent or when the remote site electronics are not fully operational (transmit and receive audio or video) the students do not receive credit for attending and the session shall be rescheduled.
7. All course tests for the program whether at the origin or remote site must comply with subdivision 4 of this section.

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8. The course coordinator must maintain records of student participation in the approved alternative presentation format and submit continuing education records for each involved student for programs used for continuing education purposes.

9. Noncompliance with these regulations shall result in removal of Office of EMS approval and students shall lose eligibility for certification testing at the level of program certification.

10. The Guidelines for Videobroadcasting of EMS Educational Programs document must be signed by the EMT instructor, ALS coordinator, or EMS education coordinator and PCD or OMD and accompany any request for electronic transmission of a program with the Course Approval Request form.

11. Letter of agreement from the remote site or sites confirming and agreeing to the guidelines.

12VAC5-31-1445. Course scheduling.

Courses schedules shall reflect the minimum hours for the course of instruction of all required lessons of the program curriculum prior to the course end date as approved by the Office of EMS.

12VAC5-31-1447. Maximum BLS or ALS course enrollment.

A. Initial and bridge certification course size shall be limited to a maximum of 30 enrolled students.

1. Additional students seeking continuing education credit may be admitted as reasonably allowed by facility size and instructional staff availability.

2. The group size for practical or lab skill sessions shall not exceed six students per instructor aide (6:1 ratio).

B. Office of EMS accredited institutions or organizations may exceed the maximum of 30 enrolled students, with resources to meet class size. The group size for practical or lab skill sessions shall not exceed six students per instructor aide (6:1 ratio).

12VAC5-31-1449. Lesson instructors.

A. In addition to the lead instructor for each lesson, arrangements must be made to provide for instructor aides to assist in all practical skill sessions. Instructor aides shall be providers certified at or above the level of instruction.

B. Course coordinators who are certified EMTs may be used for instruction of basic skill stations in advanced life support programs. Basic skills are those procedures not requiring invasive activities or use of ALS equipment.

12VAC5-31-1450. BLS student enrollment requirements. (Repealed.)

The enrolled student, certification candidate or EMS provider must comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury or to assess signs and symptoms.

2. Be a minimum of 16 years of age at the beginning date of the certification program. If less than 18 years of age, he shall provide the course coordinator with a completed parental permission form with the signature of a parent or guardian verifying approval for enrollment in the course.

3. Have no physical or mental impairment that would render him unable to perform all practical skills required for that level of certification including the ability to function and communicate independently and perform appropriate patient care, physical assessments and treatments without the need for an assistant.

4. Hold current certification in an approved course in cardio-pulmonary resuscitation (CPR) at the beginning date of the certification program. This certification shall also be current at the time of state testing.

5. May not have been convicted or found guilty of any crime, offense or regulatory violation, or participated in any other prohibited conduct identified in these regulations.

6. If in a bridge certification program, he shall hold current Virginia certification at the EMS first responder level.

7. Meet other requirements for course enrollment as set by the regional EMS council or local EMS resource, the PCD or the course coordinator, approved by the Office of EMS.

12VAC5-31-1451. Course monitoring.

All programs and courses approved for issuance of certification or award of continuing education shall allow unannounced monitoring by the Office of EMS. Failure to comply with such course monitoring may result in the following disciplinary actions to include, but not be limited to:

1. Revocation of the training program's course approval.

2. Suspension or revocation of the training program's authority to award continuing education credits.

3. Revocation of the enrolled student's eligibility for certification testing.

4. Suspension or revocation of the EMS instructor or course coordinator.

12VAC5-31-1453. EMT instructor, ALS coordinator, EMS educational coordinator responsibilities for initial student testing.

A. An EMT instructor or EMS education coordinator for BLS programs shall ensure the following for documentation of eligibility for certification testing:

1. Submit a completed Course Student Disposition Report (CSDR) in a manner as prescribed by the Office of EMS.
2. Maintain with the course materials the completed individual parental permission form for students between 16 and 18 years of age on the beginning date of the course.
3. Maintain with the course materials the original copy of the completed and signed Basic Life Support Individual Age, Clinical and Skill Performance Verification Record form and provide a copy to the student.

B. An ALS coordinator or EMS education coordinator coordinating ALS programs shall provide the following documentation of eligibility for certification testing:

1. Completion of the Course Student Disposition (CSDR).
2. A copy of the student's EMT-Enhanced competency verification summary to the Office of EMS test examiner.

Article 4 Certification Testing

12VAC5-31-1454. Admission to certification test.

A. The person desiring to take the certification examination must present the following:

1. The Virginia certification eligibility letter.
2. Current government issued photo identification.
3. If a retest, the latest testing results.

B. The person desiring to take the certification examination must be registered for the test site.

12VAC5-31-1455. Initial certification testing requirements.

A. An Office of EMS written and practical examination process is required by the following:

1. Any candidate who completes an initial program at the following levels:
 - a. First Responder.
 - b. Emergency Medical Technician.
 - c. Emergency Medical Technician-Enhanced.
 - d. Advanced EMT.
 - e. Emergency Medical Technician-Intermediate 99 provided National Registry no longer tests at this level.

f. Emergency Medical Technician-Paramedic provided National Registry no longer tests at this level.

2. Any candidate who is challenging the certification level.
3. Any certified EMS provider who received his current certification through legal recognition.
4. Any candidate who is in reentry for First Responder or Emergency Medical Technician.

B. An Office of EMS written examination only is required for the following:

1. Any provider who recertifies prior to his certification expiration except those who received their current certification through legal recognition.
2. Any candidate who is in reentry for EMT-Enhanced, Advanced EMT, EMT-Intermediate, and EMT-Paramedic.

12VAC5-31-1457. General description of certification examination.

A. Office of EMS certification examinations are required by all providers unless otherwise described in these regulations.

B. Primary certification testing is the first attempt at the certification examination process.

1. This process includes both the written and practical examination for providers seeking a new or higher level of certification.

2. Primary testing must begin:

- a. Within 180 days of the course end date; or
- b. Within the enrollment expiration date for students attending an Office of EMS accredited program.

C. Primary retest requires the candidate to retest that portion of the primary test failed within 90 days of the primary test attempt.

D. Secondary certification testing (written and practical) occurs when a candidate fails the primary attempt and either fails the primary retest or does not retest within 90 days of the primary examination attempt. Secondary certification testing requires the candidate to submit as described in these regulations CE that satisfies the recertification requirements for the level of EMS certification sought.

E. Secondary retest requires the candidate to retest that portion of the secondary test failed within 90 days of the secondary test attempt.

F. Successful completion of the certification examination process must be completed:

1. Within 365 days of the primary test attempt; or
2. Prior to the enrollment expiration date for students attending an Office of EMS accredited program.

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G. The certification examination process requires that certification testing be conducted and proctored by the Office of EMS.

12VAC5-31-1459. Certification eligibility.

Certification eligibility will be demonstrated by the possession of a valid eligibility letter from the Office of EMS by the candidate.

12VAC5-31-1460. ALS student enrollment requirements. (Repealed.)

An enrolled student in an ALS certification program (EMT-Enhanced, EMT-Intermediate or EMT-Paramedic) must comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury or to assess signs and symptoms.
2. Be a minimum of 18 years of age at the beginning date of the certification program.
3. Hold current certification as an EMT or higher EMS certification level.
4. Hold, at a minimum, a high school or general equivalency diploma.
5. Have no physical or mental impairment that would render him unable to perform all practical skills required for that level of training. Physical performance skills must include the ability of the student to function and communicate independently, to perform appropriate patient care, physical assessments and treatments without the need for an assistant.
6. Not have been convicted or found guilty of any crime, offense or regulatory violation, or participated in any other prohibited conduct identified in these regulations.
7. Meet requirements for course enrollment as set by the regional EMS council or local EMS resource, the PCD or the course coordinator, approved by the Office of EMS.
8. If in an ALS bridge certification program between certification levels, have completed the eligibility requirements for certification at the prerequisite lower ALS level at the beginning date of the ALS bridge certification program. He shall also become certified at the lower ALS certification level before certification testing for the higher level of the ALS bridge certification program.

12VAC5-31-1461. Prohibition of oral examinations.

A certification candidate may not use another person or any electronic or mechanical means to translate certification examination material into an audible or tactile format.

12VAC5-31-1463. Candidates requirements for state recertification.

A. This section shall apply to individuals requesting state recertification who hold current certification at or below the level requested to be recertified (excluding those who gained their current certification through legal recognition).

B. Students requesting recertification must demonstrate eligibility as evidenced by completion of the continuing education requirements for the corresponding recertification program for the level to be recertified. Evidence of completion for the continuing education requirements shall be received by the Office of EMS in an approved method prior to certification expiration for the provider to be classified in current provider status.

12VAC5-31-1465. Recertification examination requirement.

A. Individuals who are eligible to recertify and hold current certifications are required to successfully complete the state written examination process based upon the following:

1. All individuals who are not affiliated with a licensed EMS agency must take the state written examination to recertify.

2. Individuals affiliated with a licensed EMS agency may be granted an exam waiver from the state written recertification examination by the operational medical director (OMD) of the EMS agency, provided:

a. A completed Virginia EMS Certification Application signed by the OMD and the individual is submitted to the Office of EMS documenting the exam waiver or a format approved by the Office of EMS.

b. A Virginia EMS Certification Application form submitted as an exam waiver must be received by the Office of EMS no later than 30 days following the expiration of the individual's certification at the level being waived.

(1) Virginia EMS Certification Application forms received by the Office of EMS during the 30 days after the individual's certification expiration date will be considered valid for recertification purposes. However, during this period following expiration, the individual may not practice at the expired certification level.

(2) Virginia EMS Certification Application forms received by the Office of EMS more than 30 days after the individual's certification expiration date will be considered as invalid and the individual will be deemed in reentry status and required to test to regain current certification.

B. Candidates in current provider status required or choosing to take the state recertification examination must

demonstrate eligibility as evidenced by presentation of a valid recertification eligibility notice letter from the Office of EMS.

12VAC5-31-1467. Basic and advanced life support written examinations.

A. All state written examinations shall be conducted by the Office of EMS.

B. The Office of EMS standard for successful completion is defined as a minimum score of:

1. 70% on all basic life support certification examinations.
2. 80% on all EMT instructor certification examinations.
3. 85% on all EMT instructor pretest examinations.
4. 80% on all advanced life support certification examinations.

12VAC5-31-1469. Basic and advanced life support practical certification examinations.

A. Practical examinations shall be conducted by the Office of EMS or as approved for accredited training programs.

B. Candidates taking a practical examination conducted by the Office of EMS shall demonstrate proficiency on all practical stations required for the program level being tested. Grades of unsatisfactory will constitute failure of that station, requiring a retest.

C. Candidates failing any practical station examination conducted by the Office of EMS will have an opportunity to retest the station or stations failed.

D. If a primary retest is failed, the candidate examination conducted by the Office of EMS must complete the secondary retest requirements.

12VAC5-31-1470. Course coordinator responsibility for certification candidate eligibility. (Repealed.)

~~A course coordinator shall provide the successful certification candidate the following documentation of eligibility for testing:~~

- ~~1. A "Virginia EMS Certification Application" with required signature attesting to the eligibility for certification testing.
 - ~~a. If a BLS certification program, the course coordinator shall by his signature attest to the eligibility of the certification candidate for certification testing.~~
 - ~~b. If an ALS certification program, the physician course director shall by his signature attest to the eligibility of the certification candidate for certification testing.~~~~
- ~~2. If a certification candidate is less than 18 years of age on the beginning date of the program, the parental permission form that was completed and signed at the beginning of the program.~~

~~3. A completed individual skill performance, clinical training or field internship record, or a combination of these, as applicable for the EMS certification program.~~

12VAC5-31-1471. Examination retest.

A. Candidates failing to achieve a minimum passing score on any state administered written or practical examinations must retest within 90 days from the original exam date.

B. BLS and EMT Enhanced candidates failing one or more stations of the practical but passing the written examination are not required to repeat a successful written examination of a testing series. Likewise, a candidate failing the written examination would not be required to repeat a successful practical examination of a testing series.

C. If any retest is failed or a retest is not taken within the allowed 90-day retest period, the candidate will be considered to have failed the initial testing series and must complete secondary eligibility before secondary certification testing may be attempted.

D. Secondary certification testing eligibility requires:

1. Satisfaction of all requirements as set forth in the minimum continuing education requirements for the corresponding recertification CE program for the level being tested.

a. This training may not include any course or program completed before the initial series of testing.

b. This training may include those CE hours completed after the initial certification examination has been attempted.

c. This training must be submitted on CE cards or a format as approved by the Office of EMS.

2. Receipt of written notification from the Office of EMS of eligibility for secondary certification testing.

E. Upon notification of eligibility to test from the Office of EMS, a candidate who has previously failed a written or practical retest will be allowed one additional series of testing.

1. Candidates attempting a second series of testing are required to successfully complete both the written and practical examinations regardless of the results of the previous testing attempts.

2. This requirement for successful completion of both the written and practical examinations will apply equally to initial, recertification, and reentry candidates who have failed a previous series of testing.

3. All appropriate sections of these regulations will apply to the second series of testing.

F. Failure of any retest during the second series of testing will require the candidate to complete an entire initial basic

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training program or applicable bridge course before any additional testing may be attempted at this certification level.

G. The requirements of this section including initial and secondary certification testing series must be completed within 365 days from the date of the initial certification test attempt (i.e., first test date) or prior to the enrollment expiration date for students attending an OEMS accredited program. Failure to complete this process within this prescribed period will require the candidate to repeat an entire initial basic training program or applicable bridge course before any additional testing may be attempted at this certification level.

H. Future testing of candidates required to complete an entire initial basic training program under subsections F or G of this section will be processed in the same manner as any candidate completing a similar course for the first time.

12VAC5-31-1473. Candidate evidence of eligibility for retesting.

Candidates requesting to retest a failed written or practical exam or exams must demonstrate eligibility as evidenced by presentation of the letter of retest eligibility from the Office of EMS and the latest test results.

12VAC5-31-1475. Candidate evidence of eligibility for secondary testing.

Candidates requesting testing a second series of exams after failure of an initial testing series must demonstrate eligibility as evidenced by valid secondary eligibility notice from the Office of EMS.

12VAC5-31-1477. Examination security and review.

A. All Virginia examinations are the property of the Office of EMS. Individuals taking an examination may not copy or make recordings or reproduce in any other manner any material from the examination. Failure to return the examination will subject the individual to disqualification for certification.

B. Giving or obtaining information or aid prior to, during, or following any exam as evidenced by direct observation of the state examination administrator or administrators or subsequent analysis of examination results or engaging in other prohibited acts, may be sufficient cause to terminate candidate participation, to invalidate the results of a candidate's examination, to take enforcement action against other involved persons, or to take other appropriate action even if there is no evidence of improper conduct by the candidate. In these cases, the Office of EMS reserves the right to delay processing of examination results until a thorough and complete investigation may be conducted.

1. Unauthorized giving or obtaining information will include but not be limited to:

a. Giving unauthorized access to secure test questions.

b. Copying or reproducing all or any portion of any secure test booklet.

c. Divulging the contents of any portion of a secure test.

d. Altering candidate's responses in any way.

e. Making available any answer keys.

f. Providing a false certification on any test security form required by the Office of EMS.

g. Retaining a copy of secure test questions.

h. Falsely taking any examination, or part thereof, on behalf of another individual.

i. Participating in, directing, aiding, or assisting in any of the acts prohibited by this section.

2. For the purposes of this section the term "secure test" means any item, question, or test that has not been made publicly available by the Office of EMS.

3. Nothing in this section may be construed to prohibit or restrict the reasonable and necessary actions of the Office of EMS in test development or selection, test form construction, standard setting, test scoring and reporting, or any other related activities that in the judgment of the Office of EMS are necessary and appropriate.

C. Under no circumstances will written examinations and practical scenarios be provided to EMT instructor, ALS coordinator, EMS education coordinator, PCD or OMD, or candidates for their review at any time.

12VAC5-31-1480. Eligibility for certification examination. (Repealed.)

A. A certification candidate shall take the initial EMS certification examination within 180 days of the end date of the EMS certification program by presenting the following at a state certification examination:

1. A completed "Virginia EMS Certification Application" form signed by the course coordinator for BLS programs or the physician course director for ALS programs.

2. A parental permission form if the certification candidate was less than 18 years of age on the beginning date of a BLS program.

3. A completed individual skill performance, clinical training or field internship record, or a combination of these, as applicable for the EMS certification program.

4. For BLS certification courses, a current CPR card or a valid copy of the course roster from a CPR course approved by the Office of EMS unless an individual skill performance record verifies this information.

5. Positive identification in the form of a government issued picture identification card.

~~B. A certification candidate in recertification, reentry, equivalency challenge or legal recognition status shall present the following at a state certification examination:~~

- ~~1. A "Recertification Eligibility Notice" or test authorization letter from the Office of EMS.~~
- ~~2. Positive identification in the form of a government-issued picture identification card.~~

12VAC5-31-1490. Recertification Eligibility Notice. (Repealed.)

~~A. An EMS provider who has satisfied the CE hours specified for his certification level may be issued a "Recertification Eligibility Notice."~~

~~B. A "Recertification Eligibility Notice" remains valid until the expiration of the current certification period or the two-year "reentry" period for the level indicated unless the requirements for recertification are changed by the Office of EMS.~~

12VAC5-31-1500. Eligibility for EMT Instructor certification program. (Repealed.)

~~A. An EMS provider must comply with the following in order to be eligible to take the EMT Instructor written examination:~~

- ~~1. Be a minimum of 21 years of age.~~
- ~~2. Hold current certification as an EMT or higher EMS certification level, and have been certified as an EMT for a minimum of two years.~~
- ~~3. Be a high school graduate or equivalent.~~
- ~~4. Have completed any other prerequisite training required by the Office of EMS.~~
- ~~5. Obtain a minimum score of 85% on a written pretest examination.

 - ~~a. Instructor pretest results are valid for a period of two years from the date of the written examination.~~
 - ~~b. An EMS provider failing a written pretest examination is not eligible to repeat the examination for a period of 90 days from the date of the examination.~~~~

~~B. An EMT instructor candidate shall demonstrate competency during a formal practical pretest examination. An EMT instructor candidate shall provide the Office of EMS the following to be eligible for the practical examination:~~

- ~~1. An EMT instructor candidate affiliated with an EMS agency shall be recommended by the EMS physician serving as the agency's OMD.~~
- ~~2. An EMT instructor candidate who is not affiliated with an EMS agency shall provide both a recommendation from an EMS physician and a statement from his employer or perspective employer attesting to the need for instructor~~

~~certification to meet the EMS training needs of the organization.~~

~~C. An EMT instructor candidate shall receive an invitation from the Office of EMS to attend an instructor institute.~~

~~1. An EMT instructor candidate shall successfully complete an EMT instructor institute conducted by the Office of EMS. Attendance of some portions of the EMT instructor institute may be waived for qualified candidates who present documentation of completion of equivalent programs in adult education approved by the Office of EMS.~~

~~2. An EMT instructor candidate shall demonstrate application of the knowledge and skills required of an Instructor during a teaching presentation made at the Instructor Institute.~~

~~a. An EMT instructor candidate who performs to an acceptable level may be certified.~~

~~b. An EMT instructor candidate who performs at an unacceptable level will be deemed to have failed the instructor institute. The candidate will be required to repeat the entire EMT Instructor certification process to apply for EMT instructor certification.~~

~~e. An EMT instructor candidate who performs at a marginal level may be granted "Conditional Instructor Status."~~

Article 5
BLS Programs

12VAC5-31-1501. BLS certification course attendance.

A. Students must be present for a minimum of 85% of the entire course.

B. Students must complete all healthcare facility competency and field internship requirements for the program.

C. Students must successfully demonstrate competency to perform all required skills as specified by the Office of EMS for the level of the training program attended. Use of training manikin practice may not substitute for performance of skills involving actual patients in a clinical setting except as allowed by the Office of EMS.

12VAC5-31-1503. BLS course student requirements.

The enrolled student, certification candidate, or EMS provider must comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family, or bystander to determine a chief complaint, nature of illness or, mechanism of injury; assess signs and symptoms; and interpret protocols.

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2. Be a minimum of 16 years of age at the beginning date of the certification program. If less than 18 years of age, the student must provide the EMT instructor or the EMS educational coordinator with a completed parental permission form as approved by the Office of EMS with the signature of a parent or guardian supporting enrollment in the course.

3. Have no physical or mental impairment that would render the student or provider unable to perform all practical skills required for that level of certification including the ability to function and communicate independently and perform patient care, physical assessments, and treatments.

4. Hold current certification in an approved course in cardio-pulmonary resuscitation (CPR) at the beginning date of the certification program. This certification must also be current at the time of state testing.

5. If in a bridge certification program, the student must hold current Virginia certification at the EMS First Responder level through completion of the certification examination process.

12VAC5-31-1505. EMS First Responder certification program.

The EMS First Responder curriculum will be the current version of the Virginia Standard Curriculum or Virginia education standards for the EMS First Responder as approved by the Office of EMS and will consist of a minimum number of hours of didactic training.

12VAC5-31-1507. First Responder bridge to EMT.

The Virginia EMS First Responder Bridge curriculum will be based upon the National Standard Curriculum for the EMT and the bridge program curriculum approved by the Office of EMS.

12VAC5-31-1509. EMS First Responder bridge length.

The Virginia EMS First Responder Bridge will consist of a minimum number of hours of didactic training and competency.

12VAC5-31-1510. EMS certification written examination. (Repealed.)

A certification candidate shall pass the written certification examination with a minimum score of:

1. 70% on a BLS certification examination.
2. 80% on an ALS certification examination.
3. 85% on an EMT Instructor pretest examination.
4. 80% on an EMT Instructor recertification examination.

12VAC5-31-1511. First Responder bridge to EMT certification examinations.

Candidates completing the Virginia EMS First Responder Bridge program must complete the current EMT written and practical examinations administered by the Office of EMS.

12VAC5-31-1513. Emergency Medical Technician (EMT) certification.

The EMT curriculum will be based upon the current version of the National Standard Curriculum for the EMT or Virginia education standards and any additions, deletions, or other modifications as approved by the Office of EMS and will consist of a minimum number of hours of didactic training and competency.

12VAC5-31-1515. Emergency Medical Technician (EMT) certification examination.

Candidates completing the EMT training program must successfully complete the Office of EMS approved EMT written and practical examinations.

12VAC5-31-1520. EMS certification practical examination. (Repealed.)

A. A certification candidate shall pass all practical stations required for the certification level being tested.

B. A grade of UNSATISFACTORY on a critical criteria within a practical station will result in failure of that station.

C. A grade of UNSATISFACTORY on a practical station that uses numeric scoring will include failure to obtain the minimum required points.

Article 6 ALS Programs

12VAC5-31-1521. ALS course student requirements.

An enrolled student in an ALS certification program shall comply with the following:

1. Be proficient in reading, writing and speaking the English language in order to clearly communicate with a patient, family or bystander to determine a chief complaint, nature of illness, mechanism of injury, to assess signs and symptoms, and interpret protocols.

2. Be a minimum of 18 years of age at the beginning date of the certification program.

3. Certification as an EMT or higher EMS certification level.

4. Posses a high school or general equivalency diploma.

5. Have no physical or mental impairment that would render the student or provider unable to perform all practical skill required for that level of certification including the ability to function and communicate

independently and perform appropriate patient care, physical assessments, and treatments.

6. If in a bridge certification program, the student shall be eligible for certification at the prerequisite lower ALS level at the beginning date of the bridge program and shall have obtained certification at the bridge program's prerequisite certification level before certification testing for the bridge level.

12VAC5-31-1523. EMT-Enhanced certification.

A. The EMT-Enhanced curriculum will be the current Virginia Standard Curriculum for the EMT-Enhanced as approved by the Office of EMS.

B. Certification for the EMT-Enhanced course will be awarded upon successful completion of written and practical examinations administered by the Office of EMS.

C. EMT-Enhanced certification practical testing will follow practical testing guidelines as approved by the Office of EMS.

12VAC5-31-1524. Advanced EMT certification.

A. The Advanced EMT curriculum will be the current Virginia Standard Curriculum for the Advanced EMT or Virginia education standards as approved by the Office of EMS.

B. Certification for the Advanced EMT course will be awarded upon successful completion of written and practical examinations administered by the Office of EMS.

C. Advanced EMT certification practical testing will follow practical testing guidelines as approved by the Office of EMS.

12VAC5-31-1525. EMT-Intermediate certification.

A. The EMT-Intermediate curriculum will be the U.S. Department of Transportation National Standard Curriculum for the Intermediate 99 or a bridge program curriculum or Virginia education standards as amended and approved by the Office of EMS.

B. Certification for the EMT-Intermediate course will be awarded through reciprocity upon successful completion of written and practical examinations created and administered by the National Registry of Emergency Medical Technicians.

C. When the National Registry of Emergency Medical Technicians no longer tests EMT-Intermediate 99, the Board of Health will assume testing responsibilities for this level.

12VAC5-31-1527. EMT-Paramedic certification.

A. The EMT-Paramedic curriculum will be the National Standard Curriculum for the EMT Paramedic or a bridge program curriculum approved by the Office of EMS.

B. Certification for the EMT-Paramedic course will be awarded through reciprocity upon successful completion of written and practical examinations created and administered by the National Registry of Emergency Medical Technicians.

12VAC5-31-1529. Advanced life support bridge courses.

A. Bridge courses are designed to allow a candidate to advance from a lower level of ALS certification to a higher level of ALS certification or for a Virginia licensed registered nurse (RN) to bridge to the EMT-Paramedic certification level:

1. EMT-Enhanced to EMT-Intermediate Bridge.
2. EMT-Intermediate to EMT-Paramedic Bridge.
3. RN to EMT-Paramedic Bridge.

B. All bridge programs shall use the minimum training curriculum approved by the Office of EMS for the certification level of the program.

12VAC5-31-1530. Certification — examination — retest. (Repealed.)

~~A. A certification candidate may have up to two series of state certification examinations before being required to repeat an entire BLS or ALS certification program.~~

~~B. A certification candidate failing the written or practical certification examination of an exam series shall retest within 90 days from the date of the original examination.~~

~~C. A certification candidate failing a practical examination but passing the written examination of an exam series shall only repeat the practical examination of an exam series. A certification candidate failing the written examination but passing the practical examination shall only repeat the written examination for the exam series.~~

~~D. A certification candidate who has failed the retest of the initial examination series or has not taken the retest within the 90-day series retest period, shall satisfy the following before an additional certification test may be attempted:~~

- ~~1. Completion of the recertification CE hour requirements for the level to be tested.~~
- ~~2. Receipt of a "Second Certification Testing Eligibility Notice" from the Office of EMS.~~

~~E. A certification candidate who has received a "Second Certification Testing Eligibility Notice" must pass both the written and practical certification examinations for the certification level.~~

~~F. A certification candidate who fails a retest during the second certification examination series must complete an initial certification program or applicable bridge course in order to be eligible for further certification examination.~~

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G. A certification candidate shall complete all certification examination series within 12 months from the date of the first certification examination attempt. This 12 month maximum testing period may shorten the time available for retesting specified in subsection B of this section.

12VAC5-31-1531. Registered nurse to EMT-Paramedic bridge prerequisites.

RN to EMT-Paramedic students must be able to document compliance with the following prerequisites:

1. The candidate must be currently licensed as an RN in Virginia or as recognized through the Nursing Compact Agreement as approved by the Virginia Board of Nursing.
2. The candidate must currently hold certification as a Virginia EMT or higher certification.
3. The candidate must be currently participating as an EMS field provider or actively working as an RN.

12VAC5-31-1533. Registered Nurse to EMT-Paramedic bridge program completion requirements.

A. The RN to EMT-Paramedic bridge curriculum shall be the National Standard Curriculum for the EMT-Paramedic or a bridge program derived from this curriculum approved by the Office of EMS.

B. The student will receive formal instruction in all the objectives listed in the EMT-Paramedic curriculum as recognized by the Office of EMS either through an accredited EMT-Paramedic course or through a nursing education program as recognized by the Virginia Board of Nursing.

C. Certification for the RN to EMT-Paramedic bridge course will be awarded through reciprocity upon successful completion of written and practical examinations created and administered by the National Registry of Emergency Medical Technicians.

