



# Virginia Register of Regulations

VOL. 24 ISS. 23

PUBLISHED EVERY OTHER WEEK BY THE VIRGINIA CODE COMMISSION

JULY 21, 2008

## TABLE OF CONTENTS

<b>Register Information Page</b> .....	3089
<b>Publication Schedule and Deadlines</b> .....	3090
<b>Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed</b> ..	3091
<b>Petitions for Rulemaking</b> .....	3105
<b>Notices of Intended Regulatory Action</b> .....	3106
<b>Regulations</b> .....	3108
4VAC15-40. Game: in General (Final) .....	3108
4VAC15-50. Game: Bear (Final) .....	3109
4VAC15-70. Game: Bobcat (Final) .....	3110
4VAC15-90. Game: Deer (Final) .....	3111
4VAC15-110. Game: Fox (Final) .....	3117
4VAC15-240. Game: Turkey (Final) .....	3118
4VAC15-410. Watercraft: Boating Safety Education (Final) .....	3119
6VAC20-80. Rules Relating to Certification of Criminal Justice Instructors (Final) .....	3127
6VAC20-171. Regulations Relating to Private Security Services (Emergency) .....	3134
6VAC20-250. Regulations Relating to Property and Surety Bail Bondsman (Final) .....	3146
12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (Proposed) .....	3161
12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (Emergency) ..	3164
12VAC30-120. Waivered Services (Emergency) .....	3167
15VAC5-80. Regulations Under the Virginia Consumer Real Estate Settlement Protection Act (Final) ..	3211
16VAC15-21. Maximum Garnishment Amounts (Final) .....	3213
16VAC15-30. Virginia Rules and Regulations Declaring Hazardous Occupations (Final) .....	3214
18VAC5-21. Board of Accountancy Regulations (Withdrawal of Proposed Regulation) .....	3214
18VAC90-60. Regulations Governing the Registration of Medication Aides (Fast-Track) .....	3215
18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (Fast-Track) ..	3216
18VAC125-20. Regulations Governing the Practice of Psychology (Proposed) .....	3220
18VAC130-20. Real Estate Appraiser Board Rules and Regulations (Final) .....	3224
18VAC140-20. Regulations Governing the Practice of Social Work (Fast-Track) .....	3232
20VAC5-414. Bad Check Charges and Late Payment Charges (Proposed) .....	3235
23VAC10-210. Retail Sales and Use Tax (Fast-Track) .....	3238
23VAC10-500. Business, Professional and Occupational License Tax Regulations (Fast-Track) ..	3250
24VAC30-155. Traffic Impact Analysis Regulations (Final) .....	3290
<b>Governor</b> .....	3305
<b>General Notices/Errata</b> .....	3308

---

# 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**

If an agency demonstrates that (i) there is an immediate threat to the public's health or safety; or (ii) Virginia statutory law, the appropriation act, federal law, or federal regulation requires a regulation to take effect no later than (a) 280 days from the enactment in the case of Virginia or federal law or the appropriation act, or (b) 280 days from the effective date of a federal regulation, it then requests the Governor's approval to adopt an emergency regulation. 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 addressing specifically defined situations and may not exceed 12 months in duration. 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**; **Robert Hurt**; **Robert L. Calhoun**; **Frank S. Ferguson**; **E.M. Miller, Jr.**; **Thomas M. Moncure, Jr.**; **James F. Almand**.

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>).

---

## July 2008 through April 2009

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>INDEX 3 Volume 24</b>		
		<b>July 2008</b>
24:23	July 2, 2008	July 21, 2008
24:24	July 16, 2008	August 4, 2008
24:25	July 30, 2008	August 18, 2008
24:26	August 13, 2008	September 1, 2008
<b>FINAL INDEX Volume 24</b>		
		<b>October 2008</b>
25:1	August 27, 2008	September 15, 2008
25:2	September 10, 2008	September 29, 2008
25:3	September 24, 2008	October 13, 2008
25:4	October 8, 2008	October 27, 2008
25:5	October 22, 2008	November 10, 2008
25:6	November 5, 2008	November 24, 2008
25:7	November 18, 2008 ( <b>Tuesday</b> )	December 8, 2008
<b>INDEX 1 Volume 25</b>		
		<b>October 2008</b>
25:8	December 3, 2008	December 22, 2008
25:9	December 16, 2008 ( <b>Tuesday</b> )	January 5, 2009
25:10	December 30, 2008 ( <b>Tuesday</b> )	January 19, 2009
25:11	January 14, 2009	February 2, 2009
25:12	January 28, 2009	February 16, 2009
25:13	February 11, 2009	March 2, 2009
25:14	February 25, 2009	March 16, 2009
<b>INDEX 2 Volume 25</b>		
		<b>April 2009</b>
25:15	March 11, 2009	March 30, 2009
25:16	March 25, 2009	April 13, 2009
25:17	April 8, 2009	April 27, 2009

\*Filing deadlines are Wednesdays unless otherwise specified.

## CUMULATIVE TABLE OF VIRGINIA ADMINISTRATIVE CODE SECTIONS ADOPTED, AMENDED, OR REPEALED

The table printed below lists regulation sections, by Virginia Administrative Code (VAC) title, that have been amended, added or repealed in the *Virginia Register* since the regulations were originally published or last supplemented in VAC (the Spring 2008 VAC Supplement includes final regulations published through *Virginia Register* Volume 24, Issue 7, dated December 10, 2007, and fast-track regulations published through *Virginia Register* Volume 24 Issue 10, dated January 21, 2008). Emergency regulations, if any, are listed, followed by the designation "emer," and errata pertaining to final regulations are listed. Proposed regulations are not listed here. The table lists the sections in numerical order and shows action taken, the volume, issue and page number where the section appeared, and the effective date of the section.

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 2. Agriculture</b>			
2 VAC 5-30-10	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-30-20	Amended	24:17 VA.R. 2318	6/12/08
2 VAC 5-50-20	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-70	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-100	Amended	24:17 VA.R. 2320	6/12/08
2 VAC 5-50-110	Amended	24:17 VA.R. 2321	6/12/08
2 VAC 5-90-30	Amended	24:17 VA.R. 2322	6/12/08
2 VAC 5-150-10	Amended	24:17 VA.R. 2323	6/12/08
2 VAC 5-180-20	Amended	24:17 VA.R. 2326	6/12/08
2 VAC 5-180-30	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-50	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-60	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-80	Amended	24:17 VA.R. 2327	6/12/08
2 VAC 5-180-120	Amended	24:17 VA.R. 2328	6/12/08
2 VAC 5-210-30	Amended	24:9 VA.R. 1096	12/11/07
2 VAC 5-210-41	Amended	24:9 VA.R. 1097	12/11/07
2 VAC 5-390-180	Amended	24:15 VA.R. 2023	3/11/08
2 VAC 5-400-5	Added	24:17 VA.R. 2330	6/12/08
2 VAC 5-420-30	Amended	24:20 VA.R. 2838	5/21/08
2 VAC 5-420-80	Amended	24:20 VA.R. 2840	5/21/08
2 VAC 5-501-80	Amended	24:17 VA.R. 2332	6/12/08
2 VAC 5-501-100	Amended	24:17 VA.R. 2336	6/12/08
2 VAC 5-510-10	Amended	24:17 VA.R. 2340	6/12/08
2 VAC 5-510-50	Amended	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-60	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-70	Repealed	24:17 VA.R. 2341	6/12/08
2 VAC 5-510-80	Repealed	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-90	Amended	24:17 VA.R. 2342	6/12/08
2 VAC 5-510-100	Repealed	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-110	Amended	24:17 VA.R. 2344	6/12/08
2 VAC 5-510-120	Repealed	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-130	Amended	24:17 VA.R. 2345	6/12/08
2 VAC 5-510-140	Repealed	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-150	Amended	24:17 VA.R. 2347	6/12/08
2 VAC 5-510-160	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-170	Amended	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-180	Repealed	24:17 VA.R. 2348	6/12/08
2 VAC 5-510-190	Amended	24:17 VA.R. 2348	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
2 VAC 5-510-200	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-210	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-220	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-230	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-240	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-250	Repealed	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-260	Amended	24:17 VA.R. 2349	6/12/08
2 VAC 5-510-270	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-290	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-300	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-310	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-320	Repealed	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-330	Amended	24:17 VA.R. 2350	6/12/08
2 VAC 5-510-340	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-350	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-360	Repealed	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-390	Amended	24:17 VA.R. 2351	6/12/08
2 VAC 5-510-400	Repealed	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-410	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-420	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-500	Amended	24:17 VA.R. 2352	6/12/08
2 VAC 5-510-510	Amended	24:17 VA.R. 2353	6/12/08
2 VAC 5-531-50	Amended	24:16 VA.R. 2235	5/29/08
2 VAC 5-531-140	Amended	24:16 VA.R. 2241	5/29/08
2 VAC 15-20-81	Amended	24:16 VA.R. 2242	4/14/08
2 VAC 20-20-70	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-130	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-20-210	Amended	24:17 VA.R. 2355	6/12/08
2 VAC 20-40-50	Amended	24:17 VA.R. 2357	6/12/08
<b>Title 3. Alcoholic Beverages</b>			
3 VAC 5-50-140 emer	Amended	24:11 VA.R. 1344	1/9/08-1/8/09
3 VAC 5-50-145 emer	Added	24:11 VA.R. 1345	1/9/08-1/8/09
3 VAC 5-70-220	Amended	24:14 VA.R. 1891	5/1/08
3 VAC 5-70-225 emer	Added	24:10 VA.R. 1257	1/2/08-1/1/09
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 5-50-10 through 4VAC5-50-170	Repealed	24:17 VA.R. 2357	5/28/08
4 VAC 15-20-50	Amended	24:10 VA.R. 1258	1/1/08
4 VAC 15-20-130	Amended	24:10 VA.R. 1259	1/1/08
4 VAC 15-20-200	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-20-210	Amended	24:10 VA.R. 1261	1/1/08
4 VAC 15-30-5	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-30-40	Amended	24:10 VA.R. 1262	1/1/08
4 VAC 15-320-25	Amended	24:10 VA.R. 1265	1/1/08
4 VAC 15-330-30	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-100	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-120	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-160	Amended	24:10 VA.R. 1272	1/1/08
4 VAC 15-330-171	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-330-200	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-10	Amended	24:10 VA.R. 1273	1/1/08
4 VAC 15-340-30	Amended	24:10 VA.R. 1274	1/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 15-350-20	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-30	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-60	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-350-70	Amended	24:10 VA.R. 1275	1/1/08
4 VAC 15-360-10	Amended	24:10 VA.R. 1276	1/1/08
4 VAC 20-40-10 through 4 VAC 20-40-40	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-10	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-20	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-90-30	Repealed	24:19 VA.R. 2749	4/30/08
4 VAC 20-140-10	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-20	Amended	24:21 VA.R. 2917	3/17/09
4 VAC 20-140-25	Added	24:21 VA.R. 2917	3/17/09
4 VAC 20-150-30	Amended	24:10 VA.R. 1277	1/1/08
4 VAC 20-252-55	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-120	Amended	24:10 VA.R. 1278	1/1/08
4 VAC 20-252-150	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-160	Amended	24:10 VA.R. 1279	1/1/08
4 VAC 20-252-230	Amended	24:10 VA.R. 1281	1/1/08
4 VAC 20-270-10 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-10	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-30	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-40	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50	Amended	24:19 VA.R. 2750	4/30/08
4 VAC 20-270-50 emer	Amended	24:19 VA.R. 2751	5/1/08-5/31/08
4 VAC 20-270-50	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-270-55	Amended	24:15 VA.R. 2023	3/1/08
4 VAC 20-270-55	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-56	Amended	24:19 VA.R. 2751	4/30/08
4 VAC 20-270-58	Added	24:19 VA.R. 2751	4/30/08
4 VAC 20-320-50	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-450-30	Amended	24:21 VA.R. 2918	6/1/08
4 VAC 20-530-20	Amended	24:12 VA.R. 1456	2/1/08
4 VAC 20-530-31	Amended	24:13 VA.R. 1735	2/5/08
4 VAC 20-530-32	Repealed	24:12 VA.R. 1457	2/1/08
4 VAC 20-610-20	Amended	24:8 VA.R. 959	12/1/07
4 VAC 20-610-25	Added	24:8 VA.R. 959	12/1/07
4 VAC 20-610-30	Amended	24:8 VA.R. 960	12/1/07
4 VAC 20-610-30	Amended	24:15 VA.R. 2024	3/1/08
4 VAC 20-610-50	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-610-60	Amended	24:8 VA.R. 961	12/1/07
4 VAC 20-620-30	Amended	24:10 VA.R. 1281	12/27/07
4 VAC 20-620-40 emer	Amended	24:8 VA.R. 962	11/28/07-12/27/07
4 VAC 20-620-40	Amended	24:10 VA.R. 1282	12/27/07
4 VAC 20-620-50	Amended	24:15 VA.R. 2025	3/1/08
4 VAC 20-620-70	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-670-20	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-25	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-30	Amended	24:19 VA.R. 2752	4/30/08
4 VAC 20-670-40	Amended	24:19 VA.R. 2753	4/30/08
4 VAC 20-700-10 emer	Amended	24:19 VA.R. 2753	5/1/08-5/31/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-700-15 emer	Added	24:19 VA.R. 2753	5/1/08-5/31/08
4 VAC 20-700-15	Added	24:21 VA.R. 2918	6/1/08
4 VAC 20-700-20	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-700-20 emer	Amended	24:19 VA.R. 2754	5/1/08-5/31/08
4 VAC 20-700-20	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-720-40	Amended	24:12 VA.R. 1457	2/1/08
4 VAC 20-720-50	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-60	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-720-80	Amended	24:12 VA.R. 1458	2/1/08
4 VAC 20-750-10	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-10	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-30	Amended	24:15 VA.R. 2026	3/1/08
4 VAC 20-750-30	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-40	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-750-50	Repealed	24:19 VA.R. 2754	4/30/08
4 VAC 20-751-15	Added	24:15 VA.R. 2027	3/1/08
4 VAC 20-751-20	Amended	24:15 VA.R. 2027	3/1/08
4 VAC 20-752-20	Amended	24:19 VA.R. 2754	4/30/08
4 VAC 20-752-30	Amended	24:16 VA.R. 2246	4/1/08
4 VAC 20-752-30	Amended	24:19 VA.R. 2755	4/30/08
4 VAC 20-880-10 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-10	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-880-20 emer	Amended	24:19 VA.R. 2755	5/1/08-5/31/08
4 VAC 20-880-20	Amended	24:19 VA.R. 2756	4/30/08
4 VAC 20-880-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-880-30	Amended	24:19 VA.R. 2757	4/30/08
4 VAC 20-880-30	Amended	24:21 VA.R. 2919	6/1/08
4 VAC 20-950-47	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48	Amended	24:15 VA.R. 2028	3/1/08
4 VAC 20-950-48.1	Amended	24:15 VA.R. 2029	3/1/08
4 VAC 20-960-45	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-960-47	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-20	Amended	24:8 VA.R. 964	1/1/08
4 VAC 20-1040-35	Added	24:12 VA.R. 1459	2/1/08
4 VAC 20-1090-10 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:8 VA.R. 965	12/1/07
4 VAC 20-1090-30 emer	Amended	24:19 VA.R. 2757	5/1/08-5/31/08
4 VAC 20-1090-30	Amended	24:19 VA.R. 2760	4/30/08
4 VAC 20-1090-30	Amended	24:21 VA.R. 2920	6/1/08
4 VAC 20-1130-10 through 4 VAC 20-1130-70	Added	24:8 VA.R. 968-970	12/1/07
4 VAC 20-1140-10	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-20	Added	24:19 VA.R. 2763	4/30/08
4 VAC 20-1140-30	Added	24:19 VA.R. 2763	4/30/08
4 VAC 25-130 (Forms)	Amended	24:11 VA.R. 1424	--
4 VAC 25-150-90	Amended	24:17 VA.R. 2359	6/12/08
4 VAC 50-60-10	Amended	24:20 VA.R. 2842	7/9/08
4 VAC 50-60-1200	Amended	24:20 VA.R. 2852	7/9/08
4 VAC 50-60-1210	Amended	24:20 VA.R. 2853	7/9/08
4 VAC 50-60-1220	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1230	Amended	24:20 VA.R. 2854	7/9/08
4 VAC 50-60-1240	Amended	24:20 VA.R. 2856	7/9/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
<b>Title 5. Corporations</b>			
5 VAC 5-20-20	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-140	Amended	24:11 VA.R. 1347	2/15/08
5 VAC 5-20-150	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-170	Amended	24:11 VA.R. 1348	2/15/08
5 VAC 5-20-240	Amended	24:11 VA.R. 1349	2/15/08
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 15-61-10 through 6 VAC 15-61-300	Repealed	24:8 VA.R. 970	1/24/08
6 VAC 15-62-10 through 6 VAC 15-62-120	Added	24:8 VA.R. 970-979	1/24/08
6 VAC 15-62-110	Amended	24:13 VA.R. 1736	3/3/08
6 VAC 15-62 (Forms)	Amended	24:12 VA.R. 1523	--
6 VAC 40-50-10 through 6 VAC 40-50-80	Added	24:9 VA.R. 1103-1104	2/6/08
<b>Title 8. Education</b>			
8 VAC 20-650-30	Amended	24:21 VA.R. 2936	9/15/08
<b>Title 9. Environment</b>			
9 VAC 10-20-120	Amended	24:22 VA.R. 3040	8/6/08
9 VAC 20-60-18	Amended	24:9 VA.R. 1106	2/6/08
9 VAC 25-32 (Forms)	Amended	24:13 VA.R. 1738	--
9 VAC 25-120-10	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-20	Amended	24:9 VA.R. 1107	2/6/08
9 VAC 25-120-50	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-60	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-70	Amended	24:9 VA.R. 1108	2/6/08
9 VAC 25-120-80	Amended	24:9 VA.R. 1109	2/6/08
9 VAC 25-120-80	Amended	24:18 VA.R. 2502	6/11/08
9 VAC 25-193-40	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-193-70	Amended	24:18 VA.R. 2517	6/11/08
9 VAC 25-196-20	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-40	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-60	Amended	24:9 VA.R. 1124	2/6/08
9 VAC 25-196-70	Amended	24:9 VA.R. 1125	2/6/08
9 VAC 25-196-70	Amended	24:18 VA.R. 2532	6/11/08
9 VAC 25-210-10	Amended	24:9 VA.R. 1132	2/6/08
9 VAC 25-210-60	Amended	24:9 VA.R. 1136	2/6/08
9 VAC 25-210-116	Amended	24:9 VA.R. 1140	2/6/08
9 VAC 25-210-130	Amended	24:9 VA.R. 1142	2/6/08
9 VAC 25-260-30	Amended	24:13 VA.R. 1741	*
9 VAC 25-660-10	Amended	24:9 VA.R. 1144	2/6/08
9 VAC 25-660-60	Amended	24:9 VA.R. 1145	2/6/08
9 VAC 25-660-70	Amended	24:9 VA.R. 1147	2/6/08
9 VAC 25-660-80	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-660-100	Amended	24:9 VA.R. 1148	2/6/08
9 VAC 25-670-10	Amended	24:9 VA.R. 1156	2/6/08
9 VAC 25-670-70	Amended	24:9 VA.R. 1157	2/6/08
9 VAC 25-670-80	Amended	24:9 VA.R. 1158	2/6/08
9 VAC 25-670-100	Amended	24:9 VA.R. 1159	2/6/08
9 VAC 25-680-10	Amended	24:9 VA.R. 1170	2/6/08
9 VAC 25-680-60	Amended	24:9 VA.R. 1172	2/6/08

\* Effective upon filing notice of U.S. EPA approval with Registrar of Regulations