12VAC5-31-1535. NREMT Paramedic endorsements.

A. Physician assistants (PA) or nurse practitioners (NP) may receive Virginia endorsement to sit for the National Registry of EMT's Paramedic written and practical examinations after providing verification of successful completion of the following criteria:

1. The PA or NP shall be currently Virginia certified as an EMT-Basic or may be allowed, with written permission from the Office of EMS, to complete the 36 hour EMT-Basic continuing education (CE) hours and successfully complete the EMT-Basic written and practical certification examination.
2. The PA or the NP shall receive endorsement from an EMS physician who verifies the candidate satisfies the paramedic competencies by completing a form as prescribed by the Office of EMS.

3. Team leader skills shall be completed and verified on a form as prescribed by the Office of EMS.

B. Third and fourth year medical students, and Virginia licensed dentists or chiropractors may receive Virginia endorsement to sit for the National Registry of EMT-Paramedic written and practical examinations after providing successful completion of the following criteria:

1. Must possess or have possessed pre-hospital ALS certification that must not have expired more than 24 months prior to submission.
2. Must be currently certified as a Virginia EMT-Basic.
3. Third and fourth year medical students shall submit a copy of their official medical school transcripts. Dentists or chiropractors shall submit to the Office of EMS a copy of their license to practice in Virginia.

12VAC5-31-1540. Prohibition of oral examination administration. (Repealed.)

A certification candidate may not use another person or any electronic or mechanical means to translate certification examination material into an audible or tactile format.

Article 7

EMT Instructor, ALS Coordinator and EMS Education Coordinator

12VAC5-31-1541. EMT instructor candidate.

A. An EMS provider must comply with the following in order to be eligible to take the EMT instructor written examination:

1. Be a minimum of 21 years of age.
2. Hold current Virginia EMS certification as an EMT or higher Virginia EMS Certification level.
3. Have been certified as an EMT or higher level of EMS certification for a minimum of two years.
4. Must have a minimum of two years field experience as an EMS provider.
5. Proof of a high school diploma or equivalent.

B. The EMT instructor candidate must not have any EMS compliance enforcement issued within the previous twenty-four months or twenty-four months from the end date of the issued enforcement action.

12VAC5-31-1542. EMT instructor.

A. The instructor candidate shall successfully complete a written and practical pre-test as approved by the Office of EMS.

B. The instructor candidate will successfully complete an instructor program as approved by the Office of EMS.

12VAC5-31-1543. EMT instructor recertification.

A. The EMT instructor's certification shall be renewed every two years. To fulfill the recertification requirements, the EMT instructor must:

1. Instruct a minimum of 50 hours of EMT or First Responder subject material in approved courses within the two-year certification period. This requirement only may be met through instruction of standard Basic Life Support training courses or other programs approved for Basic Life Support (Category 1) continuing education credit.

2. Successfully complete a minimum of one EMS instructor update within the two-year certification period.

3. Successfully complete the EMT-Basic written certification examination with a minimum passing score of 80%. This examination may be completed at any time following attendance of an EMS instructor update. If the EMT instructor is affiliated with a licensed EMS agency, this examination may be waived by the EMS agency's OMD.

B. Have no physical or mental impairment that would render the instructor unable to perform and evaluate all practical skills and tasks required of an EMT.

12VAC5-31-1544. EMT instructor reentry.

Individuals whose EMT instructor certification has expired may regain full certification through completion of the reentry program within two years of their previous expiration date provided:

1. If the EMT instructor has completed the teaching requirements but is unable to fulfill one or more of the remaining requirements, the remaining requirements for recertification shall be completed within two years following the expiration date. However, if the required EMT-Basic examination was not completed prior to expiration, this examination may not be waived by an EMS Agency OMD.

2. If the EMT instructor has not completed the teaching requirements, the following requirements will be necessary for reentry:

a. Successful completion of the EMT instructor written and practical pretest examinations.

b. Attendance of the administrative portions of an EMT instructor institute.

3. Upon completion of the applicable requirements for reentry, new EMT instructor credentials will be issued for a two-year period. Thereafter, all of the requirements for recertification under 12VAC5-31-1545 will apply.

12VAC5-31-1545. Advanced Life Support coordinator program.

An Advanced Life Support coordinator may coordinate initial and continuing education training programs for EMT-Enhanced, Advanced EMT, EMT-Intermediate, and EMT-Paramedic up to their level of EMS certification or other healthcare certification or licensure as approved by the Office of EMS.

12VAC5-31-1546. Advanced Life Support coordinator certification.

A. Prerequisites for certification as an Advanced Life Support coordinator are:

1. Must be a minimum of 21 years of age.

2. The Advanced Life Support coordinator candidate must not have any EMS compliance enforcement issued within the previous 24 months or two years from the end date of the issued enforcement action.

3. The applicant must hold current certification or licensure for one or more of the following issued by the Commonwealth of Virginia:

a. EMT-Enhanced.

b. Advanced EMT.

c. EMT-Intermediate.

d. EMT-Paramedic.

e. Physician assistant.

f. Nurse practitioner.

g. Registered nurse.

h. Doctor of osteopathy.

i. Doctor of medicine.

B. A certification application shall be completed and submitted as prescribed by the Office of EMS.

C. Upon receipt of a complete Advanced Life Support coordinator application meeting the prerequisites and qualifications for certification, the applicant must attend an Advanced Life Support coordinator seminar.

D. Performance of any medical procedure is not permitted based upon Advanced Life Support coordinator certification.

12VAC5-31-1547. Renewal of Advanced Life Support coordinator.

A. An ALS coordinator must maintain current certification as a Virginia ALS provider or licensure as a doctor of medicine, doctor of osteopathy, registered nurse, or physician assistant.

B. An ALS coordinator must resubmit an ALS coordinator certification application before his expiration month.

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C. Successfully complete a minimum of one EMS instructor update or an ALS coordinator meeting within the two-year certification period.

D. A individual whose ALS coordinator certification has expired may regain full endorsement through completion of the reentry program within two years of his previous expiration date provided he:

1. Submits a completed ALS coordinator certification application; and
2. Successfully completes a minimum of one EMS instructor update or an ALS coordinator meeting within the two-year certification period.

12VAC5-31-1548. EMS education coordinator.

A. The EMS education coordinator may announce and teach courses at or below his provider certification level. An EMS education coordinator who certifies at a higher level may not begin announcing or coordinating courses at that level until they have attained one year of field experience at that level.

B. Performance of any medical procedure is not permitted based upon EMS education coordinator certification.

C. Current EMT instructors and ALS coordinators will be transitioned to EMS education coordinator within four years of (the effective date of these regulations).

12VAVC-5-31-1549. EMS education coordinator prerequisites.

Prerequisites for certification as an EMS education coordinator are:

1. Be a minimum of 21 years of age.
2. Posses a high school diploma or equivalent.
3. Have three years medical experience with a minimum of two years verified field experience as an EMS provider at the appropriate level EMS level or two years of current Virginia licensure as an registered nurse, physicians assistant, doctor of osteopathic medicine, or doctor of medicine.
4. Must not have any EMS compliance enforcement actions within the previous five years.

12VAC5-31-1550. Certification examination security. (Repealed.)

A person found to have given or obtained information or aid before, during or following a certification examination may be subject to disqualification of eligibility for certification examination and to further enforcement action. Unauthorized giving or obtaining of information will include but not be limited to:

1. Unauthorized access to a certification examination question;

2. Copying, reproducing or obtaining all or any portion of material from a certification examination;

3. Divulging any material from a certification examination;

4. Altering in any manner the response of a certification candidate, except by the Office of EMS;

5. Providing false certification or identification on any certification examination form;

6. Taking a certification examination on behalf of another person; or

7. Participating in, directing, aiding, or assisting in any of the acts prohibited by this section.

12VAC5-31-1551. EMS education coordinator certification process.

A. Eligible EMS education coordinator candidates will submit an application to include endorsement from an EMS physician.

B. Upon receipt and verification of the application, the eligible EMS education coordinator candidate will be required to complete a written and practical examination.

C. After successfully completing the written and practical examination, the qualified eligible EMS education coordinator candidate shall attend training as required by OEMS.

12VAC5-31-1552. EMS education coordinator recertification process.

A. To be eligible to recertify, the EMS education coordinator shall:

1. Maintain his provider certification.
2. Teach a minimum of 50 hours of initial certification or Category I CE and provide documentation of completion submitted in a process established by OEMS.
3. Complete one EMS education coordinator update in the two-year certification period.
4. Complete a minimum of 12 hours of instructor focused continuing education.
5. Submit an EMS education coordinator application to include endorsement from an EMS Physician.

B. Upon completion of the recertification requirements, the EMS education coordinator will receive an "Eligibility Notice" and must take and pass the EMS education coordinator recertification examination.

C. All recertification requirements must be completed and submitted to OEMS prior to the certification expiration date.

12VAC5-31-1553. EMS education coordinator reentry.

A. If an EMS education coordinator does not complete or submit all recertification requirements prior to his expiration date, he will go into a two-year reentry period.

B. During the reentry, the EMS education coordinator will not be allowed to coordinate any certification of CE courses. Any current courses in progress at the time of loss of EMS education coordinator certification will be suspended.

C. All outstanding recertification requirements shall be completed during the reentry period.

D. Failure to complete all recertification requirements during the reentry period will require the provider to complete the entire certification process as prescribed in 12VAC5-31-1551.

12VAC5-31-1560. BLS course coordinator reimbursement. (Repealed.)

~~A. The BLS course coordinator for approved first responder and emergency medical technician certification courses and Category 1 "Required" CE programs is eligible to request reimbursement. Reimbursement is designed to cover estimated costs for instruction and coordination of approved programs.~~

~~B. A BLS course coordinator is eligible for reimbursement if he is not receiving payment or reimbursement from any source other than a rescue squad or other emergency medical services organization that operates on a nonprofit basis exclusively for the benefit of the general public for instruction of the same course.~~

~~1. Fees not exceeding actual cost may be charged to students for textbooks, handouts, disposable medical supplies, other course materials and payment of assisting instructors actually utilized in the course. Upon request, a schedule of fees charged shall be provided to the Office of EMS.~~

~~2. Tuition enrollment or institutional fees charged students for taking the course may be reason for denial of reimbursement payment.~~

~~3. The sponsoring rescue squad or other emergency medical services organization may make payment to the course coordinator in an amount up to the hourly reimbursement rate established by the Office for BLS programs.~~

~~C. Requirements for Reimbursement Approval. A BLS course coordinator requesting reimbursement shall complete and sign the "Independent Contractor" agreement section of the Course Approval Request form.~~

~~1. A BLS course coordinator requesting reimbursement is an "Independent Contractor" and is not an employee of the Office of EMS or any agency of the Commonwealth of~~

~~Virginia while fulfilling this independent contractor agreement.~~

~~2. The training program shall be "open" to any qualified student up to the maximum of 30 allowed in a single program. No requirement for specific agency or employment affiliation may be imposed to limit or exclude enrollment by any individual in reimbursed courses.~~

~~3. There shall be a minimum enrollment of 13 students at the start of the program to qualify for full reimbursement, unless the Office of EMS has granted specific prior approval.~~

~~a. Programs with enrollments of less than 13 students at the time of instruction of the third lesson of the course curriculum shall submit a "Small Course Special Approval Request" form to the Office of EMS. This form requires justification of the need for continued instruction of this program for reimbursement.~~

~~b. Programs approved for reimbursement with enrollments of less than 13 will be reimbursed at a lower rate than larger programs.~~

~~4. "Small Course Special Approval Request" forms will be reviewed by Office of EMS staff and returned to the course coordinator indicating approval or denial. Programs are initially approved for reimbursement based upon the information provided at the time of request. Failure to properly coordinate and instruct the program, or other violations of applicable sections of these regulations may be deemed as grounds to deny or modify reimbursement payments at course completion.~~

~~D. Final Payment. Upon course completion, and after all requirements of these regulations and the reimbursement contract have been satisfied, the course coordinator may request reimbursement.~~

~~1. To make application for payment, the Reimbursement Claim Form shall be submitted to the Office of EMS for review and final approval.~~

~~2. A course coordinator may request that payment be made out in his name or that of a sole proprietorship or partnership he operates as a principal party. Checks made to organizations require submission of the business' federal employers identification number (FEIN) in place of the course coordinator's social security number in these cases. Reimbursement may not be paid to anyone other than the course coordinator who announced and contracted for the involved course.~~

Article 8
EMS Training Fund

12VAC5-31-1561. EMS training fund.

The Board of Health has established the emergency medical services training fund (EMSTF) to support certification and

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continuing education for BLS and ALS programs. Funding for various approved training programs will be administered on a contract basis between the EMT instructor, ALS coordinator, or EMS educational coordinator and the Office of EMS. In addition, a tuition reimbursement component has been established to help defray the costs associated with obtaining initial certification.

12VAC5-31-1563. Contracting through the EMS training fund.

The Board of Health promulgates funding contracts for EMS training programs annually on July 1. Only EMT instructors, ALS coordinators, or EMS educational coordinators are eligible to submit funding contracts. The requirements of the funding contracts supersede these regulations as they are legal documents.

12VAC5-31-1565. Individual tuition reimbursement.

A. Individual reimbursement is provided for expenses incurred by students who attend initial certification programs that received funding from the EMSTF program. Funding is made available to any certified and affiliated EMS provider in the Commonwealth.

B. Reimbursement will be awarded based upon tuition expenses incurred by the student (minus grants and scholarships) up to the maximum amount defined in the EMSTF program. Funding for individual tuition reimbursement is determined by the Office of EMS based upon the EMSTF tuition award formula. There are two different funding levels:

1. Non-EMSTF funded initial certification programs, and
2. EMSTF funded initial certification programs.

C. Individual requests for tuition reimbursement require that the applicant:

1. Be a Virginia certified EMS provider at the level of the program for which tuition is requested.
2. Submit a completed application as prescribed by the Office of EMS.
3. Ensure the submitted application shall be postmarked to the Office of EMS within 180 days of the applicant receiving Virginia certification at the level for which the tuition reimbursement is sought.
4. Not submit or have previously submitted at the current level his name for reimbursement under the organizational tuition reimbursement process.

D. Falsification of information shall nullify the tuition reimbursement request and any subsequent requests for a period of five (5) years.

12VAC5-31-1567. Organizational tuition reimbursement.

A. Reimbursement is provided for tuition expenses incurred by EMS agencies or governmental organizations that pay for students to attend initial certification programs.

B. Funding is made available to include but is not limited to:

1. 501(c) (3) organizations.
2. Governmental organizations.
3. Individuals who are not considered for-profit entities.

C. Reimbursement will be awarded based upon tuition expenses (minus grants and scholarships) up to the maximum amount defined in EMSTF program. Funding for organizational tuition reimbursement is determined by the Office of EMS based upon the EMSTF tuition award formula. There are two different funding levels:

1. Non-EMSTF funded initial certification programs, and
2. EMSTF funded initial certification programs.

D. Organizational requests for tuition reimbursement require that the applicant:

1. Submit a request for providers who are affiliated with a Virginia EMS agency that is capable of delivering care at the level of certification for which the EMS agency is seeking tuition reimbursement.
2. Submit a completed application as prescribed by the Office of EMS.
3. Ensure the submitted application for tuition reimbursement is received by the Office of EMS within 180 days of the provider receiving Virginia certification at the level for which the tuition reimbursement is sought. Documents must be postmarked before the deadline in order to be accepted.
4. Complete a separate application for each type of program or level for which tuition reimbursement is being requested.
5. Ensure that no provider on the application has been submitted, or has previously submitted at the current level, for reimbursement under the individual tuition reimbursement process.

E. Falsification of information shall nullify the tuition reimbursement request and any subsequent requests for a period of five years.

12VAC5-31-1570. EMS training grant program. (Repealed.)

~~A reimbursement fund has been established to support certification and continuing education programs through the "Virginia Rescue Squad Assistance Fund" grant program. Reimbursement for coordination and instruction of approved programs will be administered through the separate~~

~~regulations established for the "Virginia Rescue Squad Assistance Fund."~~

12VAC5-31-1580. Certification period. (Repealed.)

~~An EMS certification may be issued for the following certification period unless suspended or revoked by the Office of EMS:~~

- ~~1. A BLS certification is valid for four years from the end of the month of issuance, except as noted below.~~
- ~~2. An ALS certification is valid for three years from the end of the month of issuance. An EMS provider with ALS certification may be simultaneously issued an EMT certification for an additional two years.~~
- ~~3. An EMT instructor certification is valid for two years from the end of the month of issuance. An EMS provider with EMT instructor certification may be simultaneously issued an EMT certification for an additional two years.~~

12VAC5-31-1590. Certification through reciprocity. (Repealed.)

~~Upon demonstration of Virginia residency, Virginia EMS agency affiliation or a recognized need for Virginia EMS certification, a person holding valid EMS certification from another state or a recognized EMS certifying body with which Virginia has a formal written agreement of reciprocity may be issued a certification.~~

12VAC5-31-1600. Certification through legal recognition. (Repealed.)

~~Upon demonstration of Virginia residency, Virginia EMS agency affiliation or a recognized need for Virginia EMS certification, a person holding valid EMS certification from another state or a recognized EMS certifying body with which Virginia does not have a formal written agreement of reciprocity but who has completed a training program in compliance with the minimum training standards established by the National Standard Curriculum for the level requested, may be issued certification for a period of one year or the duration of their current certification, whichever is shorter. Legal recognition is not available for any Virginia certification level if the Office of EMS has determined that no equivalent National Standard Curriculum exists at the level requested.~~

Article 9

Accreditation of EMS Programs

12VAC5-31-1601. Accreditation of EMS training programs.

A. Training programs that lead to eligibility for initial certification at the Advanced EMT, EMT-Intermediate and EMT-Paramedic level shall hold a valid accreditation issued by the Board of Health before any training programs are offered.

B. All certification programs seeking accreditation in Virginia shall comply with these regulations and the current version of the Standards and Guidelines for an Accredited Educational Program for the Emergency Medical Services Profession established by the Committee on Accreditation of Educational Programs for the Emergency Medical Services Professions (CoAEMSP) or an equivalent organization approved by the Board of Health.

C. The program director for an Advanced EMT, EMT-Intermediate, EMT-Enhanced (optional track) or EMT (optional track) program is exempt from the bachelor's degree requirement as specified by CoAEMSP standards.

D. The medical director required by CoAEMSP standards shall also meet the requirements for an OMD or PCD as required by these regulations.

E. All accredited programs shall notify the Board of Health immediately upon receiving notice about the following changes:

1. Program personnel to include:

- a. The program director;
- b. OMD or PCD; and
- c. Primary faculty or instructional staff.

2. Additions or deletions to clinical site contracts and field site contracts.

3. Location.

4. Learning or teaching modalities.

5. Any sentinel event.

12VAC5-31-1603. Sentinel events.

In cases where a sentinel event occurs, the commissioner may:

1. Place a program on probationary accreditation until the sentinel event is satisfactorily resolved; or

2. Revoke accreditation for the program.

12VAC5-31-1605. Initial accreditation.

A. The initial accreditation process will begin upon the receipt by the Board of Health of an application for accreditation and a completed institutional self study.

B. EMT-Paramedic programs can obtain initial accreditation in one of two ways:

1. State accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

2. Programs achieving accreditation issued by CoAEMSP or an equivalent organization approved by the Board of Health shall apply to the Office of EMS for state accreditation. Full accreditation will be issued for a period

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concurrent with that issued by the CoAEMSP or other approved organization up to a maximum of five years.

C. Advanced EMT and EMT-Intermediate programs can obtain accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

D. EMT-Enhanced programs (optional track) can obtain accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

E. EMT programs (optional track) can obtain accreditation by applying to the Board of Health for an initial grant of accreditation not to exceed five years.

F. The commissioner shall grant initial accreditation as follows:

1. The commissioner will issue full accreditation for a period of five years from the accreditation date if the accreditation analysis determines that the training program is in full compliance with the requirements for accreditation outlined in the appropriate section of EMS regulations.

2. The commissioner will issue provisional accreditation if the accreditation analysis and report identifies deficiencies that are determined to be of concern but do not justify prohibiting the program from starting and completing an initial training program. Before starting any additional certification courses, the program site must receive full accreditation by correcting the deficiencies identified in the accreditation analysis and report.

3. The commissioner will issue an accreditation denied status to the applicant if the accreditation analysis and report identifies deficiencies that are determined to be sufficient to prohibit the program from starting an initial training program.

12VAC5-31-1607. Renewal of accreditation.

A. EMT-Paramedic program applicants shall only be renewed by obtaining a valid accreditation from the Committee on Accreditation of Allied Health Education Programs (CAAHEP), CoAEMSP or an equivalent organization approved by the Board of Health.

B. Advanced EMT and EMT-Intermediate, or EMT-Enhanced or EMT as optional tracks programs shall apply for renewal of their program accreditation not less than 270 days before the end of their current accreditation cycle. Reaccreditation will require submitting a new application for accreditation and an updated institutional self study. The institutional self study will be reviewed by a site review team which will determine the program's performance and provide the commissioner with a recommendation as to whether program accreditation should be renewed.

1. The commissioner will issue full accreditation for a period of five years from the reaccreditation date if the

accreditation analysis determines that the training program is in full compliance with the requirements for accreditation outlined in the Virginia EMS regulations.

2. The commissioner will issue provisional reaccreditation if the accreditation analysis and report identifies deficiencies that are determined to be of concern but do not justify prohibiting the program from starting and completing an initial training program. Before starting any additional certification courses, the program site shall receive full accreditation by correcting the deficiencies identified at the reaccreditation date.

3. The commissioner shall issue an accreditation denied status to the applicant if the accreditation analysis identifies deficiencies that are determined to be sufficient to prohibit the program from starting an initial training program.

12VAC5-31-1609. Accreditation of alternative locations and learning sites.

A. Accredited training programs in Virginia shall contact the Board of Health for accreditation of alternative training sites which differ from the site receiving initial accreditation.

B. Institutions that intend to operate entire programs or parts of programs at a different location or learning site shall prepare and submit on a form prescribed by the Board of Health for each additional location.

12VAC5-31-1610. Certification through equivalency. (Repealed.)

A Virginia licensed practical nurse, registered nurse (to include those recognized through the Nurse Licensure Compact (§ 54.1-3030 et seq. of the Code of Virginia)), physician assistant or military corpsman with current credentials may be issued EMT certification through equivalency after completing the requirements of 12VAC5-31-1640 B, including passing a written and practical certification examination.

12VAC5-31-1611. Appeal of site accreditation application results.

Appeals by a program concerning the (i) denial of initial or renewal of accreditation or (ii) issuance of probationary accreditation shall be submitted in writing within 10 days to the Office of EMS pursuant to § 2.2-4019 of the Virginia Administrative Process Act.

12VAC5-31-1613. Accreditation of EMT-Paramedic programs.

A. EMT-Paramedic programs with state accreditation shall be limited to one initial grant of state accreditation for a five-year period.

B. Renewal of at the EMT-Paramedic level will be issued only upon verification of accreditation issued by CoAEMSP.

CAAHEP, or another approved equivalent accreditation organization as specified in this chapter.

12VAC5-31-1615. Equivalent accreditation of EMS programs.

A. The commissioner may issue an equivalent accreditation to programs obtaining a valid accreditation from the CAAHEP, CoAEMSP, or an equivalent organization approved by the Board of Health.

B. As a condition for equivalent accreditation, a representative from the Board of Health must be included with each visit by the CoAEMSP or any other approved accreditation organization.

1. Programs with equivalent accreditation shall notify the Board of Health immediately upon receiving notice about the following changes:

a. Scheduling of site team visits to include:

- (1) Dates;
- (2) Times; and
- (3) The agenda or schedule of events.

b. Changes in program personnel to include:

- (1) The program director; and
- (2) OMD or PCD.

c. Changes or additions to, or deletions from clinical site contracts and field site contracts.

d. Notice of revocation, removal, or expiration of accreditation issued by CoAEMSP.

e. Any sentinel event.

2. Accreditation issued by CoAEMSP or other organization approved by the Board of Health shall remain current during any certification training program that requires accreditation by the Board of Health. Revocation, removal, or expiration of accreditation issued by CoAEMSP or other another organization approved by the Board of Health shall invalidate the corresponding state accreditation of the training program.

12VAC5-31-1620. Certification through reentry. (Repealed.)

A. An EMS provider whose EMS certification has expired within the previous two years may be issued certification after completing the requirements of 12VAC5-31-1640 B, including passing a written or practical certification examination, or both, as required by the Office of EMS. An EMS provider who fails to complete the reentry process by the end of the two year period following expiration is required to complete an initial certification program.

B. An EMS provider who has resided outside of Virginia for a minimum of two years, has maintained certification through another state or the national registry of EMTs and whose eligibility to regain certification through reentry has expired, may be issued certification through 12VAC5-31-1590 or 12VAC5-31-1600 as applicable.

12VAC5-31-1630. Voluntary inactivation of certification. (Repealed.)

Requests from individuals desiring to permanently surrender or downgrade their current certification on a voluntary basis will not be processed except upon verification of the individual's ineligibility for continued certification under these regulations (e.g., felony conviction, permanent disability, etc.).

1. Any individual holding a current EMS certification who is affiliated with a licensed EMS agency and no longer wishes to practice at their current level of certification; may request to have their certification placed in inactive status by the Office of EMS.

2. Requests for inactive status will require a minimum inactive period of 180 days during which time requests for reinstatement to active status will not be allowed.

12VAC5-31-1640. EMS recertification requirement. (Repealed.)

A. An EMS provider must complete the requirements for recertification and the Office of EMS must receive the required documentation within the issued certification period to maintain a current certification.

B. An EMS provider requesting recertification must complete the CE hour requirements for the level to be recertified.

C. An EMS provider requesting recertification must pass the written state certification examination.

1. Except an EMS provider under legal recognition, 12VAC5-31-1600, must pass a written and practical EMS certification examination.

2. An EMS provider affiliated with an EMS agency may be granted an exam waiver from the state written certification examination by the OMD of the EMS agency, provided:

a. The EMS provider meets the recertification requirements including those established by the OMD; and

b. The EMS provider must submit a completed "Virginia EMS Certification Application" with the exam waiver approval signed by the EMS agency OMD, which must be received by the Office of EMS within 30 days following the expiration of his certification.

(1) If the "Virginia EMS Certification Application" form is received by the Office of EMS after the EMS

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provider's certification expiration date, the EMS provider may not practice at the expired certification level until a valid certification is received from the Office of EMS.

(2) If the "Virginia EMS Certification Application" form is received by the Office of EMS more than 30 days after the EMS provider's certification expiration date, his certification will be in reentry and he will be required to test pursuant to 12VAC5-31-1620.

12VAC5-31-1650. EMT instructor recertification. (Repealed.)

An EMT instructor requesting recertification must complete the following requirements within the two-year certification period to maintain current certification:

1. Instruct a minimum of 50 hours in BLS certification courses or other programs approved for BLS (Category 1) CE hours;
2. Attend one EMT Instructor/ALS Coordinator Update Seminar;
3. Attend a minimum of 10 hours of approved continuing education. An instructor holding an ALS level certification is not required to attend these additional 10 hours of continuing education if his ALS certification is current at the time of EMT Instructor recertification;
4. Pass the EMT basic written certification examination with a minimum passing score of 80%. This examination may be attempted only after attending an EMT Instructor/ALS Coordinator Update Seminar. If the EMT instructor is affiliated with a licensed EMS agency, this examination may be waived by the EMS agency's OMD per 12VAC5-31-1580; and
5. Have no physical or mental impairment that would render the EMT Instructor unable to perform and evaluate all practical skills and tasks required of an EMT.

An EMT instructor's certification will revert back to his highest level of EMS certification remaining current upon expiration.

12VAC5-31-1660. EMT instructor reentry. (Repealed.)

An EMS provider whose EMT instructor certification has expired may regain certification through completion of the reentry program within two years of the expiration date of his EMT Instructor certification:

1. If the EMT instructor had completed the teaching requirements of subdivision 1 of 12VAC5-31-1650, but was unable to fulfill one or more of the requirements of subdivisions 2-5 of 12VAC5-31-1650, the remaining requirements shall be completed within two years following the expiration date. If the EMT basic examination required under subdivision 4 of 12VAC5-31-

1650 was not completed before expiration, this examination may not be waived by an EMS agency OMD.