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-680-70	Amended	24:9 VA.R. 1174	2/6/08
9 VAC 25-680-80	Amended	24:9 VA.R. 1175	2/6/08
9 VAC 25-680-100	Amended	24:9 VA.R. 1176	2/6/08
9 VAC 25-690-10	Amended	24:9 VA.R. 1188	2/6/08
9 VAC 25-690-70	Amended	24:9 VA.R. 1190	2/6/08
9 VAC 25-690-80	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-690-100	Amended	24:9 VA.R. 1191	2/6/08
9 VAC 25-720-50	Amended	24:18 VA.R. 2540	6/11/08
9 VAC 25-720-120	Amended	24:21 VA.R. 2940	8/7/08
9 VAC 25-720-130	Amended	24:18 VA.R. 2548	6/11/08
9 VAC 25-820-10	Amended	24:21 VA.R. 2942	8/7/08
9 VAC 25-820-20	Amended	24:21 VA.R. 2944	8/7/08
9 VAC 25-820-70	Amended	24:21 VA.R. 2944	8/7/08
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-20-30	Amended	24:22 VA.R. 3043	6/23/08
10 VAC 5-40-5	Added	24:22 VA.R. 3045	7/1/08
10 VAC 5-40-60	Added	24:22 VA.R. 3045	7/1/08
<b>Title 11. Gaming</b>			
11 VAC 10-130-60	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-10	Amended	24:16 VA.R. 2247	4/14/08
11 VAC 10-180-20	Repealed	24:16 VA.R. 2248	4/14/08
11 VAC 10-180-25	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-35	Added	24:16 VA.R. 2250	4/14/08
11 VAC 10-180-60	Amended	24:16 VA.R. 2251	4/14/08
11 VAC 10-180-70	Amended	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-75	Added	24:16 VA.R. 2256	4/14/08
11 VAC 10-180-80	Amended	24:16 VA.R. 2257	4/14/08
11 VAC 10-180-85	Amended	24:16 VA.R. 2258	4/14/08
11 VAC 10-180-110	Amended	24:16 VA.R. 2259	4/14/08
<b>Title 12. Health</b>			
12 VAC 5-90-370	Added	24:19 VA.R. 2777	7/1/08
12 VAC 5-195-10 through 12 VAC 5-195-670	Added	24:19 VA.R. 2778-2802	5/26/08
12 VAC 5-220-10	Amended	24:11 VA.R. 1350	3/5/08
12 VAC 5-220-110	Amended	24:11 VA.R. 1353	3/5/08
12 VAC 5-220-130	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-220-200	Amended	24:11 VA.R. 1354	3/5/08
12 VAC 5-371-150	Amended	24:11 VA.R. 1357	3/5/08
12 VAC 5-381-10 through 12VAC5-381-40	Amended	24:11 VA.R. 1358-1361	3/5/08
12 VAC 5-381-60 through 12VAC5-381-100	Amended	24:11 VA.R. 1361-1362	3/5/08
12 VAC 5-381-120	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-140	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-150	Amended	24:11 VA.R. 1362	3/5/08
12 VAC 5-381-240	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-381-280	Amended	24:11 VA.R. 1363	3/5/08
12 VAC 5-391-10	Amended	24:11 VA.R. 1364	3/5/08
12 VAC 5-391-30 through 12 VAC 5-391-100	Amended	24:11 VA.R. 1366-1368	3/5/08
12 VAC 5-391-120	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-130	Amended	24:11 VA.R. 1368	3/5/08
12 VAC 5-391-150	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-160	Amended	24:11 VA.R. 1369	3/5/08
12 VAC 5-391-250	Amended	24:11 VA.R. 1370	3/5/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-391-280	Amended	24:11 VA.R. 1370	3/5/08
12 VAC 5-410-230	Amended	24:11 VA.R. 1371	3/5/08
12 VAC 5-481-10	Amended	24:18 VA.R. 2566	6/12/08
12 VAC 5-481-20	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-30	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-90	Amended	24:18 VA.R. 2592	6/12/08
12 VAC 5-481-100	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-110	Amended	24:18 VA.R. 2593	6/12/08
12 VAC 5-481-130	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-150	Amended	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-200	Repealed	24:18 VA.R. 2594	6/12/08
12 VAC 5-481-230 through 12 VAC 5-481-270	Amended	24:18 VA.R. 2594-2595	6/12/08
12 VAC 5-481-340	Amended	24:18 VA.R. 2595	6/12/08
12 VAC 5-481-370 through 12 VAC 5-481-450	Amended	24:18 VA.R. 2597-2607	6/12/08
12 VAC 5-481-460	Repealed	24:18 VA.R. 2607	6/12/08
12 VAC 5-481-470	Amended	24:18 VA.R. 2608	6/12/08
12 VAC 5-481-480	Amended	24:18 VA.R. 2610	6/12/08
12 VAC 5-481-500	Amended	24:18 VA.R. 2619	6/12/08
12 VAC 5-481-510	Amended	24:18 VA.R. 2620	6/12/08
12 VAC 5-481-530 through 12 VAC 5-481-590	Amended	24:18 VA.R. 2622-2626	6/12/08
12 VAC 5-481-571	Added	24:18 VA.R. 2624	6/12/08
12 VAC 5-481-630 through 12 VAC 5-481-760	Amended	24:18 VA.R. 2626-2629	6/12/08
12 VAC 5-481-780	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-790	Amended	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-800	Repealed	24:18 VA.R. 2629	6/12/08
12 VAC 5-481-810 through 12 VAC 5-481-910	Amended	24:18 VA.R. 2630-2631	6/12/08
12 VAC 5-481-930 through 12 VAC 5-481-1050	Amended	24:18 VA.R. 2632-2633	6/12/08
12 VAC 5-481-971	Added	24:18 VA.R. 2632	6/12/08
12 VAC 5-481-1070	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1090	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1100	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1110	Amended	24:18 VA.R. 2633	6/12/08
12 VAC 5-481-1130	Amended	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1151	Added	24:18 VA.R. 2634	6/12/08
12 VAC 5-481-1160	Repealed	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1161	Added	24:18 VA.R. 2635	6/12/08
12 VAC 5-481-1190	Amended	24:18 VA.R. 2637	6/12/08
12 VAC 5-481-1200	Amended	24:18 VA.R. 2638	6/12/08
12 VAC 5-481-1220 through 12 VAC 5-481-1250	Amended	24:18 VA.R. 2639-2640	6/12/08
12 VAC 5-481-1270	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1300	Amended	24:18 VA.R. 2640	6/12/08
12 VAC 5-481-1310	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1320	Amended	24:18 VA.R. 2641	6/12/08
12 VAC 5-481-1350	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1380	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1420	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1440	Amended	24:18 VA.R. 2644	6/12/08
12 VAC 5-481-1490	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1520	Amended	24:18 VA.R. 2645	6/12/08
12 VAC 5-481-1540	Repealed	24:18 VA.R. 2645	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-1550	Repealed	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1560	Amended	24:18 VA.R. 2646	6/12/08
12 VAC 5-481-1570	Amended	24:18 VA.R. 2647	6/12/08
12 VAC 5-481-1670 through 12 VAC 5-481-2040	Amended	24:18 VA.R. 2647-2650	6/12/08
12 VAC 5-481-2001	Added	24:18 VA.R. 2649	6/12/08
12 VAC 5-481-2050	Repealed	24:18 VA.R. 2650	6/12/08
12 VAC 5-481-2060	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2070	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2080	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2100	Amended	24:18 VA.R. 2651	6/12/08
12 VAC 5-481-2230	Amended	24:18 VA.R. 2652	6/12/08
12 VAC 5-481-2240	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2260	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2270	Amended	24:18 VA.R. 2653	6/12/08
12 VAC 5-481-2280	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2330	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2420	Amended	24:18 VA.R. 2654	6/12/08
12 VAC 5-481-2430	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2470	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2490	Amended	24:18 VA.R. 2655	6/12/08
12 VAC 5-481-2510	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2530	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2540	Amended	24:18 VA.R. 2656	6/12/08
12 VAC 5-481-2550	Amended	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2571	Added	24:18 VA.R. 2657	6/12/08
12 VAC 5-481-2572	Added	24:18 VA.R. 2659	6/12/08
12 VAC 5-481-2573	Added	24:18 VA.R. 2660	6/12/08
12 VAC 5-481-2660 through 12 VAC 5-481-2950	Amended	24:18 VA.R. 2660-2661	6/12/08
12 VAC 5-481-2970	Amended	24:18 VA.R. 2661	6/12/08
12 VAC 5-481-2980	Amended	24:18 VA.R. 2662	6/12/08
12 VAC 5-481-3000 through 12 VAC 5-481-3040	Amended	24:18 VA.R. 2663-2665	6/12/08
12 VAC 5-481-3070 through 12 VAC 5-481-3140	Amended	24:18 VA.R. 2667-2670	6/12/08
12 VAC 5-481-3050	Repealed	24:18 VA.R. 2665	6/12/08
12 VAC 5-481-3051	Added	24:18 VA.R. 2666	6/12/08
12 VAC 5-481-3091	Added	24:18 VA.R. 2668	6/12/08
12 VAC 5-481-3151	Added	24:18 VA.R. 2670	6/12/08
12 VAC 5-481-3160	Amended	24:18 VA.R. 2671	6/12/08
12 VAC 5-481-3200 through 12 VAC 5-481-3270	Amended	24:18 VA.R. 2671-2675	6/12/08
12 VAC 5-481-3241	Added	24:18 VA.R. 2673	6/12/08
12 VAC 5-481-3261	Added	24:18 VA.R. 2674	6/12/08
12 VAC 5-481-3290	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3300	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3340	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3350	Amended	24:18 VA.R. 2675	6/12/08
12 VAC 5-481-3400	Amended	24:18 VA.R. 2676	6/12/08
12 VAC 5-481-3430	Amended	24:18 VA.R. 2677	6/12/08
12 VAC 5-481-3440	Amended	24:18 VA.R. 2683	6/12/08
12 VAC 5-481-3480	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3490	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3510	Amended	24:18 VA.R. 2684	6/12/08
12 VAC 5-481-3520	Amended	24:18 VA.R. 2685	6/12/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-3530	Amended	24:18 VA.R. 2685	6/12/08
12 VAC 5-481-3560	Amended	24:18 VA.R. 2686	6/12/08
12 VAC 5-481-3580	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3600	Amended	24:18 VA.R. 2687	6/12/08
12 VAC 5-481-3610	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3650	Amended	24:18 VA.R. 2688	6/12/08
12 VAC 5-481-3670 through 12 VAC 5-481-3780	Repealed	24:18 VA.R. 2689-2715	6/12/08
12 VAC 30-70-221	Amended	24:21 VA.R. 2959	7/23/08
12 VAC 30-80-30	Erratum	24:17 VA.R. 2473	--
12 VAC 30-80-30	Amended	24:21 VA.R. 2962	7/23/08
12 VAC 30-80-75	Added	24:21 VA.R. 2965	7/23/08
12 VAC 35-105-115	Added	24:11 VA.R. 1372	3/5/08
<b>Title 13. Housing</b>			
13 VAC 5-21-10	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-20	Amended	24:14 VA.R. 1894	5/1/08
13 VAC 5-21-31	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-41	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-45	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-51	Amended	24:14 VA.R. 1895	5/1/08
13 VAC 5-21-61	Amended	24:14 VA.R. 1896	5/1/08
13 VAC 5-31-20 through 13 VAC 5-31-50	Amended	24:14 VA.R. 1897-1898	5/1/08
13 VAC 5-31-70 through 13 VAC 5-31-170	Repealed	24:14 VA.R. 1898-1903	5/1/08
13 VAC 5-31-75	Added	24:14 VA.R. 1898	5/1/08
13 VAC 5-31-85	Added	24:14 VA.R. 1900	5/1/08
13 VAC 5-31-200	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-210	Amended	24:14 VA.R. 1904	5/1/08
13 VAC 5-31-215 through 13 VAC 5-31-270	Added	24:14 VA.R. 1904-1905	5/1/08
13 VAC 5-51-21 through 13 VAC 5-51-51	Amended	24:14 VA.R. 1907-1910	5/1/08
13 VAC 5-51-81	Amended	24:14 VA.R. 1910	5/1/08
13 VAC 5-51-85	Amended	24:14 VA.R. 1921	5/1/08
13 VAC 5-51-91	Amended	24:14 VA.R. 1924	5/1/08
13 VAC 5-51-130 through 13 VAC 5-51-135	Amended	24:14 VA.R. 1925-1928	5/1/08
13 VAC 5-51-143	Added	24:14 VA.R. 1928	5/1/08
13 VAC 5-51-145	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-150	Amended	24:14 VA.R. 1932	5/1/08
13 VAC 5-51-152	Repealed	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-154	Amended	24:14 VA.R. 1937	5/1/08
13 VAC 5-51-155	Amended	24:14 VA.R. 1939	5/1/08
13 VAC 5-63-10 through 13 VAC 5-63-50	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-70	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-80	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-100 through 13 VAC 5-63-130	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-150	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-160	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-190 through 13 VAC 5-63-260	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-225	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-265	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-267	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-270	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-280	Amended	24:14 VA.R. 1941	5/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
13 VAC 5-63-300 through 13 VAC 5-63-360	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-335	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-400	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-430	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-432	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-434 through 13 VAC 5-63-450	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-470 through 13 VAC 5-63-500	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-520	Amended	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-525	Added	24:14 VA.R. 1941	5/1/08
13 VAC 5-63-550	Repealed	24:14 VA.R. 1941	5/1/08
13 VAC 5-91-20	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-100	Amended	24:14 VA.R. 1943	5/1/08
13 VAC 5-91-110	Repealed	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-115	Added	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-120	Amended	24:14 VA.R. 1944	5/1/08
13 VAC 5-91-160	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-91-270	Amended	24:14 VA.R. 1945	5/1/08
13 VAC 5-95-10	Amended	24:14 VA.R. 1947	5/1/08
13 VAC 5-95-30	Amended	24:14 VA.R. 1948	5/1/08
13 VAC 5-112-340	Amended	24:8 VA.R. 979	1/23/08
13 VAC 10-180-10	Amended	24:11 VA.R. 1373	2/4/08
13 VAC 10-180-50	Amended	24:11 VA.R. 1374	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1376	2/4/08
13 VAC 10-180-60	Amended	24:11 VA.R. 1387	2/4/08
13 VAC 10-180-100	Amended	24:11 VA.R. 1397	2/4/08
<b>Title 14. Insurance</b>			
14 VAC 5-30-30	Amended	24:15 VA.R. 2153	4/1/08
14 VAC 5-200-185	Amended	24:15 VA.R. 2155	4/1/08
14 VAC 5-211-50	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-90	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-211-100	Amended	24:22 VA.R. 3063	7/1/08
14 VAC 5-215 (Forms)	Amended	24:17 VA.R. 2452	--
14 VAC 5-270-10 through 14 VAC 5-270-150	Amended	24:12 VA.R. 1460-1470	1/1/10
14 VAC 5-270-144	Added	24:12 VA.R. 1467	1/1/10
14 VAC 5-270-146	Added	24:12 VA.R. 1468	1/1/10
14 VAC 5-270-148	Added	24:12 VA.R. 1469	1/1/10
14 VAC 5-270-170	Amended	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-174	Added	24:12 VA.R. 1470	1/1/10
14 VAC 5-270-180	Amended	24:12 VA.R. 1470	1/1/10
<b>Title 16. Labor and Employment</b>			
16 VAC 20-20-20	Amended	24:22 VA.R. 3065	8/7/08
16 VAC 20-20-40	Amended	24:22 VA.R. 3066	8/7/08
16 VAC 20-20-50	Amended	24:22 VA.R. 3068	8/7/08
16 VAC 20-20-60	Amended	24:22 VA.R. 3069	8/7/08
16 VAC 20-20-80	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 20-20-110	Amended	24:22 VA.R. 3070	8/7/08
16 VAC 25-90-1910.6	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.68	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.94	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.103	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.107	Added	24:16 VA.R. 2262	6/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-90-1910.110	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.111	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.132	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-90-1910.144	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.243	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.251	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.253	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-90-1910.261	Added	24:16 VA.R. 2262	6/1/08
16 VAC 25-100-1915.152	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-120-1917.96	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-130-1918.106	Added	24:16 VA.R. 2263	6/1/08
16 VAC 25-175-1926.95	Added	24:16 VA.R. 2263	6/1/08
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 15-20-451	Amended	24:17 VA.R. 2455	8/1/08
18 VAC 30-20-80	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-170	Amended	24:10 VA.R. 1284	2/20/08
18 VAC 30-20-171	Amended	24:10 VA.R. 1285	2/20/08
18 VAC 60-20-30	Amended	24:20 VA.R. 2874	7/24/08
18 VAC 60-20-81	Added	24:14 VA.R. 1949	4/16/08
18 VAC 60-20-108	Amended	24:14 VA.R. 1950	4/16/08
18 VAC 60-20-190	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 60-20-220	Amended	24:10 VA.R. 1287	3/10/08
18 VAC 60-20-220	Amended	24:14 VA.R. 1951	4/16/08
18 VAC 65-20-151	Amended	24:22 VA.R. 3070	8/6/08
18 VAC 85-20-22	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-22	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 85-20-226	Added	24:11 VA.R. 1404	3/5/08
18 VAC 85-20-400	Amended	24:20 VA.R. 2876	7/24/08
18 VAC 85-40-35	Amended	24:11 VA.R. 1404	3/5/08
18 VAC 85-40-67	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-35	Amended	24:11 VA.R. 1405	3/5/08
18 VAC 85-50-61	Added	24:11 VA.R. 1405	3/5/08
18 VAC 85-80-26	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-80-73	Added	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:11 VA.R. 1406	3/5/08
18 VAC 85-101-25	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-40	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-50	Amended	24:20 VA.R. 2879	7/24/08
18 VAC 85-101-55	Added	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-60	Amended	24:20 VA.R. 2880	7/24/08
18 VAC 85-101-70	Repealed	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-150	Amended	24:20 VA.R. 2881	7/24/08
18 VAC 85-101-153	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-35	Amended	24:11 VA.R. 1407	3/5/08
18 VAC 85-110-161	Added	24:11 VA.R. 1407	3/5/08
18 VAC 85-120-10	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-50	Amended	24:20 VA.R. 2884	7/24/08
18 VAC 85-120-70	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-90	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-120-95	Added	24:20 VA.R. 2885	7/24/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 85-120-150	Amended	24:20 VA.R. 2885	7/24/08
18 VAC 85-130-30	Amended	24:14 VA.R. 1952	4/16/08
18 VAC 90-20-10	Amended	24:13 VA.R. 1842	4/2/08
18 VAC 90-20-35	Amended	24:13 VA.R. 1843	4/2/08
18 VAC 90-20-40 through 18 VAC 90-20-60	Amended	24:13 VA.R. 1843-1845	4/2/08
18 VAC 90-20-65	Repealed	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-70	Amended	24:13 VA.R. 1844	4/2/08
18 VAC 90-20-90	Amended	24:13 VA.R. 1845	4/2/08
18 VAC 90-20-95	Amended	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-96	Added	24:13 VA.R. 1846	4/2/08
18 VAC 90-20-110 through 18 VAC 90-20-140	Amended	24:13 VA.R. 1846-1848	4/2/08
18 VAC 90-20-151	Added	24:13 VA.R. 1848	4/2/08
18 VAC 90-20-160	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-190	Amended	24:13 VA.R. 1849	4/2/08
18 VAC 90-20-200	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-220	Amended	24:13 VA.R. 1850	4/2/08
18 VAC 90-20-230	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-271	Amended	24:21 VA.R. 2969	7/23/08
18 VAC 90-20-275	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-280	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-300	Amended	24:13 VA.R. 1851	4/2/08
18 VAC 90-20-370	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-390	Amended	24:13 VA.R. 1852	4/2/08
18 VAC 90-20-410	Amended	24:13 VA.R. 1853	4/2/08
18 VAC 90-30-10	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-80	Erratum	24:18 VA.R. 2731-2732	--
18 VAC 90-30-120	Amended	24:10 VA.R. 1288	2/20/08
18 VAC 90-30-121	Added	24:10 VA.R. 1289	2/20/08
18 VAC 95-20-80	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 95-20-175	Amended	24:20 VA.R. 2887	7/24/08
18 VAC 95-20-220	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-20-230	Amended	24:20 VA.R. 2888	7/24/08
18 VAC 95-30-40	Amended	24:16 VA.R. 2264	5/14/08
18 VAC 105-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-10	Amended	24:8 VA.R. 983	1/23/08
18 VAC 110-20-75	Amended	24:22 VA.R. 3071	8/6/08
18 VAC 110-20-321	Added	24:8 VA.R. 986	1/23/08
18 VAC 110-20-411 through 18 VAC 110-20-416	Repealed	24:8 VA.R. 986-987	1/23/08
18 VAC 110-20-530	Amended	24:16 VA.R. 2265	5/14/08
18 VAC 110-30-15	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-10	Amended	24:10 VA.R. 1290	2/20/08
18 VAC 110-50-160	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-170	Added	24:10 VA.R. 1291	2/20/08
18 VAC 110-50-180	Added	24:10 VA.R. 1292	2/20/08
18 VAC 110-50-190	Added	24:10 VA.R. 1292	2/20/08
18 VAC 115-30-150	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 115-30-160	Amended	24:14 VA.R. 1953	4/16/08
18 VAC 125-20-170	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 125-30-120	Amended	24:12 VA.R. 1471	3/19/08
18 VAC 135-20-10	Amended	24:11 VA.R. 1408	4/1/08
18 VAC 135-20-30	Amended	24:11 VA.R. 1409	4/1/08