2. If an EMT instructor does not complete the teaching requirements of 12VAC5-31-1650, the following requirements will be necessary for reentry:

- a. Successful completion of the EMT instructor written and practical pretest examinations as specified under 12VAC5-31-1480; and
- b. Attendance of the administrative portions of an EMT Instructor Institute.

12VAC5-31-1670. Continuing education categories. (Repealed.)

A CE hour may be issued for one of the following categories:

1. "Required" (Category 1). CE hours may be issued provided the objectives listed in the applicable "Basic Life Support Category 1 Training Modules" or "Advanced Life Support Category 1 Training Modules" are followed, a qualified instructor is present and available to respond to students, requirements for specific contact hours are met and the course coordinator complies with these regulations.
2. "Approved" (Category 2). CE hours may be issued provided that a qualified instructor is present and available to respond to students, topics are approved and the course coordinator complies with these regulations.
3. "Multimedia" (Category 3). CE hours may be issued for contact with periodicals, videotapes, and other multimedia sources provided that specific contact hours for the certification level involved are met.

12VAC5-31-1680. Submission of continuing education. (Repealed.)

A CE hour may be issued for attendance of a program approved by the Office of EMS provided:

1. A course coordinator must submit a CE record/seanearcd within 15 days of the course end date or the student's attendance of an individual lesson for an EMS provider attending a training program for recertification hours.
2. An EMS provider is responsible for the accuracy of all information submitted for CE hours.

12VAC5-31-1690. Recertification Eligibility Notice. (Repealed.)

An EMS provider who has satisfied the CE hours specified for his certification level may be issued a "Recertification Eligibility Notice" that remains valid until the expiration of the current certification period for the level indicated or the two-year "reentry" period.

12VAC5-31-1700. ~~ALS coordinator endorsement. (Repealed.)~~

A. A person applying for endorsement as an ALS coordinator must:

1. Be a minimum of 21 years of age.
2. Hold ALS certification or licensure as one of the following:
 - a. Registered nurse;
 - b. Physician assistant; or
 - c. Physician.
3. Submit an "ALS Coordinator Application" form with the required recommendations and supporting documentation of qualifications to the Office of EMS including:
 - a. A recommendation for acceptance from an EMS physician knowledgeable of the applicant's qualifications. If the applicant is an EMS physician, the support of another EMS physician is not required on his "ALS Coordinator Application."
 - b. A recommendation for acceptance of the applicant's qualifications from the regional EMS council or local EMS resource.

B. A separate ALS Coordinator Application is required for each region in which the applicant intends to coordinate ALS certification or CE programs. An application submitted for approval to serve in additional regions will not alter the expiration date of the current ALS coordinator endorsement and all regional endorsements will be due for renewal on the current expiration date.

C. An ALS coordinator candidate meeting the requirements for endorsement shall attend an ALS Coordinator Seminar.

D. An ALS coordinator candidate that completes all requirements for ALS coordinator endorsement may be issued an endorsement that is valid for two years. An ALS coordinator endorsement does not provide concurrent provider credentials at any EMS certification level.

E. An ALS coordinator endorsement alone does not authorize the performance of any medical procedure.

12VAC5-31-1710. ~~Renewal of ALS coordinator endorsement. (Repealed.)~~

A. An ALS coordinator shall maintain current and unrestricted certification as an ALS provider, or licensure as a registered nurse, physician assistant or physician.

B. An ALS coordinator shall resubmit an ALS coordinator application before the expiration date of his ALS coordinator endorsement. A separate ALS coordinator application is required for each region in which the applicant desires to continue to coordinate an ALS certification or CE programs.

C. An ALS coordinator must attend one EMT Instructor/ALS Coordinator Update Seminar within his certification period.

D. An ALS coordinator attempting to regain endorsement through the reentry program shall, within two years of his expiration date, complete the ALS coordinator application and the requirements of subsections A, B and C of this section.

12VAC5-31-1810. Qualifications for EMS physician endorsement.

A physician seeking endorsement as an EMS physician shall hold a current unrestricted license to practice medicine or osteopathy issued by the Virginia Board of Medicine. The applicant must submit documentation of his qualifications for review by the medical direction committee of the regional EMS council or local EMS resource on a form prescribed by the Office of EMS. The documentation required shall present evidence of the following:

1. Board certification in emergency medicine or that applicant is in the active application process for board certification in emergency medicine issued by a national organization recognized by the Office of EMS, or board certification in family practice, internal medicine, or surgery or is in the active application process for board certification in family practice, internal medicine, or surgery issued by a national organization recognized by the Office of EMS. As an applicant under this section, a physician must also submit documentation of successful course completion or current certification in ACLS, ATLS, and PALS or present documentation of equivalent education in cardiac care, trauma care, and pediatric care completed within the past five years.
2. ~~Board certification in family practice, internal medicine or surgery or that applicant is in the active application process for board certification in family practice, internal medicine or surgery issued by a national organization recognized by the Office of EMS. As an applicant under this section, a physician must also submit documentation of successful course completion or current certification in ACLS, ATLS and PALS (or present documentation of equivalent education in cardiac care, trauma care and pediatric care) completed within the past five years.~~
3. 2. Completion of an EMS medical direction program approved by the Office of EMS within the past five years prior to submitting application for consideration of endorsement as an EMS physician.
4. 3. In the event that an EMS agency or training program is located in a geographic area that does not have available a physician meeting the requirements stated in subdivisions 1 or 2 of this section, or if an EMS agency has a specific need for a physician meeting specialized knowledge requirements (i.e., pediatrics, neonatology, etc.), then an

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available physician may submit ~~their~~ his qualifications to serve as an EMS physician under these circumstances. An EMS physician endorsed under this subsection by the Office of EMS is limited to service within the designated geographic ~~areas~~ area or agency of the recommending regional EMS councils or local EMS resources.

~~a. A physician seeking review for endorsement under this section may apply to any number of regional EMS councils or local EMS resources for service within each respective geographic service area.~~

~~b. A physician seeking endorsement under this section must provide documentation of successful course completion or current certification in cardiac care, trauma care, and pediatric care or equivalent education (such as ACLS, ATLS and PALS) completed within one year of endorsement. All or part of this requirement may be waived if the Office of EMS determines this training is not required due to the specialized nature of the EMS agency to be served.~~

12VAC5-31-1820. Application for EMS physician endorsement.

~~A. Physicians~~ A physician seeking endorsement as an EMS physician must make application on forms ~~prescribed provided~~ by the Office of EMS. ~~The physician must submit the application with all requested documentation of their qualifications to the regional EMS council or local EMS resource for review.~~

~~B. Upon receipt of the application, the regional EMS council or local EMS resource will review the physician's qualifications, verify credentials and review the application at the next scheduled meeting of the medical direction committee of the regional EMS council or local EMS resource. The review will specify either recommendation or rejection with justification documented on the physician's application. The application will be submitted to the Office of EMS within 15 days of the review.~~

~~C. B.~~ The Office of EMS will review the application and the enclosed documents and notify the physician in writing of the status of his application within 30 days of receipt. Final disposition of an application may be delayed pending further review by the EMS ~~advisory board medical direction committee~~ Advisory Board Medical Direction Committee as applicable.

12VAC5-31-1830. Conditional endorsement.

~~Physicians who are otherwise eligible but who have not completed an approved EMS Medical Direction Program as required by 12VAC5-31-1810 within the past five years will be issued a conditional endorsement for a period of one year pending the completion of the following requirements:~~

1. Upon verification of EMS medical direction program attendance ~~and the training required pursuant to 12VAC5-~~

~~31-1810~~ at one four-hour "Currents" session within the one-year conditional endorsement, the Office of EMS will reissue endorsement with an expiration date five years from the date of original issuance.

2. If the conditional EMS physician fails to complete the required EMS medical direction program or the training pursuant to 12VAC5-31-1810 within the initial one-year period, his endorsement will lapse.

12VAC5-31-1840. Lapse of EMS physician endorsement.

A. If an EMS physician fails to reapply for endorsement prior to expiration, the Office of EMS will notify the EMS physician, ~~applicable regional EMS councils or local EMS resources~~, and any EMS agency or training course that the EMS physician is associated with, of the loss of endorsement. Any training programs already begun may be completed under the direction of the involved EMS physician, but no other programs may be started or announced.

B. Any EMS agency notified of the loss of their OMD's EMS physician endorsement will be required to immediately obtain the services of another endorsed EMS physician to serve as operational medical director pursuant to Part II (12VAC5-31-300 et seq.) of these regulations.

C. Upon loss of EMS physician endorsement, a new endorsement may only be issued upon completion of the application requirements of these regulations.

12VAC5-31-1850. Change in EMS physician contact information.

An EMS physician must report any changes of his name, contact addresses and contact telephone numbers to the Office of EMS within ~~45~~ 30 days.

12VAC5-31-1860. Renewal of endorsement.

A. Continued endorsement as an EMS physician requires submission of an application for renewal to the Office of EMS before expiration of the five-year endorsement period. Renewal of an EMS physician endorsement is based upon the physician's continuing to meet and maintain the qualifications specified in 12VAC5-31-1810.

B. Completion of equivalent related continuing education programs may be substituted for formal certification in ACLS, ATLS and PALS for the purposes of endorsement renewal. Acceptance of these continuing education hours is subject to approval by the Office of EMS.

C. An EMS physician must also attend a minimum of two "Currents" sessions as sponsored by OEMS within the five-year endorsement period.

12VAC5-31-1880. Agreement to serve as an operational medical director.

A. An EMS physician may serve as the sole operational medical director (OMD) or one of multiple OMDs required for licensure of an EMS agency.

B. The EMS physician shall enter into a written agreement to serve as OMD with the EMS agency. This agreement shall at a minimum incorporate the specific responsibilities and authority ~~specified below~~ as defined in 12VAC5-31-590.

- ~~1. Must describe the process or procedure by which the OMD or EMS agency may discontinue the agreement with prior notification of the parties involved pursuant to 12VAC5-31-1910;~~
- ~~2. Must identify the specific responsibilities of each EMS physician if an agency has multiple OMDs; and~~
- ~~3. Must ensure that adequate indemnification exists for:

 - ~~a. Medical malpractice; and~~
 - ~~b. Civil liability.~~~~

12VAC5-31-1890. Responsibilities of operational medical directors.

A. Responsibilities of the operational medical director regarding medical control functions include but are not limited to medical directions provided directly to prehospital providers by the OMD or a designee either on-scene or through direct voice communications.

B. Responsibilities of the operational medical director regarding medical direction functions include but are not limited to:

1. Using protocols, operational policies and procedures, medical audits, reviews of care and determination of outcomes; for the purpose of establishing direction of education; and limitation of provider patient care functions.
2. Verifying that qualifications and credentials for the agency's patient care or emergency medical dispatch personnel are maintained on an ongoing basis through training, testing and certification that, at a minimum, meet the requirements of these regulations, other applicable state regulations and including, but not limited to, § 32.1-111.5 of the Code of Virginia.
3. Functioning as a resource to the agency in planning and scheduling the delivery of training and continuing education programs for agency personnel.
4. Taking or recommending appropriate remedial or corrective measures for EMS personnel, consistent with state, regional and local EMS policies that may include but are not limited to counseling, retraining, testing, probation, and in-hospital or field internships.

5. Suspending certified EMS personnel from medical care duties pending review and evaluation. Following final review, the OMD shall notify the provider, the EMS agency and the Office of EMS in writing of the nature and length of any suspension of practice privileges that are the result of disciplinary action.

6. Reviewing and auditing agency activities to ensure an effective quality management program for continuous system and patient care improvement, and functioning as a resource in the development and implementation of a comprehensive mechanism for the management of records of agency activities including prehospital patient care and dispatch reports, patient complaints, allegations of substandard care and deviations from patient care protocols or other established standards.

7. Interacting with state, regional and local EMS authorities to develop, implement, and revise medical, operational and dispatch protocols, policies and procedures designed to deliver quality patient care. This function includes the selection and use of appropriate medications, supplies, and equipment.

8. Maintaining appropriate professional relationships with the local community including but not limited to medical care facilities, emergency departments, emergency physicians, allied health personnel, law enforcement, fire protection and dispatch agencies.

9. Establishing any other agency rules or regulations pertaining to proper delivery of patient care by the agency.

10. Providing for the maintenance of written records of actions taken by the OMD to fulfill the requirements of this section.

12VAC5-31-1950. Physician endorsement exemptions.

A. ~~On January 1, 2003, endorsement~~ Endorsement as an EMS physician will be initially issued to each licensed physician currently recorded as having previously been endorsed to serve as an operational medical director by the Office of EMS. Issuance of an EMS physician endorsement will be subject to renewal pursuant to ~~12VAC5-31-1820~~ 12VAC5-31-1860.

B. EMS physicians initially endorsed through the "grandfather" clause who fail to request renewal before expiration will be subject to compliance with the full provisions of 12VAC5-31-1810 in order to regain endorsement as an EMS physician.

12VAC5-31-2330. Designation of a regional EMS council.

A. The Board of Health will designate a regional EMS council that satisfies the representation requirements in these regulations.

B. The designation of a regional EMS council will be based on:

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1. The "Regional EMS Council Designation Manual" application process.

a. Completed application. Submitted applications missing any information requested will be considered incomplete and will not be processed for designation;

b. Completed Regional EMS Council Self-Assessment Checklist; comply with all indicated standards consistent with these regulations;

c. Current roster of the membership of the applicant organization's board of directors. The roster needs to show all members of the board of directors for the applicant, their addresses, e-mail addresses, phone numbers, and the constituency they represent;

d. Current approved bylaws. A copy of the most recently approved bylaws complete with adoption date;

e. Scope of services. This shall include data and information that demonstrates the qualifications of the applicant to plan, initiate, expand or improve the regional EMS delivery system;

f. Budget. A proposed budget for the first year of designation must illustrate costs associated with the applicant's proposed operations and programs as a designated regional EMS council;

g. EMS involvement. Documentation demonstrating how the applicant organization interacts with EMS agencies and personnel;

h. Policies and guidelines. Up-to-date policies and guidelines covering all aspects of the applicant's regional EMS councils operations, must show revision date of all changes made and be consistent with these regulations;

i. Directory of localities, hospitals and EMS agencies. A comprehensive directory of the localities, hospitals and EMS agencies the applicant organization will be serving.

2. ~~Hospital catchment areas for~~ A listing of all hospitals within the applicant's proposed geographic service delivery area. ~~Hospital catchment areas are the geographic area from which a hospital draws the majority of its patients.~~

3. The demonstrated capability to establish communitywide and regional programs.

4. An evaluation of prior performance as a designated regional EMS council.

C. The Office of EMS will evaluate the performance and effectiveness of a regional EMS council on a periodic basis.

12VAC5-31-2570. Correction order.

A. The Office of EMS may order the designated regional EMS council to correct a deficiency, cease any violations or comply with these regulations by issuing a written correction order as follows:

1. Correction orders may be issued in conjunction with any other enforcement action in response to individual violations or patterns of violations.

2. The Office of EMS will determine that a deficiency or violation exists before issuance of any correction order.

B. The Office of EMS will send a correction order to the agent of the designated regional EMS council by certified mail to his last known address or via personal service with written receipt. Notification will include, but not be limited to, a description of the deficiency or violation to be corrected, and the period within which the deficiency or situation must be corrected, which shall not be less than 30 days from receipt of such order, unless an emergency has been declared by the Office of EMS.

C. A correction order takes effect upon receipt and remains in effect until the deficiency is corrected or until the designation is suspended, revoked, or allowed to expire or until the order is overturned or reversed.

D. Should the designated regional EMS council be unable to comply with the correction order by the prescribed date, it may submit a request for modification of the correction order with the Office of EMS. The Office of EMS will approve or disapprove the request for modification of the correction order within 10 days of receipt.

E. The designated regional EMS council shall correct the deficiency or situation within the period stated in the order.

1. The Office of EMS will determine whether the correction is made by the prescribed date.

2. Should the designated regional EMS council fail to make the correction within the time period cited in the order, the Office of EMS may invoke any of the other enforcement procedures set forth in this part.

12VAC5-31-2740. Accountability for public funds.

A. A designated regional EMS council shall maintain a current operating statement, reflecting revenue and expenditures, available for review.

B. A designated regional EMS council shall have a current income and expenditure statement available at all governing board meetings.

C. A designated regional EMS council shall have an independent annual audit of financial records with management letters conducted by a certified public accountant.

D. A designated regional EMS council ~~may~~ shall have an independent ~~audit review~~ of financial records conducted by a ~~Certified Professional Accountant (CPA)~~ certified public accountant upon change of an executive director.

E. A designated regional EMS council shall retain all books, records, and other documents relative to public funds for six

years after the close of the fiscal year the funds were received. The Office of EMS, its authorized agents, and/or state auditors shall have full access to and the right to examine any materials related to public funds during said period.

F. A designated regional EMS council shall follow generally accepted accounting principles for financial management.

G. A designated regional EMS council's governing board shall approve its annual fiscal year (July 1 through June 30) budget by July 15 of each year.

H. A designated regional EMS council shall comply with all appropriate federal and state tax-related reporting.

I. A designated regional EMS council shall follow generally accepted fund raising practices in the charitable field.

J. A designated regional EMS council shall have written policies that indicate by position, signatories of executed financial and contractual instruments.

NOTICE: The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

FORMS (12VAC5-31)

Clinical Training Record, EMS-TR-05 (rev. 4/95).

Training Program/Instructor Complaint Form, EMS-TR-30 (rev. 8/93).

Virginia Course Approval Request Form, EMS-TR-01 (rev. 9/99) 7/08).

Consolidated Test Site - Reimbursement Claim Form, EMS-TR-02C (rev. 10/98).

Student Course Fee Summary for State Reimbursed BLS Training Programs, EMS-TR-01-SF (rev. 9/97).

Application for EMS Variance/Exemption, EMS-TR-10 (rev. 4/00).

Course Summary Form, EMS-TR-03 (rev. 9/97).

EMS Continuing Education (CE) Registration Card Scan Form, EM-156839:6543 (rev. 1/96).

Virginia EMS Training Program Enrollment Form, EM-234503-1:6543 (rev. 1/01).

Virginia EMS Certification Application, EM-210983-5:65432 (rev. 1/97).

Application for EMS Agency License, EMS-AGENCY-APP (rev. 1/00).

Application for EMS Vehicle Permit, EMS-6010F (rev. 2/02).

Complaint Form (rev. 1/00).

OMD Personnel Information Form/Agreement To Serve, OMD-PIS (rev. 1/02).

Certified Advanced Life Support Coordinator Application, Certified ALS Coordinator Application 2000.doc (rev. 1/00).

Reimbursement Claim Form, EMS-TR-02 (rev. 5/99).

Small Course Approval Request Form, EMS-TR-01-S (rev. 9/99).

Pre-Hospital Patient Care Report, 5936-0225-1306 (rev. 6/01).

Registered Automated External Defibrillation Service Patient Care Incident Report, EMS-AED-001 (rev. 7/99).

Virginia Office of EMS BLS Course Student Information Package (rev. 1/1/05).

Virginia Office of EMS ALS Course Student Information Package (rev. 1/1/05).

Basic Life Support Individual Age, Clinical and Skill Performance Verification Record, EMS-TR-33 (rev. 1/06).

Basic Life Support Student Permission Form For Students Less Than 18 Years Old, EMS-TR-07 (rev. 1/05).

Physician Assistant & Nurse Practitioner Paramedic Program Competency Summary, EMS-TR-37 (rev. 7/06).

Institutional Self Study for Paramedic Programs - Application for EMT-Paramedic Accreditation (rev. 7/07).

Institutional Self Study for Intermediate Programs - Application for EMT-Intermediate Accreditation (rev. 7/07).

Alternative Site Application for EMS Programs In Virginia (7/07).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-31)

Standards and Guidelines for an ~~Accredited Education Program for the Accreditation of Educational Programs in the~~ Emergency Medical ~~Technician Paramedic Services Professions~~. Essentials/Standards initially adopted in 1978, revised in 1989 and 1999, and 2005 by the American Academy of Pediatrics, American College of Cardiology, American College of Emergency Physicians, American College of Osteopathic Emergency Physicians, American College of Surgeons, American Society of Anesthesiologists, Commission on Accreditation of Allied Health Education Programs, National Association of Emergency Medical Services Educators, National Association of Emergency Medical Technicians, National Association of State Emergency Medical Services Directors, and National Registry of Emergency Medical Technicians.

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Scope of Practice - Procedures for EMS Personnel, 2009, Virginia Office of Emergency Medical Services.

Scope of Practice - Formulary for EMS Personnel, 2009, Virginia Office of Emergency Medical Services.

American National Standard for High-Visibility Safety Apparel and Headwear, ANSI/ISEA 107-2004, revised 2004, International Safety Equipment Association.

Virginia Standard Curriculum.

United States Department of Transportation National Standard Curriculum.

Guidelines for Video Broadcasting of EMS Educational Programs.

VA.R. Doc. No. R08-877; Filed December 17, 2009, 10:48 a.m.

Final Regulation

Registrar's Notice: The State Board of Health is claiming an exemption from the Administrative Process Act pursuant to Item 295 of Chapter 781 of the 2009 Acts of Assembly, which exempts the Special Supplemental Nutrition Program for Women, Infants, and Children from the requirements of the Administrative Process Act.

Title of Regulation: 12VAC5-195. Virginia WIC Program (amending 12VAC5-195-30, 12VAC5-195-390, 12VAC5-195-580, 12VAC5-195-590, 12VAC5-195-670).

Statutory Authority: § 32.1-12 of the Code of Virginia; 7 CFR Part 246.

Effective Date: January 18, 2010.

Agency Contact: Anne Massey, Policy Analyst, Department of Health, 109 Governor St., Richmond, VA 23219, telephone (804) 864-7800, ext: 7797, or email anne.massey@vdh.virginia.gov.

Summary:

The majority of the amendments to the Virginia WIC Program regulations are made to Part III relating to vendor requirements. Many of the amendments resulted from the implementation of the new WIC food package on October 1, 2009. The new WIC food package resulted in significant changes to the WIC program including (i) the addition of fresh fruits and vegetables to the approved food list, which WIC participants obtain by utilizing a cash value voucher (CVV); (ii) the new requirement that retailers choose "store designated brands" for certain items contained in the approved food list; and (iii) the new requirement that retailers furnish shelf labels to identify which products are "store designated brands." These programmatic changes require inclusion in the WIC state regulations, specifically in the approved food list (12VAC5-195-390), and performance and administrative monitoring (12VAC5-195-580).

Content is also added to 12VAC5-195-590 regarding food instruments rejected for payment because of an error made by the depository bank. The current language only addresses food instruments rejected for payment due to an error made by the retail store. 12VAC5-195-670, which describes in detail the state agency's full administrative review process, is amended to remain consistent with federal regulations that have changed to include additional actions that stores could not appeal for a full administrative review.

In addition to these amendments, numerous definitions are removed from 12VAC5-195-30 based on recommendations from the Attorney General's Regulatory Reform Task Force.

12VAC5-195-30. Definitions.

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

"Administrative appeal" means the procedure through which applicants and/or retail stores may appeal a state agency's administrative action, including program disqualification, denied authorization and other termination reasons.

~~"Annualized income" means income amount covering a 12-month period used to determine financial eligibility for the WIC Program.~~

~~"Applicant" or "retail store applicant" means a sole proprietorship, a partnership, cooperative association or a corporation that is not currently authorized to accept WIC food instruments.~~

"Approved food list" means a brochure or method used by the WIC Program to communicate to eligible participants, retailers, local agencies and other interested parties which authorized supplemental foods may be purchased using WIC food instruments. The approved food list is a guide and must be used with the printed food instrument, which may identify specific brands or additional products not stated on the approved food list that may be purchased by participants.

"Authorization" means the process by which the state agency assesses, selects and enters into an agreement with stores that apply or subsequently reapply to be authorized.

"Automated clearinghouse" or "ACH credit" or "direct deposit" means a method used to reimburse stores for certain types of processed food instruments (i.e., "Over FI Max."). A credit is made to the store's designated bank account and routing number using the automated clearinghouse process.

"Business economic areas" or "BEAs" mean a categorization method established by the United States Department of Commerce – Bureau of Economic Analysis and used by the state agency to identify geographically similar trade and economic communities. Some more populated BEAs are

further broken down into smaller subsets or peer groupings, based upon number of unique participants served by authorized stores.

"Caretaker" means a person designated by a parent or legal guardian to certify an infant/child, obtain and redeem food instruments and attend nutrition education. A caretaker may be any person who has detailed knowledge of the nutritional needs and eating habits of the infant/child. A parent or legal guardian may designate one caretaker per family ID number.

"Caseload" means the number of WIC participants assigned to a local agency by the state agency.

"Cash value food benefits" means a special food instrument that has been issued to eligible participants for a specific dollar amount that must be used to purchase fruits and vegetables. Unless stated otherwise, all references to food instruments include cash value food benefits, as well as food and formula food instruments.

"Enrollment" means the process all applicants and authorized stores must complete in order for a store to be eligible to accept WIC food instruments.

~~"Food instrument type" or "FI type" means a grouping of certain foods and formula together that is used for reimbursement purposes in a paper-based system.~~

"Image replacement document" or "IRD" means a legal copy of a deposited food instrument that is created and transmitted by a store's depository bank to the WIC Program's backend processor for payment consideration.

"Informal settlement meeting" means a meeting held with an authorized store or applicant representative and the state WIC director whose purpose is to review and clarify outstanding WIC Program administrative issues.

~~"Leave and earnings statement" or "LES" means the earnings statement for a member of the uniformed service.~~

"Legal guardian" means an individual who has been appointed by a court of law or the Department of Social Services, or other legal means, to have primary, physical custody of a minor. A legal guardian shall be authorized to provide eligibility information for an applicant, consent to medical treatment of the applicant, and shall be held legally bound if sanctions are imposed.

"Peer group" means a classification of applicants and authorized stores into groups based on common characteristics or criteria that affect food prices for the purpose of applying appropriate competitive price criteria to stores at authorization and limiting payments for foods at competitive pricing levels.

"Postpayment review" means an analysis of paid food instruments redeemed by authorized retailers in order to determine if pricing and redemption discrepancies exist.

Based upon this analysis, a vendor claim against the retail store may be established by the state agency.

"Prepayment edit" means a price adjustment made to the reimbursement level given to retailers. This editing process can be either automated or a manual screening of deposited food instruments done by an independent banking contractor, prior to releasing payment to authorized retail stores.

"Retailer" means a vendor, retail store, commissary, or entity authorized by the Virginia WIC Program to accept WIC food instruments for the various types of foods listed on food instruments.

"Retailer agreement" means a written agreement that establishes the respective roles and responsibilities of the program and authorized retailers in complying with federal and state requirements.

"Sanctions" mean a penalty imposed by the state agency upon an authorized retailer for a specific violation outlined in the vendor manual or retailer agreement.

"State agency" means the Division of WIC and Community Nutrition Services that has the administrative responsibility for managing the Virginia WIC Program.

"Termination" means the act of ending a retail store's WIC Program authorization for administrative reasons that include but are not limited to a change of ownership, closed store, voluntary withdrawal, and noncompetitive prices.

"Unique participant" means the number of unduplicated individuals who have redeemed one or more food instruments at a retail store during a specific period.

"United States Department of Agriculture" or "USDA" means the federal agency that provides funding for the WIC Program on behalf of Congress.

"Vendor claim" means the state agency has determined an authorized store committed a violation of the retailer agreement that affects the payment status of one or several food instruments. The state agency may delay payment or establish a claim in the amount of the full purchase price of each food instrument that contained the overcharge or other error. The state agency will bill and recoup the funds paid against these improperly redeemed food instruments.

"Vendor manual" means a series of written documents that communicate administrative policies and procedures for the Virginia WIC Program that affect both authorized retailers and applicants. The Vendor Manual is part of the WIC Program State Plan that must be submitted and approved by USDA.

"Virginia Department of Health" or "VDH" means the state agency that oversees the Virginia WIC Program.

"Waiting list" means a list implemented by the state agency when the maximum caseload is reached.

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"Warning" means one or more incidents of noncompliance with program requirements were documented. The state agency sends a written warning letter to the owner or store manager to advise him of any documented violations. A warning letter is not sent to the owner or store manager for selective documented violations that affect the integrity of the investigative process, including but not limited to overcharges, fraud, and forgery.

12VAC5-195-390. Approved food list.

A. A copy of the current Virginia WIC Program's Approved Food List (effective January 1, 2007) must be stored at each cash register where WIC transactions are handled. A copy of the approved food list must also be stored in the Vendor Manual that shall be kept onsite at the authorized store location.

B. The approved food list is used in conjunction with the WIC food instrument to identify foods that are eligible for purchase by WIC participants. The food instrument may state specific manufacturers or brands that must be purchased by program participants that are not covered by the general description used in the approved food list.

C. Authorized retailers shall sell WIC-designated brands for food categories identified in the approved food list. Authorized retailers shall use shelf labels approved by the state agency to identify the WIC-designated brands that they select and declare using the state agency's Internet-based application.

12VAC5-195-580. Performance and administrative monitoring.

A. All applicants must successfully pass an unannounced stocking visit prior to being authorized. Applicants will receive a written letter from the state agency advising them the store has been selected for further authorization consideration. The applicant will receive a copy of the minimum stocking requirement and the letter sent to the store will identify the consequences associated with failing to meet this program standard.

B. The state agency monitors authorized store's performance throughout the contract period in order to ensure the best qualified stores are authorized. The type and level of monitoring conducted by the state agency depends upon the store's authorization status. Stores designated as high volume retailers, high risk retailers, and probationary stores are more likely to be selected for unannounced monitoring visits by the WIC Program.

C. Authorized stores that fail to consistently meet any of the general requirements and conditions for authorization may be terminated. Specific areas the state agency monitors include, but are not limited to:

1. Number of paid and rejected food instruments;

2. Prices charged for WIC-approved foods and formula;
3. Level of compliance in following program requirements; and
4. Use of approved wholesalers and suppliers in purchasing WIC-approved foods and formulas.

D. The state agency shall establish and communicate to all authorized stores and applicants the minimum stocking requirement.

E. Each federal fiscal year, a sample of authorized stores shall be selected for one or more unannounced onsite monitoring visits.

F. State agency personnel may conduct an unannounced monitoring visit to ensure that authorized stores or applicants meet all program requirements. Authorized stores and applicants shall have available onsite the minimum stocking requirement at all times as established by the state agency. The specific foods, contract formulas and administrative procedures associated with meeting this requirement are outlined in the Minimum Stocking Requirement, which is included in the Vendor Manual.

G. Authorized stores with more than one year of continuous participation in the program may request in writing to the state agency that a waiver be granted for one or more items that are part of the minimum stocking requirement. The state agency shall provide a written decision to the store's waiver request within 30 calendar days after receipt. The waiver to the minimum stocking requirement for a required item shall expire upon the presentation to the store, on behalf of a participant, of a WIC food instrument for the purchase of that required food item. The authorized store shall provide the food item within 48 hours, excluding weekends and holidays, after presentation of the WIC food instrument.

H. The state agency may conduct other types of unannounced onsite monitoring visits to a retail store's location including, but not limited to, random, price verification, high volume, formula audits, and high risk.

I. During the unannounced onsite monitoring visit, the state agency representative may perform, but not be limited, to the following:

1. Observe and document the level of compliance with general program requirements;
2. Validate if the minimum stocking requirement has been met;
3. Collect and confirm prices submitted by retail stores;
4. Confirm prices are posted on or in close proximity to WIC-approved foods;
5. Review purchase or invoice records;
6. Conduct formula inventory analysis;

- 7. Educate the retailer about program changes;
- 8. Provide educational materials and supplies; ~~and~~
- 9. Provide technical consultation; and
- 10. Confirm WIC-approved shelf labels are being used to correctly identify WIC-designated brands.

J. During the unannounced onsite monitoring visits, store management may receive the following:

- 1. Answers to technical or procedural questions;
- 2. Updated program information;
- 3. Additional training materials and supplies;
- 4. Opportunity to correct documented deficiencies, if needed;
- 5. Opportunity to provide shelf prices of WIC-approved items, if applicable; and
- 6. Opportunity to confirm results documented by the state agency representative during the monitoring visit.

K. The results from these onsite visits are documented and kept on file at the Richmond, Virginia, state agency office.

L. Each federal fiscal year, a sample of authorized stores shall be selected for one or more announced onsite formula monitoring visits. The state agency shall ensure that authorized stores sell formulas that have been purchased from a WIC-approved supplier, distributor, wholesaler, or an authorized resource. A listing of WIC-approved suppliers, distributors, wholesalers, and authorized resources is located on the state agency's website. This outcome is accomplished by state agency personnel reviewing formula purchasing records and invoices, comparing formula redemption data from WIC sales and completing a pre- and postphysical inventory of formula available at the store location during a specific analysis period. Stores whose purchase records do not support the quantity of WIC sales volume for a selective formula item based upon redeemed food instruments may be issued sanctions, fined, or disqualified from the WIC Program. The results from a formula monitoring visit are documented and a written assessment is sent to the store once the state agency has completed its analysis.

M. Authorized stores that do not remain price competitive fail to maintain the minimum stocking requirement or fail to adhere to the retailer agreement may be fined or have their authorization terminated unless inadequate participant access exists. Depending upon the service delivery impact, the state agency may waive terminating a store that fails to comply with any of these requirements until an alternative store located in the same area can be authorized. The state agency will evaluate and document the reasons for making any authorization exception decisions.

12VAC5-195-590. Reimbursement and payments.

A. The state agency shall use a prepayment edit process to screen all deposited food instruments. For each processed food instrument, the state agency shall either:

- 1. Pay as submitted;
- 2. Make a price adjustment, if applicable; or
- 3. Deny payment of the deposited food instrument.

B. The state agency's reimbursement responsibilities in making payments against deposited and undeposited food instruments include, but are not limited to:

- 1. Ensuring payments are made to authorized stores that have a signed retailer agreement with the Virginia WIC Program. Unauthorized stores will not be paid for any mistakenly accepted and deposited food instruments;
- 2. Ensuring the maximum reimbursement levels used by its banking contractor, based upon peer groups, are reasonable for the food and formula items prescribed for purchase by participants;
- 3. Reconsidering for payment WIC food instruments not paid or partially paid provided the food instruments are submitted to the state agency within 50 calendar days of the first date printed on the food instrument;
- 4. Making price adjustments to the reimbursement amount paid to retail stores in order to ensure individual store's reimbursement levels remain eligible for authorization, based upon competitive prices charged by similar stores;
- 5. Collecting bank account and routing numbers from applicants and authorized stores in order to process direct deposit payments using an Automated Clearinghouse (ACH);
- 6. Ensuring prompt ACH credits are made to the retailer's bank account when appropriate;
- 7. Collecting retailer's prices using an electronic, Internet-based application;
- 8. Identifying retailers whose prices are noncompetitive and take administrative actions including possible termination of the retailer's authorization;
- 9. Complying with all federal regulations and guidelines that require administrative approval by USDA prior to making payments, as applicable;
- 10. Providing written communications to all authorized stores containing the procedures used by the program to pay or deny payments for all deposited food instruments; and
- 11. Recouping overpayments due to banking or procedural errors, if applicable, from authorized stores.

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C. Authorized stores must deposit food instruments within 14 calendar days of the last date printed on the food instrument.

D. Food instruments or image replacement documents (IRDs) rejected for payment due to "unreadable vendor stamp" or "no vendor stamp" error messages must be corrected and redeposited within 30 calendar days of the last date printed on the food instrument.

E. All food instruments or IRDs rejected for payment or undeposited ~~FIs~~ food instruments require WIC Program review for exception payment consideration and must be submitted by the authorized store to the state agency. ~~A store must also simultaneously submit a written request and justification for payments on undeposited or rejected FIs or IRDs.~~ The state agency reserves the right to deny a submitted request for payment depending on the explanation provided by the store or bank of first deposit. Approved exception payments will only be made to an authorized retail store.

1. Stores must submit their undeposited or rejected ~~FIs~~ food instruments or IRDs and justifications to the state agency within 30 calendar days of the last date printed on the food instrument. A store must also simultaneously submit a written request and justification for payments on undeposited or rejected food instruments or IRDs.

2. Undeposited or rejected ~~FIs~~ food instruments or IRDs sent to the state agency that are greater than 30 calendar days from the last date printed on the food instrument may not be eligible for payment and may require USDA approval.

3. Food instruments or IRDs rejected for payment due to a processing error that originates either at the federal reserve or bank of first deposit may be considered for an exception payment. The food instruments or IRDs must be submitted to the state agency within 120 calendar days from the first date to spend printed on the food instrument. A bank representative must submit a written request with the unpaid food instruments or IRDs.

F. A maximum allowable reimbursement amount for each peer group and food item combination is established using pricing data (7 CFR 246.12). Each food item combination is identified by a unique food instrument type identifier. More than 4,000 unique food combinations exist with different reimbursement maximum amounts. Authorized stores that submit prices determined to be noncompetitive will not have their prices used when the state agency computes the maximum allowable reimbursement amount used for making price adjustments.

G. Stores may only get reimbursed for mandatory and optional foods and formula products they have submitted prices for prior to redeeming ~~FIs~~ food instruments for those products. Redeemed ~~FIs~~ food instruments may be subject to repayment as a vendor claim if they include optional items for

which a store has failed to submit prices. Stores must ensure that the most current shelf prices have been submitted to the WIC Program for all mandatory items. Failure to submit prices or providing inaccurate prices for any mandatory food items may lead to a store's authorization being terminated unless inadequate participant access would exist.

H. Contract and special formulas where pricing information is collected via the Internet-based application by the state agency are eligible for payment to authorized stores. Prices are purposely not collected by the state agency for formulas that should not be redeemed at retail stores. Food instruments redeemed for these types of special formulas are subject to repayment by the store.

I. A maximum reimbursement amount will be established for cash value food benefits used by participants to purchase fruits and vegetables. ~~For cash value food benefits only, if the total dollar amount being purchased by the participant exceeds the printed cash value then the participant shall be allowed to pay the amount over the printed value.~~ The amount written on the food instrument must not exceed the maximum reimbursement amount printed on it. For cash value food benefits only, the store must offer one of the following options to the participant if the total dollar amount being purchased exceeds the printed cash value:

1. The participant shall be allowed to pay the amount over the printed cash value; or

2. The participant shall be allowed to reduce the quantity of eligible fruits and vegetables being purchased.

Stores must notify the state agency in writing which of these options they provide to WIC participants.

J. The food instrument type/peer group pricing maximum amount may be adjusted monthly by the state agency, depending upon external factors including, but not limited to, wholesale price increases. The reimbursement maximum used for the various food instrument types peer group combinations are not distributed to authorized stores prior to being used by the banking contractor.

K. Food instruments or IRDs that are ineligible for payment and are rejected will be returned to the store's depository bank by the state agency's banking contractor. These returned food instruments will be stamped with a descriptive error message.

L. The state agency may make payment exceptions for food instruments that would normally be denied payment by its banking services contractor. The authorized store shall submit all such requests in writing, including a justification, within 30 calendar days from the last date printed on the food instrument. The state agency will send a payment disposition decision to the requestor within 30 calendar days, after receipt.

M. The state agency shall use a postpayment review process to prospectively evaluate the reimbursement amount paid

against redeemed food instruments in order to identify excessive or improperly redeemed food instruments in accordance with federal regulations (7 CFR 246.12). From the postpayment review process, the state agency may determine that one or more payments already made to a retail store were ineligible for payment as a result of a store failing to submit pricing data for the purchased item or items. The state agency reserves the right to bill and recoup payments of these ineligible payments, which will be referred to as a vendor claim (7 CFR 246.12). The state agency shall not bill an authorized store if the vendor claim amount is less than \$10.

N. A retail store that is not authorized to participate in the Virginia WIC Program that accepts a food instrument will not be reimbursed for any food instruments redeemed by a WIC participant.

O. A store must submit a direct deposit ACH form to the state agency that identifies any bank changes to its routing or account number. A direct deposit ACH form must be submitted at least 14 days prior to the change effective date. If the state agency's banking contractor identifies that the store's bank account or routing number is not valid, then the store will receive one written notice from the state agency. Failure by the store to resolve any reported discrepancies within 30 days after a written notice has been sent by the state agency may lead to the store being ineligible to receive payments for rejected FIs.

P. Retail stores are responsible for all bank handling fees and charges associated with doing business with the WIC Program.

12VAC5-195-670. Full administrative review.

A. Authorized retail stores and applicants shall be offered an opportunity to request a full administrative review for only the adverse action cited in subsection O of this section.

B. The retail store or applicant has 15 calendar days from the date of receipt of the denial notice, either by letter or an electronic format, or disqualification letter to request a full administrative review.

C. The request for the full administrative review can be mailed by US mail, sent by facsimile transmission or sent via email to the vendor manager. If the request is mailed, it must be postmarked within 15 calendar days from the date of receipt of letter or electronic notification from the state agency, whichever comes first.

D. The retail store or applicant must indicate whether or not he will be represented by an attorney when the full administrative review request is made. The retail store or applicant must also provide the state agency with copies of any written information to be used during the review and names of witnesses that will be called at least five days prior to the scheduled full administrative review. Failure to notify

the state agency of these items may result in a rescheduled date and time for the full administrative review or the exclusion of documents and witnesses from the full administrative review.

E. Upon receipt of the retail store's or applicant's request for a full administrative review, the state agency will confirm a date, time, and place for the review within 30 days. For authorized stores, the review must be scheduled to take place within 60 calendar days after the written request is received by the state agency unless otherwise agreed to by the parties involved.

F. Failure to attend the scheduled review on the agreed upon date and time will lead to the retail store forfeiting its rights to any further administrative reviews.

G. The retail store or applicant will have one opportunity to reschedule the full administrative review's date or time. All requests to reschedule the review date or time must be submitted in writing at least 24 hours before the scheduled review date, unless an emergency occurs, as determined at the discretion of the state WIC director or designee. Rescheduled reviews shall take place within four weeks of the originally scheduled date unless the parties mutually agree on a later date.

H. If the retail store representative is more than 45 minutes late from the agreed upon review start time, then this will be considered a "no show" unless he can provide documentation that the WIC director or designee determines justifies his tardiness or failure to appear. This outcome means that the retail store has forfeited its rights to a full administrative review.

I. A full administrative review is conducted by an adjudication officer who is employed by the Virginia Department of Health. The adjudication officer shall ensure that administrative actions taken by the WIC Program are consistently and fairly applied and that those administrative actions comply with established policies, procedures and federal and state regulations. A representative from the state agency will present its case to the adjudication officer and retail store or applicant representative. Conversely, the storeowner or designated representative, which may include legal counsel, will present its case to the adjudication officer.

J. All full administrative reviews are held in Richmond, Virginia.

K. After a full administrative review is held, the state WIC director shall provide written notification of the adjudication officer's decision, including the basis for the decision, within 90 calendar days of the date of receipt of the full administrative appeal review request, unless otherwise agreed to by the parties involved. This notification will also be sent to the appropriate USDA Food and Nutrition Services office.

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L. Authorized retail stores being disqualified may continue to deposit WIC food instruments until a decision has been rendered from the full administrative review. The adverse action effective date shall be postponed by the state agency pending the outcome of the review.

M. In accordance with 7 CFR 246.18, if an authorized store does not request a full administrative review, then disqualification becomes effective 15 calendar days after the retailer receives the state agency's written disqualification letter.

N. An authorized retailer being retained in lieu of disqualification may elect to voluntarily withdraw from the WIC Program rather than pay a mandated civil monetary penalty fine. If the retailer voluntarily withdraws and does not pay a civil monetary penalty fine that previously had been imposed by the program, then a disqualification status will be documented in the state agency's records. The disqualification period may range from one to six years, depending on the type of sanctions and violations documented by the state agency.

O. The state agency shall provide a full administrative review to retail stores or applicants for the following adverse actions pursuant to 7 CFR 246.18:

1. Denial of authorization based on the vendor selection criteria for competitive price or for minimum variety and quantity of authorized supplemental foods or on a determination that the vendor is attempting to circumvent a sanction (7 CFR 246.12);
2. Denial of authorization based upon the vendor selection criteria for business integrity or for a current Food Stamp Program disqualification or civil money penalty for hardship (7 CFR 246.12);
3. Denial of authorization based on a state agency established vendor selection criteria if the basis of the denial is a vendor sanction or a Food Stamp Program withdrawal of authorization or disqualification;
4. Denial of authorization based on the state agency's retailer limiting criteria (7 CFR 246.12);
5. Denial of authorization because a vendor submitted its application outside the timeframes during which applications are accepted or processed as established by the state agency under (7 CFR 246.12);
6. Termination of a retailer agreement because of a change in ownership or location or cessation of operations (7 CFR 246.12);
7. Termination of a retailer agreement for cause;
8. Disqualification based on documented WIC Program violations;

9. Disqualification based on a trafficking conviction (7 CFR 246.12);

10. Disqualification based on the imposition of a Food Stamp Program civil monetary penalty for hardship (7 CFR 246.12);

11. Disqualification or civil monetary penalty imposed in lieu of disqualification based on a mandatory sanction imposed by another WIC state agency (7 CFR 246.12); or

12. Imposition of a fine or a civil monetary penalty in lieu of disqualification.

P. The state agency shall not provide a full administrative review to retail stores that appeal the following actions pursuant to 7 CFR 246.18:

1. The validity or appropriateness of the state agency's vendor limiting or selection criteria (7 CFR 246.12);
2. The validity or appropriateness of the state agency's vendor peer group criteria and the criteria used to identify vendors that are above 50% vendors or comparable to above 50% vendors;
3. The validity or appropriateness of the state agency's participant access criteria and the state agency's participant access determinations;
4. The state agency's determination whether a vendor had an effective policy and program in effect to prevent trafficking and that the ownership of the vendor was not aware of, did not approve of, and was not involved in the conduct of the violation (7 CFR 246.12);
5. Denial of authorization if the state agency's vendor authorization is subject to the procurement procedures applicable to the state agency;
6. The expiration of the retailer's agreement;
7. Disputes regarding food instrument payments and vendor claims other than the opportunity to justify or correct a vendor overcharge or other error as permitted by (7 CFR 246.12); ~~or~~
8. Disqualification of a vendor as a result of disqualification from the Food Stamp Program (7 CFR 246.12);
9. The state agency's determination to include or exclude an infant formula source from the state agency's list of state-licensed wholesalers, distributors, and retailers and infant formula manufacturers registered with the Food and Drug Administration; and
10. The state agency's determination whether to notify a vendor in writing when an investigation reveals an initial violation for which a pattern of violations must be established in order to impose a sanction.

Q. A full administrative review request shall not be denied or dismissed unless:

1. The request to the state agency is not postmarked within 15 calendar days of the applicant or authorized store's receipt of the notice of disqualification or adverse action;
2. The request to the state agency was submitted by an individual who does not have the legal or delegated authority to represent the owner;
3. The retailer or authorized representative withdraws the request in writing;
4. The retailer or authorized representative fails without good cause to appear at the scheduled review date and time; or
5. The request for a full administrative review is not eligible for this consideration based on the specific exclusion criteria outlined in subsection P of this section.

V.A.R. Doc. No. R10-2084; Filed December 23, 2009; 2:21 p.m.

**DEPARTMENT OF MEDICAL ASSISTANCE
SERVICES**

Emergency Regulation

Title of Regulation: 12VAC30-120. Waivered Services (amending 12VAC30-120-360, 12VAC30-120-370, 12VAC30-120-380).

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

Effective Dates: December 30, 2009, through December 29, 2010.

Agency Contact: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, or email brian.mccormick@dmas.virginia.gov.

Preamble:

Section 2.2-4011 of the Administrative Process Act states that an agency may adopt regulations in an "emergency situation": (i) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (ii) in a situation in which Virginia statutory law, the Virginia 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 subdivision A 4 of § 2.2-4006; or (iii) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the

amending action does not extend the effective date of the original action.

This emergency regulation meets the standard of § 2.2-4011 B of the Code of Virginia as follows: Chapter 781, Item 306(M)(1) and (M)(2), of the 2009 Acts of Assembly states: "The Department of Medical Assistance Services shall have the authority to seek federal approval of changes to its MEDALLION waiver and its Medallion II (MCO) waiver. In order to conform the state regulations to the federally approved changes and to implement the provisions of this act, the department shall promulgate emergency regulations to become effective within 280 days or less from the enactment of this act. The department shall implement these necessary regulatory changes to be consistent with federal approval of the waiver changes."

This action conforms the Virginia Administrative Code to changes that have been approved by the Centers for Medicare and Medicaid Services to the Virginia Medicaid managed care waiver program entitled Medallion II (MCO). The approved changes concern the addition of the rural exception to the Medallion II program in areas federally designated as "rural" where there is only one contracted MCO. The approved changes also provide for several organizational improvements and the updating of internal citations.

Part VI
Medallion II

12VAC30-120-360. Definitions.

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

"Action" means the denial or limited authorization of a requested service, including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial, in whole or in part, of payment for a service; the failure to provide services in a timely manner, as defined by the state; or the failure of an MCO to act within the timeframes provided in 42 CFR 438.408(b).

"Appeal" means a request for review of an action, as "action" is defined in this section.

"Area of residence" means the recipient's address in the Medicaid eligibility file.

"Capitation payment" means a payment the department makes periodically to a contractor on behalf of each recipient enrolled under a contract for the provision of medical services under the State Plan, regardless of whether the particular recipient receives services during the period covered by the payment.

"Client," "clients," "recipient," "enrollee," or "participant" means an individual or individuals having current Medicaid

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eligibility who shall be authorized by DMAS to be a member or members of Medallion II.

"Covered services" means Medicaid services as defined in the State Plan for Medical Assistance.

"Disenrollment" means the process of changing enrollment from one Medallion II Managed Care Organization (MCO) plan to another MCO or to the Primary Care Case Management (PCCM) program, if applicable.

"DMAS" means the Department of Medical Assistance Services.

"Eligible person" means any person eligible for Virginia Medicaid in accordance with the State Plan for Medical Assistance under Title XIX of the Social Security Act.

"Emergency medical condition" means a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in the following:

1. Placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy,
2. Serious impairment to bodily functions, or
3. Serious dysfunction of any bodily organ or part.

"Emergency services" means covered inpatient and outpatient services that are furnished by a provider that is qualified to furnish these services and that are needed to evaluate or stabilize an emergency medical condition.

"Enrollment broker" means an independent contractor that enrolls recipients in the contractor's plan and is responsible for the operation and documentation of a toll-free recipient service helpline. The responsibilities of the enrollment broker include, but shall not be limited to, recipient education and MCO enrollment, assistance with and tracking of recipients' complaints resolutions, and may include recipient marketing and outreach.

"Exclusion from Medallion II" means the removal of an enrollee from the Medallion II program on a temporary or permanent basis.

"External Quality Review Organization" (EQRO) is an organization that meets the competence and independence requirements set forth in 42 CFR 438.354 and performs external quality reviews, other EQR related activities as set forth in 42 CFR 438.358, or both.

"Foster care" is a program in which a child receives either foster care assistance under Title IV-E of the Social Security Act or state and local foster care assistance.

"Grievance" means an expression of dissatisfaction about any matter other than an action, as "action" is defined in this section.

"Health care plan" means any arrangement in which any managed care organization undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services.

"Health care professional" means a provider as defined in 42 CFR 438.2.

"Managed care organization" or "MCO" means an entity that meets the participation and solvency criteria defined in 42 CFR Part 438 and has an executed contractual agreement with DMAS to provide services covered under the Medallion II program. Covered services for Medallion II individuals must be as accessible (in terms of timeliness, amount, duration, and scope) as compared to other Medicaid recipients served within the area.

"Network" means doctors, hospitals or other health care providers who participate or contract with an MCO and, as a result, agree to accept a mutually-agreed upon sum or fee schedule as payment in full for covered services that are rendered to eligible participants.

"Newborn enrollment period" means the period from the child's date of birth plus the next two calendar months.

"Nonparticipating provider" means a health care entity or health care professional not in the contractor's participating provider network.

"Post-stabilization care services" means covered services related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition or to improve or resolve the enrollee's condition.

"Potential enrollee" means a Medicaid recipient who is subject to mandatory enrollment or may voluntarily elect to enroll in a given managed care program, but is not yet an enrollee of a specific MCO or PCCM.

"Primary care case management" or "PCCM" means a system under which a primary care case manager contracts with the Commonwealth to furnish case management services (which include the location, coordination, and monitoring of primary health care services) to Medicaid recipients.

"PCP of record" means a primary care physician of record with whom the recipient has an established history and such history is documented in the individual's records.

"Retractions" means the departure of an enrolled managed care organization from any one or more localities as provided for in 12VAC30-120-370.

"Rural exception" means a rural area designated in the § 1915(b) managed care waiver, pursuant to § 1932(a)(3)(B)

of the Social Security Act and 42 CFR § 438.52(b) and recognized by the Centers for Medicare and Medicaid Services, wherein qualifying Medallion II enrollees are mandated to enroll in the one available contracted MCO.

"School health services" means those physical therapy, occupational therapy, speech therapy, nursing, psychiatric and psychological services rendered to children who qualify for these services under the federal Individuals with Disabilities Education Act (20 USC § 1471 et seq.) by (i) employees of the school divisions or (ii) providers that subcontract with school divisions, as described in 12VAC30-50-229.1.

"Spend-down" means the process of reducing countable income by deducting incurred medical expenses for medically needy individuals, as determined in the State Plan for Medical Assistance.

12VAC30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Individuals not meeting the exclusion criteria set out below must participate in the Medallion II program. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any recipient who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. Recipients excluded from Medallion II through this provision may appeal the decision to DMAS.

B. The following individuals shall be excluded (as defined in 12VAC30-120-360) from participating in Medallion II ~~or will be disenrolled from Medallion II if any of the following apply. Individuals not meeting the exclusion criteria must participate in the Medallion II program. as defined in the 1915(b) managed care waiver.~~ Individuals excluded from Medallion II include the following:

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in the family planning waiver, or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;
5. Individuals who are participating in foster care or subsidized adoption programs;
6. Individuals under age 21 who are either enrolled in DMAS authorized treatment foster care programs as

defined in 12VAC30-60-170 A, or who are approved for DMAS residential facility Level C programs as defined in 12VAC30-130-860;

7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the ~~member's~~ enrollee's obstetrical provider (e.g., physician, hospital, midwife) does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;

8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;

9. Individuals who receive hospice services in accordance with DMAS criteria;

10. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other insurance purchased through the Health Insurance Premium Payment Program (HIPP);

11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of MCO enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the MCO enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge. This exclusion reason shall not apply to recipients admitted to the hospital while already enrolled in a department-contracted MCO;

12. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less. The client's physician must certify the life expectancy;

13. Certain individuals between birth and age three certified by the ~~Department of Mental Health, Mental Retardation and Substance Abuse State Board of Behavioral Health and Developmental Services~~ as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

14. Individuals who have an eligibility period that is less than three months;

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15. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

16. Individuals who have an eligibility period that is only retroactive; and

17. 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.

C. Individuals enrolled with a MCO who subsequently meet one or more of the aforementioned criteria during MCO enrollment shall be excluded from MCO participation as determined by DMAS, with the exception of those who subsequently become recipients in the federal long-term care waiver programs, as otherwise defined elsewhere in this chapter, for home-based and community-based Medicaid coverage (AIDS, IFDDS, MR, EDCD, Day Support, or ~~Alzheimers~~ Alzheimer's or as may be amended from time to time). These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

D. Individuals who are enrolled in localities that qualify for the rural exception may meet exclusion criteria if their PCP of record, as herein defined, cannot or will not participate with the one MCO in the locality. Individual requests to be excluded from MCO participation in localities meeting the qualification for the rural exception must be made to DMAS for consideration on a case-by-case basis. Recipients enrolled in MCO rural exception areas shall not have open enrollment periods and shall not be afforded the 90-day window after initial enrollment during which they may make a health plan or program change.

~~D.~~ E. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

~~E.~~ F. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures after Medicaid eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection F of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days. Recipients who are enrolled in one mandatory MCO program who immediately become eligible for another mandatory MCO program are able to maintain consistent enrollment with their currently assigned MCO, if available. These recipients will receive a notification letter including information regarding their ability to change health plans under the new program.