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 135-20-60	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-100	Amended	24:11 VA.R. 1410	4/1/08
18 VAC 135-20-101	Added	24:11 VA.R. 1412	4/1/08
18 VAC 135-20-105	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-160	Amended	24:11 VA.R. 1413	4/1/08
18 VAC 135-20-170	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-180	Amended	24:11 VA.R. 1414	4/1/08
18 VAC 135-20-190	Amended	24:11 VA.R. 1416	4/1/08
18 VAC 135-20-210	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-220	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-280	Amended	24:11 VA.R. 1417	4/1/08
18 VAC 135-20-300	Amended	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-345	Added	24:11 VA.R. 1418	4/1/08
18 VAC 135-20-360	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-370	Amended	24:11 VA.R. 1419	4/1/08
18 VAC 135-20-390	Amended	24:11 VA.R. 1420	4/1/08
18 VAC 135-60-60	Amended	24:9 VA.R. 1230	3/1/08
18 VAC 140-20-105	Amended	24:20 VA.R. 2890	7/24/08
18 VAC 150-20-135	Amended	24:21 VA.R. 2969	7/23/08
<b>Title 19. Public Safety</b>			
19 VAC 30-20-115	Added	24:11 VA.R. 1421	3/6/08
19 VAC 30-70-6	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-7	Amended	24:8 VA.R. 988	3/1/08
19 VAC 30-70-9	Amended	24:8 VA.R. 989	3/1/08
19 VAC 30-70-10	Amended	24:8 VA.R. 991	3/1/08
19 VAC 30-70-40	Amended	24:8 VA.R. 994	3/1/08
19 VAC 30-70-50	Amended	24:8 VA.R. 995	3/1/08
19 VAC 30-70-60	Amended	24:8 VA.R. 997	3/1/08
19 VAC 30-70-80	Amended	24:8 VA.R. 998	3/1/08
19 VAC 30-70-90	Amended	24:8 VA.R. 1001	3/1/08
19 VAC 30-70-110 through 19 VAC 30-70-660	Amended	24:8 VA.R. 1001-1070	3/1/08
19 VAC 30-190-10 through 19 VAC 30-190-140	Added	24:11 VA.R. 1421-1423	3/6/08
<b>Title 21. Securities and Retail Franchising</b>			
21 VAC 5-20-280	Amended	24:21 VA.R. 2971	7/1/08
21 VAC 5-80-10	Amended	24:21 VA.R. 2976	7/1/08
21 VAC 5-80-200	Amended	24:21 VA.R. 2977	7/1/08
21 VAC 5-110-10	Amended	24:21 VA.R. 2983	7/1/08
21 VAC 5-110-20	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-30	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-40	Amended	24:21 VA.R. 2984	7/1/08
21 VAC 5-110-50	Amended	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-55	Added	24:21 VA.R. 2985	7/1/08
21 VAC 5-110-60	Amended	24:21 VA.R. 2986	7/1/08
21 VAC 5-110-65	Amended	24:21 VA.R. 2987	7/1/08
21 VAC 5-110-70	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-75	Amended	24:21 VA.R. 2988	7/1/08
21 VAC 5-110-80	Amended	24:21 VA.R. 2989	7/1/08
21 VAC 5-110-90	Repealed	24:21 VA.R. 2992	7/1/08
21 VAC 5-110-95	Added	24:21 VA.R. 2992	7/1/08
<b>Title 22. Social Services</b>			

---

## Cumulative Table of VAC Sections Adopted, Amended, or Repealed

---

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
22 VAC 15-30-310	Amended	24:10 VA.R. 1295	3/6/08
22 VAC 30-10-10	Amended	24:22 VA.R. 3076	8/8/08
22 VAC 30-10-20	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-40	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 30-10-50	Amended	24:22 VA.R. 3077	8/8/08
22 VAC 40-470-10	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-685-30	Amended	24:9 VA.R. 1231	2/6/08
22 VAC 40-705-10 emer	Amended	24:14 VA.R. 1987	3/1/08-2/28/09
22 VAC 40-705-30 emer	Amended	24:14 VA.R. 1990	3/1/08-2/28/09
<b>Title 23. Taxation</b>			
23 VAC 10-10-10 through 23 VAC 10-10-80	Amended	24:12 VA.R. 1520-1521	4/19/08
23 VAC 10-10-80	Amended	24:12 VA.R. 1521	4/19/08
23 VAC 10-10-90	Repealed	24:12 VA.R. 1522	4/19/08
<b>Title 24. Transportation and Motor Vehicles</b>			
24 VAC 30-72-10 through 24 VAC 30-72-170	Added	24:17 VA.R. 2458-2466	7/1/08
24 VAC 30-72-30	Erratum	24:18 VA.R. 2732	--

---

# PETITIONS FOR RULEMAKING

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF DENTISTRY

#### Initial Agency Notice

Title of Regulation: **18VAC60-20. Regulations Governing the Practice of Dentistry and Dental Hygiene.**

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

Name of Petitioner: Len Futerman.

Nature of Petitioner's Request: To establish a registration process for those qualified to administer sedation and anesthesia.

Agency's Plan for Disposition of Request: The board is requesting public comment on the petition to establish registration and issue permits to those who meet the qualifications for administration of sedation and anesthesia. The board will consider the petitioner's request and any comment on the petition at its meeting on September 12, 2008.

Comments may be submitted until August 20, 2008.

Agency Contact: Elaine J. Yeatts, Agency Regulatory Coordinator, Board of Dentistry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

VA.R. Doc. No. R08-21; Filed June 25, 2008, 2:56 p.m.

### BOARDS OF NURSING AND MEDICINE

#### Agency Decision

Titles of Regulations: **18VAC90-30. Regulations Governing the Licensure of Nurse Practitioners.**

**18VAC 90-40. Regulations for Prescriptive Authority for Licensed Nurse Practitioners.**

Statutory Authority: §§54.1-2400 and 54.1-2957.01 of the Code of Virginia.

Name of Petitioner: Aida Faline Johnson and Donald E. Johnson.

Nature of Petitioner's Request: To amend regulations to modify the definition of a "licensed physician," remove all requirements for nurse practitioners to develop and sign practice agreements with physicians, require a nurse practitioner to work for at least two years as a RN in a hospital or medical facility.

Agency Decision: Request denied.

Statement of Reasons for Decision: At a meeting of the Board of Nursing on May 20, 2008, and at a meeting of the Board of

Medicine on June 26, 2008, the petition request was denied because changes to the supervisory requirements for nurse practitioners with prescriptive authority would necessitate a statutory action by the General Assembly. Practice by a nurse practitioner on a military base is not governed by Virginia law or regulation, so it is not correct to state that a licensed nurse practitioner could not care for soldiers or their families on a military base because of state regulation.

Agency Contact: Jay P. Douglas, Executive Director, Board of Nursing, 9960 Mayland Drive, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

VA.R. Doc. No. R08-07; Filed July 1, 2008, 2:37 p.m.

---

# NOTICES OF INTENDED REGULATORY ACTION

---

## TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

### DEPARTMENT (BOARD) OF JUVENILE JUSTICE

#### 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 Juvenile Justice intends to consider amending the following regulations: **6VAC35-30, Regulations for State Reimbursement of Local Juvenile Residential Facility Costs.** The purpose of the proposed action is to amend the regulation to take into account restructuring, both in the Department of Juvenile Justice and localities, and outdated terms that have occurred since the last review that was completed on September 9, 1992. Items under consideration include updating references and definitions; streamlining steps in the approval process; deleting the preliminary review and funding priorities that are no longer applicable; and adding language that makes it clear that reimbursement may be denied for failure to submit inspection and progress reports, or notify the department of substantive changes during the construction phase.

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

Statutory Authority: §§16.1-233 and 66-10 of the Code of Virginia.

Public Comments: Public comments may be submitted until August 20, 2008.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804)371-0743, FAX (804)371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

VA.R. Doc. No. R08-1330; Filed June 25, 2008, 11:13 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Juvenile Justice intends to consider amending the following regulations: **6VAC35-60, Minimum Standards for Virginia Delinquency Prevention and Youth Development Act Grant Programs.** The purpose of the proposed action is to incorporate current practice into the existing framework to support the goals of the Delinquency Prevention and Youth Development Act. Items under consideration include the annual plan, staffing requirements, background checks, budget submissions, monitoring, needs assessment contents, and nonresidential standards.

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

Statutory Authority: §§66-10 and 66-28 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on August 20, 2008.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804)786-6407, FAX (804)371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

VA.R. Doc. No. R08-1228; Filed June 25, 2008, 11:13 a.m.

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Juvenile Justice intends to consider amending the following regulations: **6VAC35-150, Standards for Nonresidential Services Available to Juvenile and Domestic Relations District Courts.** The purpose of the proposed action is to make substantive changes due to regulatory changes required by law and to enhance clarity and achieve improvements. Items under consideration include amending the background check section, clarifying requirements for volunteers and interns, formalizing the process for obtaining a waiver of regulatory provisions, reviewing duties of court services unit staff, clarifying if and when procedures should be required for handling nondepartment funds, and reviewing and streamlining requirements for all reports to court.

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

Statutory Authority: §§16.1-233, 16.1-309.2, and 66-10 of the Code of Virginia.

Public Comments: Public comments may be submitted until 5 p.m. on August 20, 2008.

Agency Contact: Deron Phipps, Regulatory Coordinator, Department of Juvenile Justice, P.O. Box 1110, Richmond, VA 23218-1110, telephone (804)786-6407, FAX (804)371-0773, or email [deron.phipps@djj.virginia.gov](mailto:deron.phipps@djj.virginia.gov).

VA.R. Doc. No. R08-1226; Filed June 25, 2008, 11:14 a.m.

---

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-50, Amount, Duration, and Scope of Medical and Remedial Care Services.** The purpose of the

proposed action is to comply with Item 306 OO of the 2008 Appropriation Act that implements prior authorization review for community-based mental health services for children and adults. In recent years, the utilization of certain community-based mental health services has increased substantially. Intensive in-home services expenditures are expected to increase 25% during SFY 2008. In order to address these expected increases in utilization, the General Assembly provided DMAS authority to implement prior authorization of these services in order to ensure that such services are provided based on Medicaid service criteria.

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

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

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](mailto:brian.mccormick@dmas.virginia.gov).

VA.R. Doc. No. R08-1328; Filed July 2, 2008, 11:30 a.m.

## Notice of Intended Regulatory Action

Notice is hereby given in accordance with §2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-120, Waivered Services**. The purpose of the proposed action is to add new services to the Medicaid Home and Community-Based Care Waiver Programs, and enhance the coordination of current services in order to better integrate institutionalized Medicaid enrollees into the community.

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

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Agency Contact: Jason Rachel, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-2984, FAX (804) 786-1680, or email [jason.rachel@dmas.virginia.gov](mailto:jason.rachel@dmas.virginia.gov).

VA.R. Doc. No. R08-1107; Filed June 25, 2008, 10:04 a.m.



## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Medicine has WITHDRAWN the Notice of Intended Regulatory for 18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic, that was published in 22:15 VA.R. 2260 April 3, 2006. The board has modified the proposal to eliminate the requirement of a urine drug screen.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Dr., Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R06-214; Filed June 30, 2008, 11:03 a.m.

#### Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Board of Medicine has WITHDRAWN the Notice of Intended Regulatory for 18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic, relating to a bachelor's degree for licensure in chiropractic that was published in 24:6 VA.R. 637 November 26, 2007.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Dr., Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4429, or email [william.harp@dhp.virginia.gov](mailto:william.harp@dhp.virginia.gov).

VA.R. Doc. No. R07-19; Filed July 1, 2008, 9:24 a.m.

---

# 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 4. CONSERVATION AND NATURAL RESOURCES

### BOARD OF GAME AND INLAND FISHERIES

#### Final Regulation

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-40. **Game:** in General (amending 4VAC15-40-30, 4VAC15-40-70, 4VAC15-40-190, 4VAC15-40-210, 4VAC15-40-220).

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

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

#### Summary:

*The amendments (i) expand opportunities for hunters to use electronic calls on public lands beyond department-owned wildlife management areas; (ii) modify the requirement that large body-gripping traps in excess of 7-1/2 inches be covered by water so that they can be set when only half submerged by water; and (iii) specify that the maximum jaw spread of foothold traps set above the ground be measured to the inside of the jaws.*

*Changes from the proposed include (i) removal of the prohibition on the release of captive reared and properly marked mallards during open dog training seasons; (ii) removal of the requirement that cable stops that prevent the loop from closing smaller than 2-1/2 inches in diameter on snares capable of opening more than four inches, and (iii) removal of the exemptions to snare restrictions for department personnel and other individuals authorized by the director to conduct certain types of wildlife damage management activities.*

**4VAC15-40-30. Recorded wild animal or wild bird calls or sounds prohibited in taking game; bobcats, coyotes, crows, and foxes excepted.**

It shall be unlawful to take or attempt to take wild animals and wild birds [ 7 ] with the exception of bobcats, coyotes, crows, and foxes by the use or aid of recorded animal or bird calls or sounds or recorded or electrically amplified imitation of animal or bird calls or sounds; provided, that electronic calls may be used on private lands for hunting bobcats, coyotes, and foxes with the written permission of the landowner and on ~~department-owned wildlife management areas unless otherwise posted by wildlife management area rules~~ public lands except where specifically prohibited.

**4VAC15-40-70. Open dog training season.**

A. Private lands and certain military areas. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on private lands, Fort A.P. Hill, Fort Pickett, and Quantico Marine Reservation. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, must comply with all regulations and laws pertaining to hunting and no game shall be taken; provided, however, that weapons may be in possession when training dogs on [ captive raised and properly marked mallards and ] pigeons so that they may be immediately shot or recovered, except on Sunday.

B. Designated portions of certain department-owned lands. It shall be lawful to train dogs on quail on designated portions of the Amelia Wildlife Management Area, Chester F. Phelps Wildlife Management Area, Chickahominy Wildlife Management Area, and Dick Cross Wildlife Management Area from September 1 to the day prior to the opening date of the quail hunting season, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

C. Designated department-owned lands. It shall be lawful to train dogs during daylight hours on rabbits and nonmigratory game birds on the Weston Wildlife Management Area from September 1 to March 31, both dates inclusive. Participants in this dog training season shall not have any weapons other than starter pistols in their possession, shall not release pen-raised birds, must comply with all regulations and laws pertaining to hunting and no game shall be taken.

**4VAC15-40-190. Restricted use of body-gripping traps in excess of 7-1/2 inches.**

The use of body-gripping traps with a jaw spread in excess of 7-1/2 inches is prohibited except when such traps are covered at least half submerged by water.

**4VAC15-40-210. Restricted use of certain steel leg-hold foothold traps.**

It shall be unlawful to set above the ground any steel leg-hold foothold trap with teeth set upon the jaws or with a maximum inside jaw spread exceeding 6-1/2 inches measured perpendicular to the hinges.

**4VAC15-40-220. Use of deadfalls prohibited; restricted use of snares.**

It shall be unlawful to trap, or attempt to trap, on land any wild bird or wild animal with any deadfall or snare; provided, that snares with loops no more than 12 inches in diameter and with the [ top ~~bottom~~ ] of the snare loop set not to exceed 12 inches above ground level may be used with the written permission of the landowner [ ~~provided further that any snare set above the surface of the ground and capable of opening more than four inches in diameter must include a cable stop that prevents the loop from closing smaller than 2 1/2 inches in diameter. The provisions of this section shall not apply to department personnel while in performance of their official duties and other individuals specifically exempted by the director for the purpose of conducting wildlife damage management activities~~ ].

VA.R. Doc. No. R07-809; Filed July 1, 2008, 4:26 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-50. **Game:** Bear (amending 4VAC15-50-20, 4VAC15-50-25, 4VAC15-50-81, 4VAC15-50-91).

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

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendments establish a two-week open season on bear on lands soon to be purchased by the Department of Forestry in Washington and Russell counties; change the opening date of the bear season from the first Monday in November to October 1, an increase of five weeks in the cities of Suffolk, Chesapeake and Virginia Beach; and remove the requirements to "seal" (with a nose tag) black bears harvested by licensees when they are checked at bear check stations.*

**4VAC15-50-20. Open season; first Monday in December and for 11 consecutive hunting days following in certain counties or portions of counties and on the Clinch Mountain and Hidden Valley Wildlife Management Areas and on Department of Forestry lands in Washington and Russell counties.**

It shall be lawful to hunt bear from the first Monday in December and for 11 consecutive hunting days following, both dates inclusive, on the Clinch Mountain and Hidden Valley Wildlife Management Areas, on Department of Forestry lands in Washington and Russell counties, and in the counties of Buchanan, Campbell (west of Norfolk Southern Railroad), Carroll, Dickenson, Floyd, Franklin, Grayson, Henry, Lee, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Russell, Scott, Smyth (south of Interstate 81), Tazewell (that part north of Route 19 that is west of Route 16), Washington (south of Interstate 81 and that part north of Interstate 81 that is west of Route 19), Wise, and Wythe (south of Interstate 81)

**4VAC15-50-25. Open season; cities of Chesapeake, Suffolk and Virginia Beach.**

It shall be lawful to hunt bear from ~~the first Monday in November~~ October 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk and Virginia Beach.

**4VAC15-50-81. Validating tags and checking bear by licensee or permittee.**

A. Any person killing a bear shall, before removing the carcass from the place of kill, validate an appropriate tag on their special license for hunting bear, deer, and turkey or special permit by completely removing the designated notch area from the tag. Place of kill shall be defined as the location where the animal is first reduced to possession. It shall be unlawful for any person to validate (notch) a bear tag from any special license for hunting bear, deer, and turkey or special permit prior to the killing of a bear. A bear tag that is mistakenly validated (notched) prior to the killing of a bear must be immediately voided by the licensee or permittee by writing, in ink, the word "VOID" on the line provided on the license tag.

---

# Regulations

---

B. Upon killing a bear and validating (notching) a license tag or special permit, as provided above, the licensee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag or special permit to an authorized bear checking station or to an appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass and validated (notched) license tag or special permit to the bear checking station, the licensee shall surrender or allow to be removed one premolar tooth from the carcass ~~and have a seal, furnished by the department, permanently attached by the check station operator.~~ At such time, the person checking the carcass will be given a game check card. The successful hunter shall then immediately record the game check card number, in ink, on the line provided adjacent to the license tag that was validated (notched) in the field. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

C. It shall be unlawful for any person to destroy the identity (sex) of any bear killed unless and until the license tag or special permit is validated (notched) and checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as the sex of the animal remains identifiable and all the parts of the carcass are present when the bear is checked at an authorized bear checking station. Any bear found in the possession of any person without a validated (notched) license tag or documentation that the bear has been checked at an authorized bear checking station as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

## **4VAC15-50-91. Checking bear by persons exempt from license requirements or holding a license authorization number.**

A. Upon killing a bear, any person exempt from license requirements as prescribed in §29.1-301 of the Code of Virginia, or issued a complimentary license as prescribed in §29.1-339, or the holder of a permanent license issued pursuant to §29.1-301 E, or the holder of a Virginia license authorization number issued by a telephone or electronic media agent pursuant to §29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized bear checking station or to any appropriate representative of the department in the county or adjoining county in which the bear was killed. Upon presentation of the carcass to the bear checking station, the person checking the carcass shall surrender or allow to be removed one premolar tooth from the carcass ~~and have a seal, furnished by the~~

~~department, permanently attached by the check station operator.~~ At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department. The game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass.

B. It shall be unlawful for any person to destroy the identity of the sex of any bear killed until the bear is checked as required by this section. Successful bear hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the bear is checked at a big game check station.

VA.R. Doc. No. R07-804; Filed July 1, 2008, 4:26 p.m.

## **Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** **4VAC15-70. Game: Bobcat (amending 4VAC15-70-50; adding 4VAC15-70-70).**

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

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

### **Summary:**

*The amendments (i) remove the requirement to affix a Convention on International Trade in Endangered Species (CITES) seal on bobcats that are mounted or tanned for personal use (not sold), and (ii) add a provision for the department to authorize individuals to affix CITES tags to bobcats themselves instead of requiring tagging by an "agent" of the department.*

*The amendments also (i) establish a new mandatory automated harvest reporting system for all bobcats harvested by hunters and trappers and describe the procedures for reporting the harvest of bobcat within 24 hours after the kill, and (ii) provide for a confirmation process as proof of compliance with the regulation.*

**4VAC15-70-50. Pelts to be sealed before sale, etc.**

It shall be unlawful to ~~tan, mount,~~ buy, sell, barter, ~~exchange,~~ traffic or trade in, bargain for, solicit for, purchase, or transport out of the Commonwealth, any bobcat pelts until the pelts have been sealed by an agent ~~of~~ or other individual designated by the department. All bobcat pelts or unskinned carcasses required to be sealed under the provisions of this section must be sealed not later than April 1 of the license year in which the animal is taken.