4. Any newborn whose mother is enrolled with an MCO at the time of birth shall be considered an enrollee of that same MCO for the newborn enrollment period. ~~The newborn enrollment period is defined as the birth month plus two months following the birth month.~~ This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision G 1 of this section.

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born while the contract is active, until the newborn receives a Medicaid number or for the newborn enrollment period, whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of the newborn enrollment period will be disenrolled. Newborns who remain eligible for participation in Medallion II will be reenrolled in an MCO through the preassignment process upon receiving a Medicaid identification number.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their previous MCO without going through preassignment and selection.

~~F.~~ G. Clients who do not select an MCO as described in subdivision ~~E-3~~ F 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through a system algorithm based upon the client's history with a contracted MCO.

2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.

3. Clients who live in rural exception areas as defined in 12VAC30-120-360 must enroll with the one available MCO. These recipients shall receive a preassignment notification for enrollment into the MCO.

~~3.~~ 4. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.

~~4.~~ 5. In areas where there is only one contracted MCO or contracted PCCM program, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in these areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals, with the exception of those residing in localities qualifying for the rural exception, are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.

~~5.~~ 6. DMAS shall have the discretion to utilize an alternate strategy for enrollment or transition of enrollment from the method described in this section for expansions, retractions or changes to ~~new~~ client populations, ~~new~~ geographical areas, ~~expansion through procurement~~ procurements, or any or all of these; such alternate strategy shall comply with federal waiver requirements.

~~G.~~ H. Following their initial enrollment into an MCO or PCCM program, recipients shall be restricted to the MCO or PCCM program until the next open enrollment period, unless appropriately disenrolled or excluded by the department (as defined in 12VAC30-120-360).

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection I of this section.

~~H.~~ I. The department shall conduct an annual open enrollment for all Medallion II participants with the exception of those clients who live in a designated rural exception area. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO and where the PCCM program is available, recipients will be given the opportunity to select either the MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

~~I.~~ J. Disenrollment for cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. Cause for disenrollment shall include the following:

a. A recipient's desire to seek services from a federally qualified health center which is not under contract with the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;

b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;

c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;

d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;

e. The enrollee moves out of the MCO's service area;

f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;

g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or

h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which the enrollee files the request, in compliance with 42 CFR 438.56.

3. Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

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4. The DMAS determination concerning cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12VAC30-110-10 through 12VAC30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine cause.

6. Individuals enrolled with a MCO who subsequently meet one or more of the exclusions in subsection B of this section during MCO enrollment shall be ~~disenrolled~~ excluded as appropriate by DMAS, with the exception of those who subsequently become recipients into the AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimer's federal waiver programs for home-based and community-based Medicaid coverage. These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

~~Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee for service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.~~

12VAC30-120-380. Medallion II MCO responsibilities.

A. The MCO shall provide, at a minimum, all medically necessary covered services provided under the State Plan for Medical Assistance and further defined by written DMAS regulations, policies and instructions, except as otherwise modified or excluded in this part.

1. Nonemergency services provided by hospital emergency departments shall be covered by MCOs in accordance with rates negotiated between the MCOs and the emergency departments.

2. Services that shall be provided outside the MCO network shall include those services identified and defined by the contract between DMAS and the MCO. Services reimbursed by DMAS include, but shall not be limited to, dental and orthodontic services for children up to age 21; for all others, dental services (as described in 12VAC30-50-190), school health services (as defined in 12VAC30-120-360), community mental health services (rehabilitative, targeted case management and substance abuse services) and long-term care services provided under the § 1915(c) home-based and community-based waivers including related transportation to such authorized waiver services. Services that may be provided outside the MCO network shall be defined by the contract between DMAS and the MCO.

3. The MCOs shall pay for emergency services and family planning services and supplies whether they are provided inside or outside the MCO network.

B. EPSDT services shall be covered by the MCO and defined by the contract between DMAS and the MCO. The MCO shall have the authority to determine the provider of service for EPSDT screenings.

C. The MCOs shall report data to DMAS under the contract requirements, which may include data reports, report cards for clients, and ad hoc quality studies performed by the MCO or third parties.

D. Documentation requirements.

1. The MCO shall maintain records as required by federal and state law and regulation and by DMAS policy. The MCO shall furnish such required information to DMAS, the Attorney General of Virginia or his authorized representatives, or the State Medicaid Fraud Control Unit on request and in the form requested.

2. Each MCO shall have written policies regarding enrollee rights and shall comply with any applicable federal and state laws that pertain to enrollee rights and shall ensure that its staff and affiliated providers take those rights into account when furnishing services to enrollees in accordance with 42 CFR 438.100.

E. The MCO shall ensure that the health care provided to its clients meets all applicable federal and state mandates, community standards for quality, and standards developed pursuant to the DMAS managed care quality program.

F. The MCOs shall promptly provide or arrange for the provision of all required services as specified in the contract between the state and the contractor. Medical evaluations shall be available within 48 hours for urgent care and within 30 calendar days for routine care. On-call clinicians shall be available 24 hours per day, seven days per week.

G. The MCOs must meet standards specified by DMAS for sufficiency of provider networks as specified in the contract between the state and the contractor.

H. Each MCO and its subcontractors shall have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of service. Each MCO and its subcontractors shall ensure that any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested, be made by a health care professional who has appropriate clinical expertise in treating the enrollee's condition or disease. Each MCO and its subcontractors shall have in effect mechanisms to ensure consistent application of review criteria for authorization decisions and shall consult with the requesting provider when appropriate.

I. In accordance with 42 CFR 447.50 through 42 CFR 447.60, MCOs shall not impose any cost sharing obligations on enrollees except as set forth in 12VAC30-20-150 and 12VAC30-20-160.

J. An MCO may not prohibit, or otherwise restrict, a health care professional acting within the lawful scope of practice, from advising or advocating on behalf of an enrollee who is his patient in accordance with 42 CFR 438.102.

K. An MCO that would otherwise be required to reimburse for or provide coverage of a counseling or referral service is not required to do so if the MCO objects to the service on moral or religious grounds and furnishes information about the service it does not cover in accordance with 42 CFR 438.102.

VA.R. Doc. No. R10-2004; Filed December 30, 2009, 1:30 p.m.



TITLE 14. INSURANCE
STATE CORPORATION COMMISSION
Proposed Regulation

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

Title of Regulation: 14VAC5-350. Rules Governing Surplus Lines Insurance (amending 14VAC5-350-30, 14VAC5-350-90, 14VAC5-350-100, 14VAC5-350-160, 14VAC5-350-165).

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

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

Public Comment Deadline: February 1, 2010.

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

Summary:

The proposed revisions update the rules, forms, and procedures used to administer Chapter 48 of Title 38.2 of the Code of Virginia, entitled Surplus Lines Insurance Law, and Chapter 6 of Title 38.2 of the Code of Virginia, entitled Insurance Information and Privacy Protection. The proposed revisions delete the definitions and sections of the regulations relating to commercial insureds and diligent effort. The proposed revisions are necessary due to the passage of Chapter 212 of the 2008 Acts of Assembly, which amended § 38.2-4806 of the Code of Virginia.

AT RICHMOND, DECEMBER 17, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00225

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

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section § 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code. The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to the regulations set forth in Chapter 350 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Surplus Lines Insurance" which amend the regulations at 14 VAC 5-350-30, 14 VAC 5-350-90, 14 VAC 5-350-100, 14 VAC 5-350-160, and 14 VAC 5-350-165 ("Rules"). The Bureau has also recommended that Forms SLB 1, SLB 4, SLB 6, and SLB 10 be deleted and Forms 3001 and 4052 should be added.

The proposed amendments to the regulations are necessary due to the passage of House Bill 298 during the 2008 General Assembly Session, which amends § 38.2-4806 of the Code, effective July 1, 2008.

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of February 19, 2010.

IT IS THEREFORE ORDERED THAT:

(1) The proposed amendments to the regulations entitled "Rules Governing Surplus Lines Insurance" which amend the regulations at 14 VAC 5-350-30, 14 VAC 5-350-90, 14 VAC 5-350-100, 14 VAC 5-350-160, and 14 VAC 5-350-165 be attached and made a part hereof.

(2) All interested persons who desire to comment or request a hearing on the proposed amendments to the regulations shall file such comments or hearing request on or before February 1, 2010, in writing with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00225. Interested persons desiring to submit comments electronically may do so by following the

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instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

(3) If no written request for a hearing on the proposed amendments to the regulations is filed on or before February 1, 2010, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed regulations, may adopt the regulations as submitted by the Bureau.

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

(5) AN ATTESTED COPY hereof, together with a copy of the proposed regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Brian P. Gaudiose, who forthwith shall give further notice of the proposed adoption of the amended regulations by mailing a copy of this Order, together with the proposed regulations, to all licensed surplus lines brokers.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

14VAC5-350-30. Definitions.

As used in this chapter:

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

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

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

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

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

~~"Diligent effort" means:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~may file legible photocopies of the previously filed quarterly reports on Form SLB-5 (Parts 1-3) for the calendar year.~~

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

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

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

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

FORMS (14VAC5-350)

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

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

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

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

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

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

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

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

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

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

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

Application for Individual Insurance License
(Please Print or Type)

Check appropriate box for license requested.

- Resident License
- Non-Resident License
 - Identify Home State: _____
 - Identify Home State License #: _____

Demographic Information					
① Soc. Security Number		② If assigned, National Producer Number (NPN)			
③ If applicable, NASD Individual Central Registration Depository (CRD) Number			④ Are you affiliated with a financial institution/bank? Yes <input type="checkbox"/> No <input type="checkbox"/>		
⑤ Last Name JR./SR. etc		⑥ First Name	⑦ Middle Name	⑧ Date of Birth (month) ___ (day) ___ (year) ___	
⑨ Residence/Home Address (Physical Street)		⑩ P.O. Box	⑪ City	⑫ State	⑬ Zip Code
⑭ Home Phone Number () -	⑮ Gender (Circle One) Male Female	⑯ Are you a Citizen of the United States? (Check One) Yes <input type="checkbox"/> No <input type="checkbox"/> (If No, of which country are you a citizen?) (If No, you must supply proof of eligibility to work in the U.S.)			
⑰ Business Entity Name					
⑱ Business Address (Physical Street)		⑲ P.O. Box	⑳ City	㉑ State	㉒ Zip Code
㉓ Business Phone Number (include extension) () -	㉔ Business Fax Number () -	㉕ Business E-Mail Address		㉖ Business Web Site Address	
㉗ Applicant's Mailing Address		㉘ P.O. Box	㉙ City	㉚ State	㉛ Zip Code
㉜ a. List any other assumed, fictitious, alias, maiden or trade names which you have used in the past. b. List any trade names under which you are currently doing business or intend to do business.					
Agency or Business Entity Affiliations					
㉝ List your Insurance Agency Affiliations: (Complete only if the applicant is to be licensed as an active member of the business entity)					
FEIN _____	NPN _____	Name of Agency _____			
FEIN _____	NPN _____	Name of Agency _____			
FEIN _____	NPN _____	Name of Agency _____			
Employment History					
㉞ Account for all time for the past five years. Give all employment experience starting with your current employer working back five years. Include full and part-time work, self-employment, military service, unemployment and full-time education.					
			From	To	Position Held
Name	City	State	Month	Year	
Name	City	State	Month	Year	
Name	City	State	Month	Year	
Name	City	State	Month	Year	
Name	City	State	Month	Year	
Name	City	State	Month	Year	
For Bureau of Insurance Use Only					

FORM 3001

MARCH 2008

Name: _____

SSN: _____

VIRGINIA RESIDENT APPLICANTS MUST ATTACH TO THIS APPLICATION A CRIMINAL HISTORY RECORD REPORT WHICH MAY BE OBTAINED BY CONTACTING THE VIRGINIA STATE POLICE AND REQUESTING THE INFORMATION. IF YOU FAIL TO PROVIDE A CURRENT (NO MORE THAN 90 DAYS OLD) CRIMINAL HISTORY RECORD REPORT, THE BUREAU WILL REFUSE TO ISSUE A LICENSE TO YOU. (§§ 38.2-1820 AND 38.2-1831 OF THE CODE OF VIRGINIA.) IF YOU HAVE RESIDED IN VIRGINIA FOR LESS THAN SIX MONTHS AND YOU WERE NOT LICENSED IN YOUR PREVIOUS STATE OF RESIDENCE WITHIN THE LAST 90 DAYS, YOU MUST SUBMIT A CURRENT CRIMINAL HISTORY RECORD REPORT FROM YOUR PREVIOUS STATE OF RESIDENCE.

Licensing fees are nonrefundable and nontransferable. No personal checks will be accepted unless certified, and no cash will be accepted.

Producer Major Lines of Authority – Place an X by the license for which you are applying.

Line of Authority	Exam	License Fee (nonrefundable)	Expiration Date
007 - Life and Annuities (fixed)	Yes	\$15	Perpetual*
008 - Health	Yes	\$15	Perpetual*
009 - Variable Contracts**	No	\$15	Perpetual*
030 - Property and Casualty	Yes	\$15	Perpetual*
032 - Personal Lines	Yes	\$15	Perpetual*
033 - Title	Yes	\$15	Perpetual*

*CE is required to maintain license. **Must hold Life and Annuities authority and have passed FINRA's (formerly NASD) Series 6 or 7 exam.

Producer Limited Lines of Authority

Line of Authority	Exam	License Fee (nonrefundable)	Expiration Date
003 - Temporary Life and Health (Sale of Agency)	No	\$15	180 calendar days
006 - Temporary Life and Health (Collect Debits)	No	\$15	180 calendar days
031 - Temporary Property and Casualty (Sale of Agency)	No	\$15	180 calendar days
015 - Credit, which includes: Credit L&H Credit Property/Involuntary Unemployment Mortgage Accident & Sickness/Mortgage Redemption Mortgage Guaranty	No	\$15	Perpetual
024 - Motor Vehicle Rental Contract	No	\$15	Perpetual
080 - Limited Life and Health, which includes; Dental Benefit Contracts Mutual Assessment L&H Dental Services Optometric Services Limited Burial Travel Accident	No	\$15	Perpetual
081 - Limited Property and Casualty Automobile Club Ocean Marine Home Protection Pet Accident, Sickness & Hospitalization Legal Services Travel Baggage Mutual Assessment P&C	No	\$15	Perpetual

Non-Standard Lines of Authority

Line of Authority	Exam	License Fee (nonrefundable)	Expiration Date
059 - Life and Health Consultant	Yes*	\$50	June 30 annually**
058 - Property and Casualty Consultant	Yes*	\$50	June 30 annually**
064 - Viatical Settlement Broker	No	\$50	June 30 annually**
065 - Surplus Lines Broker***	No	\$50	June 30 annually**

*Life & Health and/or Property & Casualty examinations are required for resident applicants who do not hold Life and Health Licenses and/or a Property and Casualty License. CE is required to maintain license.

**Regardless of the date of issue, the license must be renewed prior to June 30 of each calendar year.

***Surplus Lines Broker Applicants only

1. Resident applicants must be actively licensed as a Property and Casualty insurance agent before applying for a Surplus Lines Brokers license.
2. Resident applicants must file with the Commission a surety bond (SLB-2) in the amount of \$25,000, and thereafter shall keep the bond in force for as long as the license remains in effect.

Mail to: Bureau of Insurance
PO Box 1157
Richmond, VA 23218

Overnight Address: Bureau of Insurance
1300 East Main Street
Richmond, VA 23219

Name: _____

SSN: _____

Background Information

39 The Applicant must read the following very carefully and answer every question. All copies of documents must be certified. All written statements submitted by the Applicant must include an original signature.

1. Have you ever been convicted of a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? Yes ___ No ___
"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a certified copy of the charging document,
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

If you have a felony conviction, have you applied for a waiver as required by 18 USC 1033? N/A ___ Yes ___ No ___

If so, was that waiver granted? (Attach copy of 1033 waiver approved by home state.) N/A ___ Yes ___ No ___

2. Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration? Yes ___ No ___

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
- b) a certified copy of the Notice of Hearing or other document that states the charges and allegations, and
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

3. Has any demand been made or judgment rendered against you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, for overdue monies by an insurer, insured or producer, or have you ever been subject to a bankruptcy proceeding? Only include bankruptcies that involve funds held on behalf of others. Yes ___ No ___

If you answer yes, submit a statement summarizing the details of the indebtedness and arrangements for repayment, and/or type and location of bankruptcy.

4. Have you been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement? Yes ___ No ___

If you answer yes, identify the jurisdiction(s): _____

5. Are you currently a party to, or have you ever been found liable in, any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? Yes ___ No ___

If you answer yes, you must attach to this application:

- a) a written statement summarizing the details of each incident,
- b) a certified copy of the Petition, Complaint or other document that commenced the lawsuit or arbitration, and
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

6. Have you or any business in which you are or were an owner, partner, officer or director, or member or manager of limited liability company, ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct? Yes ___ No ___

If you answer yes, you must attach to this application:

- a) a written statement summarizing the details of each incident and explaining why you feel this incident should not prevent you from receiving an insurance license, and
- b) certified copies of all relevant documents.

7. Do you have a child support obligation in arrearage? Yes ___ No ___

If you answer yes,

- a) by how many months are you in arrearage? _____ Months
- b) are you currently subject to a repayment agreement? Yes ___ No ___
- c) are you the subject of a child support related subpoena/warrant? Yes ___ No ___

FORM 3001

MARCH 2008

Name: _____

SSN _____

Applicant's Certification and Attestation

40 The Applicant must read the following very carefully:

1. I hereby certify that, under penalty of perjury, all of the information submitted in this application and attachments is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license revocation or denial of the license and may subject me to civil or criminal penalties.
2. Where required by law, I hereby designate the Commissioner, Director or Superintendent of Insurance, or other appropriate party in each jurisdiction for which this application is made to be my agent for service of process regarding all insurance matters in the respective jurisdiction and agree that service upon the Commissioner, Director or Superintendent of Insurance, or other appropriate party of that jurisdiction is of the same legal force and validity as personal service upon myself.
3. I further certify that I grant permission to the Commissioner, Director or Superintendent of Insurance, or other appropriate party in each jurisdiction for which this application is made to verify information with any federal, state or local government agency, current or former employer, or insurance company.
4. I further certify that, under penalty of perjury, a) I have no child-support obligation, b) I have a child-support obligation and I am currently in compliance with that obligation, or c) I have identified my child support obligation arrearage on this application.
5. I authorize the jurisdictions to give any information concerning me, as permitted by law, to any federal, state or municipal agency, or any other organization and I release the jurisdictions and any person acting on their behalf from any and all liability of whatever nature by reason of furnishing such information.
6. I acknowledge that I understand and will comply with the insurance laws and regulations of the jurisdictions to which I am applying for licensure.
7. For Non-Resident License Applications, I certify that I am licensed and in good standing in my home state/resident state for the lines of authority requested from the non-resident state.
8. As part of the resident licensing process pursuant to applicable state law, resident applicant acknowledges that the submission of his or her fingerprint record will be submitted to a secured centralized repository maintained by the National Association of Insurance Commissioners ("NAIC") as authorized by the state insurance department pursuant to a memorandum of understanding between participating state insurance departments and the NAIC. The resident applicant acknowledges the fingerprint record will be stored at the NAIC and transmitted to law enforcement agencies for the purpose of determining Applicant's qualification for licensure. *(Applicable only to residents of Alaska)*

Month/Day/Year

Original Producer Signature

Full Legal Name (Printed or Typed)

Attachments

41 The following attachments must accompany the application otherwise the application may be returned unprocessed or considered deficient.

1. For Non-Resident License Applications and unless otherwise noted in the State Matrix of Business Rules, a state will rely on an electronic verification of an Applicant's resident license through the NAIC's State Producer Licensing Database in lieu of requiring an original Letter of Certification from the resident state.
2. Any jurisdiction specific attachments listed in the State Matrix of Business Rules (www.nipr.com).

FORM 4052

MARCH 2008

Application for Business Entity Insurance License
(Please Print or Type)

Check appropriate box for license requested.

- Resident License
- Non-Resident License
 - Identify Home State: _____
 - Identify Home State License #: _____

Demographic Information				
① Business Entity Name	② Incorporation/Formation Date (month) ___ (day) ___ (year) ___	③ FEIN -		
④ If assigned, National Producer Number (NP#)	⑤ If applicable, NASD Firm Central Registration Depository (CRD) Number			
⑥ List any other assumed, fictitious, alias or trade names under which you are doing business or intend to do business.	⑦ State of Domicile	⑧ Country of Domicile		
⑨ Is the business entity affiliated with a financial institution/bank? Yes <input type="checkbox"/> No <input type="checkbox"/>				
⑩ Business Address	⑪ City	⑫ State	⑬ Zip Code	⑭ Foreign Country
⑮ Phone Number (include extension) () - () - ()	⑯ Fax Number () - ()	⑰ Business Web Site Address		⑱ Business E-Mail Address
⑲ Mailing Address	⑳ P.O. Box	㉑ City	㉒ State	㉓ Zip Code
Designated/Responsible Licensed Producer				
㉔ Identify at least one Designated/Responsible Licensed Producer. (See Matrix of State Requirements at www.licenseregistry.com for jurisdictions that require the designated/responsible licensed producer to be an officer, director or partner of the business entity.)				
Name _____	SSN _____	-	-	
Name _____	SSN _____	-	-	
Name _____	SSN _____	-	-	
Name _____	SSN _____	-	-	
Owners, Partners, Officers and Directors				
㉕ Identify all owners with 10% interest or voting interest, partners, officers and directors of the business entity, or members or managers of a limited liability company:				
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
Name _____	Title _____	SSN/FEIN _____	-	-
For Bureau of Insurance Use Only				

FORM 4052

MARCH 2008

Name: _____ FEIN: _____

Licensing fees are nonrefundable and nontransferable. No personal checks will be accepted unless certified, and no cash will be accepted.

Producer Major Lines of Authority – Place an X by the license for which you are applying.		
Line of Authority	License Fee (nonrefundable)	Expiration Date
007 - Life and Annuities (fixed)	\$15	Perpetual
008 - Health	\$15	Perpetual
009 - Variable Contracts*	\$15	Perpetual
030 - Property and Casualty	\$15	Perpetual
033 - Title	\$15	Perpetual
*Must hold Life and Annuities authority.		
Non-Standard Lines of Authority		
Line of Authority	License Fee (nonrefundable)	Expiration Date
059 - Life and Health Consultant	\$50	June 30 annually
058 - Property and Casualty Consultant	\$50	June 30 annually
064 - Viatical Settlement Broker	\$50	June 30 annually
Regardless of the date of issue, the license must be renewed prior to June 30 of each calendar year.		

065 - Surplus Lines Broker	\$50	June 30 annually
Regardless of the date of issue, the license must be renewed prior to June 30 of each calendar year.		

AUTHORIZED INDIVIDUALS – Attach additional sheet if necessary.
Authorized individuals must be licensed as a Property and Casualty agent in Virginia.

NAME	SSN	TITLE	RESIDENCE ADDRESS

1. Resident applicants must file with the Commission a surety bond (SLB-2) in the amount of \$25,000, and thereafter shall keep the bond in force for as long as the license remains in effect.
2. Virginia domiciled corporations, limited liability companies, or limited partnerships **must** be registered with the Office of the Clerk of the State Corporation Commission.
3. Non-resident agencies must be registered with the Office of the Clerk of the State Corporation Commission. The "certificate of authority" is available by contacting the Clerk's Office at 804-371-9733. (Note: This is the equivalent of obtaining a certificate of authority from the Secretary of State in most other states.)
4. If your home state does not report Surplus Lines authority to the NAIC's Producer Data Base, attach a current (no more than 90 days old) certification from the insurance department in the state in which the business entity is incorporated/domiciled or where the principal office is located.

Mail to:
Bureau of Insurance
PO Box 1157
Richmond, VA 23218

Overnight Address: Bureau of Insurance
1300 East Main Street
Richmond, VA 23219

FORM 4052

MARCH 2008

Name: _____ FEIN _____

Background Information

29 Please read the following very carefully and answer every question. All copies of documents must be certified. All written statements submitted by the Applicant must include an original signature.

1. Has the business entity or any owner, partner, officer or director of the business entity, or member or manager of a limited liability company, ever been convicted of, or is the business entity or any owner, partner, officer or director, member or manager currently charged with, committing a crime, had a judgment withheld or deferred, or are you currently charged with committing a crime? Yes ___ No ___

"Crime" includes a misdemeanor, felony or a military offense. You may exclude misdemeanor traffic citations or convictions involving driving under the influence (DUI) or driving while intoxicated (DWI), driving without a license, reckless driving, or driving with a suspended or revoked license and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict of a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

If you answer yes, you must attach to this application:

- a) a written statement explaining the circumstances of each incident,
- b) a certified copy of the charging document,
- c) a certified copy of the official document, which demonstrates the resolution of the charges or any final judgment.

2. Has the business entity or any owner, partner, officer or director, or manager or member of a limited liability company, ever been involved in an administrative proceeding regarding any professional or occupational license, or registration? Yes ___ No ___

"Involved" means having a license censured, suspended, revoked, canceled, terminated; or, being assessed a fine, a cease and desist order, a prohibition order, a compliance order, placed on probation or surrendering a license to resolve an administrative action. "Involved" also means being named as a party to an administrative or arbitration proceeding, which is related to a professional or occupational license. "Involved" also means having a license application denied or the act of withdrawing an application to avoid a denial. You may EXCLUDE terminations due solely to noncompliance with continuing education requirements or failure to pay a renewal fee.

If you answer yes, you must attach to this application:

- a) a written statement identifying the type of license and explaining the circumstances of each incident,
- b) a certified copy of the Notice of Hearing or other document that states the charges and allegations, and
- c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

3. Has any demand been made or judgment rendered against the business entity or any owner, partner, officer or director, or member or manager if a limited liability company, for overdue monies by an insurer, insured or producer, or have you ever been subject to a bankruptcy proceeding? Only include bankruptcies that involve funds held on behalf of others. Yes ___ No ___

If you answer yes, submit a statement summarizing the details of the indebtedness and arrangements for repayment.

4. Has the business entity or any owner, partner, officer or director, or member or manager of a limited liability company, ever been notified by any jurisdiction to which you are applying of any delinquent tax obligation that is not the subject of a repayment agreement? Yes ___ No ___

If you answer yes, identify the jurisdiction(s): _____

5. Is the business entity or any owner, partner, officer or director a party to, or ever been found liable in any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? Yes ___ No ___

If you answer yes, you must attach to this application:

- a) a written statement summarizing the details of each incident,
- b) a certified copy of the Petition, Complaint or other document that commenced the lawsuit or arbitration, and
- c) a certified copy of the official document which demonstrates the resolution of the charges or any final judgment.

6. Has the business entity or any owner, partner, officer or director, or member or manager if a limited liability company, ever had an insurance agency contract or any other business relationship with an insurance company terminated for any alleged misconduct? Yes ___ No ___

If you answer yes, you must attach to this application:

- a) a written statement summarizing the details of each incident and explaining why you feel this incident should not prevent you from receiving an insurance license, and
- b) certified copies of all relevant documents.

FORM 4052

MARCH 2008

Name: _____ FEIN: _____

Applicant's Certification and Attestation

50 On behalf of the business entity or limited liability company, the undersigned owner, partner, officer or director of the business entity, or member or manager of a limited liability company, hereby certifies, under penalty of perjury, that:

1. All of the information submitted in this application and attachments is true and complete and I am aware that submitting false information or omitting pertinent or material information in connection with this application is grounds for license or registration revocation and may subject me and the business entity or limited liability company to civil or criminal penalties.
2. Where required by law, the business entity or limited liability company hereby designates the Commissioner, Director or Superintendent of Insurance, or an appropriate representative in each jurisdiction for which this application is made to be its agent for service of process regarding all insurance matters in the respective jurisdiction and agree that service upon the Commissioner or Director of that jurisdiction is of the same legal force and validity as personal service upon the business entity.
3. The business entity or limited liability company grants permission to the Commissioner or Director of Insurance in each jurisdiction for which this application is made to verify any information supplied with any federal, state or local government agency, current or former employer or insurance company.
4. Every owner, partner, officer or director of the business entity, or member or manager of a limited liability company, either a) does not have a current child-support obligation, or b) has a child-support obligation and is currently in compliance with that obligation.
5. I authorize the jurisdictions to give any information they may have concerning me to any federal, state or municipal agency, or any other organization and I release the jurisdictions and any person acting on their behalf from any and all liability of whatever nature by reason of furnishing such information.
6. I acknowledge that I understand and comply with the insurance laws and regulations of the jurisdictions to which I am applying for licensure/registration.
7. If required, I have received a Certificate of Good Standing from the jurisdiction's Secretary of State in which I am applying.
8. For Non-Resident License Applications, I certify that I am licensed and in good standing in my home state/resident state for the lines of authority requested from the non-resident state.

Must be signed by an officer, director, or partner of the business entity, or member or manager if a limited liability company:

Month/Day/Year

Signature

Typed or Printed Name

Title

Social Security Number

Address

City State Zip

Attachments

31 The following attachments must accompany the application otherwise the application may be returned unprocessed or considered deficient.

1. For Non-Resident License Applications and unless otherwise noted in the State Matrix of Business Rules, a state will rely on an electronic verification of an Applicant's resident license through the NAIC's State Producer Database in lieu of requiring an original Letter of Certification from the resident state.
2. Any jurisdiction specific attachments listed in the State Matrix of Business Rules (www.nipr.com).

VIRGINIA FORM SLB-2

Bond No. _____

**BOND FOR SURPLUS LINES INSURANCE BROKER
(To comply with Section 38.2-1857.2 B of the Code of Virginia)**

KNOW ALL MEN BY THESE PRESENTS, That _____ of _____ as Principal, and the _____ Company, a corporation organized and existing under the laws of the State of _____, and authorized to do business in the Commonwealth of Virginia, as Surety, are held and firmly bound unto the COMMONWEALTH OF VIRGINIA in the penal sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000) for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, successors and assigns, jointly and severally, firmly by these presents.

SIGNED, SEALED, AND DATED THIS _____ day of _____, 20____.

THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

WHEREAS, the said Principal has applied to the State Corporation Commission of the Commonwealth of Virginia for a license to act as a Surplus Lines Broker pursuant to Chapter 18 (§ 38.2-1857.1 et seq.) of the Code of Virginia and, in accordance with Section 38.2-1857.2 B thereof, is required to give a corporate surety bond unto the COMMONWEALTH OF VIRGINIA in the penal sum of TWENTY-FIVE THOUSAND DOLLARS (\$25,000);

NOW THEREFORE, the condition of this obligation is such that if the said Principal shall conduct business under said license in accordance with the provisions of the laws and regulations of the Commonwealth of Virginia pertaining to Surplus Lines Brokers, and, further, shall promptly remit the taxes and assessments provided by such laws and regulations, then this obligation shall be null and void; otherwise, to remain in full force and effect;

PROVIDED FURTHER, the Surety may be released from liability for future breaches of the conditions of this bond only after thirty days have elapsed from the giving of written notice to the State Corporation Commission of the Commonwealth of Virginia of its desire to be so released.

APPLICANT'S CERTIFICATION AND ATTESTATION

I hereby certify, under penalty of perjury, that all of the information submitted on the bond thereto is true and complete. I am aware that submitting false information or omitting pertinent or material information in connection with this bond is grounds for denial of this application or future license revocation if the license applied for is issued, and that I may also be subject to civil or criminal penalties.

Signature of Applicant (Individual or Officer of Corporation)

Date

IN WITNESS WHEREOF, the said Principal has hereunto set his hand and seal and the said Surety has caused these presents to be signed by its duly authorized officer or Attorney-in-Fact and its corporate seal affixed on the day and year first written above.

(SEAL)

(PRINCIPAL)

By: _____

(SEAL)

(SURETY)

By: _____

VIRGINIA FORM SLB-2 (Rev. 01/04)

VIRGINIA FORM SLB-3

QUARTERLY COMBINED AFFIDAVIT BY SURPLUS LINES BROKER
Re:
INSURANCE ON VIRGINIA RISK PLACED WITH AN UNLICENSED INSURER

STATE OF _____, CITY/COUNTY OF _____:

I, _____, _____, being duly sworn, affirm:
(Authorized Individual) (Ind. P&C License No. or NPN No.)

1. THAT I, _____, _____ a duly licensed Surplus Lines
(Surplus Lines Broker) (Broker License No. or NPN No.)

Broker authorized under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2 of the Code of Virginia, was engaged by the insureds named on the attached quarterly report or Property and Casualty Agents duly licensed in this Commonwealth acting on behalf of the insureds named on the attached quarterly report to obtain insurance against certain risks during the calendar quarter ending _____.

2. THAT each of the insureds named on the attached quarterly report have been given the notice required by subsection B of § 38.2-4806 of the Code of Virginia and 14 VAC 5-350-95.

3. THAT the gross premiums written during the calendar quarter ending _____ are \$ _____ and the amount of the tax (2.25%) applicable thereto is \$ _____.

4. THAT the insurance described herein has been effected with the unlicensed insurers named herein.

Surplus Lines Broker

By _____
(Authorized individual if licensee is a Corporation or Partnership)

SUBSCRIBED AND SWORN TO before me this ____ day of _____.

Notary Public

My Commission expires _____.

VIRGINIA FORM SLB-8

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
BUREAU OF INSURANCE
SURPLUS LINES BROKER'S
ANNUAL GROSS PREMIUMS TAX REPORT

Year ended December 31, 20. (Due March 1, 20)

(Surplus Lines Broker) _____ (License or NPN Number)

(Address)

TO: STATE CORPORATION COMMISSION, BUREAU OF INSURANCE, Richmond, Virginia

In compliance with §§ 38.2-4807 and 38.2-4809 of the Code of Virginia, following is a report of ALL GROSS PREMIUMS, ASSESSMENTS, DUES AND FEES charged on contracts of insurance effected in unlicensed insurers on Virginia risks by the undersigned. This report also includes details of all additional and return premiums on such business.

- 1. GROSS PREMIUMS (from SLB-5, Part 1, of previously filed quarterly reports) \$ _____
- 2. ADDITIONAL PREMIUMS (from SLB-5, Part 2, of previously filed reports) \$ _____
- 3. Less: RETURN PREMIUMS (from SLB-5, Part 3, of previously filed reports) \$ _____
- 4. BALANCE (Taxable Premium Income) \$ _____
- 5. Premium Tax (2.25% of BALANCE, Line 4) \$ _____
- 6. Less: QUARTERLY AMOUNT(S) PREVIOUSLY PAID (if any) \$ _____
- 7. TAX AMOUNT DUE (Line 5 - Line 6) \$ _____
- 8. TAX AMOUNT (OVERPAID) (If Line 5 - Line 6 is negative) \$ _____
- 9. Assessment for Maintenance of Bureau of Insurance (based upon Taxable Premium (Line 4) at _____% (subject to a minimum of \$300) \$ _____
- 10. BALANCE DUE (lines 7 & 9) AND CHECK MADE PAYABLE TO THE TREASURER OF VIRGINIA ATTACHED (Note: Do not reduce the assessment amount due on Line 9 by any tax overpayment shown on Line 8) \$ _____

Date By: _____

Title

STATE OF _____)
County (City) of _____) To-Wit:

This day _____, _____
(Name) (Title)
of _____ personally appeared before me in
the County (City) aforesaid, and verified that the foregoing report is correct.

Given under my hand this _____ day of _____.

(Notary Public)

My Commission expires _____

Preparer's Name _____ Preparer's Phone Number _____

VIRGINIA FORM SLB-8 (Rev. 5/06)

Proposed Regulation

ORDER TO TAKE NOTICE

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

Section 12.1-13 of the Code of Virginia ("Code") provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 38.2-223 of the Code provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code. The regulations issued by the Commission pursuant to § 38.2-223 of the Code are set forth in Title 14 of the Virginia Administrative Code.

Titles of Regulations: 14VAC5-360. Rules Governing Local Government Group Self-Insurance Pools (amending 14VAC5-360-10 through 14VAC5-360-160, 14VAC5-360-180, 14VAC5-360-190; adding 14VAC5-360-45).

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to the regulations set forth in Chapters 360 and 370 of Title 14 of the Virginia Administrative Code, entitled "Rules Governing Local Government Group Self-Insurance Pools" and "Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act," respectively. The proposed amendments are necessary due to the passage of House Bill 1756 during the 2009 General Assembly Session, which provides for the merger of group self-insurance associations consisting solely of political subdivisions into local government group self-insurance pools.

14VAC5-370. Rules Governing Group Self-Insurers of Liability Under the Virginia Workers Compensation Act (amending 14VAC5-370-10 through 14VAC5-370-150, 14VAC5-370-170, 14VAC5-370-180; adding 14VAC5-370-145).

The Commission is of the opinion that the proposed amendments submitted by the Bureau should be considered for adoption with an effective date of February 19, 2010.

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

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

Accordingly, IT IS ORDERED THAT:

Public Comment Deadline: February 1, 2010.

Agency Contact: Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

(1) The proposed amendments to the regulations entitled "Rules Governing Local Government Group Self-Insurance Pools" and "Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act," which amend the regulations at 14 VAC 5-360-10 through 14 VAC 5-360-160, 14 VAC 5-360-180, 14 VAC 5-360-190, 14 VAC 5-370-10 through 14 VAC 5-370-150, 14 VAC 5-370-170, and 14 VAC 5-370-180, be attached hereto and made a part hereof.

Summary:

The proposed amendments provide for the merger of group self-insurance associations, consisting solely of political subdivisions, into local government group self-insurance pools. The proposed revisions are necessary due to Chapter 336 of the 2009 Acts of Assembly, which amended §§ 15.2-2703, 65.2-801 and 65.2-1203 of the Code of Virginia, relating to the merger of group self-insurance associations into local government group self-insurance pools.

(2) All interested persons who desire to comment or request a hearing on the proposed amendments to the regulations shall file such comments or hearing requests on or before February 1, 2010, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, 1300 East Main Street, 1st Floor, Richmond, Virginia 23219, and shall refer to Case No. INS-2009-00273. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.

AT RICHMOND, DECEMBER 17, 2009

COMMONWEALTH OF VIRGINIA

(3) If no written request for a hearing on the proposed amendments to the regulations is filed on or before February 1, 2010, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed amendments to the regulations, may adopt the

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00273

Ex Parte: In the matter of Adopting Amendments to the Rules Governing Local Government Group Self-Insurance Pools and the Rules Governing Group Self-Insurers of Liability Under the Virginia Workers' Compensation Act

Regulations

proposed amendments to the regulations as submitted by the Bureau.

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

(5) AN ATTESTED COPY hereof, together with a copy of the proposed amended regulations, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who shall mail a copy of this Order, together with the proposed amended regulations, to all licensed group self-insurance associations, local government group self-insurance pools and other interested parties designated by the Bureau.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (5) above.

14VAC5-360-10. Purpose.

The purpose of this chapter is to set forth rules, forms and procedural requirements that the ~~Commission~~ commission deems necessary for the approval and monitoring of pools created pursuant to Local Government Group Self-Insurance Pools, Chapter ~~11.1~~ (~~§ 15.1-503.4:1 et seq.~~) 27 (§ 15.2-2700 et seq.) of Title ~~15.1~~ 15.2 of the Code of Virginia.

14VAC5-360-20. Definitions.

"Act" means Chapter ~~11.1~~ (~~§ 15.1-503.4:1 et seq.~~) 27 (§ 15.2-2700 et seq.) of Title ~~15.1~~ 15.2 of the Code of Virginia.

"Actuary," for coverages other than group life, accident and health, means a person who is a member of the American Academy of Actuaries qualified in loss reserves and rate making according to professional guides, recommendations, interpretations, and opinions of the Academy, or a member of the Casualty Actuarial Society. For group life, accident and health coverages, "actuary," means a person who is a member of the American Academy of Actuaries qualified in group life, accident and health reserves or a fellow of the Society of Actuaries.

"Administrator" means the individual, partnership, corporation or other entity authorized to serve as a representative of a pool and its members in carrying out the policies of the board and managing the pool's activities.

"Commission" means the State Corporation Commission.

"Contribution" means the amount of payments required of each member in order to fund the pool's obligations under the Plan plan.

"Group self-insurance pool" or "pool" means a pool organized by two or more political subdivisions for the purpose of forming a group self-insurance pool to provide for joint or cooperative action relative to their financial and administrative resources for the purpose of providing to the participating political subdivisions risk management and liability insurance coverage for pool members and employees of pool members for acts or omissions arising out of the scope of their employment, including any or all of the following:

1. Casualty insurance, including workers' compensation under the Virginia Workers' Compensation Act (§ 65.2-100 et seq. of the Code of Virginia), employers' liability, general and professional and public officials liability coverage; but not including group self insurers of liability under the Virginia Workers' Compensation Act;

2. Property insurance, including marine insurance and inland marine and transportation insurance coverage;

3. Group life, accident and health coverages including hospital, medical, surgical and dental benefits to the employees of member political subdivisions and their dependents;

4. Automobile insurance, including motor vehicle liability insurance coverage and collision and security for motor vehicles owned or operated, as required by Title ~~46.1~~ 46.2 of the Code of Virginia, and protection against other liability and loss associated with the ownership and use of motor vehicles;

5. Surety and fidelity insurance coverage; and

6. Umbrella and excess insurance coverages.

"Insolvent" means (i) the condition of a pool that has liabilities in excess of assets or (ii) the inability of a pool to pay its obligations as they become due in the usual course of business.

"Member" means a political subdivision which has entered into a member agreement and thereby becomes a member in a group self-insurance pool.

"Member agreement" means the written agreement executed between each member and the pool which sets forth the conditions of membership in the pool, the obligations, if any, of each member to the other members and the terms, coverages, limits, and deductibles of the ~~Plan~~ plan.

"Members' supervisory board" or "board" means the governing authority of the pool selected by the members to be responsible for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency.

"Plan" means the plan of self-insurance offered by the pool to its members as specifically designated in the member agreement.

"Political subdivision" means any county, city, or town, school board, transportation district commission, or any other local governmental authority or local agency or public service corporation owned, operated or controlled by a locality or local government authority, with power to enter into contractual undertakings.

"Service agent" means any individual, partnership, corporation or other entity that may provide any or all of the insurance services including, but not limited to, claims adjustment, safety engineering, compilation of statistics, the preparation of contribution payments, loss reports, and other required self-insurance reports, and the administration of a claims fund.

14VAC5-360-30. Application for license as group self-insurance pool; requirements; approval; review.

A. Two or more political subdivisions may be licensed by the ~~Commission~~ commission as a group self-insurance pool for the purpose of entering into agreements to pool their liabilities under the Act. The application for a license shall be made on a form prescribed by the ~~Commission~~ commission and shall contain answers to all questions and shall be verified by the oath or affidavit of at least one member of the board of the pool, and the administrator.

B. The ~~Commission~~ commission may disapprove an application for the formation of a group self-insurance pool and may suspend or withdraw approval whenever it finds that applicant or pool:

1. Has refused to submit its books, papers, accounts, or affairs to the reasonable inspection of the ~~Commission~~ commission or its representative;
2. Has refused, or its officers or agents have refused, to furnish satisfactory evidence of its financial and business standing or solvency;
3. Is insolvent, or is in such condition that its further transaction of business in this Commonwealth is hazardous to its members and creditors in this Commonwealth, and to the public;
4. Has refused or neglected to pay a valid final judgment against it within 60 days after its rendition;
5. Has violated any law of this Commonwealth or has violated or exceeded the powers granted by its members;
6. Has failed to pay any fees, taxes or charges imposed in this Commonwealth within 60 days after they are due and payable, or within 60 days after final disposition of any legal contest with respect to liability therefor; or

7. Has been found insolvent by a court of any other state, or by the insurance commissioner or other proper officer or agency of any other state, and has been prohibited from doing business in such state.

C. If after review of the pool's application and other additional information required by this chapter, the ~~Commission~~ commission is satisfied that the pool's financial condition and method of operation are such that the pool may reasonably be expected to meet the obligations which it has undertaken, and has fully disclosed to its members or potential members the coverages and obligations of membership in the plan, then the ~~Commission~~ commission shall issue a license to the pool. The ~~Commission~~ commission shall act on the application as promptly as practical under the existing circumstances.

D. If the ~~Commission~~ commission rejects the pool's application, notice shall be served personally, or by certified or registered mail, upon all interested parties stating the reason for the rejection. The pool shall be provided an opportunity to introduce evidence and be heard in a hearing convened within a timely manner. Such hearing may be formal or informal.

14VAC5-360-40. Application for license; additional requirements.

A. An application submitted by a pool shall be accompanied by the following items which shall be subject to the approval of the ~~Commission~~ commission:

1. A copy of the articles of incorporation, constitution, or other instrument which sets forth the powers of the pool.
2. A copy of the bylaws or the governing rules of the proposed pool which may be included as part of the documents provided pursuant to subdivision 1 ~~above~~ of this subsection.
3. A copy of the forms used for the member agreement and power of attorney, if any.
4. A copy of the forms used for the indemnity agreement and power of attorney, if any.
5. A copy of a financial plan which sets forth in general terms:
 - a. The insurance coverages to be offered by the group self-insurance pool, applicable deductible levels, and the maximum liability which the pool will retain;
 - b. The amount of reserves to be set aside for the payment of claims;
 - c. The amount, if any, of specific excess insurance to be purchased by the pool; and
 - d. The amount, if any, of aggregate excess insurance coverage to be purchased and maintained.

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Such items may be contained in other documents submitted to the ~~Commission~~ commission in lieu of inclusion in a financial plan.

~~5- 6.~~ A copy of a plan of management which provides for all of the following:

- a. The means of establishing the governing authority of the pool;
- b. The responsibility of the governing authority for fixing contributions to the pool, maintaining reserves, levying and collecting assessments for deficiencies, disposing of surpluses, and administration of the pool in the event of termination or insolvency;
- c. The basis upon which new members may be admitted to, and existing members may leave, the pool;
- d. The identification of reserves by exposure areas; and
- e. Such other provisions as are necessary or desirable for the operation of the pool.

Such items may be contained in other documents in lieu of inclusion in a plan of management.

~~6- 7.~~ Designation of the initial or interim board and the administrator, together with pertinent biographical information for each member of the board and for the administrator or the principal officers of the corporation serving as administrator. This information is to be submitted on a form prescribed by the ~~Commission~~ commission.

~~7- 8.~~ The address in this Commonwealth where the books and records of the pool will be maintained at all times.

~~8- 9.~~ Information showing that the pool has, within its own organization or by contract with an approved service agent, ample facilities and competent personnel to service its program with respect to underwriting matters, compilation of statistics, loss prevention, safety engineering and claims adjusting. Copies of all executed service agreements shall be filed with the ~~Commission~~ commission.

~~9- 10.~~ A confirmation of a fidelity bond covering the administrator and its employees in a form and amount acceptable to the ~~Commission~~ commission.

~~10- 11.~~ A projection of administrative expenses for the first year of operation in an amount and as a percentage of the estimated annual contributions.

~~11- 12.~~ Proof of payment of contributions by members of at least ~~\$250,000~~ 25% of its estimated first year's contribution into a designated depository. This amount shall not be less than \$250,000.

13. The application shall be accompanied by any other information the commission requires.

B. An application submitted by a group self-insurance pool shall be accompanied by a composite listing of the estimated annual gross contributions to be developed by each organizing member of the pool individually and in the aggregate for the pool. The aggregate amount of annual contributions must be at least ~~\$500,000~~ \$ 1 million unless otherwise approved by the ~~Commission~~ commission.

C. Any subsequent revisions to items submitted under the provisions of 14VAC5-360-30 and 14VAC5-360-40 ~~of this chapter~~ shall be filed with and subject to approval by the ~~Commission~~ commission.

14VAC5-360-45. Security deposit requirement.

Each pool licensed by the commission to offer workers compensation shall maintain with the State Treasurer a security deposit of acceptable securities in an amount of \$250,000 for the first plan year, or such other amount as the commission prescribes, and for succeeding plan years such amount as the commission deems reasonable taking into account the financial condition of the association and any excess insurance carried by the association. The commission may, from time to time, increase, release, or reduce the security deposit or surety bond requirement. The security deposit shall be subject to the provisions of Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

For the purposes of this chapter, acceptable securities shall be (i) investments allowed by § 2.2-4500 of the Code of Virginia (legal investments for public sinking funds) and § 2.2-4501 of the Code of Virginia (legal investments for other public funds); (ii) securities issued by states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc.; (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc. that are bonds issued by municipalities or political subdivisions of this Commonwealth or any other state; (iv) securities issued by the Federal Home Loan Banks; and (v) securities issued by the Federal Intermediate Credit Banks.

14VAC5-360-50. Investments.

The board of a pool may, in its discretion, invest funds in any type of investments authorized by §§ ~~38.2-14115~~ 38.2-1415, 38.2-1418, 38.2-1419, 38.2-1421, and 38.2-1432 of the Code of Virginia. Investments may also include (i) investments allowed by ~~§ 2.1-327~~ § 2.2-4500 of the Code of Virginia (legal investments for public sinking funds) and ~~§ 2.1-328~~ § 2.2-4501 of the Code of Virginia (legal investments for other public funds), (ii) securities issued by states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc., (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc. that are bonds issued by

municipalities or political subdivisions of this Commonwealth or any other state, (iv) securities issued by the Federal Home Loan Banks, and (v) securities issued by the Federal Intermediate Credit Banks. Other investments may be made subject to the approval of the ~~Commission~~ commission. All such investments shall be authorized or approved by the board in the manner contemplated by the provisions of § 38.2-1408 of the Code of Virginia.

14VAC5-360-60. Filing of reports; examination by ~~Commission~~ commission.

A. Each pool shall file annually with the ~~Commission~~ commission and with the members of the pool within ~~420 days~~ six months after the end of the pool's fiscal year, audited financial ~~statements~~ reports for the most recently completed fiscal year certified by an independent certified public accountant. The financial ~~statement~~ report shall be considered filed on the date the ~~statement~~ report was sent by mail as shown by the postmark. If the pool fails to file such audited financial ~~statements~~ reports, the ~~Commission~~ commission may perform the audit and the pool shall reimburse the ~~Commission~~ commission for such cost.

1. The audited financial ~~statement~~ report shall contain a report in detail of the pool's assets, outstanding liabilities, including the amount of claims paid to date and current reserves for losses, revenues and disbursements during the year, the investments of the pool's assets and all other information which the ~~Commission~~ commission may deem necessary to secure a full and accurate knowledge of the financial affairs and condition of the pool. The working papers of the certified public accountant and other records pertaining to the preparation of the audited financial ~~statements~~ reports may be reviewed by the ~~Commission~~ commission.

2. The audited financial ~~statement~~ report shall be signed on behalf of the pool by two duly authorized officers or a duly authorized officer and the administrator.

3. The ~~Commission~~ commission shall also devise a uniform accounting system to be used by the pool.

4. In addition to the annual audited financial ~~statement~~ report, the ~~Commission~~ commission may require any pool to file additional financial information, including interim financial reports and additional reports, exhibits or statements considered necessary to secure complete information concerning the condition, solvency, experience, transactions or affairs of the pool. The ~~Commission~~ commission shall establish reasonable deadlines for filing these additional reports, exhibits or statements and may require verification as the ~~Commission~~ commission shall designate.

B. The pool must retain and have available for examination by the ~~Commission~~ commission:

1. All executed copies of the application of each political subdivision for membership in the pool; and

2. A certified copy of each political subdivision's resolution authorizing membership in the pool.

C. Any person who knowingly or willfully makes or files any false or fraudulent statement, report or other instrument shall be charged with a Class 5 felony. If convicted, such person shall be guilty of a Class 5 felony.

D. The ~~Commission~~ commission may examine the affairs, transactions, accounts, records, and assets of the pool as often as it deems necessary. The manner and frequency in which the examination of financial condition shall be conducted and the release of any reports of financial condition shall be as provided in Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-360-70. Reserves.

A. Every pool shall calculate the amount reasonably determined to be sufficient to provide for the payment of every loss or claim whether reported or unreported, arising on or prior to the date of any annual or other ~~statement~~ report and it shall maintain a reserve liability in an amount estimated in the aggregate to provide for the payment of all such losses or claims and any expenses related thereto.

B. Each pool shall maintain reserves equal to the unearned portion of the gross contribution or assessment, if any, on unexpired or unexpired risks.

C. Reserves for coverages based on life expectancy shall be computed according to tables of mortality and rates of interest prescribed in Title 38.2 of the Code of Virginia. The pool shall maintain an active life reserve for accident and health coverages which shall place a sound value on its liabilities under such risks and shall not be less in the aggregate than the pro rata gross unearned contributions for such coverages.

D. Every pool may receive credit for insurance or reinsurance recoverable from an insurance company licensed to transact such insurance in this Commonwealth, or any state of the United States or the District of Columbia and meeting the standards of solvency at least equal to those required in this Commonwealth. A pool may receive credit for insurance or reinsurance with any other insurer to the extent that funds are withheld as security for the payment of obligations thereunder if such funds are held subject to withdrawal by and are under the control of the pool. Such funds may include letters of credit subject to the approval of the ~~Commission~~ commission. Credit may be received for insurance or reinsurance recoverable on the basis of an agreement entered into with individual unincorporated underwriters having a trusted surplus of at least \$100,000,000.

E. Credit may be received for insurance or reinsurance when the contract is:

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1. Not cancellable or terminable for any reason except upon not less than 60 days written notice sent by registered or certified mail to (i) the pool and (ii) the ~~Commission~~ commission;

2. Automatically renewable at the expiration of the policy period except upon 60 days written notice sent by registered or certified mail to (i) the pool, and (ii) the ~~Commission~~ commission.

F. No more than one pool, which shall be defined as the named insured, shall be covered by any contract or policy of excess liability insurance. Any contract of insurance or reinsurance shall be payable by the assuming insurer on the basis of the liability of the pool under the contract or contracts assumed without diminution because of the insolvency of the pool.

G. Copies of the complete contracts or policies of insurance or reinsurance, with all endorsements thereto entered into by the pool for the benefit of the pool, shall be filed with the ~~Commission~~ commission.

H. No pool shall expose itself to any loss on any one risk or hazard in an amount exceeding 10% of the aggregate annual contribution, unless authorized by the ~~Commission~~ commission.

14VAC5-360-80. Responsibilities of members' supervisory board.

A. The members' supervisory board shall be responsible for holding and managing the assets of and directing the affairs of the pool and shall be elected in the manner prescribed by the pool's governing instruments. At least a majority of the board ~~must~~ shall be members of the pool, but a board member shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, under contract with the pool.

B. The board shall fix contributions to the pool and supervise the finances of the pool and the pool's operations to the extent necessary to assure conformity with law, this chapter, the member agreement, and the pool's governing instruments.

C. The board shall take all necessary precautions to safeguard the assets of the pool, including, but not limited to, the following:

1. Doing all acts necessary to assure that each member continues to be able to fulfill the obligations of membership; and also reporting promptly to the ~~Commission~~ commission any grounds or change in circumstances which may affect the pool's ability to meet its obligations such as withdrawal of a member;

2. Designating an administrator to administer the affairs of the pool, to carry out the policies established by the board and to provide day to day management of the pool. The

administrator shall furnish a fidelity bond in an amount sufficient to protect the pool against the misappropriation or misuse of any monies or securities. Evidence of the bond shall be filed with the ~~Commission~~ commission, said bond being one of the conditions required for licensing of the pool. The administrator shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, any of which are under contract with the pool;

3. Retaining control of all monies collected for the pool and the disbursement of such monies by the pool. All assets of the pool shall remain in the custody of the board or the authorized administrator. However, a claims fund for payment of benefits due and other related expenses may be established for the use of any authorized service agent; and

4. Actively collecting delinquent accounts resulting from any past due contributions by members. Any member of a pool who fails to make the required contributions after due notice may be declared ineligible for the self-insurance privilege until this past due account, including cost of collection, has been paid or adequately provided for.

D. The board shall assure that, for workers' compensation liability, payroll verifications of all members of the pools are completed within 180 days after the close of a plan year and the board shall require that efforts are made to collect any additional amounts due within 30 days of the completion of each audit.

E. Neither the board nor the administrator shall use any of the monies collected for any purpose unrelated to securing the members' liability or other rights and obligations under the member agreement and any administrative or other necessary expenses of the pool. Further, the board shall be prohibited from borrowing any monies from the pool or in the name of the pool without advising the ~~Commission~~ commission of the nature and purpose of the loan and obtaining the ~~Commission's~~ commission's approval.