**4VAC15-70-70. Checking requirements.**

Any hunter or trapper who kills a bobcat shall report the kill within 24 hours through the department's automated harvest reporting system. At such time, the person reporting the kill will be furnished with a confirmation number. The hunter or trapper shall immediately record this confirmation number in a location where it can later be retrieved to prove compliance with checking requirements or to request a department seal. Any bobcat received by a taxidermist for mounting or tanning shall have written documentation securely attached to the carcass that includes the full name of the hunter or trapper, date of kill, and the harvest confirmation number.

VA.R. Doc. No. R07-814; Filed July 1, 2008, 4:27 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-90. **Game:** Deer (amending 4VAC15-90-22, 4VAC15-90-70, 4VAC15-90-80, 4VAC15-90-90, 4VAC15-90-91).

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

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendments (i) extend the special late antlerless deer open season in the counties of Fairfax, Loudoun, and Prince William counties through the last Saturday in March, (ii) include Fauquier County in the special late*

*antlerless deer open season, and (iii) excludes department-owned lands.*

*The amendments also (i) begin the urban archery deer season on the first, rather than the third, Saturday in September, and (ii) establish an antlerless deer archery season in Loudoun and Prince William counties with dates that correspond to the urban archery season.*

*The amendments (i) add one week to the beginning of the early special muzzleloading season west of the Blue Ridge and on national forest lands in Amherst, Bedford, and Nelson counties, (ii) establish a late muzzleloading deer season in the City of Suffolk (east of the Dismal Swamp line) and make the last six days of the season either-sex deer hunting days, and (iii) increase the number of either-sex deer hunting days during the late muzzleloading season on private lands in Grayson County from one to 6 days.*

*The amendments also (i) establish a special "Earn A Buck" regulation on private lands in the counties of Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William and Roanoke, (ii) require that in these counties at least one antlerless deer must be taken before the second antlered deer of the license year can be taken, and (iii) require that in these counties an additional antlerless deer must be taken before the third antlered deer of the license year can be taken.*

*The amendments (i) increase either sex deer hunting days in 16 eastern Virginia city/counties (Albemarle, Chesapeake, Chesterfield, Essex, Goochland (east of US Route 522), Halifax, Hanover, Henrico, King George, King and Queen, New Kent, Pittsylvania (east of Norfolk Southern Railroad), Powhatan, Suffolk (east and west of the Dismal Swamp line), Virginia Beach and Westmoreland), (ii) reduce either-sex deer hunting days on private lands in two western Virginia counties (Rockbridge and a portion of Rockingham), (iii) reduce either-sex deer hunting days on National Forest and Department-owned lands (public lands) in 12 counties (Amherst, Bedford, Bland, Botetourt, Carroll, Craig, Giles, Montgomery, Nelson, Pulaski, Roanoke, and Wythe), (iv) increase either-sex deer hunting days on Featherfin WMA, and (v) include a soon to be purchased Virginia Department of Forestry property in the public land either-sex day regulation in Russell and Washington counties.*

**4VAC15-90-22. Special late antlerless only open season; Fairfax, Fauquier, Loudoun, and Prince William counties.**

It shall be lawful to hunt antlerless deer from the Monday following the first Saturday in January through the ~~first~~ last Saturday in ~~February~~ March, both dates inclusive, in Fairfax, Fauquier, Loudoun and Prince William counties [ except on department-owned lands ].

---

# Regulations

---

## 4VAC15-90-70. Bow and arrow hunting.

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive, except where there is a closed general hunting season on deer.

B. In addition to the season provided in subsection A of this section, it shall be lawful to hunt deer during the late special archery season with bow and arrow from the Monday following the close of the general firearms season on deer through the first Saturday in January, both dates inclusive, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County) and in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and on the Chester F. Phelps Wildlife Management Area and on national forest lands in Frederick County and from December 1 through the first Saturday in January, both dates inclusive, in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line) and Virginia Beach.

C. Deer of either sex may be taken full season during the special archery seasons as provided in subsections A and B of this section (except on PALS (Public Access Lands) in Dickenson County where it shall be unlawful to take antlerless deer during the special archery seasons provided for in subsections A and B of this section).

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons.

E. Arrows used for hunting big game must have a minimum width head of 7/8 of an inch and the bow used for such hunting must be capable of casting a broadhead arrow a minimum of 125 yards.

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season.

G. For the purpose of the application of subsections A through ~~H~~ I to this section, the phrase "bow and arrow" includes crossbows.

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the ~~third~~ first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except in the cities of Chesapeake, Suffolk, and Virginia Beach) and the counties of Fairfax and York provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban

archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department-owned lands.

## 4VAC15-90-80. Muzzleloading gun hunting.

A. It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the first Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted ~~east of the Blue Ridge Mountains, except on national forest lands in Amherst, Bedford and Nelson counties~~ and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp Line) and Virginia Beach. ~~It shall be lawful to hunt deer during the early special muzzleloading season with muzzleloading guns from the Saturday prior to the second Monday in November through the Friday prior to the third Monday in November, both dates inclusive, in all cities, towns, and counties where deer hunting with a rifle or muzzleloading gun is permitted west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties.~~

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns [~~from the Saturday prior to the third Monday in December through~~ starting 18 consecutive hunting days immediately prior to and inclusive of] the first Saturday in January, [~~both dates inclusive,~~] in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season in all cities, towns, and counties east of the Blue Ridge Mountains (except on national forest lands, state forest lands, state park lands except Occoneechee State Park, department-owned lands and Philpott Reservoir) and on the second Saturday only east of the Blue Ridge Mountains on state forest lands, state park lands except Occoneechee State Park, department-owned lands and on Philpott Reservoir. Deer of either sex may be taken during the entire early special muzzleloading season on Occoneechee State Park. Deer of either sex may be taken during the early

special muzzleloading season only on the second Monday in November in all counties west of the Blue Ridge Mountains (except Clarke, Buchanan, Dickenson, Floyd, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and in Grayson Highlands State Park and national forest lands in Grayson County, and on private lands in Frederick, Roanoke, and Warren counties) and on national forest and department-owned lands in Roanoke County and on national forest lands in Frederick and Warren counties and on national forest lands in Amherst, Bedford, and Nelson counties. Additionally, deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Frederick, Roanoke and Warren counties.

D. Deer of either sex may be taken during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 except on national forest lands), Bedford (except on national forest lands), Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151 except on national forest lands), Patrick, and Pittsylvania (west of Norfolk Southern Railroad). It shall be lawful to hunt deer of either sex during the last six days of the late special muzzleloading season in all counties west of the Blue Ridge Mountains (except Buchanan, Dickenson, Floyd, in Grayson Highlands State Park and national forest lands in Grayson, Lee, Russell, Scott, Smyth, Tazewell, Washington, Wise, and on private lands in Roanoke [ ~~County~~ and Warren Counties ] and on national forest and department-owned lands in Roanoke County and on national forest lands in [ Warren County and on national forest lands in ] Amherst, Bedford, Frederick, and Nelson counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp line), and Virginia Beach. Provided further it shall be lawful to hunt deer of either sex during the last day only of the late special muzzleloading season in the counties of ~~Grayson~~, Lee, Russell, Scott, Smyth, Tazewell, and Washington and in Grayson Highlands State Park and national forest lands in Grayson County. Additionally, deer of either-sex may be taken during the entire late special muzzleloading season in Floyd County and on private lands in Roanoke [ ~~County~~ and Warren Counties ].

E. Deer of either sex may be taken full season during the special muzzleloading seasons within the incorporated limits of any city or town in the Commonwealth that allows deer hunting except in the counties of Buchanan, Dickenson, and Wise and in the cities of Chesapeake, Suffolk, and Virginia Beach.

F. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns.

G. A muzzleloading gun, for the purpose of this section, means a single shot flintlock or percussion weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of

the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent [ or smokeless powder ] ).

H. It shall be unlawful to have in immediate possession any firearm other than a muzzleloading gun while hunting with a muzzleloading gun in a special muzzleloading season.

**4VAC15-90-90. Bag limit, bonus deer permits and special antlerless provision for youth hunters and earn a buck.**

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson counties) is two per day, six per license year, three of which must be antlerless.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties is one per day, five per license year, three of which must be antlerless. Only one antlered buck may be taken during the special early muzzleloading season per hunter. Only one antlered buck taken in Shenandoah County per license year may have less than four antler points one inch or longer on one side of the antlers.

C. [ ~~Antlerless~~ Except as noted in subsection E below, antlerless ] deer may be taken only during designated either-sex deer hunting days during the special archery seasons, special muzzleloading seasons, and the general firearms season.

D. Bonus deer permits shall be valid on private land in counties and cities where deer hunting is permitted (except Buchanan, Dickenson, and Wise counties) during the special archery seasons, special muzzleloading seasons, and the general firearms season. Bonus deer permits shall be valid on public lands, including state parks, state forests, national wildlife refuges, military areas, etc., as authorized by the managing agency. Unless otherwise posted or authorized in writing for wildlife management areas by the department, or for national forest lands by the U.S. Forest Service, the use of bonus permits is prohibited on department-owned and national forest lands. Bonus deer permits shall be valid for antlerless deer only. Deer taken on bonus permits shall count against the daily bag limit but are in addition to the seasonal bag limit.

E. Deer hunters 15 years of age and under, including those exempt from purchasing a hunting license, when in compliance with all applicable laws and license requirements, may take one antlerless deer per license year on days other than designated either-sex deer hunting days during the special muzzleloading seasons or the general firearms season in all counties that have at least one either-sex deer hunting day during the general firearms deer season.

F. Earn a buck. At least one antlerless deer must be taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, or Roanoke counties

---

# Regulations

---

before the second antlered deer of the license year may be taken on private lands in any of these counties. Furthermore, at least two antlerless deer must have been taken on private lands in Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, or Prince William counties before the third antlered deer of the license year may be taken on private lands in any of these counties.

## **4VAC15-90-91. General firearms season either-sex deer hunting days.**

A. During the general firearms deer season, deer of either sex may be taken within:

Accomack County: full season.

Albemarle County: ~~the second, third, and fourth Saturdays and the last 24 hunting days~~ full season.

Alleghany County: the second Saturday and the last two hunting days.

-National forest lands: the second Saturday and the last hunting day.

Amelia County: the second and third Saturdays and the last six hunting days.

Amherst County (east of U.S. Route 29): the second, third, and fourth Saturdays and the last 24 hunting days.

Amherst County (west of U.S. Route 29): full season.

-National forest lands: the second Saturday and the last ~~six~~ hunting days day.

Appomattox County: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second Saturday.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Arlington County: full season.

Augusta County: the second Saturday and the last six hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Bath County: the second Saturday and the last two hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Bedford County: full season.

-National forest lands: the second Saturday and the last ~~six~~ hunting days day.

Bland County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ hunting days day.

Botetourt County: full season.

-National forest lands: the second Saturday and the last ~~two~~ hunting days day.

Brunswick County: the second and third Saturdays and the last six hunting days.

Buchanan County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Buckingham County: the second and third Saturdays and the last six hunting days.

-Appomattox-Buckingham State Forest: the second Saturday.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (east of Norfolk Southern Railroad): the second, third, and fourth Saturdays and the last 24 hunting days.

Campbell County (west of Norfolk Southern Railroad): full season.

Caroline County: the second and third Saturdays and the last six hunting days.

Carroll County: full season.

-National forest and department-owned lands: the second Saturday and the last ~~two~~ hunting days day.

Charles City County: the second and third Saturdays and the last 12 hunting days.

-Chickahominy WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Charlotte County: the second and third Saturdays and the last six hunting days.

Chesapeake (City of): the first ~~Saturday~~ and second Saturdays following October 1st and the last ~~six~~ 12 hunting days.

Chesterfield County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

Clarke County: full season.

Craig County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ hunting days day.

Culpeper County: the second, third, and fourth Saturdays and the last 24 hunting days.

- Chester F. Phelps WMA: the second Saturday.
- Cumberland County: the second and third Saturdays and the last six hunting days.
- Cumberland State Forest: the second Saturday.
- Dickenson County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.
- Dinwiddie County: the second and third Saturdays and the last six hunting days.
- Essex County: the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.
- Fairfax County: full season (restricted to certain parcels of land by special permit).
- Fauquier County: full season.
- G.Richard Thompson WMA: the second Saturday and the last hunting day.
- Chester F. Phelps WMA: the second Saturday.
- Floyd County: full season.
- Fluvanna County: second and third Saturdays and the last six hunting days.
- Franklin County: full season.
- Philpott Reservoir: the second Saturday and the last six hunting days.
- Turkeycock Mountain WMA: the second Saturday and the last two hunting days.
- Frederick County: full season
- National forest lands: the second Saturday and the last hunting day.
- Giles County: the second Saturday and the last six hunting days.
- National forest lands: the second Saturday and the last ~~two~~ hunting days day.
- Gloucester County: the second, third, and fourth Saturdays and the last 24 hunting days.
- Goochland County (east of U.S. Route 522): the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.
- Goochland County (west of U.S. Route 522): the second and third Saturdays and last six hunting days.
- Grayson County: full season.
- National forest lands and portions of Grayson Highland State Park open to hunting: the second Saturday and the last hunting day.
- Greene County: the second, third, and fourth Saturdays and the last 24 hunting days.
- Greensville County: full season.
- Halifax County: the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.
- Hanover County: the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.
- Henrico County: the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.
- Henry County: full season.
- Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.
- Turkeycock Mountain WMA: the second Saturday and the last two hunting days.
- Highland County: the second Saturday and the last two hunting days.
- National forest and department-owned lands: the second Saturday and the last hunting day.
- Isle of Wight County: full season.
- Ragged Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.
- James City County: the second and third Saturdays and last 12 hunting days.
- King and Queen County: the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.
- King George County: the second and third Saturdays and the last ~~six~~ 12 hunting days.
- King William County: the second and third Saturdays and the last 12 hunting days.
- Lancaster County: the second, third, and fourth Saturdays and the last 24 hunting days.
- Lee County: the second Saturday and the last two hunting days.
- National forest lands: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.
- Loudoun County: full season.
- Louisa County: the second and third Saturdays and the last six hunting days.
- Lunenburg County: the second and third Saturdays and the last six hunting days.

---

# Regulations

---

Madison County: the second, third, and fourth Saturdays and the last 24 hunting days.

Mathews County: the second and third Saturdays and last 12 hunting days.

Mecklenburg County: the second and third Saturdays and the last six hunting days.

Middlesex County: the second and third Saturdays and last 12 hunting days.

Montgomery County: full season.

-National forest lands: the second Saturday and the last ~~two~~ hunting ~~days~~ day.

Nelson County (east of Route 151): the second, third, and fourth Saturdays and the last 24 hunting days.

-James River WMA: the second Saturday and the last six hunting days.

Nelson County (west of Route 151): full season.

-National forest lands: the second Saturday and the last ~~six~~-hunting ~~days~~ day.

New Kent County: the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Northampton County: full season.

Northumberland County: the second, third, and fourth Saturdays and the last 24 hunting days.

Nottoway County: the second and third Saturdays and the last six hunting days.

Orange County: the second, third, and fourth Saturdays and the last 24 hunting days.

Page County: the second Saturday and the last two hunting days.

-National forest lands: the second Saturday and the last hunting day.

Patrick County: full season.

-Fairystone Farms WMA, Fairystone State Park, and Philpott Reservoir: the second Saturday and the last six hunting days.

Pittsylvania County (east of Norfolk Southern Railroad): the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

-White Oak Mountain WMA: the second Saturday and the last hunting day.

Pittsylvania County (west of Norfolk Southern Railroad): full season.

Powhatan County: the second and third Saturdays and the last ~~six~~ 12 hunting days.

-Powhatan WMA: the second and third Saturdays and the last six hunting days.

Prince Edward County: the second and third Saturdays and the last six hunting days.

-Featherfin WMA: the second, third, and fourth Saturdays and the last 24 hunting days.

-Prince Edward State Forest: the second Saturday.

Prince George County: the second and third Saturdays and the last six hunting days.

Prince William County: full season.

Pulaski County: the second Saturday and the last six hunting days.

-National forest lands: the second Saturday and the last ~~two~~ hunting ~~days~~ day.

Rappahannock County: the second, third, and fourth Saturdays and the last 24 hunting days.

Richmond County: the second, third, and fourth Saturdays and the last 24 hunting days.

Roanoke County: full season.

-National forest and department-owned lands: the second Saturday and the last ~~two~~ hunting ~~days~~ day.

Rockbridge County: the second Saturday and the last ~~six~~ two hunting days.

-National forest and department-owned lands: the second Saturday and the last hunting day.

Rockingham County: the second Saturday and the last six hunting days.

-National forest lands and private lands west of Routes 613 and 731: the second Saturday and the last hunting day.

Russell County: the second Saturday and the last two hunting days.

-Clinch Mountain WMA, ~~and~~ Hidden Valley WMA, and state forest lands: the second Saturday and the last hunting day.

Scott County: the second Saturday and the last six hunting days.

-National forest lands: antlered bucks only—no either-sex days.

Only deer with antlers above the hairline may be taken.

Shenandoah County: full season.

-National forest lands: the second Saturday and the last hunting day.

Smyth County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: the second Saturday and the last hunting day.

Southampton County: full season.

Spotsylvania County: the second, third, and fourth Saturdays and the last 24 hunting days.

Stafford County: the second, third, and fourth Saturdays and the last 24 hunting days.

Suffolk (City of; east of the Dismal Swamp line): the first and second Saturdays following October 1st and the last ~~six~~ 12 hunting days.

Suffolk (City of; west of the Dismal Swamp line): the second ~~and~~, third, and fourth Saturdays and the last ~~12~~ 24 hunting days.

Surry County: full season.

-Carlisle Tract of the Hog Island WMA: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Sussex County: full season.

Tazewell County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: the second Saturday and the last hunting day.

Virginia Beach (City of): the first ~~Saturday~~ and second Saturdays following October 1 and the last ~~six~~ 12 hunting days.

Warren County: full season.

-National forest lands: the second Saturday and the last hunting day.

Washington County: the second Saturday and the last two hunting days.

-National forest lands, Clinch Mountain WMA, ~~and~~ Hidden Valley WMA, and state forest lands: the second Saturday and the last hunting day.

Westmoreland County: the second ~~and~~, third, and fourth Saturdays and the last 12 24 hunting days.

Wise County: antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Wythe County: the second Saturday and the last six hunting days.

-National forest lands and Big Survey WMA: the second Saturday and the last ~~two~~ hunting days day.

York County: full season.

B. Except as provided in the subsection A of this section, deer of either sex may be taken full season during the general firearms deer season within the incorporated limits of any city or town, state park, national wildlife refuge, or military installation that allows deer hunting.

VA.R. Doc. No. R07-803; Filed July 1, 2008, 4:27 p.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** 4VAC15-110. Game: Fox (amending 4VAC15-110-10, 4VAC15-110-75).

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

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The amendments align the season dates for dog-only fox hunting on designated public areas with the period when it is lawful to hunt foxes with firearms. Changes from the proposed include removing the provision that allowed coyotes to be released in foxhound training preserves that meet certain conditions as approved by the director or his designee.*

### Part I Hunting with Dogs Only

**4VAC15-110-10. Closed season in certain areas.**

It shall be unlawful to hunt foxes with dogs on the George Washington/Jefferson National Forest and on the Gathright, Goshen, G. Richard Thompson, Highland, Little North Mountain and Rapidan Wildlife Management Areas ~~from February 1 through October 31, both dates inclusive~~ except during the period when it is lawful to hunt foxes with firearms.

---

# Regulations

---

## **4VAC15-110-75. Foxhound training preserves; live-trapping for release.**

It shall be lawful for any foxhound training preserve permittee or those licensed trappers designated in writing by the permittee to live-trap and transport [~~coyotes (Canis latrans), and~~] red (*Vulpes vulpes*) and gray (*Urocyon cinereoargenteus*) foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits authorized by the board and issued by the department [~~and containing conditions approved by the director or his designee~~]. For the purpose of this section, [~~coyotes and~~] foxes may be live-trapped on private land with landowner permission or on public lands designated by the department. For the purpose of this section, [~~coyotes and~~] foxes may be live-trapped and transported within the Commonwealth of Virginia.