~~E.~~ F. The board may dispose of any surplus as provided in 14VAC5-360-100 ~~hereof~~.

~~F.~~ G. The board shall assure that the office of the administrator of the pool and all pertinent records necessary to verify the accuracy and completeness of all reports submitted to the ~~Commission~~ commission are maintained within this Commonwealth.

~~G.~~ H. The board may adopt its own rules and procedures as considered necessary for the operation of the pool provided these rules and procedures are not inconsistent with the Act and this chapter.

~~H.~~ I. The board may designate a service agent or agents.

14VAC5-360-90. Contribution requirements.

A. For the purpose of funding the liability of a pool the members shall make contributions to the pool in the manner prescribed in the member agreement.

~~B. For the purpose of funding the workers' compensation liability of a pool, the members shall make contributions to the pool based on annual payrolls for all employees of each member using rates and stock or nonstock discounts as adopted by the board and approved by the commission. The rates to be used are those in effect as of the inception of each pool's fiscal year. A plan that allows for consideration of past experience in developing a factor to be applied to a member's contribution may be used provided this plan has been approved by the commission.~~

~~Nothing contained herein shall be construed to prevent a pool from filing with the commission its own rates or a deviation from these rates or an alternative method of determining contributions that may be used upon approval by the commission.~~

C. At the effective date of a pool's license, \$250,000 shall have been paid into a designated depository. The balance of the first year's contributions shall be paid no later than the end of the ninth month of the pool's fiscal year, either in quarterly or monthly installments at the discretion of the board. For each subsequent year of operation of the pool, the payment schedule shall provide for annual or periodic payments in intervals no more frequently than once a month, at the discretion of the board.

~~D. Each pool shall file with the Commission commission the basis for establishing the annual contributions of its members. Such contributions must be based on reasonable assumptions and certified by an actuary or other person satisfactory to the Commission commission as to the sufficiency of such contributions. This subsection shall not apply to a pool's workers' compensation business.~~

~~E. The total amount of each member's annual contribution to the pool shall be certified by the board to the governing body of each member at least one month prior to the beginning of the next fiscal year, if practical.~~

~~F. Each pool may levy upon its members an additional assessment whenever needed to supplement the pool's surplus to assure payment of its obligations. A member may be assessed for any fiscal year during which the member participated in the pool. Such assessment may be made after the end of the pool's fiscal year and after the member has discontinued membership in the pool.~~

1. The pool may assess each participating member an additional proportionate amount, as provided in the pool's member agreement or as provided in the pool's plan filed with the ~~Commission~~ commission to correct a deficit condition.

2. The board shall submit to the ~~Commission~~ commission a report of the causes of the pool's insufficiency, the assessments necessary to replenish it and the steps taken to prevent a recurrence of such circumstances.

14VAC5-360-100. Distribution of surplus funds.

Any surplus accumulated within a pool's fiscal year, as determined from the annual audited financial ~~statement~~ report, may be declared refundable by the board. No distribution of the surplus funds shall be made earlier than 12 months following the end of the pool's fiscal year for which a surplus was declared. Such distribution shall not be made until certified by an actuary and the plan has been filed with the ~~Commission~~ commission.

Surplus accumulated within a pool's fiscal year shall be used exclusively for the benefit of those members belonging to the pool during that year. The accounting for each pool's fiscal year shall be separate for each year.

Notwithstanding the foregoing paragraph, the ~~Commission~~ commission may require, and shall permit upon application of the pool that does not write workers' compensation, that 5.0%, or such greater an amount as the board may elect, of a pool's surplus accumulated within a fiscal year be allocated to a restricted surplus account at the end of that year. The restricted surplus is to be used at the direction of the pool's board subject to the approval of the Commission commission.

However, for pools that have been merged into by a group self-insurance association consisting solely of political subdivisions licensed pursuant to § 65.2-802 of the Code of Virginia, the commission shall require that 1.0% or more of a pool's earned contributions for each fiscal accounting period be allocated to a contingency reserve. The contingency reserve is to be used at the direction of the pool's board subject to the approval of the commission. When the commission is satisfied that the contingency reserve is adequate for the needs of the pool, adjustments may be made by the commission as necessary to the contingency reserve or to contributions to the contingency reserve to maintain it at an established amount.

14VAC5-360-110. Member agreement.

A. Every member of a group self-insurance pool shall execute a member agreement which shall set forth the rights, privileges and obligations of the member, and the terms, coverages, limits, and deductibles of the ~~Plan~~ plan. This agreement shall be subject to the approval of the ~~Commission~~ commission and shall provide for, in substance, the following:

1. Election by pool members of a governing authority for the pool, a majority of whom shall be elected or appointed officials of pool members;

2. A requirement that the members' supervisory board designate and appoint an administrator empowered to

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accept service of process on behalf of the pool and authorized to act for and bind the pool and members in all transactions relating to or arising out of the operation of the pool;

3. The right of substitution of the administrator and revocation of the power of attorney and rights thereunder;

4. A financial plan or plan of risk management which is further described in 14VAC5-360-40 A ~~4 of this chapter 5~~;

5. A management plan which is further described in 14VAC5-360-40 A ~~5 of this chapter 6~~;

6. A requirement that the pool, at the request of a member, provide without unreasonable delay, to any person designated by the member, proof of the coverages provided by the pool, including any insurance or reinsurance, applicable deductible levels and the maximum liability which the pool will retain; and

7. For group life, accident and health coverages, a requirement that the pool provide to each covered pool member and to employees of pool members a certificate setting forth (i) the coverage, including any limitations, reductions and exclusions applicable to the coverage provided; (ii) to whom benefits are payable; and (iii) any family member or dependent's coverage.

Such member agreement may also contain such other provisions not inconsistent with law or this chapter.

B. The first page of the member agreement shall include a summary that shall disclose:

1. In regard to coverage:

- a. The coverages provided;
- b. The period of the coverage;
- c. The amount of the deductible, if any, per claim or in the aggregate; and
- d. For each coverage, the maximum amount of coverage to be borne by the pool.

2. In regard to the contribution:

- a. The contribution and dates payments are due for the political subdivision to become a member of the pool;
- b. The basis upon which each member's contribution is determined; and
- c. Whether any additional assessments of the members may be made.

3. In regard to excess coverage of the pool: 'a. A description of the excess coverage for the pool as to its coverage per occurrence, coverage per occurrence per person, if appropriate, and in the aggregate for each coverage offered; and

b. A statement that there is no excess coverage for the pool if the pool has not obtained such coverage.

4. The name of the proposed service agent.

C. The member agreement shall include a prominent disclosure notice that must be signed by a duly authorized officer of the political subdivision. The disclosure notice shall use the following or substantially similar language:

A local government group self-insurance pool is not protected by any Virginia insurance guaranty association against default due to insolvency. In the event of insolvency, members and persons filing claims against members may be unable to collect any amount owed to them by the pool regardless of the terms of the member agreement. In the event the pool is in a deficit position, a member may be liable for any and all unpaid claims against such member.

With regards to workers' compensation liability, each member agrees to assume and discharge, jointly and severally, any liability under the Virginia Workers' Compensation Act of any and all employers party to such agreement and which provides that, in addition to the rights of the pool, in the event of failure of the pool to enforce such rights after reasonable notice to the pool, the commission shall have the right independently to enforce on behalf of the pool the joint and several liability of its members under the Virginia Workers' Compensation Act and the liability of members for any unpaid contributions and assessments.

The member agreement may also contain such other provisions not inconsistent with law or this chapter.

14VAC5-360-120. Servicing of pool.

A. A service agent for a licensed group self-insurance pool shall apply for and shall be subject to the approval of the ~~Commission~~ commission before entering into a contract with a pool and shall satisfy to the ~~Commission~~ commission that it has adequate facilities and competent personnel to fulfill its obligations to the pool and this chapter.

B. A service agent shall maintain a resident agent in this Commonwealth and that agent shall be authorized to act for the service agent on any and all matters covered by the service agreement. All books and records relating to the servicing of the pool shall be maintained in Virginia.

C. A service agent shall file with the ~~Commission~~ commission copies of all contracts entered into with the pool as they relate to the services to be performed. The service contract must state that the service agent agrees to handle all claims covered by the service agreement incurred during the contract period to their conclusion without additional compensation unless approval to transfer them is obtained from the ~~Commission~~ commission prior to such transfer.

D. The service agent shall furnish a fidelity bond covering its employees in an amount sufficient to protect all monies placed in the claims fund.

E. Upon satisfactory compliance with the above provisions, a certificate of approval as a recognized and authorized service agent shall be issued to the applicant. Failure to comply with any of the foregoing rules or any order of the ~~Commission~~ commission within the time prescribed shall be considered justification for withdrawing the certificate of approval. The ~~Commission~~ commission shall give 10 days prior notice of such withdrawal. The notice shall be served personally, or by certified or registered mail, upon all interested parties setting forth the reasons for withdrawal, and providing the service agent an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, the service agent's certificate of approval is revoked this revocation shall become effective 30 days after issuance of the ~~Commission's~~ commission's order or within such shorter or longer period as the ~~Commission~~ commission may consider necessary to protect the interests of the pool, its members and their employees.

F. Each individual, partnership, corporation or other entity approved to act as a service agent for a pool may be required to file with the ~~Commission~~ commission an annual statement of financial condition within four months of the completion of its fiscal year.

G. The pool may through its own personnel provide the services performed by a service agent upon approval by the ~~Commission~~ commission.

14VAC5-360-130. Handling of pool deficit.

If a group self-insurance pool is in a deficit condition, the pool shall promptly file with the ~~Commission~~ commission a financial plan to correct the deficit condition. If the plan is found to be unacceptable by the ~~Commission~~ commission and written notice, thereof, is given to the governing authority of the pool, delinquency proceedings may be commenced and conducted by the ~~Commission~~ commission in accordance with the provisions of Chapter 15 (§ 38.2-1500 et seq.) of Title 38.2 of the Code of Virginia.

14VAC5-360-140. Termination of pool members.

A. A member who fails to make timely contribution payments as provided by the board may be terminated after 10 days written notice has been given to the member and the ~~Commission~~ commission. A member can be terminated without cause after 30 days written notice has been given to the member.

B. For workers' compensation liability, no member agreement shall be cancelled or nonrenewed except on 30 days notice to the member and the Workers' Compensation Commission, unless the member has obtained other insurance and the Workers' Compensation Commission is notified of

that fact by the insurer assuming the risk, or unless, in the event of cancellation, said cancellation is for nonpayment of contributions; then 10 days notice shall be given the member and the Workers' Compensation Commission.

C. The pool shall remain liable for all claims applicable to the period during which the political subdivision was a member of the pool, including the period required for termination of membership.

14VAC5-360-150. Terms of license; voluntary dissolution of pool; merger of pools mergers.

A. A pool's license shall remain in effect until terminated at the request of the board or revoked by the ~~Commission~~ commission pursuant to 14VAC5-360-160.

B. Before a pool can voluntarily dissolve, it must present a plan of dissolution to the ~~Commission~~ commission for approval. Such a plan shall provide for the payment of all incurred losses and expenses of the fund and its members, including all incurred but not reported losses, as certified by an actuary, to the extent of the pool's assets. No assets of the pool may be used for any other purpose until payment of all such losses and expenses is provided for.

C. Subject to the approval of the ~~Commission~~ commission, a pool may merge with another local government group self-insurance pool if the resulting pool assumes in full all obligations of the merging pools. The ~~Commission~~ commission may hold a hearing on the merger and shall do so if any party, including a member of either pool, so requests.

D. Subject to the approval of the commission, a group self-insurance association consisting solely of political subdivisions licensed pursuant to § 65.2-802 of the Code of Virginia may merge with a pool pursuant to § 15.2-2703 of the Code of Virginia if the resulting pool assumes in full all obligations of the group self-insurance association. The commission may hold a hearing on the merger and shall do so if any party, including a member of the group self-insurance association or pool, so requests.

14VAC5-360-160. Revocation or suspension of self-insurance license.

A. The ~~Commission~~ commission may suspend or withdraw a pool's license as provided for in 14VAC5-360-30 B ~~of this chapter~~.

B. The ~~Commission~~ commission shall give 10 days prior notice to a pool of the proposed suspension or revocation. The notice shall be served personally, or by certified or registered mail, upon all interested parties and shall state the reasons for the proposed suspension or revocation and provide the pool with an opportunity to introduce evidence and be heard. If after a hearing, which may be formal or informal, the pool's license is suspended or revoked, such action shall become effective 30 days after the ~~Commission's~~ commission's order is issued.

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C. Any suspension may be terminated by the ~~Commission~~ commission upon proof by the pool that the original reasons for suspension have been satisfactorily corrected, and that the pool continues to meet all other requirements for a license.

14VAC5-360-180. Penalties.

Penalties for failure to comply with this chapter may include (i) suspension or revocation of the pool's license as provided in 14VAC5-360-160 ~~of this chapter~~, or (ii) a monetary fine of not more than \$5,000, or (iii) both.

14VAC5-360-190. Severability.

If any ~~provisions~~ provision of this chapter, or the application ~~of it thereof~~ to any person or ~~circumstances~~, circumstance is for any reason held to be invalid, ~~such invalidity shall not affect other provisions of this chapter which can be given effect without the invalid provision or, and the application, and to that end the provisions of this chapter are severable of the provision to other persons or circumstances shall not be affected thereby.~~ the remainder of the chapter

14VAC5-370-10. Purpose.

The purpose of this chapter is to set forth rules, forms and procedural requirements that the ~~Commission~~ commission deems necessary to carry out the provisions of § 65.2-802 of the Code of Virginia.

14VAC5-370-20. Definitions.

"Act" means the Virginia Workers' Compensation Act as provided by Title 65.2 of the Code of Virginia.

"Administrator" means the individual, partnership or corporation authorized to serve as a representative of an association and its members in carrying out the policies of the board and managing the association's activities.

"Commission" means State Corporation Commission.

"Common interest" means employers engaged in the same or substantially similar industry, trade, commerce or profession, including political subdivisions of this Commonwealth. Notwithstanding the foregoing, an employer seeking membership in an association licensed on and before July 1, 2000, has a common interest if the industry, trade, commerce, profession or other business activity of such employer is the same or substantially similar to the business activity of an employer that was a member of the association on and before July 1, 2000. If an association is licensed by the ~~Commission~~ commission, different businesses which are owned or controlled by a member of the association are eligible for membership in such association.

"Contributions" means the amount of payments required of each member in order to fund the association's obligations under the Act.

"Employer" shall have the definition provided by § 65.2-101 of the Code of Virginia.

"Group self-insurance association" or "association" means an association organized by two or more employers having a common interest that have entered into agreements to pool their liabilities under the Virginia Workers' Compensation Act.

"Indemnity agreement and power of attorney" means the written agreement executed by each member of the association in which each member (i) agrees to assume and discharge, jointly and severally, any liability under the Act of any and all members party to such agreement and (ii) grants the administrator power of attorney to act for and bind the members in all transactions relating to or arising out of the operations of the association.

"Member" or "member in good standing" means an employer party to an indemnity agreement for membership in a group self-insurance association who has been approved in accordance with the requirements of 14VAC5-370-50.

"Members' supervisory board," or "board," means the representative body selected by the members to be responsible for holding and managing the assets and directing the affairs of the association and for assuring that the association, through its members, is financially sound and able to meet its obligations under the Act.

"Service agent" means any individual, partnership or corporation that may provide services including, but not limited to, claims adjustment, safety engineering, compilation of statistics and the preparation of contribution payment and loss reports, preparation of other required self-insurance reports and the administration of a claims fund.

14VAC5-370-30. Application for license as group self-insurance association requirements; approval; review.

Two or more employers having a common interest may be licensed by the ~~Commission~~ commission as a group self-insurance association for the purpose of entering into agreements to pool their liabilities under the Act. The application for a license shall be made on the form prescribed by the ~~Commission~~ commission and shall contain answers to all questions and shall be verified by the oath or affidavit of at least one member of the board of the association and the administrator.

If, after review of the association's application as well as the additional information required by 14VAC5-370-40 ~~of this chapter~~, the ~~Commission~~ commission is satisfied that it has satisfactory proof of (i) the solvency of each member of the association, (ii) the financial ability of each employer to meet its obligations as a member and (iii) the ability of the association to pay or cause to be paid the compensation in the amount and manner and when due as provided for in the Act, the ~~Commission~~ commission may issue a license to the association.

The license may be revoked if the association fails to comply with all conditions and requirements set forth in this chapter and the Act.

Continuance of the license will require that the association maintain and produce on request by the ~~Commission~~ commission evidence of continuing compliance with any requirements imposed under 14VAC5-370-60 ~~of this chapter~~.

14VAC5-370-40. Application for license as group self-insurance association; additional requirements.

A. An application submitted by a group self-insurance association shall be accompanied by the following items. These items shall be subject to the approval of the ~~Commission~~ commission:

1. A copy of the members' indemnity agreement and power of attorney required by 14VAC5-370-120 ~~of this chapter~~ binding the association and each member of the association, jointly and severally, to comply with the provisions of the Act and copies of any other governing instruments of the proposed group self-insurance association;

2. An executed copy of the application of each employer for membership in the association on the effective date of the license of the association;

3. Financial statements of all applicants for membership showing that the membership of the proposed association has a combined net worth of at least one million dollars. Political subdivisions of this Commonwealth may combine to form associations without complying with this requirement;

4. Proof of payment by each member of at least 25% of its estimated first year's contribution into a designated depository;

5. A confirmation of excess insurance, if excess insurance is required, by a licensed insurer in an amount acceptable to the ~~Commission~~ commission which complies with the requirements set forth in 14VAC5-370-90 ~~of this chapter~~. However, the ~~Commission~~ commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer;

6. Designation of the board and of the administrator of the association, together with properly executed biographical affidavits for each member of the board and for the administrator or the principal officers of a corporation serving as an administrator. Affidavits are to be submitted on a form prescribed by the ~~Commission~~ commission;

7. The address in this Commonwealth where the books and records of the pool will be maintained at all times;

8. Information showing that the association has, within its own organization or by contract with an approved service agent, adequate facilities and competent personnel to

service its program with respect to underwriting matters, claims adjusting, and industrial safety engineering. Copies of all executed servicing agreements shall be filed with the ~~Commission~~ commission;

~~8.~~ 9. A confirmation of a fidelity bond in a form and amount acceptable to the ~~Commission~~ commission;

~~9.~~ 10. Deposit of securities or a surety bond with the State Treasurer in an amount acceptable to the ~~Commission~~ commission in accordance with the requirements of 14VAC5-370-60 ~~of this chapter~~;

~~10.~~ 11. A projection of administrative expenses for the first year of operation in an amount and as a percentage of the estimated annual contributions;

~~11.~~ 12. A statement regarding the type of business and guidelines to be used to determine common interest; and

~~12.~~ 13. A copy of the association's contracts with the service agent and the administrator which sets forth the terms and obligations of the agreement.

B. An application submitted by a group self-insurance association shall be accompanied by all of the following:

1. A composite listing of the estimated annual gross contribution to be developed by each member of the association individually and in the aggregate for the association, which, in the aggregate, shall be not less than ~~\$350,000~~ \$500,000 for each of the association's first two years and thereafter for subsequent years shall be not less than ~~\$500,000~~ \$1 million, provided that this latter requirement shall not apply to groups licensed prior to May 1, 1988; and

2. The application shall be accompanied by any other information the ~~Commission~~ commission requires.

C. Any subsequent revisions to items submitted under the provisions of 14VAC5-370-30 and ~~14VAC5-370-40~~ of this chapter section will be filed with and subject to approval by the ~~Commission~~ commission. Any subsequent revisions of the items in subsection B of this section will be filed with the ~~Commission~~ commission.

14VAC5-370-50. Approval of members of association.

Application for membership in an association shall be made on a form approved by the ~~Commission~~ commission. The application shall include (i) acknowledgement of the execution of the indemnity agreement and power of attorney required by 14VAC5-370-120 ~~of this chapter~~, (ii) the applicant's current financial ~~statement~~ report on a form approved by the ~~Commission~~ commission demonstrating the solvency of the applicant and its financial ability to meet its obligations as a member and (iii) the approval by or on behalf of the board of the applicant's membership. A copy of the completed application shall be filed with the ~~Commission~~ commission by the board within seven days after the effective

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date of coverage whereupon the ~~Commission~~ commission shall be deemed to have granted authorization for the applicant to become a member of the association as of such effective date. The ~~Commission~~ commission may, after notice to an association, require that applications for membership in such association be approved by the ~~Commission~~ commission before the applicant may become a member of the association. The association shall at all times have in its possession, in a form acceptable to the ~~Commission~~ commission, a current financial ~~statement report~~ statement report for each member. The requirement for having a current financial ~~statement report~~ statement report as a condition of membership or otherwise shall not apply to governmental entities which are not required by law to have an annual audit performed.

The ~~Commission~~ commission may, at any time, withdraw approval of any member after giving proper notice if the ~~Commission~~ commission determines that the member is not in compliance with this chapter. Prior to withdrawal of approval by the ~~Commission~~ commission or any revocation or termination by the association, the member will be considered to be a member in good standing with the association. Any member who cannot demonstrate its solvency and its financial ability to meet its obligations as a member shall be removed from membership in the association by the board.

14VAC5-370-60. Security deposit and surety bond requirement.

A. Except as provided in subsection B of this section, each group self-insurance association licensed by the ~~Commission~~ commission shall maintain with the State Treasurer a security deposit of acceptable securities or surety bond in an amount of \$250,000 for the first plan year, or such other amount as the ~~Commission~~ commission prescribes, and for succeeding plan years such amount as the ~~Commission~~ commission deems reasonable taking into account the financial condition of the association and any excess insurance carried by the association. The ~~Commission~~ commission may, from time to time, increase, release or reduce the security deposit or surety bond requirement. The security deposit or surety bond shall be held by the State Treasurer pursuant to § 65.2-801 C of the Code of Virginia, and so far as not inconsistent with the provisions of the Act or these regulations shall be subject to the provisions of Article 7 (§ 38.2-1045 et seq.) of Chapter 10 of Title 38.2 of the Code of Virginia.

For the purposes of this chapter, acceptable securities shall be (i) investments allowed by ~~§ 2.1-327~~ § 2.2-4500 of the Code of Virginia (legal investments for public sinking funds) and ~~§ 2.1-328~~ § 2.2-4501 of the Code of Virginia (legal investments for other public funds), (ii) securities issued by states, other than Virginia, and their municipalities or political subdivisions rated A or better by Moody's Investors Services, Inc., or Standard and Poor's, Inc., (iii) revenue bonds rated Aa (AA) or better by Moody's Investors Services, Inc., or

Standard and Poor's, Inc. that are bonds issued by municipalities or political subdivisions of this Commonwealth or any other state, (iv) securities issued by the Federal Home Loan Banks, and (v) securities issued by the Federal Intermediate Credit Banks.

Surety bonds deposited pursuant to this section shall be issued by an insurer duly licensed in this Commonwealth to transact a surety business and shall not either directly or indirectly be under the same ownership or management as the principal on such bonds. The surety bond shall be designated as applying to agreements approved or awards by the Virginia Workers' Compensation Commission made at any time on account of injuries or deaths occurring during the continuance of the principal's license and the continuance of the bond.

In addition to the minimum security deposit or surety bond required by this section, the ~~Commission~~ commission may require additional securities or surety it considers appropriate after giving consideration to such factors as excess insurance and the financial ability of the group to meet its obligations under the Act.

B. As an alternative to the security deposit or surety bond required by subsection A of this section, a group self-insurance association may have an appropriate endorsement attached to its contracts for excess insurance as required in 14VAC5-370-90 ~~of this chapter~~. The endorsement must provide that in the event the group self-insurance association fails to pay to any employee or dependent of any employee any compensation provided by the Act, the excess coverage insurer will become liable immediately for 100% of the compensation and will make payment as directed by the Virginia Worker's Compensation Commission.

C. Any deposit made with the State Treasurer prior to May 1, 1988 must be maintained with the State Treasurer until specifically released in writing by the ~~Commission~~ commission.

14VAC5-370-70. Investment.

The board of an association may, in its discretion, invest funds in any type of investments authorized by §§ 38.2-1415, 38.2-1418, 38.2-1419, 38.2-1421, 38.2-1432 of the Code of Virginia and 14VAC5-370-60 ~~of this chapter~~. Other investments may be made subject to the approval of the ~~Commission~~ commission. All such investments shall be authorized or approved by the board in the manner contemplated by the provisions of § 38.2-1408 of the Code of Virginia.

14VAC5-370-80. Filing of reports.

Each association shall file annually with the ~~Commission~~ commission on or before March 1, of each year an annual statement showing its financial operations and condition for the most recently completed calendar year. The ~~Commission~~ commission, for good cause, may extend the time for filing

the annual statement by not more than 60 days. In addition, each association shall furnish a copy of an audited ~~statement report~~ of its financial operations and conditions prepared by an independent ~~Certified Public Accountant~~ certified public accountant within six months of the end of the association's fiscal period.

The annual statement shall contain a report in detail of the association's assets, liabilities, revenues and disbursements during the year, and all other information which the ~~Commission~~ commission may deem necessary to secure a full and accurate knowledge of the financial affairs and condition of the association.

The ~~Commission~~ commission may prescribe the form of the annual statement and of any necessary schedules and exhibits. In addition to the annual statement, the ~~Commission~~ commission may require any association to file timely additional financial information, including interim financial reports.

14VAC5-370-90. Contracts for excess insurance.

Specific and aggregate excess insurance may be required as a condition for licensing a group self-insurance association and shall be subject to the following requirements:

1. No contract or policy of excess liability insurance shall be recognized by the ~~Commission~~ commission in considering the ability of an applicant to fulfill its financial obligations under the Act unless this contract or policy:

a. Is issued by an insurer licensed or approved by the ~~Commission~~ commission. However, the ~~Commission~~ commission at its discretion may allow this insurance to be placed with an approved surplus lines insurer;

b. Is not cancellable or terminable for any reason except upon 60 days written notice sent by registered or certified mail to:

- (1) The association; and
- (2) The ~~Commission~~ commission.

c. Is automatically renewable at the expiration of the policy period except upon 60 days written notice sent, by registered or certified mail to:

- (1) The association; and
- (2) The ~~Commission~~ commission.

2. If the contract or policy contains any type of commutation clause, it shall provide in substance:

a. That any commutation effected under the policy shall not relieve the underwriter or underwriters of further liability in respect to claims and expenses unknown at the time of such commutation or in regard to claims apparently closed but which may be subsequently revived by or through a competent authority; and

b. That in the event the underwriter proposes to settle liability to the association for any future payments payable as compensation for injuries occurring during the term of the policy by the payment of a lump sum to be fixed as provided in the commutation clause of the policy, not less than 30 ~~days'~~ days prior notice of this commutation shall be given to the ~~Commission~~ commission by registered or certified mail by the underwriter or its agent.

3. In the event any commutation is effected, the ~~Commission~~ commission shall have the right to direct that this sum either:

a. Be placed in trust for the benefit of the injured employee or dependent entitled to the future payment of benefits, or

b. Be invested by the association in the manner permitted by 14VAC5-370-70 ~~of this chapter~~ and held along with any income or gains from the investments in a special reserve subject to further order of the ~~Commission~~ commission to assure the future payment of compensation to the employee or dependent entitled to the compensation.

4. No more than one association, which shall be defined as the named insured, shall be covered by any contract or policy of excess liability insurance. Any reinsurance contract issued on any contract or policy of excess liability shall contain a clause providing that, (i) the reinsurance is written expressly for, and for the protection of, the named insured, and (ii) in the event of the aggregate and/or specific excess underwriter's going into liquidation or being otherwise unable to pay to the named insured, the reinsurer of the aggregate and/or specific excess underwriter will pay benefits as may be due under the terms of the reinsurance contract directly to the named insured;

5. Copies of the complete contracts or policies of excess liability insurance, complete with all endorsements thereto, shall be filed with the ~~Commission~~ commission.

The ~~Commission~~ commission may release the association from the excess insurance requirement if the contingency reserve established by the association is in an amount determined by the ~~Commission~~ commission to be adequate.

14VAC5-370-100. Responsibilities of members' supervisory board.

The members' supervisory board shall be responsible for holding and managing the assets and directing the affairs of the association and shall be elected in the manner prescribed by the association's governing instruments. At least 3/4 of the board must be members of the association, but a supervisory board member shall not be an owner, officer or employee of any service organization, its parent or any of its affiliated

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companies, under contract with the association. The board shall supervise the finances of the association and the association's operations to the extent necessary to assure conformity with law, this chapter, the members' indemnity agreement and power of attorney, and the association's governing instruments. The members' supervisory board shall take all necessary precautions to safeguard the assets of the association, including, but not limited to, the following:

1. Monitoring the financial condition of each member of the association (unless proof of financial condition is not required under 14VAC5-370-40 A 3), and doing all other acts necessary to assure that each member continues to be able to fulfill the obligations of membership; and also reporting promptly to the ~~Commission~~ commission any grounds for believing that a change in any member's financial condition, withdrawal of a member, or any other circumstances affecting the association's ability to meet its obligations;

2. Designating an administrator to administer the affairs of the association, who shall furnish a fidelity bond with the association as obligee, in an amount sufficient to protect the association against the misappropriation or misuse of any monies or securities. The amount of the bond shall be determined by the ~~Commission~~ commission and evidence of the bond shall be filed with the ~~Commission~~ commission, said bond being one of the conditions required for licensing of the association. The administrator shall not be an owner, officer or employee of any service agent, its parent or any of its affiliated companies, any of which are under contract with the association;

3. Retaining control of all monies collected for the association and the disbursement of such monies by the association. All assets of the association shall remain in the custody of the board or the authorized administrator. However, a claims fund for payment of benefits due and other related expenses may be established for the use of any authorized service agent;

4. Active efforts to collect delinquent accounts resulting from any past due contributions by members. The board shall terminate in the manner provided by § 65.2-804 B of the Code of Virginia any member delinquent for more than 30 days in the payment of any subscription charge or assessment billed to such member;

5. The members' supervisory board or the administrator shall not use any of the monies collected for any purpose unrelated to securing the members' liability under the Act. Further, they shall be prohibited from borrowing any monies from the association or in the name of the association without advising the ~~Commission~~ commission of the nature and purpose of the loan and obtaining ~~Commission~~ commission approval;

6. The members' supervisory board shall assure that the office of the administrator of the association and all pertinent records necessary to verify the accuracy and completeness of all reports submitted to the ~~Commission~~ commission are maintained within this Commonwealth;

7. The members' supervisory board shall assure that payroll verifications of all members of the associations are completed within 180 days after the close of a plan year and the board shall require that efforts are made to collect any additional amounts due within 30 days of the completion of each audit; and

8. The members' supervisory board may adopt its own rules and procedures as considered necessary for the operation of the association provided these rules and procedures are not inconsistent with § 65.2-802 of the Code of Virginia and this chapter.

14VAC5-370-110. Advance contribution requirements and distribution of surplus funds.

A.1. For the purpose of funding the liability of the association, the members shall make contributions to the association based on annual payrolls for all employees of each member, except for executive officers where the payroll is to be limited to a maximum of \$300 per week, using rates and stock or non- stock discounts as adopted by the board and approved by the ~~Commission~~ commission. The rates to be used are those in effect as of the inception of each association's fiscal year. A plan which allows for consideration of past experience in developing a factor to be applied to a member's contribution may be used provided this plan has been approved by the ~~Commission~~ commission.

Nothing contained herein shall be construed to prevent an association from filing with the ~~Commission~~ commission its own rates or a deviation from these rates or an alternative method of determining contributions which may be used upon approval by the ~~Commission~~ commission.

2. At the effective date of the license of an association, at least 25% of the first year's estimated annual contribution payable by each member of the association shall have been paid into a designated depository. The balance of the first year's annual contributions shall be paid no later than the end of the ninth month of the association year. For each subsequent year of operation of the association, the payment schedule shall provide an advance payment of at least 15% of the estimated annual contribution with the balance payable not later than the end of the tenth month. At no time shall the member's combined payments be less than the total earned estimated annual contribution due at that time.

B. Any surplus assets (i.e. those assets in excess of the amount necessary to fulfill all obligations under the Act and this chapter) accumulated within an association year may be declared refundable by the board. The board shall establish

the plan and the dates for payment of these excess assets. Payment of this surplus shall not be made until approved by the ~~Commission~~ commission.

However, the ~~Commission~~ commission shall require that 3.0% or more of an association's earned contributions for each fiscal accounting period be allocated to a contingency reserve. The contingency reserve is to be used at the direction of the association's board subject to the approval of the ~~Commission~~ commission. When the ~~Commission~~ commission is satisfied that the contingency reserve is adequate for the needs of the association, adjustments may be made by the ~~Commission~~ commission as necessary to the contingency reserve or to contributions to the contingency reserve to maintain it at an established amount.

14VAC5-370-120. Indemnity agreement and power of attorney.

Every member of a group self-insurance association shall execute an indemnity agreement and power of attorney which shall set forth the rights, privileges and obligations of the member and the association and the powers and duties of the administrator. The indemnity agreement and power of attorney shall be subject to the approval of the ~~Commission~~ commission and shall contain in substance the following provisions:

1. An agreement under which each member agrees to assume and discharge, jointly and severally, any liability under the Act of any and all employers party to such agreement and which provides that, in addition to the rights of the association, in the event of failure of the association to enforce such rights after reasonable notice to the association, the ~~Commission~~ commission shall have the right independently to enforce on behalf of the association the joint and several liability of its members under the Act and the liability of members for any unpaid contributions and assessments;
2. Provisions requiring that the members' supervisory board designate and appoint an administrator empowered to accept service of process on behalf of the association and authorized to act for and bind the association and members in all transactions relating to or arising out of the operation of the association; and
3. Provisions for the right of substitution of the administrator and revocation of the power of attorney and rights thereunder.

~~All indemnity agreements shall be brought into conformity with the requirements of this section on or before July 1, 1989.~~

Such indemnity agreement may also contain such other provisions not inconsistent with law or this chapter.

14VAC5-370-130. Servicing of association.

A service agent for a licensed workers' compensation group self-insurance association shall apply and shall be subject to the approval of the ~~Commission~~ commission before entering into a contract with an association and shall satisfy the ~~Commission~~ commission that it has adequate facilities and competent personnel to fulfill its obligations to the association and this chapter.

A service agent shall maintain a resident agent in this Commonwealth and that agent shall be authorized to act for the service agent on any and all matters covered by the Act and the ~~Rules~~ rules and ~~Regulations~~ regulations of the ~~Commission~~ commission.

A service agent shall provide to the commission the address in this Commonwealth where the books and records of the association will be maintained at all times.

A service agent shall file with the ~~Commission~~ commission copies of all contracts entered into with the association as they relate to the services to be performed. These contracts shall provide for services necessary to fulfill the employer's obligations under the Act and the ~~Rules~~ rules and ~~Regulations~~ regulations of the ~~Commission~~ commission. In addition, any service contract or letter of intent must state that the servicing organization agrees to handle all claims incurred during the contract period to their conclusion without further remuneration unless approval to transfer them is obtained from the ~~Commission~~ commission prior to such transfer.

The service organization shall furnish a fidelity bond covering its employees, with the association as obligee, in an amount sufficient to protect all monies placed in the claims fund. However, if the bond required of the administrator also covers the monies in the claims fund, a separate bond shall not be required of the servicing organization with respect to the claims fund.

Upon satisfactory compliance with the above provisions, a certificate of approval as a recognized and authorized service agent shall be issued to the applicant. Failure to comply with any of the foregoing rules or any order of the ~~Commission~~ commission within the time prescribed shall be considered justification for withdrawing the certificate of approval. The ~~Commission~~ commission shall give 10 ~~days'~~ days prior notice of such withdrawal. The notice shall be served personally, or by certified or registered mail, upon all interested parties setting forth the reasons for withdrawal and providing the service agent an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, the service agent's certificate of approval is revoked this revocation shall become effective 30 days after issuance of the ~~Commission's~~ commission's order or within such shorter or longer period as the ~~Commission~~ commission may consider necessary to protect the interest of the association, its members and their employees.

Regulations

Each individual, partnership, or corporation approved to act as a service agent for an association shall file with the ~~Commission~~ commission an annual statement, in a form acceptable to the ~~Commission~~ commission, of its financial condition within four months of the completion of its fiscal year.

14VAC5-370-140. Termination of members of association.

No member of an association may be terminated unless at least 30 days written notice has been given to the member, the ~~Commission~~ commission, and the Virginia Workers' Compensation Commission, except as provided in § 65.2-804 of the Code of Virginia.

The association shall remain liable for all claims applicable to the period during which an employer was a member of an association, including the 30 day period required for termination of membership or for a lesser period as provided by § 65.2-804 of the Code of Virginia.

14VAC5-370-145. Mergers.

Subject to the approval of the commission, an association consisting solely of political subdivisions may merge with a local government group self-insurance pool pursuant to § 15.2-2703 of the Code of Virginia if the resulting pool assumes in full all obligations of the association. The commission may hold a hearing on the merger and shall do so if any party, including a member of the association or local government group self-insurance pool, so requests.

14VAC5-370-150. Revocation of self-insurance license.

The ~~Commission~~ commission may revoke an association's license if:

1. The association no longer meets the standards required for the issuance of its license; or
2. The association fails to comply with this chapter, the provisions of the Act or an order of the ~~Commission~~ commission.

The ~~Commission~~ commission shall give 10 ~~days'~~ days prior notice of the proposed revocation to the association. The notice shall be served personally, or by certified or registered mail, upon all interested parties stating the reasons for the proposed revocation and providing the association an opportunity to introduce evidence and be heard. If, after a hearing, which may be formal or informal, the association's license is revoked, this revocation shall become effective 30 days after the ~~Commission's~~ commission's order is issued.

14VAC5-370-170. Examination of association.

If the ~~Commission~~ commission considers it expedient for the protection of the interests of the citizens of this Commonwealth, it may make or direct to be made a financial condition examination into the affairs of any association, or service agent licensed or approved in this Commonwealth.

The manner and frequency in which the examination of financial condition shall be conducted and the release of any reports of financial condition shall be as provided in Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia.

14VAC5-370-180. Severability.

If any provisions of this chapter, or the application ~~of it~~ thereof to any person or ~~circumstances,~~ circumstances is held to be invalid, such invalidity shall not affect other provisions or applications the remainder of this the chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are severable application of the provision to other persons or circumstances shall not be affected thereby.

VA.R. Doc. No. R10-2060; Filed December 18, 2009; 3:43 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 104 (2009)

DELEGATION OF GOVERNOR'S AUTHORITY TO DECLARE A STATE OF EMERGENCY, TO CALL THE VIRGINIA NATIONAL GUARD TO ACTIVE SERVICE FOR EMERGENCIES OR DISASTERS, AND TO DECLARE THE GOVERNOR UNABLE TO DISCHARGE THE POWERS AND DUTIES OF HIS OFFICE WHEN THE GOVERNOR CANNOT BE REACHED OR IS INCAPACITATED

By virtue of the authority vested in me by § 2.2-104 of the Code of Virginia, and subject to the provisions stated herein, I hereby affirm and delegate to the Chief of Staff, followed in protocol order by the Secretary of Public Safety, and the State Coordinator of the Virginia Department of Emergency Management, my authorities under §§ 44-146.17 and 44-75.1 of the Code of Virginia, to declare a state of emergency and to call forth the Virginia National Guard or any part thereof to state active duty in any of the circumstances outlined in subsections 4 and 5 of § 44-75.1 A.

I further hereby affirm and delegate to the Chief of Staff, my authority under Article V Section 16 of the Constitution and under § 24.2-211 of the Code of Virginia to transmit to the President pro tempore of the Senate and the Speaker of the House of Delegates, a declaration that I am unable to discharge the powers and duties of the Governor's office. Each of these delegations is subject to the following conditions:

1. Such delegation is subject always to my continuing, ultimate authority and responsibility to act in such matters, and in the case of a declaration that I am unable to discharge the powers and duties of my office, my ability to transmit to the Clerk of the Senate and Clerk of the House of Delegates, my written declaration that no inability continues to exist and to resume the powers and duties of my office.
2. Use of this delegation is contingent upon my being unable to be reached so as to give my approval for the declaration of a state of emergency, as defined in § 44-146.16 of the Code of Virginia, or use of the Virginia National Guard.
3. Use of this delegation to declare that I am unable to discharge the powers and duties of my office is specifically contingent upon my being unable to be reached or otherwise incapacitated for over 24 hours and the unavailability of any one of the Attorney General, President pro tempore of the Senate, or the Speaker of the House of Delegates.
4. This delegation is strictly standby in nature, to be held in abeyance until such time as there may be explicit circumstances involving an emergency whereby human

lives and public and private property are threatened in the event of natural or man-made emergencies or disasters.

5. If the authority granted under this order is used, I shall be informed of such use as soon as practicable.

This Executive Order rescinds Executive Order 6 (2006) issued on January 14, 2006. This Executive Order shall become effective upon its signing and shall remain in full force and effect until January 31, 2010, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 18th day of December 2009.

/s/ Timothy M. Kaine
Governor

EXECUTIVE ORDER NUMBER 105 (2009)

DECLARATION OF A STATE OF EMERGENCY FOR THE COMMONWEALTH OF VIRGINIA DUE TO A SEVERE WINTER STORM EVENT THROUGHOUT THE COMMONWEALTH

On December 18, 2009 I verbally declared a state of emergency to exist for the Commonwealth of Virginia based on severe winter storm from prolonged periods of snow and windy weather from the remnants of a winter storm causing widespread power outages, flooding and transportation difficulties throughout the State.

The health and general welfare of the citizens of the Commonwealth require that state action be taken to help alleviate the conditions caused by this situation. The effects of this storm constitute a natural disaster wherein human life and public and private property are imperiled, as described in § 44-146.16 of the Code of Virginia.

Therefore, by virtue of the authority vested in me by § 44-146.17 of the Code of Virginia, as Governor and as Director of Emergency Management, and by virtue of the authority vested in me by Article V, Section 7 of the Constitution of Virginia and by § 44-75.1 of the Code of Virginia, as Governor and Commander-in-Chief of the armed forces of the Commonwealth, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby confirm, ratify, and memorialize in writing my verbal orders issued this date, wherein I proclaim that a state of emergency exists and direct that appropriate assistance be rendered by agencies of both state and local governments to prepare for potential impacts of the storm, to alleviate any conditions resulting from significant storm events and to implement recovery and mitigation operations and activities so as to return impacted areas to pre-event conditions in so far as possible. Pursuant to § 44-75.1 A 3 and A 4 of the Code of Virginia, I also directed that the Virginia National Guard and the Virginia Defense Force be called forth to state duty to assist in providing such aid. This shall include Virginia

Governor

National Guard assistance to the Virginia State Police to direct traffic, prevent looting, and perform such other law enforcement functions as the Superintendent of State Police, in consultation with the State Coordinator of Emergency Management, the Adjutant General, and the Secretary of Public Safety, may find necessary.

In order to marshal all public resources and appropriate preparedness, response and recovery measures to meet this potential threat and recover from its effects, and in accordance with my authority contained in § 44-146.17 of the Emergency Services and Disaster Laws, I hereby order the following protective and restoration measures:

A. The implementation by agencies of the state and local governments of the Commonwealth of Virginia Emergency Operations Plan, as amended, along with other appropriate state agency plans.

B. The activation of the Virginia Emergency Operations Center (VEOC) and the Virginia Emergency Response Team (VERT) to coordinate the provision of assistance to local governments. I am directing that the VEOC and VERT coordinate state actions in support of potential affected localities, other mission assignments to agencies designated in the Commonwealth of Virginia Emergency Operations Plan (COVEOP) and others that may be identified by the State Coordinator of Emergency Management, in consultation with the Secretary of Public Safety, which are needed to provide for the preservation of life, protection of property, and implementation of recovery activities.

C. The authorization to assume control over the Commonwealth's state-operated telecommunications systems, as required by the State Coordinator of Emergency Management, in coordination with the Virginia Information Technology Agency, and with the consultation of the Secretary of Public Safety, making all systems assets available for use in providing adequate communications, intelligence and warning capabilities for the event, pursuant to § 44-146.18 of the Code of Virginia.

D. The evacuation of areas threatened or stricken by effects of the storm. Following a declaration of a local emergency pursuant to § 44-146.21 of the Code of Virginia, if a local governing body determines that evacuation is deemed necessary for the preservation of life or other emergency mitigation, response or recovery, pursuant to § 44-146.17 (1) of the Code of Virginia, I direct the evacuation of all or part of the populace therein from such areas and upon such timetable as the local governing body, in coordination with the Virginia Emergency Operations Center (VEOC), acting on behalf of the State Coordinator of Emergency Management, shall determine. Notwithstanding the foregoing, I reserve the right to direct and compel evacuation from the same and different areas and determine a different timetable both where local governing bodies have made such a determination and where local governing bodies have not

made such a determination. Violations of any order to citizens to evacuate shall constitute a violation of this Executive Order and are punishable as a Class 1 misdemeanor.

E. The activation, implementation and coordination of appropriate mutual aid agreements and compacts, including the Emergency Management Assistance Compact (EMAC), and the authorization of the State Coordinator of Emergency Management to enter into any other supplemental agreements, pursuant to § 44-146.17(5) and § 44-146.28:1 of the Code of Virginia, to provide for the evacuation and reception of injured and other persons and the exchange of medical, fire, police, National Guard personnel and equipment, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies. The State Coordinator of Emergency Management is hereby designated as Virginia's authorized representative within the meaning of the Emergency Management Assistance Compact, § 44-146.28:1 of the Code of Virginia.

F. The authorization of the Departments of State Police, Transportation and Motor Vehicles to grant temporary overweight, over width, registration, or license exemptions to all carriers transporting essential emergency relief supplies or providing restoration of utilities (electricity, gas, phone, water, wastewater, and cable) in and through any area of the Commonwealth in order to support the disaster response and recovery, regardless of their point of origin or destination.

The axle and gross weights shown below are the maximum allowed, unless otherwise posted.

Any One Axle	24,000 Pounds
Tandem Axles (more than 40 inches but not more than 96 inches spacing between axle centers)	44,000 Pounds
Single Unit (2 Axles)	44,000 Pounds
Single Unit (3 Axles)	54,500 Pounds
Tractor-Semitrailer (4 Axles)	64,500 Pounds
Tractor-Semitrailer (5 or more Axles)	90,000 Pounds
Tractor-Twin Trailers (5 or more Axles)	90,000 Pounds
Other Combinations (5 or more Axles)	90,000 Pounds
Per Inch of Tire Width in Contact with Road Surface	850 Pounds

All overwidth loads, up to a maximum of 12 feet, must follow Virginia Department of Motor Vehicles (DMV) hauling permit and safety guidelines.

In addition to described overweight/overwidth transportation privileges, carriers are also exempt from registration with the Department of Motor Vehicles. This includes the vehicles enroute and returning to their home base. The above-cited agencies shall communicate this information to all staff

responsible for permit issuance and truck legalization enforcement.

This authorization shall apply to hours worked by any carrier when transporting passengers, property, equipment, food, fuel, construction materials and other critical supplies to or from any portion of the Commonwealth for purpose of providing relief or assistance as a result of this disaster, pursuant to § 52-8.4 of the Code of Virginia.

The foregoing overweight/overwidth transportation privileges as well as the regulatory exemption provided by § 52-8.4 A of the Code of Virginia, and implemented in 19VAC30-20-40 B of the "Motor Carrier Safety Regulations," shall remain in effect for 30 days from the onset of the disaster, or until emergency relief is no longer necessary, as determined by the Secretary of Public Safety in consultation with the Secretary of Transportation, whichever is earlier.

G. The discontinuance of provisions authorized in paragraph F above may be implemented and disseminated by publication of administrative notice to all affected and interested parties by the authority I hereby delegate to the Secretary of Public Safety, after consultation with other affected Cabinet-level Secretaries.

H. The authorization of a maximum of \$100,000 for matching funds for the Individuals and Household Program, authorized by The Stafford Act (when presidentially authorized), to be paid from state funds.

I. The implementation by public agencies under my supervision and control of their emergency assignments as directed in the COVEOP without regard to normal procedures pertaining to performance of public work, entering into contracts, incurring of obligations, or other logistical and support measures of the Emergency Services and Disaster Laws, as provided in § 44-146.28 (b) of the Code of Virginia. Section 44-146.24 of the Code of Virginia also applies to the disaster activities of state agencies.

J. Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, in performing these missions shall be paid from state funds and/or federal funds. In addition, up to \$100,000 shall be made available for state response and recovery operations and incident documentation with the Department of Planning and Budget overseeing the release of these funds.

K. Designation of members and personnel of volunteer, auxiliary and reserve groups including search and rescue (SAR), Virginia Associations of Volunteer Rescue Squads (VAVRS), Civil Air Patrol (CAP), member organizations of the Voluntary Organizations Active in Disaster (VOAD), Radio Amateur Civil Emergency Services (RACES), volunteer fire fighters, Citizen Corps Programs such as Medical Reserve Corps (MRCs) and Citizen Emergency

Response Teams (CERTS), and others identified and tasked by the State Coordinator of Emergency Management for specific disaster related mission assignments as representatives of the Commonwealth engaged in emergency services activities within the meaning of the immunity provisions of § 44-146.23 (a) and (f) of the Code of Virginia, in the performance of their specific disaster-related mission assignments.

L. The authorization of appropriate oversight boards, commissions and agencies to ease building code restrictions, and to permit emergency demolition, hazardous waste disposal, debris removal, emergency landfill siting and operations and other activities necessary to address immediate health and safety needs without regard to time-consuming procedures or formalities and without regard to application or permit fees or royalties.

M. The activation of the statutory provisions in § 59.1-525 et seq. of the Code of Virginia related to price gouging. Price gouging at any time is unacceptable. Price gouging is even more reprehensible after a natural disaster. I have directed all applicable executive branch agencies to take immediate action to address any verified reports of price gouging of necessary goods or services. I make the same request of the Office of the Attorney General and appropriate local officials.

The following conditions apply to the deployment of the Virginia National Guard and the Virginia Defense Force:

1. The Adjutant General of Virginia, after consultation with the State Coordinator of Emergency Management, shall make available on state active duty such units and members of the Virginia National Guard and Virginia Defense Force and such equipment as may be necessary or desirable to assist in preparations and in alleviating the human suffering and damage to property.

2. Pursuant to § 52-6 of the Code of Virginia, I authorize the Superintendent of State Police to appoint any and all such Virginia Army and Air National Guard personnel called to state active duty as additional police officers as deemed necessary. These police officers shall have the same powers and perform the same duties as the State Police officers appointed by the Superintendent. However, they shall nevertheless remain members of the Virginia National Guard, subject to military command as members of the State Militia. Any bonds and/or insurance required by § 52-7 of the Code of Virginia shall be provided for them at the expense of the Commonwealth.

3. In all instances, members of the Virginia National Guard and Virginia Defense Force shall remain subject to military command as prescribed by § 44-78.1 of the Code of Virginia and not subject to the civilian authorities of county or municipal governments. This shall not be deemed to prohibit working in close cooperation with members of the Virginia Departments of State Police or Emergency

Management or local law enforcement or emergency management authorities or receiving guidance from them in the performance of their duties.

4. Should service under this Executive Order result in the injury or death of any member of the Virginia National Guard, the following will be provided to the member and the member's dependents or survivors:

(a) Workers Compensation benefits provided to members of the National Guard by the Virginia Workers Compensation Act, subject to the requirements and limitations thereof; and, in addition,

(b) The same benefits, or their equivalent, for injury, disability and/or death, as would be provided by the federal government if the member were serving on federal active duty at the time of the injury or death. Any such federal-type benefits due to a member and his or her dependents or survivors during any calendar month shall be reduced by any payments due under the Virginia Workers Compensation Act during the same month. If and when the time period for payment of Workers Compensation benefits has elapsed, the member and his or her dependents or survivors shall thereafter receive full federal-type benefits for as long as they would have received such benefits if the member had been serving on federal active duty at the time of injury or death. Any federal-type benefits due shall be computed on the basis of military pay grade E-5 or the member's military grade at the time of injury or death, whichever produces the greater benefit amount. Pursuant to § 44-14 of the Code of Virginia, and subject to the availability of future appropriations which may be lawfully applied to this purpose, I now approve of future expenditures out of appropriations to the Department of Military Affairs for such federal-type benefits as being manifestly for the benefit of the military service.

5. The following conditions apply to service by the Virginia Defense Force:

1. Compensation shall be at a daily rate that is equivalent of base pay only for a National Guard Unit Training Assembly, commensurate with the grade and years of service of the member, not to exceed 20 years of service;

2. Lodging and meals shall be provided by the Adjutant General or reimbursed at standard state per diem rates;

3. All privately owned equipment, including, but not limited to, vehicles, boats, and aircraft, will be reimbursed for expense of fuel. Damage or loss of said equipment will be reimbursed, minus reimbursement from personal insurance, if said equipment was authorized for use by the Adjutant General in accordance with § 44-54.12 of the Code of Virginia; and

4. In the event of death or injury, benefits shall be provided in accordance with the Virginia Workers Compensation Act, subject to the requirements and limitations thereof.

Upon my approval, the costs incurred by state agencies and other agents in performing mission assignments through the VEOC of the Commonwealth as defined herein and in § 44-146.28 of the Code of Virginia, other than costs defined in the paragraphs above pertaining to the Virginia National Guard and the Virginia Defense Force, in performing these missions shall be paid from state funds.

This Executive Order shall be effective December 18, 2009 and shall remain in full force and effect until June 30, 2011 unless sooner amended or rescinded by further executive order. Termination of the Executive Order is not intended to terminate any federal-type benefits granted or to be granted due to injury or death as a result of service under this Executive Order.

Given under my hand and under the Seal of the Commonwealth of Virginia, this 18th Day of December 2009.

/s/ Timothy M. Kaine
Governor

GENERAL NOTICES/ERRATA

DEPARTMENT OF ENVIRONMENTAL QUALITY

Proposed Consent Order for Fountainhead Land Company, LLC

An enforcement action has been proposed for Fountainhead Land Company, LLC, regarding violations of the Virginia Water Protection Permit Program that took place at the Ballyhack Golf Club in Roanoke County. The proposed consent order describes the violations, requires corrective action, and contains a civil charge as well as a Supplemental Environmental Project. A description of the proposed action is available at the DEQ office named below or online at www.deq.virginia.gov. Lee M. Crowell will accept comments by email at lee.crowell@deq.virginia.gov, FAX (804) 698-4277 or postal mail at the Department of Environmental Quality, Division of Enforcement, P.O. Box 1105, Richmond, VA 23218, from Monday, January 18, 2010, until Wednesday, February 17, 2010.

STATE BOARD OF HEALTH

Public Hearing to Solicit Comment on Proposed Virginia Durable Do Not Resuscitate Regulation

A public hearing to solicit comment on the proposed Virginia Durable Do Not Resuscitate regulations, 12VAC5-66, as published in the Virginia Register on December 21, 2009, will be conducted on Thursday, February 18, 2010, beginning at 2 p.m. at the following location: Virginia Office of Emergency Medical Services, Virginia Department of Health, 1041 Technology Park Drive, Glen Allen, VA 23059.

For further information please contact: Michael D. Berg, BS, NREMT-P, Manager, Regulation and Compliance, telephone (804) 864-7600, FAX (804) 864-7580, "Virginia only" (800) 523-6019.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Order of the State Lottery Department was filed with the Virginia Registrar of Regulations on December 21, 2009. The order may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Final Rules for Game Operation:

Director's Order Number Ninety-Three (09)

Virginia Lottery's "\$50,000,000 Redskins Mania Sweepstakes" Final Rules for Game Operation (effective 12/21/09)

VIRGINIA CODE COMMISSION

Notice to State Agencies

Mailing Address: Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed

Beginning with Volume 26, Issue 1 of the Virginia Register of Regulations dated September 14, 2009, the Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed will no longer be published in the Virginia Register of Regulations. The cumulative table may be accessed on the Virginia Register Online webpage at <http://register.dls.virginia.gov/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations

Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the Virginia Register of Regulations. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

The Office of the Virginia Register is working toward the eventual elimination of the requirement that agencies file print copies of regulatory packages. Until that time, agencies may file petitions for rulemaking, notices of intended regulatory actions and general notices in electronic form only; however, until further notice, agencies must continue to file print copies of proposed, final, fast-track and emergency regulatory packages.