VA.R. Doc. No. R07-808; Filed July 1, 2008, 4:27 p.m.

### **Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia when promulgating regulations regarding the management of wildlife. The board is required by §2.2-4031 of the Code of Virginia to publish all proposed and final wildlife management regulations, including length of seasons and bag limits allowed on the wildlife resources within the Commonwealth of Virginia.

**Title of Regulation:** **4VAC15-240. Game: Turkey (amending 4VAC15-240-20, 4VAC15-240-31, 4VAC15-240-40, 4VAC15-240-50; adding 4VAC15-240-11, 4VAC15-240-51).**

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

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

#### **Summary:**

*The amendments shift the late segment of the six-week fall turkey season in most counties east of the Blue Ridge Mountains so that it begins on the Monday nearest December 2 and ends on the last Saturday in December and add the City of Suffolk, Accomack County, and Northampton County to the two-week and Thanksgiving Day fall turkey season*

*The amendments also (i) shift the late segment of the four-week fall turkey season so that it begins on the*

*Monday nearest December 2 and continues for 11 hunting days following; (ii) change the ending of legal shooting hours during the spring youth hunt day from 12 noon to sunset; (iii) remove Accomack and Northampton counties and the City of Suffolk from the continuous closed fall season regulation; and (iv) provide a youth fall turkey hunt day on the third Saturday in October for youth 15 years of age and under.*

## **4VAC15-240-11. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, on Thanksgiving Day, and on the Monday closest to December 2 through the last Saturday in December, both dates inclusive.**

Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to hunt turkeys in counties, cities and towns east of the Blue Ridge Mountains except Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad), Franklin, Henry, Nelson (west of Route 151), Patrick and Pittsylvania (west of Norfolk Southern Railroad) from the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, on Thanksgiving Day, and on the Monday nearest December 2 through the last Saturday in December, both dates inclusive.

## **4VAC15-240-20. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, and on Thanksgiving Day.**

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, and on Thanksgiving Day in the counties of Accomack, Buchanan, Isle of Wight, Northampton, Prince George, Southampton, Surry, and Sussex and the City of Suffolk.

## **4VAC15-240-31. Open season; certain counties and areas; Saturday prior to the last Monday in October and for 11 hunting days following, on Thanksgiving Day, and on the Monday closest to December 9 2 and for 11 hunting days following.**

It shall be lawful to hunt turkeys on the Saturday prior to the last Monday in October and for 11 consecutive hunting days following, on Thanksgiving Day, and on the Monday closest to December 9 2 and for 11 hunting days following in the counties of Charles City, Gloucester, James City, King George, Lancaster, Mathews, Middlesex, New Kent, Northumberland, Richmond, Westmoreland, and York (except on Camp Peary).

## **4VAC15-240-40. Open season; spring season for bearded turkeys.**

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in April and for 30 consecutive hunting days following, both

dates inclusive, from 1/2 hour before sunrise to 12:00 noon prevailing time during the first 19 hunting days and from 1/2 hour before sunrise to sunset during the last 12 hunting days of the spring season.

B. Turkey hunters 15 years of age and under may hunt on the first Saturday in April from 1/2 hour before sunrise to ~~12:00 noon prevailing time~~ sunset, when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or an adult that is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters on this day may assist with calling but they shall not carry or discharge weapons

C. Bearded turkeys may be hunted by calling.

D. It shall be unlawful to use dogs or organized drives for the purpose of hunting.

E. It shall be unlawful to use or have in possession any shot larger than number 2 fine shot when hunting turkeys with a shotgun.

**4VAC15-240-50. Continuous closed season in certain counties, cities and areas.**

There shall be continuous closed turkey season, except where a special spring season for bearded turkeys is provided for in 4VAC15-240-40, in the ~~counties~~ county of ~~Aceomack,~~ Arlington, ~~and Northampton;~~ and in the cities of Chesapeake, Hampton, Newport News, ~~Suffolk,~~ and Virginia Beach.

**4VAC15-240-51. Youth fall turkey hunt.**

In counties, cities, and areas with a fall turkey season, hunters 15 years of age and under may hunt turkey on the third Saturday in October when in compliance with applicable license requirements and when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth hunters on this day may assist with calling turkey but they shall not carry or discharge weapons.

VA.R. Doc. No. R07-807; Filed July 1, 2008, 4:27 p.m.

**Final Regulation**

**REGISTRAR'S NOTICE:** The Board of Game and Inland Fisheries is claiming an exemption from the Administrative Process Act pursuant to §29.1-701 E of the Code of Virginia, which provides that the board shall promulgate regulations to implement Chapter 7 (§29.1-700 et seq.) of Title 29.1 (Boating Laws) as prescribed in Article 1 (§29.1-500 et seq.) of Chapter 5 of Title 29.1 of the Code of Virginia. Regulations promulgated pursuant to Article 1 of Chapter 5 of Title 29.1 (Wildlife Management Regulations) are exempt from the Administrative Process Act pursuant to subdivision A 3 of §2.2-4002 of the Code of Virginia.

**Title of Regulation:** **4VAC15-410. Watercraft: Boating Safety Education (adding 4VAC15-410-10 through 4VAC15-410-160).**

**Statutory Authority:** §§29.1-701, 29.1-735, and 29.1-735.2 of the Code of Virginia.

**Effective Date:** July 1, 2008.

**Agency Contact:** Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4016 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341 or email phil.smith@dgif.virginia.gov.

**Summary:**

*The regulation complies with §29.1-735.2 of the Code of Virginia, which mandates that the Board of Game and Inland Fisheries promulgate regulations by July 1, 2008, to implement a boating safety education program for all motorboat and personal watercraft operators to meet boating safety education requirements.*

**CHAPTER 410**

**WATERCRAFT: BOATING SAFETY EDUCATION**

**4VAC15-410-10. Application.**

This chapter applies to all operators of a motorboat with a motor of 10 horsepower or greater or personal watercraft on the public waters of the Commonwealth. However, the provisions of this chapter shall not apply to law-enforcement officers while they are engaged in the performance of their official duties.

**4VAC15-410-20. Definitions.**

As used in this chapter, unless the context clearly requires a different meaning, the following words and terms shall have the following meanings:

"Approved course provider" is any individual, business, or organization that [ ~~instructs or provides~~ makes available to the boating public ] a boating safety education course approved by the National Association of State Boating Law Administrators and accepted by the department. An approved course provider shall have executed and have on file a valid cooperative agreement with the department. [ Persons who simply provide classroom instruction for an approved course provider shall not be considered an approved course provider. The department will make information regarding such approved courses and providers readily available for public access. ]

"Board" means the Board of Game and Inland Fisheries.

"Boating safety education course" means a course offered in the classroom, through the Internet, or through an electronic format such as CD-ROM that provides a course content and test questions that have been reviewed and approved by the National Association of State Boating Law Administrators in

---

# Regulations

---

accordance with the National Boating Education Standards, updated January 1, 2008, and accepted by the department. A boating safety education course shall include no less than 50 test questions, which shall include at least 10 test questions specific about Virginia boating laws.

"Department" means the Department of Game and Inland Fisheries.

"Dockside safety checklist" means a document provided by the department that consists of selected facts about Virginia boating laws and safe boat operation that a rental or livery agent or motorboat leasing business is required to present to those who rent or lease a motorboat [ or personal watercraft ]. The dockside safety checklist must be reviewed and initialed by the person operating the motorboat before the boat can be rented/leased and operated.

"Equivalency exam" means a written examination that is developed by the department to test the knowledge of information included in the curriculum of a boating safety education course (may also be referred to as a challenge exam). The equivalency exam is intended to provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in §29.1-735.2 of the Code of Virginia without having to take and successfully complete a boating safety education course. The equivalency exam shall be comprised of no less than 75 or more than 100 test questions, shall include no less than 25 questions specific about Virginia boating laws, [ and ] shall be proctored by an individual(s) specifically designated by the department [ , and shall be completed without the use of any reference material ]. A minimum score of at least 70% shall be considered passing.

"Motorboat" means any vessel propelled by machinery whether or not the machinery is the principal source of propulsion and for this chapter shall mean with a motor of 10 horsepower or greater.

"NASBLA" means the National Association of State Boating Law Administrators.

"NASBLA-approved course" means a boating safety education course that has been reviewed and approved by NASBLA.

"Onboard direct supervision" as referenced in §29.1-735.2 B 6 and 9 of the Code of Virginia occurs when a person maintains close visual and verbal contact with, provides adequate direction to, and can immediately assume control of a motorboat from the operator of a motorboat. A person who is water skiing, or is in the cabin of a motorboat and not at the helm/wheel is not considered to be in [ a position capable of providing ] direct supervision.

"Operate" means to navigate or otherwise control the movement of a motorboat or vessel.

"Optional Virginia Boater Education Card" means a card authorized for issuance by the department to persons who (i) can show they have met the minimum standard of boating safety education course competency, (ii) possess a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government, (iii) possess a Canadian Pleasure Craft Operator's Card, or (iv) possess a commercial fisherman registration pursuant to §28.2-241 of the Code of Virginia.

"Personal watercraft" means a motorboat less than 16 feet in length that uses an inboard motor powering a jet pump as its primary motive power and that is designed to be operated by a person sitting, standing, or kneeling on, rather than in the conventional manner of sitting or standing inside the vessel.

"Proctored" means that the written equivalency exam has been administered under the direct supervision of (i) a designated member of the United States Coast Guard Auxiliary or the United States Power Squadrons®, (ii) a designated department employee [ or a department volunteer boating safety instructor ], or (iii) an individual who has been approved for such purpose by the department.

"Temporary operator's certificate" means a nonrenewable document issued with the certificate of number for the motorboat [ or personal watercraft ], if the boat is new or was sold with a transfer of ownership. A temporary operator's certificate shall be issued only by the department, by any person authorized by the director to act as an agent to issue a certificate of number pursuant to §29.1-706 of the Code of Virginia, or by a license agent of the department authorized to issue a temporary registration certificate for a motorboat [ or personal watercraft ]. A temporary operator's certificate shall allow the owner(s) to operate a motorboat with a motor of 10 horsepower or greater or personal watercraft in Virginia for 90 days.

"Vessel" means every description of watercraft, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

"Waters of the Commonwealth" means any public waters within the territorial limits of the Commonwealth.

## **4VAC15-410-30. Compliance schedule and phase-in provisions.**

The requirements for boating safety education shall be phased in according to the following provisions:

1. Personal watercraft operators 20 years of age or younger shall meet the requirements by July 1, 2009;
2. Personal watercraft operators 35 years of age or younger shall meet the requirements by July 1, 2010;
3. Personal watercraft operators 50 years of age or younger and motorboat operators 20 years of age or younger shall meet the requirements by July 1, 2011;

4. All personal watercraft operators, regardless of age, and motorboat operators 30 years of age or younger shall meet the requirements by July 1, 2012;

5. Motorboat operators 40 years of age or younger shall meet the requirements by July 1, 2013;

6. Motorboat operators 45 years of age or younger shall meet the requirements by July 1, 2014;

7. Motorboat operators 50 years of age or younger shall meet the requirements by July 1, 2015;

8. All motorboat operators, regardless of age, shall meet the requirements by July 1, 2016.

**4VAC15-410-40. Provisions for compliance and minimum standards for boating safety education course competency.**

A. A person shall be considered in compliance with the requirements for boating safety education if he meets one or more of the following provisions pursuant to §29.1-735.2 B 1 through 9 of the Code of Virginia:

1. Completes and passes a boating safety education course;

2. Passes an equivalency exam;

3. Possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card;

4. Possesses a temporary operator's certificate;

5. Possesses a rental or lease agreement from a motorboat [ or personal watercraft ] rental or leasing business that lists the person as the authorized operator of the motorboat;

6. Operates the motorboat under onboard direct supervision of a person who meets the requirements of this section;

7. Is a nonresident, is temporarily using the waters of Virginia for a period not to exceed 90 days, and meets any applicable boating safety education requirements of the state of residency, or possesses a Canadian Pleasure Craft Operator's Card;

8. Has assumed operation of the motorboat [ or personal watercraft ] due to the illness or physical impairment of the initial operator, and is returning the motorboat [ or personal watercraft ] to shore in order to provide assistance or care for the operator; or

9. Is registered as a commercial fisherman pursuant to §28.2-241 of the Code of Virginia or is under the onboard direct supervision of the commercial fisherman while operating the commercial fisherman's boat.

B. The minimum standards for boating safety education course competency required by the department are:

1. Successful completion of a classroom boating safety education course in person and a passing score of at least 70% on a written test administered closed-book at the conclusion of the course by the designated course instructor(s) or other designated course assistant;

2. Successful completion of a classroom boating safety education course in person and a passing score of at least 90% on a written test administered open-book at the conclusion of the course by the designated course instructor(s) or other designated course assistant;

3. Successful completion of a boating safety education course offered through the Internet or through an electronic format such as CD-ROM and a passing score of at least 90% on a self-test administered in conjunction with the course material; or

4. A score of at least 70% on a proctored equivalency exam.

**4VAC15-410-50. Boating safety education course provider requirements.**

A. To be an approved course provider, any individual, business, or organization that instructs or provides a boating safety education course shall execute and have on file a cooperative agreement with the department. It shall be the responsibility of the state boating law administrator to develop and execute such agreements. A list of approved course providers and boating safety education courses shall be kept by the department and made available to the public. Such list does not constitute any endorsement of any course or course provider by the department or the board.

B. As of January 1, 2009, boating safety education courses offered through the Internet and accepted by the department shall:

1. Be approved by NASBLA in accordance with the National Boating Education Standards, updated January 1, 2008, for course content/testing;

2. Be provided only by an approved course provider who has executed a valid cooperative agreement with the department. Such agreements may be amended at any time by the department and may be cancelled with 30 days notice upon failure of the course provider to comply with the terms and conditions of the agreement or its amendments;

3. Be formatted and made available to the student only in instructional/training modules;

4. Consist of no less than six instructional/training modules with each module having no less than 10 test questions, randomly selected from a pool of questions that contains at least three times the number of questions presented in the module test in 2009 and four times the number of questions

---

# Regulations

---

presented in the module test in 2010 and each following year:

5. Allow for the student to advance through the modules only in a sequential, chronological order and only upon successful completion of the test questions for the module. Successful completion shall be by a score of at least 90% correct on the test questions;

6. Be designed so that the student should spend at least six hours of active involvement in completing the course. Completing the course shall include familiarization with the course material, completion of any review questions, and completion of the test questions. The course design shall also include the provision of at least 50 separate web pages of course content and material for presentation to the student. Active involvement shall require the student to click on a "Next" or "Forward" button to progress through the course material;

7. Be designed so that the student is directed to repeat the entire module if the student has not scored at least 90% correct on the test questions for that module. The student shall also be provided with a reference to the applicable course text material for any missed questions on the module test; and

8. Be designed to promote the presentation, understanding and comprehension of boating safety information and safe practices and not the simple completion of an end-of-course test.

C. Any material and/or products to be used by an approved course provider that make reference to the department must be approved by the department, through the state boating law administrator, before publishing and/or distribution to the public.

D. Any fees charged by a course provider are set by the course provider, but must be clearly communicated to the student prior to taking the course.

## **4VAC15-410-60. Boating safety education course availability.**

A. The department shall coordinate with the United States Coast Guard Auxiliary, the United States Power Squadrons®, and any other approved course provider so that classroom-based boating safety education courses are available across the Commonwealth throughout the year.

B. The department shall coordinate with approved course providers of Internet-based courses so that courses developed and offered in accordance with 4VAC15-410-50 B are available.

C. The department shall make testing opportunities for the proctored equivalency exam available on a statewide basis throughout the year.

## **4VAC15-410-70. Boating safety education course certificates.**

A. Upon successful completion of a boating safety education course, the approved course provider shall provide the student with a course certificate and/or pocket-size card. At a minimum, such certificate/card shall include the student's name and date of birth, the issuance date, the name of the course, and indication of NASBLA course approval and acceptance by the department. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide [ ~~a record~~ ] to the department [ a copy of the record ] of those students issued a course certificate and/or pocket-size card. Upon request by the student and subject to verification of successful course completion, it shall be the responsibility of each approved course provider to issue duplicate certificates/cards.

B. Upon successful completion of the proctored equivalency exam, the department shall issue a completion certificate and/or card, which shall include the person's name, date of birth, and the issuance date. Upon request by the person to whom the certificate/card was originally issued and subject to verification of successful completion, the department shall issue a duplicate certificate/card.

## **4VAC15-410-80. Recordkeeping and student records.**

A. The department shall maintain a database of all students successfully completing the department's classroom-based boating safety education course and all persons successfully completing the equivalency exam. Such database shall include, but not be limited to, student name, address, date of birth, course/equivalency exam completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider for other classroom-based boating safety education courses shall provide [ ~~a record~~ ] to the department [ a copy of the record ] of those students successfully completing such course and the department may add this information to the student database. A change in student address will be made only upon receipt of a written request from the affected student.

B. Each approved course provider for boating safety education courses offered over the Internet or through an electronic format such as CD-ROM shall maintain a database of all students successfully completing such course. The database shall include, but not be limited to, student name, address, date of birth, course completion date, and the specific name of the course. On a schedule and in a manner mutually agreed to through a cooperative agreement, each approved course provider shall provide [ ~~a record~~ ] to the department [ a copy of the record ] of those students successfully completing their course. Such record shall include the database information referenced in this section. It shall be the responsibility of each approved course provider to ensure that reasonable measures, such as the Payment Card

Industry (PCI) data security measures, are taken to protect any acquired student data. Further, such data shall not be sold or otherwise used in any way except for the student's own completion of a boating safety education course and issuance of course completion documents.

#### **4VAC15-410-90. Instructor certification.**

A. To be certified as a boating safety education course instructor for the department's classroom-based boating safety education course, a person shall have successfully completed a classroom-based boating safety education course and be certified as an instructor by the United States Coast Guard Auxiliary, or the United States Power Squadrons®, or the National Safe Boating Council, or another certification program accepted by the department.

B. Applicants for certified instructor shall submit an application to the department on a form and in a manner determined by the state boating law administrator. At a minimum, the application shall include:

1. The applicant's name;
2. The applicant's street address;
3. The applicant's telephone number;
4. The applicant's email address, if any;
5. Information describing the applicant's experience and training in boating safety and seamanship and proof of completion of a NASBLA-approved boating safety education course; and
6. Any other information deemed necessary after review of the initial application.

C. Applicants may be required to submit a written consent for a criminal history background check in a manner determined by the Law Enforcement Division of the department.

#### **4VAC15-410-100. Provisions for open-book tests for classroom courses.**

A. A boating safety education course offered in a classroom setting by either the department or an approved course provider shall offer the student the option of taking the end-of-course exam either closed-book or open-book. The minimum standards for boating safety education course competency shall be as provided for in 4VAC15-410-40 B 1 and 2.

B. In taking the exam open-book, the student may use the course text, instructor handouts, any related course material, and any personal notes taken during the class instruction to assist in the completion of the exam. The exam must be completed in a single session with a time limit not to exceed two hours.

#### **4VAC15-410-110. Equivalency exam criteria.**

A. The department shall develop and make available a written equivalency exam to test the knowledge of information included in the curriculum of a boating safety education course. Such exam shall provide experienced and knowledgeable boaters with the opportunity to meet the boating safety education compliance requirement set forth in §29.1-735.2 of the Code of Virginia without having to take and successfully complete a boating safety education course.

B. The equivalency exam shall be proctored by an individual(s) specifically designated by the department. The use of reference materials shall not be allowed while the exam is being administered and the exam shall be completed in a single session with a time limit not to exceed three hours.

C. The equivalency exam shall be comprised of no less than 75 nor more than 100 exam questions and a minimum score of at least 70% shall be considered passing. Upon successful completion, an exam certificate and/or card shall be issued to the person completing the exam.

#### **4VAC15-410-120. Requirements for motorboat rental and leasing businesses and the dockside safety checklist program.**

A. Any person, business, or organization that provides a motorboat with a motor of 10 horsepower or greater or personal watercraft for rent or lease shall provide the rental/lease boat operator with a dockside safety checklist provided by the department. Other persons authorized to operate such boat shall also be provided with the dockside safety checklist.

B. A dockside safety checklist shall consist of selected facts about Virginia boating laws and safe boat operation.

C. The authorized operator(s) of the rental/leased boat shall review and initial each item in the dockside safety checklist before they may operate the boat being rented or leased.

D. The dockside safety checklist for the authorized operator(s) shall be retained on board the boat being rented or leased, along with the rental or lease agreement from the motorboat rental or leasing business, when the boat is being operated.

E. Any person who presents documentation that he has met the minimum standards for boating safety education course competency in accordance with 4VAC15-410-40 B or possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card or possesses a commercial fisherman registration pursuant to §28.2-241 of the Code of Virginia shall be exempt from the dockside safety checklist requirements.

---

# Regulations

---

F. Pursuant to §29.1-735.2 B 6 [ and 8 ] of the Code of Virginia, a person may be allowed to operate the rented/leased boat without completing the dockside safety checklist as long as he is operating under the onboard direct supervision of a person (i) who has completed the dockside safety checklist or (ii) who is otherwise exempt from the dockside safety checklist requirement [ or has assumed operation of the boat due to the illness or physical impairment of the initial operator, and is returning the boat to shore in order to provide assistance or care for the operator ] .

#### **4VAC15-410-130. Temporary operator's certificate.**

A. The registered owner(s) of a motorboat or personal watercraft, if the boat is new or was sold with a transfer of ownership, shall be issued with the certificate of number for the motorboat or personal watercraft a temporary operator's certificate that shall allow the owner(s) to operate such boat in Virginia for 90 days.

B. A temporary operator's certificate shall be issued by the department, by any person authorized by the director to act as an agent to issue a certificate of number pursuant to §29.1-706 of the Code of Virginia, or by a license agent of the department authorized to issue a temporary registration certificate for a motorboat. A temporary operator's certificate shall not be renewable.

#### **4VAC15-410-140. Optional Virginia Boater Education Card.**

A. The department may establish an optional [ long-lasting and durable ] Virginia Boater Education Card for issuance to persons who can show that they have met the minimum standard of boating safety education course competency or who possesses a valid license to operate a vessel issued to maritime personnel by the United States Coast Guard or a marine certificate issued by the Canadian government or possesses a Canadian Pleasure Craft Operator's Card or possesses a commercial fisherman registration pursuant to §28.2-241 of the Code of Virginia.

B. To obtain an optional Virginia Boater Education Card, a person must provide to the department:

1. A completed application on a form provided by the department. The application shall require the applicant's name, current mailing address, and date of birth. The applicant must also sign a statement declaring that statements made on the form are true and correct and that all documents submitted with the form are true and correct copies of documents issued to the applicant. Incomplete applications will be returned to the applicant;

2. A copy of the documentation (such as the boating safety education course completion certificate/wallet card or equivalency exam completion certificate/card) that indicates that the minimum standards for boating safety education course competency have been met. Such

documents must contain the name of the individual applying for the Virginia Boater Education Card. The department may require the applicant to provide the original document in the event that the copy submitted with the application is illegible or if the authenticity of the copy is not certain.

C. Upon receipt by the applicant, the optional Virginia Boater Education Card will serve in lieu of any other certificates or cards that have been issued to the bearer as a result of meeting the minimum standards for boating safety education course competency. As such, the Virginia Boater Education Card will not be transferable or revocable and will have no expiration date.

D. A person may apply, on a form provided by the [ ~~Department~~ department ], for a replacement Virginia Boater Education Card. A replacement card may be issued if the original card is lost, stolen or destroyed, if misinformation is printed on the card, or if the bearer has legally changed their name. The application shall include an affidavit stating the circumstances that led to the need for replacement of the original card.

#### **4VAC15-410-150. Fees.**

A. Pursuant to §29.1-735.2 E of the Code of Virginia, the board may establish fees for boating safety courses and certificates provided by the department. Such fees shall not exceed the cost of giving such instruction for each person participating in and receiving the instruction.

B. The department shall not charge a fee for the provision of its state course for basic boating education delivered in a conventional classroom setting.

C. Fees charged by an approved course provider for boating safety education courses are set by the course provider, but must be clearly communicated to the student prior to taking the course.

D. The fee for issuance of an optional Virginia Boater Education Card, which will serve in lieu of a previously-obtained boating safety education course certificate/card, shall be \$10. The fee for [ issuance of ] a replacement [ ~~card~~ Virginia Boater Education Card ] shall be \$8.00.

#### **4VAC15-410-160. Penalties [ for violation ] .**

[ Any person who operates a motorboat with a motor of 10 horsepower or greater or personal watercraft on the public waters of the Commonwealth shall, upon the request of a law-enforcement officer, present to the officer evidence that he has complied with §29.1-735.2 B of the Code of Virginia. ] As provided for in §§29.1-735.2 H and 29.1-748 B of the Code of Virginia, any person who violates any provision of this chapter shall be subject to a civil penalty of \$100. All civil penalties assessed under this chapter shall be deposited in the Motorboat and Water Safety Fund of the Game

Protection Fund and used as provided for in §29.1-701 of the Code of Virginia.

**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

Optional Virginia Boater Education Card Application Form (eff. [ ~~insert effective date~~ 7/1/08) ].

**OPTIONAL VIRGINIA BOATER EDUCATION CARD  
APPLICATION FORM**

Last Name \_\_\_\_\_

First Name \_\_\_\_\_

Middle Initial \_\_\_\_\_

Mailing Address

Street \_\_\_\_\_

City \_\_\_\_\_

State \_\_\_\_\_

Zip Code \_\_\_\_\_

Home Phone Number \_\_\_\_\_

Date of Birth \_\_\_\_\_ Gender \_\_\_\_\_

Hair Color \_\_\_\_\_ Eye Color \_\_\_\_\_

Name/Date/Type of Boating Education Course Completed  
\_\_\_\_\_  
\_\_\_\_\_

The following items must be submitted with this form:

- 1) Check or money order (payable Treasurer of Virginia) for \$10.00 (for a replacement card the fee is \$8.00)
- 2) A copy of your course completion documents or a copy of your equivalency exam certification

I certify that the information provided herein by me are true and correct statements and that all documents submitted herewith are true and correct copies of documents issued to me.

Legal Signature of Applicant \_\_\_\_\_

Signature Date \_\_\_\_\_

Send To: Virginia Department of Game and Inland Fisheries  
4010 W. Broad Street  
Richmond, Virginia 23230  
Attn: Boater Education Card

Optional Virginia Boater Education Card Application Form (eff. July 1, 2008)

DOCUMENT INCORPORATED BY REFERENCE

National Boating Education Standards, updated January 1, 2008, National Association of State Boating Law Administrators.

VA.R. Doc. No. R08-1187; Filed June 26, 2008, 10:36 a.m.

**TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS**

**CRIMINAL JUSTICE SERVICES BOARD**

**Final Regulation**

Title of Regulation: **6VAC20-80. Rules Relating to Certification of Criminal Justice Instructors (amending 6VAC20-80-10 through 6VAC20-80-90; repealing 6VAC20-80-100, 6VAC20-80-110).**

Statutory Authority: §9.1-105 of the Code of Virginia.

Effective Date: September 1, 2008.

Agency Contact: Judith Kirkendall, Regulatory Coordinator, Department of Criminal Justice Services, 202 North 9th St., 10th Floor, Richmond, VA 23219, telephone (804)225-4086, FAX (804)786-0588, or email judith.kirkendall@dcjs.virginia.gov.

Summary:

*The amendments (i) increase the number of instructor apprenticeship hours needed for specialty training; (ii) allow training academy directors to determine criteria for instructor recertification; (iii) eliminate the need for training academies to report recertification hours to the board on paper forms; and (iv) allow individuals who are newly hired by an agency or department and otherwise qualified as instructors in a specialized area to conduct training in their specialty without first having to work for the agency or department for two years.*

*Changes from the proposed include (i) expanding the definition of apprenticeship; (ii) adding requirements for provisional instructor certification; (iii) adding the requirement that certification becomes null and void when a certified instructor is no longer employed by an agency that comes under the purview of the department; (iv) adding the requirement for Adult Learners to methods of instruction; (v) changing instructor apprenticeship requirements to four hours for general instructor and four hours in any specialty or skill area except speed measurement, which shall consist of two hours; and (vi) eliminating the two-year limitation for subject matter experts instructing in their area of expertise.*

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.

**6VAC20-80-10. Definitions.**

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

"Academy director" means the chief administrative officer of a certified training academy.

~~"Academy instructor" means an individual who has complied with all of the applicable standards for certification or recertification, whichever applies, contained herein and is eligible to instruct, teach or lecture for more than three hours of approved or mandated training at a certified training academy.~~

~~"Agency instructor" means any previously certified instructor who has complied with all of the applicable standards for instructor recertification contained herein, except 6VAC20-80-70 A-5.~~

~~"Apprenticeship" means a period of supervised instruction, occurring after satisfactory completion of an approved instructor development course, wherein the instructor applicant is evaluated by a certified instructor during mandated or approved instruction.~~

~~"Certified training academy" means a certified training academy which provides instruction of at least the minimum training standards mandated by the board and has been approved by the department for the specific purpose of training criminal justice personnel.~~

~~"Criminal justice agency" means any government agency or identifiable subunit which has as its principal duty(s): the prevention, detection, and investigation of crime; the apprehension, detection, and prosecution of alleged offenders; the confinement or correctional supervision of accused or convicted persons; or the administrative or technical support of these functions.~~

~~"Department" means the Department of Criminal Justice Services.~~

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

~~"Instructional staff" means any individual employed in training on a full-time basis who shall instruct approved training.~~

"Apprenticeship" means a period of supervised instruction, occurring after satisfactory completion of an approved instructor development course, wherein the instructor applicant is evaluated by a certified instructor during

---

# Regulations

---

mandated instruction [ or another course of instruction approved by the academy director ].

"Certified training academy" means a certified training academy that provides instruction of at least the minimum training standards mandated by the board and has been approved by the department for the specific purpose of training criminal justice personnel.

"Criminal justice agency" means any government agency or identifiable subunit that has as its principal duty(s): the prevention, detection, and investigation of crime; the apprehension, detection, and prosecution of alleged offenders; the confinement or correctional supervision of accused or convicted persons; or the administrative or technical support of these functions, and is designated by the Code of Virginia as coming under the purview of the Department of Criminal Justice Services.

"Department" means the Department of Criminal Justice Services.

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

"Instructional staff" means any individual employed in training on a full-time basis who shall instruct mandated training.

"Instructor" means an individual who has complied with all of the applicable standards for certification or recertification, whichever applies, contained herein and is eligible to instruct or teach mandated training at a certified training academy.

"Mandated training" means training that satisfies compulsory minimum training requirements such as entry-level and in-service training.

## **6VAC20-80-20. Minimum Compulsory minimum standards for instructors.**

Individuals instructing ~~approved~~ mandated training shall possess one of the following certifications authorized by the department, excluding those enumerated in 6VAC20-80-50:

[ A. Provisional instructor certification.

For the individual who has not previously met the requirements for instructor certification, this certification:

1. Requires a high school diploma or high school equivalency certificate (GED);
2. Requires that the individual has met the compulsory minimum training standards for the primary function for which employed by a criminal justice agency, if applicable;
3. Does not authorize an individual to instruct or qualify others in mandated firearms, defensive tactics, driver training, or radar courses; and

4. Is valid for not more than two years and is not renewable. An individual may apply for instructor certification upon meeting the requirements of 6VAC20-80-20 and 6VAC20-80-60. ]

[ B. 1. ] General instructor certification. For individuals who have professional or proficiency skills in a field directly related to criminal justice, this certification:

[ 1. 1. ] Requires a high school diploma or high school equivalency certificate (GED);

[ 2. 2. ] Requires the applicant to be ~~instructional staff, a sworn officer or~~ an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for a general instructor certification provided that they only conduct training in their particular areas of expertise;

[ 3. 3. ] Requires a minimum of two years' experience in a criminal justice agency; or two years of experience in the subject area the individual will instruct;

[ 4. 4. ] Requires the applicant to have successfully completed an instructor development course which meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;

[ 5. 5. ] Is valid for not more than three years, but may be renewed;

[ 6. 6. ] Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship ~~on the instructor application form; and. This documentation shall be maintained at the [ appropriate ]~~ certified academy [ at which certification is obtained ];

[ 7. 7. ] Does not authorize an individual to instruct or qualify others in mandated firearms, defensive tactics, driver training, or radar operator courses; and

[ ~~h.~~ 8. ] Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

[ C. 2. ] Firearms instructor certification. For the individual who has had extensive firearms training and experience, this certification:

[ 1. 1. ] Requires a high school diploma or high school equivalency certificate (GED);

[ 2. 2. ] Requires the applicant to be ~~instructional staff, a sworn officer or~~ an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director; Nonsworn employees may apply for general instructor certification provided that they only conduct training in their particular area of expertise;

[ 3. ~~e~~ ] Requires a minimum of two years' experience in a criminal justice agency;

[ 4. ~~f~~ ] Requires the applicant to have attended and successfully completed an instructor development course which meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;

[ 5. ~~e~~ ] Requires the applicant also to have successfully completed a firearms instructors course which meets or exceeds the standards of the firearms instructors course approved by the department;

[ 6. ~~f~~ ] Is valid for not more than three years, but may be renewed;

[ 7. ~~g~~ ] Requires prequalification on a department "Modified Double Action Course or Virginia Tactical Qualification Course" with a minimum score of 90%;

[ 8. ~~h~~ ] Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship ~~on the instructor application form; and. This documentation shall be maintained at the [ appropriate ] certified academy [ at which certification is obtained ] ;~~

[ 9. ~~i~~ ] Authorizes an individual to instruct mandated firearms training courses and to conduct annual firearms qualifications only; and

[ ~~10.~~ ] Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

[ D. ~~3.~~ ] Defensive tactics certification. For the individual who has had extensive training and experience in the area of defensive tactics, this certification:

[ 1. ~~a~~ ] Requires a high school diploma or a high school equivalency certificate (GED);

[ 2. ~~b~~ ] Requires the applicant to be ~~instructional staff, a sworn officer or~~ an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director; Nonsworn employees may apply for general instructor certification provided that they only conduct training in their particular area of expertise;

[ 3. ~~e~~ ] Requires a minimum of two years experience in a criminal justice agency;

[ 4. ~~f~~ ] Requires the applicant to have attended and successfully completed an instructor development course which meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30.

[ 5. ~~e~~ ] Requires the applicant also to have successfully completed a defensive tactics instructors course which

meets or exceeds the standards of the defensive tactics instructors course approved by the department;

[ 6. ~~f~~ ] Is valid for not more than three years, but may be renewed;

[ 7. ~~g~~ ] Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship ~~on the instructor application form; and. This documentation shall be maintained at the [ appropriate ] certified academy [ at which certification is obtained ] ;~~

[ 8. ~~h~~ ] Authorizes the individual to instruct defensive tactics subjects only; and

[ ~~9.~~ ] Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

[ ~~4.~~ E. ] Driver training instructor certification. For the individual who has had extensive training and experience in the area of driver training, this certification:

[ 1. ~~a~~ ] Requires a high school diploma or a high school equivalency certificate (GED);

[ 2. ~~b~~ ] Requires the applicant to be ~~instructional staff, a sworn officer or~~ an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for general instructor certification provided that they only conduct training in their areas of expertise;

[ 3. ~~e~~ ] Requires a minimum of two years experience in a criminal justice agency;

[ 4. ~~f~~ ] Requires the applicant to have attended and successfully completed an instructor development course which meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;

[ 5. ~~e~~ ] Requires the applicant also to have successfully completed a driver training instructors course which meets or exceeds the standards of the driver training instructors course approved by the department;

[ 6. ~~f~~ ] Is valid for not more than three years, but may be renewed;

[ 7. ~~g~~ ] Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until they can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship ~~on the instructor application form; and. This documentation shall be maintained at the [ appropriate ] certified academy [ at which certification is obtained ] ;~~

---

# Regulations

---

[ ~~8. h.~~ ] Authorizes the individual to instruct driver training subjects only; and

[ ~~± 9.~~ ] Certification becomes null and void when the certified instructor is not employed by an agency that comes under the purview of the department.

[ F. ~~5. Radar Speed measurement~~ ] instructor certification. This certification:

[ 1. ~~a.~~ ] Requires a high school diploma or high school equivalency certificate (GED);

[ 2. ~~b.~~ ] Requires the applicant to be ~~instructional staff, a sworn officer or~~ an employee of a Virginia criminal justice agency, academy instructional staff, or an academy director. Nonsworn employees may apply for general instructor certification provided that they only conduct training in their particular area of expertise;

[ 3. ~~c.~~ ] Requires a minimum of two years experience in a criminal justice agency, including two years experience in radar operation;

[ 4. ~~d.~~ ] Requires the applicant to have attended and successfully completed an instructor development course which meets or exceeds the standards of the instructor development course enumerated in 6VAC20-80-30;

[ 5. ~~e.~~ ] Requires the applicant to have attended and successfully completed a radar instructor school which meets or exceeds the standards established by the department;

[ 6. This provision applies to all new personnel employed after July 1, 2007; ]

~~6.~~ [ ~~f.~~ 7. ] Is valid for not more than three years, but may be renewed;

~~7.~~ [ ~~g.~~ 8. ] Requires the applicant to serve an apprenticeship, as specified in 6VAC20-80-40, with a certified instructor until the applicant can demonstrate the ability to successfully instruct without supervision. The certified instructor shall document this successful completion of the apprenticeship ~~on the instructor application form; and. This documentation shall be maintained at the [ appropriate ] certified academy [ at which certification is obtained ] ;~~

~~8.~~ [ ~~h.~~ 9. ] Authorizes an individual to instruct radar subjects only; and

[ ~~± 10.~~ ] Certification becomes null and void when the certified instructor is no longer employed by an agency that comes under the purview of the department.

## **6VAC20-80-30. Compulsory minimum training standards for instructor development and recertification courses.**

The board establishes the following compulsory minimum training standards:

1. An instructor development course shall include a minimum of 40 hours of training and must address each of the following subjects:

a. Role of the Instructor/Adult Learner

b. Fundamentals of Communication

c. Liability and Ethics of Instructors

d. Research and Development

e. Instructional Performance Objectives

f. Preparation and Use of Lesson Plans

g. Methods of Instruction [ for Adult Learners ]

h. Preparation and Use of Audio-Visual Material

i. Criteria Testing and Test Construction

j. Student Presentations

k. Optional Topics (subject(s) selected at the discretion of the academy director, if applicable, but must pertain to instructor development.);

2. An instructor recertification course shall include a minimum of ~~six two~~ hours of training ~~and must address the following mandated subjects:~~ for each general instructor and all specialty designations. The director of a certified academy shall establish recertification criteria for that academy and submit completion of recertification training to the department.

~~a. Curriculum.~~

~~(1) Core subjects (4 hours minimum).~~

~~(a) Review of Instructional Techniques and Methods~~

~~(b) Review of Liability and Ethics of Instructors~~

~~(c) Training Innovations and Technology~~

~~(d) Testing and Measurements~~

~~(e) Record Keeping and Documentation~~

~~(2) Skill specific subjects (2 hours minimum)~~

~~(a) Review of Current Basic and In Service Course Requirements (Skills Areas to Emphasize and Review Current Mandates)~~

~~(b) Skill Specific Liability Issues;~~

~~3. Application(s) to conduct approved instructor development and recertification courses shall be submitted on forms provided by the department and within the time limit prescribed by the department.~~

## **6VAC20-80-40. Instructor apprenticeship requirements.**

A. The apprenticeship shall:

1. Occur after the successful completion of a Virginia certified or other equivalent instructor development course which meets or exceeds the standards of the instructor development course established by the department;

2. Be conducted under the supervision and evaluation of a Virginia certified instructor, who possesses at least three years of experience as a certified instructor in the topic of apprenticeship instruction; and

3. Consist of instructional presentation which shall total no less than four hours in duration ~~However, firearms instructor apprenticeship shall total no less than eight hours, four hours classroom and four hours range presentation.~~ for general instructor and no less than [ eight four ] hours in any specialty or skill area except for speed measurement [ that, which ] shall consist of [ four two ] hours. For the specialty or skill area the individual must demonstrate proficiency in both classroom and skills presentations.

B. The certified instructor shall document the successful completion of the apprenticeship ~~on the "Instructor Certification Application."~~ in a manner prescribed by the certified academy that is conducting the apprenticeship.

**6VAC20-80-50. Exemptions to certification requirements.**

The following individuals are exempted from the certification requirements set forth in 6VAC20-80-20:

~~1. Individuals who instruct three hours or less in any approved training session in a certified training academy;~~

~~2. 1.~~ An individual assigned by the academy director to instruct in emergency situations;

~~3. 2.~~ Individuals who possess professional or proficiency skills directly related to the subject matter in which they are instructing. This may include but not be limited to members of the bar, medical profession, public administrators, teachers, social service practitioners, etc. Documentation of skills may be requested and final approval, if necessary, rests with the department;

~~4. 3.~~ Subdivision ~~3 2~~ of ~~6VAC20-80-50~~ this section may apply to employees of criminal justice agencies of this Commonwealth and its political subdivisions if approved by the department;

~~5. 4.~~ Certified emergency care and first aid instructors; and

~~6. 5.~~ Individuals who serve as field training officers or on-the-job training officers for purposes of providing field training as required by minimum training standards. Such exemption shall not be construed to apply to training promulgated by the department other than field training or on-the-job training; and

6. Individuals who have conducted training as a subject matter expert may continue to conduct training in their area

~~of expertise [ only for two years after being hired by an agency designated by the Code of Virginia as coming under the purview of the department ];~~

**6VAC20-80-60. Application for instructor certification.**

~~A. A properly completed "Instructor Certification Application" is required from each instructor prior to being considered for certification. The application must be received by the department within 12 months of completion of the instructor course for which certification is requested. The application shall be accompanied by a recommendation from the chief of police, sheriff, agency administrator or his designee, and endorsed by the academy director shall conform to the format and requirements specified by the department.~~

~~B. If a properly completed "Instructor Certification Application" is not received within the 12 month application period, the applicant must attend the applicable recertification course and must be reevaluated in accordance with the apprenticeship requirements set forth in 6VAC20-80-40 prior to consideration for certification.~~

**6VAC20-80-70. Instructor recertification.**

~~A. Instructor certifications, other than those issued to provisional instructors, will shall be valid for not more than three years. Individual instructors must meet all applicable recertification requirements by December 31 of the third calendar year following issuance of certification. Applications for recertification will be submitted on forms provided by the department.~~

~~1. Applicants for recertification shall be recommended by the chief of police, sheriff, agency administrator or his designee, and endorsed, where applicable, by the academy director.~~

~~2. A recertification application for departmental firearms instructors does not require endorsement by the academy director.~~

~~3. Applicants shall attend and successfully complete a recertification course which shall be approved by the department for each type of certification held. This requirement must be completed prior to December 31 of the calendar year in which the instructor is required to be recertified unless provided otherwise in accordance with subdivision 6 of 6VAC20-80-70.~~

~~Completion of one or more of the skills recertification seminars (firearms, defensive tactics, driver training, or radar training) will qualify an instructor for recertification in the general category.~~

~~4. Individuals whose certification expires shall comply with all requirements of 6VAC20-80-60 and meet any certification requirements that are in effect at that time.~~

---

# Regulations

---

~~5. Individuals who instruct in a certified training academy shall have taught a minimum of eight hours of mandated or approved instruction during the current period of certification, and shall have been evaluated by staff or students in order to be eligible for recertification as an academy instructor.~~

~~6. Individuals who have not taught a minimum of eight hours of mandated or approved instruction during the current period of certification and have not been evaluated by staff or students shall be designated as agency instructors. Agency instructors may become an academy instructor upon completion of the requirements set forth in paragraph 5 above under the supervision of a certified instructor~~

~~7. The director may grant an extension of the time limit for completion of the recertification requirements under the following conditions:~~

~~a. The chief of police, sheriff or agency administrator shall present written notification that the officer was unable to complete the required training within the specified time limit due to:~~

~~(1) Illness;~~

~~(2) Injury;~~

~~(3) Military service;~~

~~(4) Special duty assignment required and performed in the public interest;~~

~~(5) Leave without pay or suspension pending investigation or adjudication of a crime; or~~

~~(6) Any other reason documented by the agency administrator. Such reason must be specified and any approval granted shall not exceed 90 days.~~

~~b. Requests for extension of the time limit shall be requested prior to certification expiration.~~

## **6VAC20-80-80. ~~Suspension and revocation~~ Revocation of instructor certification.**

A. The department may ~~suspend or~~ revoke any instructor certification issued under these rules if it is determined that an individual has:

1. Falsified any department report, application, form or roster;
2. Demonstrated instructional incompetence based upon observation and assessment; or
3. Otherwise misused the authority granted herein.

B. An instructor's certification may be recommended for ~~suspension or~~ revocation for cause upon written request of the chief of police, sheriff, agency administrator, or academy director.

C. When a certified instructor terminates employment with the criminal justice agency ~~which~~ that recommended certification, or is no longer an employee of a Virginia criminal justice agency, or an academy director, the instructor certification shall become null and void ~~upon written request of the chief of police, sheriff, agency administrator, or academy director~~. Upon reemployment with a Virginia criminal justice agency, the instructor's certification may be reinstated upon the written request of the chief of police, sheriff or agency administrator. Requests for reinstatement shall be authorized by an academy director. ~~Any reinstatement of certification shall not exceed the original date of expiration.~~

D. Any instructor whose certification is revoked as provided in subsection A of this section shall not be eligible to reapply for certification for a period of three years from the date of revocation.

## **6VAC20-80-90. Administrative requirements.**

Reports will be required from the ~~school~~ academy director, chief of police, sheriff, or agency administrator on forms provided by or approved by the director and at such times as designated by the director.

## **6VAC20-80-100. ~~Effective date.~~ (Repealed.)**

~~These rules shall be effective on and after July 1, 1992, and until amended or repealed.~~

## **6VAC20-80-110. ~~Adopted: July 6, 1983.~~ (Repealed.)**

~~Amended: April 1, 1992.~~

<p><u>NOTICE:</u> The form used in administering the above regulation is listed below. Any amended or added forms are reflected in the listing and are published following the listing.</p>
---

## [ FORMS

Criminal Justice Instructor Application for Certification/Recertification, eff. ~~7/1/92~~ 9/1/99.

Criminal Justice Training Roster, Form 41, eff. 1/93. (Electronic Submission Only) ]



---

# Regulations

---

## Emergency Regulation

**Title of Regulation:** 6VAC20-171. **Regulations Relating to Private Security Services (amending 6VAC20-171-10, 6VAC20-171-50, 6VAC20-171-120, 6VAC20-171-230, 6VAC20-171-320, 6VAC20-171-350, 6VAC20-171-360).**

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

**Effective Dates:** July 1, 2008, through June 30, 2009.

**Agency Contact:** Lisa D. McGee, Regulatory Programs Manager, Department of Criminal Justice Services, P.O. Box 10110, Richmond, VA 23240-9998, telephone (804) 371-2419, FAX (804) 786-6344, or email [lisa.mcgee@dcjs.virginia.gov](mailto:lisa.mcgee@dcjs.virginia.gov).

### Preamble:

*Section 9.1-141 A of the Code of Virginia requires the board and the department to adopt regulations in accordance with the Administrative Process Act for persons employed by private security services businesses in classifications defined in §9.1-138 of the Code of Virginia. According to Chapter 638 of the 2008 Acts of Assembly, the board and the department are required to promulgate regulations to implement the regulatory requirements for locksmiths to be effective by July 1, 2008, as required by Chapter 638 of the 2008 Acts of Assembly.*

*By promulgating emergency regulations, the board and the department will include the category of locksmiths under the Regulations Relating to Private Security Services thus establishing a licensing and registration requirement for individuals providing locksmith services as enacted under §9.1-138 of the Code of Virginia.*

*A summary of changes include:*

- 1. The addition of definitions based on statutory amendments and amendment of existing definitions to include the category of locksmith.*
- 2. Changes reflect the inclusion of a locksmith category under initial business license requirements, initial registration requirements, standards of conduct and establishing entry-level and in-service minimum training standards for locksmiths.*

### Part I Definitions

#### **6VAC20-171-10. Definitions.**

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

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

"Alarm respondent" means a natural person who responds to the signal of an alarm for the purpose of detecting an intrusion of the home, business or property of the end user.

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

"Armed security officer" means a natural person employed to (i) safeguard and protect persons and property or (ii) deter theft, loss, or concealment of any tangible or intangible personal property on the premises he is contracted to protect, and who carries or has access to a firearm in the performance of his duties.

"Armored car personnel" means persons who transport or offer to transport under armed security from one place to another money, negotiable instruments or other valuables in a specially equipped motor vehicle with a high degree of security and certainty of delivery.

"Assistant training director" means a certified instructor designated by a private security training school director to submit training school session notifications and training rosters and perform administrative duties in lieu of the director.

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

"Business advertising material" means display advertisements in telephone directories, letterhead, business cards, local newspaper advertising and contracts.

"Central station dispatcher" means a natural person who monitors burglar alarm signal devices, burglar alarms or any other electrical, mechanical or electronic device used to prevent or detect burglary, theft, shoplifting, pilferage or similar losses; used to prevent or detect intrusion; or used primarily to summon aid for other emergencies.

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

"Certified training school" means a training school that is certified by the department for the specific purpose of training private security services business personnel in at least one category of the compulsory minimum training standards.

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

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

"Compliance agent" means a natural person who is an owner of, or employed by, a licensed private security services business. The compliance agent shall assure the

compliance of the private security services business with all applicable requirements as provided in §9.1-139 of the Code of Virginia.

"Courier" means any armed person who transports or offers to transport from one place to another documents or other papers, negotiable or nonnegotiable instruments, or other small items of value that require expeditious service.

"Date of hire" means the date any employee of a private security services business or training school performs services regulated or required to be regulated by the department.

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

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

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

"Electronic security business" means any person who engages in the business of or undertakes to (i) install, service, maintain, design or consult in the design of any electronic security equipment to an end user; (ii) respond to or cause a response to electronic security equipment for an end user; or (iii) have access to confidential information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security employee" means a natural person who is employed by an electronic security business in any capacity which may give him access to information concerning the design, extent, status, password, contact list, or location of an end user's electronic security equipment.

"Electronic security equipment" means electronic or mechanical alarm signaling devices, including burglar alarms or holdup alarms or cameras used to detect intrusion, concealment or theft to safeguard and protect persons and property. This shall not include tags, labels, and other devices that are attached or affixed to items offered for sale, library books, and other protected articles as part of an electronic article surveillance and theft detection and deterrence system.

"Electronic security sales representative" means a natural person who sells electronic security equipment on behalf of an electronic security business to the end user.

"Electronic security technician" means a natural person who installs, services, maintains or repairs electronic security equipment.

"Electronic security technician's assistant" means a natural person who works as a laborer under the supervision of the electronic security technician in the course of his normal duties, but who may not make connections to any electronic security equipment.

"Employed" means an employer/employee relationship where the employee is providing work in exchange for compensation and the employer directly controls the employee's conduct and pays taxes on behalf of the employee. The term "employed" shall not be construed to include independent contractors.

"Employee" means a natural person employed by a licensee to perform private security services that are regulated by the department.

"End user" means any person who purchases or leases electronic security equipment for use in that person's home or business.

"Engaging in the business of providing or undertaking to provide private security services" means any person who solicits business within the Commonwealth of Virginia through advertising, business cards, submission of bids, contracting, public notice for private security services, directly or indirectly, or by any other means.

"Firearms endorsement" means a method of regulation that identifies an individual registered as a private security registrant and has successfully completed the annual firearms training and has met the requirements as set forth in this chapter.

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

"Firm" means a business entity, regardless of method of organization, applying for a private security services business license or for the renewal or reinstatement of same.

"Key cutting" means making duplicate keys from an existing key and includes no other locksmith services.

"Incident" means an event that exceeds the normal extent of one's duties.

"In-service training requirement" means the compulsory in-service training standards adopted by the Criminal Justice Services Board for private security services business personnel.

"License number" means the official number issued to a private security services business licensed by the department.

---

## Regulations

---

"Licensed firm" means a business entity, regardless of method of organization, which holds a valid private security services business license issued by the department.

"Licensee" means a licensed private security services business.

"Locksmith" means any individual that performs locksmith services, or advertises or represents to the general public that the individual is a locksmith even if the specific term locksmith is substituted with any other term by which a reasonable person could construe that the individual possesses special skills relating to locks or locking devices, including use of the words lock technician, lockman, safe technician, safeman, boxman, unlocking technician, lock installer, lock opener, physical security technician or similar descriptions.

"Locksmith security equipment" means mechanical, electrical or electro-mechanical locking devices for the control of ingress or egress that do not primarily detect intrusion, concealment and theft.

"Locksmith services" mean selling, servicing, rebuilding, repairing, rekeying, repinning, changing the combination to an electronic or mechanical locking device; programming either keys to a device or the device to accept electronic controlled keys; originating keys for locks or copying keys; adjusting or installing locks or deadbolts, mechanical or electronic locking devices, egress control devices, safes, and vaults; opening, defeating or bypassing locks or latching mechanisms in a manner other than intended by the manufacturer; with or without compensation for the general public or on property not his own nor under his own control or authority.

"Official documentation" means personnel records; DD214; copies of business licenses indicating ownership; law-enforcement transcripts; certificates of training completion; a signed letter provided directly by a current or previous employer detailing dates of employment and job duties; college transcripts; letters of commendation; private security services registrations, certifications or licenses from other states; and other employment, training, or experience verification documents. A resume is not considered official documentation.

"On duty" means the time during which private security services business personnel receive or are entitled to receive compensation for employment for which a registration or certification is required.

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

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

"Personal protection specialist" means any natural person who engages in the duties of providing close protection from bodily harm to any person.

"Physical address" means the location of the building that houses a private security services business or training school, or the location where the individual principals of a business reside. A post office box is not a physical address.

"Principal" means any sole proprietor, individual listed as an officer or director with the Virginia State Corporation Commission, board member of the association, or partner of a licensed firm or applicant for licensure.

"Private investigator" means any natural person who engages in the business of, or accepts employment to make, investigations to obtain information on (i) crimes or civil wrongs; (ii) the location, disposition, or recovery of stolen property; (iii) the cause of accidents, fires, damages, or injuries to persons or to property; or (iv) evidence to be used before any court, board, officer, or investigative committee.

"Private security services business" means any person engaged in the business of providing, or who undertakes to provide, armored car personnel, security officers, personal protection specialists, private investigators, couriers, security canine handlers, alarm respondents, locksmiths, central station dispatchers, electronic security employees, electronic security sales representatives or electronic security technicians and their assistants to another person under contract, express or implied.

"Private security services business personnel" means each employee of a private security services business who is employed as an unarmed security officer, armed security officer/courier, armored car personnel, security canine handler, private investigator, personal protection specialist, alarm respondent, locksmith, central station dispatcher, electronic security employee, electronic security sales representative, electronic security technician or electronic security technician's assistant.

"Private security services instructor" means any natural person certified by the department to provide mandated instruction in private security subjects for a certified private security services training school.

"Private security services registrant" means any qualified individual who has met the requirements under Article 6 (6VAC20-171-120 et seq.) of Part III of this chapter to perform the duties of alarm respondent, locksmith, armored car personnel, central station dispatcher, courier, electronic security sales representative, electronic security technician, electronic security technician's assistant, personal protection specialist, private investigator, security canine handler, unarmed security officer or armed security officer.

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

"Reciprocity" means the relation existing between Virginia and any other state, commonwealth or providence as established by agreements approved by the board.

"Recognition" means the relation of accepting various application requirements between Virginia and any other state, commonwealth or providence as established by agreements approved by the board.

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

"Registration category" means any one of the following categories: (i) unarmed security officer and armed security officer/courier, (ii) security canine handler, (iii) armored car personnel, (iv) private investigator, (v) personal protection specialist, (vi) alarm respondent, (vii) central station dispatcher, (viii) electronic security sales representative, ~~or~~ (ix) electronic security technician ~~or~~ (x) electronic security technician's assistant or (xi) locksmith.

"Security canine" means a dog that has attended, completed, and been certified as a security canine by a certified security canine handler instructor in accordance with approved department procedures and certification guidelines. "Security canine" shall not include detector dogs.

"Security canine handler" means any natural person who utilizes his security canine in the performance of private security duties.

"Security canine team" means the security canine handler and his security canine performing private security duties.

"Session" means a group of classes comprising the total hours of mandated training in any of the following categories: unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, private investigator, alarm respondent, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, electronic security technician's assistant or compliance agent.

"Supervisor" means any natural person who directly or indirectly supervises registered or certified private security services business personnel.

"This chapter" means the Regulations Relating to Private Security Services (6VAC20-171) as part of the Virginia Administrative Code.

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

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

"Training school director" means a natural person designated by a principal of a certified private security services training school to assure the compliance of the private security services training school with all applicable requirements as provided in the Code of Virginia and this chapter.

"Unarmed security officer" means a natural person who performs the function of observation, detection, reporting, or notification of appropriate authorities or designated agents regarding persons or property on the premises he is contracted to protect, and who does not carry or have access to a firearm in the performance of his duties.

"Uniform" means any clothing with a badge, patch or lettering which clearly identifies persons to any observer as private security services business personnel, not law-enforcement officers.

## Article 2

### Private Security Services Business License

#### **6VAC20-171-50. Initial business license application.**

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

B. Each person seeking a license as a private security services business shall file a completed application provided by the department including:

1. For each principal and supervisor of the applying business, their fingerprints pursuant to 6VAC20-171-30;
2. Documentation verifying that the applicant has secured a surety bond in the amount of \$100,000 executed by a surety company authorized to do business in Virginia, or a certificate of insurance reflecting the department as a certificate holder, showing a policy of comprehensive general liability insurance with a minimum coverage of \$100,000 and \$300,000 issued by an insurance company authorized to do business in Virginia;
3. For each nonresident applicant for a license, on a form provided by the department, a completed irrevocable consent for the department to serve as service agent for all actions filed in any court in this Commonwealth;
4. For each applicant for a license as a private security services business except sole proprietor or partnership,

---

# Regulations

---

on a form provided by the department, the identification number issued by the Virginia State Corporation Commission for verification that the entity is authorized to conduct business in the Commonwealth;

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

6. On the license application, designation of at least one individual as compliance agent who is not designated as compliance agent for any other licensee, and who is certified or eligible for certification pursuant to 6VAC20-171-70;

7. The applicable, nonrefundable license application fee; and

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

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

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

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

F. Each license shall be issued to the legal business entity named on the application, whether it be a sole proprietorship, partnership, corporation, or other legal entity, and shall be valid only for the legal entity named on the license. No license shall be assigned or otherwise transferred to another legal entity, with the exception of a sole proprietorship or partnership that incorporates to form a new corporate entity where the initial licensee remains as a principal in the newly formed corporation. This

exception shall not apply to any existing corporation that purchases the business or assets of an existing sole proprietorship.

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

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

## Article 6

### Private Security Services Registration

#### **6VAC20-171-120. Initial registration application.**

A. Individuals required to be registered, pursuant to §9.1-139 C of the Code of Virginia, in the categories of armored car personnel, courier, unarmed security officer, armed security officer, security canine handler, private investigator, personal protection specialist, locksmith, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant shall meet all registration requirements in this section. Prior to the issuance of a registration, the applicant shall meet or exceed the requirements of registration and application submittal to the department as set forth in this section. Individuals who carry or have access to a firearm while on duty must have a valid registration with a firearm endorsement. If carrying a handgun concealed, the individual must also have a valid concealed handgun permit and the written permission of his employer pursuant to §18.2-308 of the Code of Virginia.

B. Each person applying for registration shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 18 years of age;
2. Successfully complete all initial training requirements for each registration category, including firearms endorsement if applicable, requested pursuant to the compulsory minimum training standards in 6VAC20-171-360 with the exception of locksmiths who meet the statutory requirements for waiver as set forth in §9.1-140.1; and
3. Be a United States citizen or legal resident alien of the United States.

C. Each person applying for registration shall file with the department:

1. A properly completed application provided by the department;
2. On the application, his mailing address;
3. Fingerprint cards pursuant to 6VAC20-171-30; and

4. The applicable, nonrefundable application fee.

D. Each person seeking or required to seek registration as unarmed security officer, locksmith, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant may be employed for a period not to exceed 90 consecutive days in any categories listed above while completing the compulsory minimum training standards, provided:

1. Fingerprint cards have been submitted pursuant to 6VAC20-171-30;
2. The individual is not employed in excess of 120 days without having been issued a registration from the department; and
3. The individual did not fail to timely complete the required training with previous employer(s).

E. Upon completion of the initial registration application requirements, the department may issue an initial registration letter for a period not to exceed 24 months. This registration letter shall be submitted by the applicant to the Virginia Department of Motor Vehicles or other specified entity for a state-issued photo identification card.

F. The department may issue a letter of temporary registration for not more than 120 days while awaiting the results of the state and national fingerprint search, provided the applicant has met the necessary conditions and requirements.

G. Each registration shall be issued to the individual named on the application and shall be valid only for use by that individual. No registration shall be assigned or otherwise transferred to another individual.

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

#### **6VAC20-171-230. Business standards of conduct.**

A licensee shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Ensure that all employees regulated, or required to be regulated, by this chapter conform to all application requirements, administrative requirements and standards of conduct pursuant to the Code of Virginia and this chapter.
3. Not direct any employee regulated, or required to be regulated, by this chapter to engage in any acts prohibited by the Code of Virginia and this chapter.

4. Employ individuals regulated, or required to be regulated, as follows:

a. A licensee shall employ or otherwise utilize individuals possessing a valid registration issued by the department showing the registration categories required to perform duties requiring registration pursuant to the Code of Virginia;

b. A licensee shall not allow individuals requiring registration as armored car personnel, armed security officers/couriers, alarm respondents with firearm endorsement, private investigators, personal protection specialists or security canine handlers to perform private security services until such time as the individual has been issued a registration by the department;

c. A licensee may employ individuals requiring registration as alarm respondent without firearm endorsement, locksmith, central station dispatcher, electronic security sales representative, electronic security technician, armored car driver, unarmed security officer or electronic security technician's assistant for a period not to exceed 90 consecutive days in any registered category listed above while completing the compulsory minimum training standards provided:

(1) The individual's fingerprint cards have been submitted pursuant to Article 1 (6VAC20-171-30 et seq.) of Part III of this chapter;

(2) The individual is not employed in excess of 120 days without having been issued a registration from the department; and

(3) The individual did not fail to timely complete the required training with previous employer(s).

d. A licensee shall not employ any individual carrying or having access to a firearm in the performance of his duties who has not obtained a valid registration and firearms endorsement from the department; and

e. A licensee shall maintain appropriate documentation to verify compliance with these requirements. A licensee shall maintain these documents after employment is terminated for a period of not less than three years.

5. Not contract or subcontract any private security services in the Commonwealth of Virginia to a person not licensed by the department. Verification of a contractor's or subcontractor's license issued by the department shall be maintained for a period of not less than three years.

6. Ensure that the compliance agent conforms to all applicable application requirements, administrative

---

# Regulations

---

requirements and standards of conduct pursuant to the Code of Virginia and this chapter.

7. Permit the department during regular business hours to inspect, review, or copy those documents, business records or training records that are required to be maintained by the Code of Virginia and this chapter.

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

9. Not commit any act or omission that results in a private security license or registration being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.

10. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.

11. Not obtain a license, license renewal, registration, registration renewal, certification, certification renewal, or firearms endorsement through any fraud or misrepresentation.

12. Include the business license number issued by the department on all business advertising materials pursuant to the Code of Virginia.

13. Not conduct a private security services business in such a manner as to endanger the public health, safety and welfare.

14. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration or certification.

15. Not represent as one's own a license issued to another private security services business.

16. When providing central station monitoring services, attempt to verify the legitimacy of a burglar alarm activation by calling the site of the alarm. If unable to make contact, call one additional number provided by the alarm user who has the authority to cancel the dispatch. (This shall not apply if the alarm user has

provided written authorization requesting immediate or one call dispatch to both their local police department and their dealer of record). This shall not apply to duress or hold-up alarms.

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

18. Utilize vehicles for private security services using or displaying a flashing light only as specifically authorized by §46.2-1025.9 of the Code of Virginia.

19. Not use or display the state seal of Virginia or the seal of the Department of Criminal Justice Services, or any portion thereof, or the seal of any political subdivision, or any portion thereof, as a part of any logo, stationery, letter, training document, business card, badge, patch, insignia or other form of identification or advertisement.

20. Not provide information obtained by the firm or its employees to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

21. Not engage in acts of unprofessional conduct in the practice of private security services.

22. Not engage in acts of negligent or incompetent private security services.

23. Not make any misrepresentation or false promise to a private security services business client or potential private security services business client.

24. Not violate any state or local ordinances.

25. Satisfy all judgments related to private security services not provided.

26. Not publish or cause to be published any written business material relating to private security services that contains an assertion, representation, or statement of fact that is false, deceptive or misleading.

27. Not conduct private security business under a fictitious or assumed name unless the name is on file with the Department of Criminal Justice Services. This does not apply to a private investigator conducting a "pretext," provided that the private investigator does not state that he is representing a private security business that does not exist.

## **6VAC20-171-320. Registered personnel standards of conduct.**

A registered individual shall:

1. Conform to all requirements pursuant to the Code of Virginia and this chapter.
2. Not violate or aid and abet others in violating the provisions of Article 4 (§9.1-138 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia or this chapter.
3. Not commit any act or omission that results in a private security license, registration or certification being suspended, revoked, not renewed or being otherwise disciplined in any jurisdiction.
4. Not have been convicted or found guilty in any jurisdiction of the United States of any felony or a misdemeanor involving moral turpitude, assault and battery, damage to real or personal property, controlled substances or imitation controlled substances as defined in Article 1 (§18.2-247 et seq.) of Chapter 7 of Title 18.2 of the Code of Virginia, prohibited sexual behavior as described in Article 7 (§18.2-61 et seq.) of Chapter 4 of Title 18.2 of the Code of Virginia, or firearms, from which no appeal is pending, the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purpose of this chapter. The record of conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be prima facie evidence of such guilt.
5. Not obtain a license, license renewal, registration, registration renewal, certification or certification renewal through any fraud or misrepresentation.
6. Not solicit or contract to provide any private security services without first having obtained a private security services business license with the department.
7. Carry a valid registration or valid temporary authorization letter at all times while on duty. Individuals requiring registration as an alarm respondent, a locksmith, a central station dispatcher, an electronic security sales representative or an electronic security technician may be employed for not more than 90 consecutive days in any category listed above while completing the compulsory minimum training standards and may not be employed in excess of 120 days without having been issued a registration or an exception from the department.
8. Carry the private security state issued photo identification card at all times while on duty once the authorization has been approved from the department, except those individuals operating outside the Commonwealth of Virginia who shall obtain the state

issued photo identification card prior to providing services when physically located in the Commonwealth.

9. Perform those duties authorized by his registration only while employed by a licensed private security services business and only for the clients of the licensee. This shall not be construed to prohibit an individual who is registered as an armed security officer from being employed by a nonlicensee as provided for in §9.1-140 of the Code of Virginia.

10. Possess a valid firearms training endorsement if he carries or has access to firearms while on duty and then only those firearms by type of action and caliber to which he has been trained on and is qualified to carry.

11. Carry a firearm concealed while on duty only with the expressed authorization of the licensed private security services business employing the registrant and only in compliance with §18.2-308 of the Code of Virginia.

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

13. If authorized to make arrests, make arrests in full compliance with the law and using only the minimum force necessary to effect an arrest.

14. Engage in no conduct which through word, deed or appearance suggests that a registrant is a law-enforcement officer, or other government official.

15. Display one's registration while on duty in response to the request of a law-enforcement officer, department personnel or client.

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

17. If a uniform is required, wear the uniform required by his employer. If wearing a uniform while employed as an armed security officer, unarmed security officer, alarm respondent or armored car personnel, that uniform must:

a. Include at least one insignia clearly identifying the name of the licensed firm employing the individual and, except armored car personnel, a name plate or tape bearing, as a minimum, the individual's last name attached on the outermost garment, except rainwear worn only to protect from inclement weather; and

b. Include no patch or other writing (i) containing the word "police" or any other word suggesting a law-enforcement officer; (ii) containing the word "officer" unless used in conjunction with the word "security"; or (iii) resembling any uniform patch or insignia of any duly constituted law-enforcement agency of this

---

# Regulations

---

Commonwealth, its political subdivisions or of the federal government. This restriction shall not apply to individuals who are also duly sworn special police officers, to the extent that they may display words that accurately represent that distinction.

18. When providing services as a central station dispatcher, attempt to verify the legitimacy of a burglar alarm activation by contacting an authorized individual at the site where an alarm signal originated before dispatching authorities. This shall not apply if the alarm user has provided written authorization requesting immediate dispatch. This shall not apply to duress or hold-up alarms.

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

20. Not represent as one's own a registration issued to another individual.

21. Not falsify, or aid and abet others in falsifying, training records for the purpose of obtaining a license, registration, certification, or certification as a compliance agent, training school, school director or instructor.

22. Not provide information obtained by the registrant or his employing firm to any person other than the client who secured the services of the licensee without the client's prior written consent. Provision of information in response to official requests from law-enforcement agencies, the courts, or from the department shall not constitute a violation of this chapter. Provision of information to law-enforcement agencies pertinent to criminal activity or to planned criminal activity shall not constitute a violation of this chapter.

23. Not engage in acts of unprofessional conduct in the practice of private security services.

24. Not engage in acts of negligent or incompetent private security services.

25. Not make any misrepresentation or make a false promise to a private security services business client or potential private security services business client.

26. Satisfy all judgments related to private security services not provided.

## Part V

### Compulsory Minimum Training Standards for Private Security Services Business Personnel

#### Article 1

#### Registration/Certification Category Requirements

#### **6VAC20-171-350. Entry level training.**

A. Each person employed by a private security services business or applying to the department for registration as

an unarmed security officer, armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, private investigator, locksmith, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician, or electronic security technician's assistant as defined by §9.1-138 of the Code of Virginia, or for certification as a compliance agent as required by §9.1-139 of the Code of Virginia, who has not met the compulsory minimum training standards prior to July 13, 1994, must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with this chapter.

B. Training will be credited only if application for registration or certification is submitted to the department within 12 months of completion of training.

C. Hour requirement. The compulsory minimum entry level training hour requirement by category, excluding examinations, practical exercises and range qualification, shall be:

1. Unarmed security officer—18 hours
2. Armed security officer/courier—40 hours

\*There are 8 hours of Arrest Powers, Policies, Procedures that are included in the Armed Security Officer Training. These 8 hours are mandatory for armed security officers only.

3. Armored car personnel—26 hours
4. Security canine handler—30 hours
5. Private investigator—60 hours
6. Personal protection specialist—60 hours
7. Alarm respondent—18 hours
8. Central station dispatcher—8 hours
9. Electronic security sales representative—8 hours
10. Electronic security technician—14 hours
11. Electronic security technician's assistant—4 hours
12. Compliance agent—6 hours
13. Locksmith—18 hours

D. Course content. The compulsory minimum entry level training course content by category, excluding examinations, mandated practical exercises and range qualification, shall be as provided in this subsection.

1. Security officer core subjects. The entry level curriculum for unarmed security officer, armed security officer/courier, security canine handler, and alarm respondent sets forth the following areas identified as:

- a. Orientation—2 hours

- (1) Virginia law and regulations
  - (2) Code of ethics
  - (3) General duties and responsibilities
  - b. Law —4 hours
  - c. Security patrol, access control and communications —2 hours
  - d. Documentation —4 hours
  - e. Emergency procedures —4 hours
  - f. Confrontation management —2 hours
- Total hours (excluding exam) —18 hours

2. Armed security officer/courier.

- a. Security officer core subjects —18 hours
- b. Entry level handgun training (refer to Article 2 (6VAC20-171-365 et seq.) of this part) —14 hours (includes dry fire, and judgmental shooting and low level light shooting familiarization)
- c. Arrest powers, policies, procedures - 8 hours
- d. Entry level shotgun training, if applicable (refer to Article 2 (6VAC20-171-365 et seq.) of this part) —2 hours

Total hours (excluding examinations, shotgun classroom instruction and range qualification) —40 hours

3. Armored car personnel.

- a. Administration and armored car orientation —1 hour
- b. Applicable sections of the Code of Virginia and DCJS regulations —1 hour
- c. Armored car procedures —10 hours
- d. Written examination
- e. Entry level handgun training (refer to Article 2 (6VAC20-171-365 et seq.) of this part) —14 hours (includes 4 hours of range dry fire and low level lighting)
- f. Entry level shotgun training, if applicable (refer to Article 2 (6VAC20-171-365 et seq.) of this part) —2 hours

Total hours (excluding examinations, shotgun classroom instruction and range qualification) —26 hours

4. Security canine handler.

Complete entry level training requirements pursuant to Article 3 (6VAC20-171-430 et seq.) of this part.

5. Private investigator.

a. Orientation: applicable sections of the Code of Virginia; Administrative Code 6VAC20-171; standards of professional conduct; and ethics —6 hours

b. Law: basic law; legal procedures and due process; civil law; criminal law; evidence; and legal privacy requirements —16 hours plus one practical exercise

c. General investigative skills, tools and techniques: surveillance; research; and interviewing —16 hours plus one practical exercise

d. Documentation: Report preparations; photography; audio recording; general communication; and courtroom testimony —8 hours plus one practical exercise

e. Types of investigations: accident; insurance; background; domestic; undercover; fraud and financial; missing persons and property; and criminal —14 hours plus one practical exercise

f. Written comprehensive examination

Total hours in classroom (excluding written examination and practical exercises) —60 hours

6. Personal protection specialist.

a. Administration and personal protection orientation —3 hours

b. Applicable sections of the Code of Virginia and DCJS regulations —1 hour

c. Assessment of threat and protectee vulnerability —8 hours

d. Legal authority and civil law —8 hours

e. Protective detail operations —28 hours

f. Emergency procedures —12 hours

(1) CPR

(2) Emergency first aid

(3) Defensive preparedness

g. Performance evaluation —Five practical exercises

h. Written examination

Total hours (excluding written examination and performance evaluation) —60 hours

7. Alarm respondent.

Security officer core subjects —18 hours

8. Electronic security subjects. The entry level electronic security subjects curriculum for central station dispatcher, electronic security sales representative,

---

# Regulations

---

electronic security technician and electronic security technician's assistant sets forth the following areas identified as:

- a. Administration and orientation to private security — 1 hour
- b. Applicable sections of the Code of Virginia and DCJS regulations —1 hour
- c. Overview of electronic security —1 hour
- d. False alarm prevention —1 hour
- e. Written examination

Total hours (excluding examination) —4 hours

9. Central station dispatcher.

- a. Electronic security subjects —4 hours
- b. Central station dispatcher subjects —4 hours
  - (1) Duties and responsibilities
  - (2) Communications skills
  - (3) Emergency procedures
- c. Written examination

Total hours (excluding examination) —8 hours

10. Electronic security sales representative.

- a. Electronic security subjects —4 hours
- b. Electronic security sales representative subjects —4 hours
  - (1) Duties and responsibilities
  - (2) System design/components
  - (3) False alarm prevention
- c. Written examination

Total hours (excluding examination) —8 hours

11. Electronic security technician.

- a. Electronic security subjects —4 hours
- b. Electronic security technician subjects —10 hours
  - (1) Duties and responsibilities
  - (2) Electronics
  - (3) Control panels
  - (4) Protection devices and application
  - (5) Test equipment
  - (6) Power and grounding
  - (7) National electrical code

- (8) Job safety
- c. Written examination

Total hours (excluding examination) —14 hours

12. Compliance agent.

- a. Industry overview and responsibilities
- b. Regulations review
- c. Business practices and ethical standards
- d. Records requirements and other related issues
- e. Written examination

Total hours (excluding written examination) —6 hours

13. Locksmith.

a. Virginia Code and Regulations – 2 hours

b. Orientation to locksmithing – 2 hours

(1) History of locksmithing

(2) Ethics

(3) Trade resources

(4) Terminology

(5) Test equipment

(6) Professional conduct

(7) Job Safety

c. Public Safety Codes – 4 hours

(1) NFPA (80,101)

(2) Overview of Authorities having Jurisdiction (AHJs)

(3) ADA

(4) Terminology

(5) Safety code resources

d. Technical Applications – 10 hours

(1) Terminology (to include definition/purpose/direction)

(2) Locks/Types

(3) Handing

(4) Master keying

(5) Key records and codes

(6) Key blanks and keyways

(7) Physical security

(8) Types of client sites

(9) Safes/Vaults

(10) Access control

(11) Handling restricted keys

(12) Door system components

(13) Automotive

e. Written examination

Total hours (excluding written examination) —18 hours

**6VAC20-171-360. In-service training.**

A. Each person registered with the department as an armed security officer/courier, personal protection specialist, armored car personnel, security canine handler, private investigator, locksmith, alarm respondent, central station dispatcher, electronic security sales representative, electronic security technician, unarmed security officer or electronic security technician's assistant, or certified by the department to act as a compliance agent shall complete the compulsory in-service training standard once during each 24-month period of registration or certification.

1. Compliance agent.

a. In-service training must be completed within 12 months immediately preceding the expiration date.

b. Individuals who fail to complete in-service training prior to the established expiration date may complete in-service training within 30 days after the expiration date if a completed in-service training enrollment application and a \$25 delinquent training fee is received by the department.

2. Instructor. All private security instructors must complete instructor in-service training within 12 months immediately preceding the individual's expiration date.

B. Hour requirement. The compulsory minimum in-service training hour requirement by category, excluding examinations, practical exercises and range qualification, shall be as follows:

1. Unarmed security officer —4 hours
2. Armed security officer/courier —4 hours
3. Armored car personnel —4 hours
4. Security canine handler —8 hours
5. Private investigator —8 hours
6. Personal protection specialist —8 hours
7. Alarm respondent —4 hours
8. Central station dispatcher —4 hours
9. Electronic security sales representative —4 hours

10. Electronic security technician —4 hours

11. Electronic security technician's assistant —2 hours

12. Compliance agent —4 hours

13. Firearms instructor —4 hours

14. General instructor —4 hours

15. Locksmith — 8 hours

C. Course content. The compulsory minimum in-service training course content by category, excluding examinations, practical exercises and range qualification, shall be as follows:

1. Security officer core subjects: Unarmed security officer/armed security officer/courier/alarm respondent

a. Legal authority —2 hours

b. Job-related training —2 hours

Total hours —4 hours

2. Armored car personnel

Job-related training —4 hours

Total hours —4 hours

3. Security canine handler (annual requirement per 6VAC20-171-440)

a. Basic obedience evaluation and retraining —4 hours

b. Job-related training —4 hours

Total hours —8 hours

4. Private investigator

Job-related training —8 hours

Total hours —8 hours

5. Personal protection specialist

Job-related training —8 hours

Total hours —8 hours

6. Central station dispatcher

Job-related training —4 hours

Total hours —4 hours

7. Electronic security sales representative

Job-related training —4 hours

Total hours —4 hours

8. Electronic security technician

Job-related training —4 hours

Total hours —4 hours

---

# Regulations

---

## 9. Electronic security technician's assistant

Job-related training —2 hours

Total hours —2 hours

## 10. Compliance agent

- a. Industry overview and responsibilities
- b. Regulations review
- c. Business practices and ethical standards
- d. Records requirements and other related topics

Total hours —4 hours

## 11. General instructor

- a. Regulations review and legal issues
- b. Ethical standards
- c. Records requirements and other related topics
- d. Techniques of instruction delivery, including practical exercises

Total hours —4 hours

## 12. Firearms instructor

- a. Legal issues
- b. Techniques of delivery of instruction and other related topics

Total hours —4 hours

## 13. Locksmith

Job-related training —8 hours

Total hours —8 hours

VA.R. Doc. No. R08-1293; Filed July 1, 2008, 3:01 p.m.

### **Final Regulation**

**Title of Regulation: 6VAC20-250. Regulations Relating to Property and Surety Bail Bondsman (adding 6VAC20-250-10 through 6VAC20-250-380).**

**Statutory Authority:** §9.1-185.2 of the Code of Virginia.

**Effective Date:** August 20, 2008.

**Agency Contact:** Lisa McGee, Section Chief, Department of Criminal Justice Services, 202 North 9th Street, 5th Floor, Richmond, VA 23219, telephone (804) 371-2419, FAX (804) 786-6344, or email [lisa.mcgee@dcjs.virginia.gov](mailto:lisa.mcgee@dcjs.virginia.gov).

### **Summary:**

*The regulation establishes a licensure process, licensure fees, compulsory minimum entry-level training standards including firearms training and*

*qualifications, standards of conduct, and administration of the regulatory system for property and surety bail bondsmen. The regulation provides an appeal process pursuant to the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) and outlines procedures for (i) receiving complaints concerning the conduct of any person whose activities are monitored by the board; (ii) conducting investigations; (iii) issuing disciplinary action; and (iv) revoking, suspending, or refusing to renew a license.*

*Changes since publication of the proposed regulations include the following:*

*1. Adding and deleting definitions either based on statutory amendments that went into effect July 1, 2007, or to provide further clarification for the regulated industry;*

*2. Amending the fee structure by reducing two application processing fees and adding a mandatory application processing fee based on the upcoming implementation of a web-based licensing system;*

*3. Amending sections throughout the regulation to establish a distinction between the types of bail bonding licensure categories and responsibilities; these include the surety bail bondsmen, the property bail bondsmen and the agent bail bondsmen employed by a property bail bondsman; and*

*4. Amending language concerning termination of a license should a property or agent bail bondsman not maintain required collateral and new professional conduct standards concerning any licensed bail bondsman violating provisions of protective orders.*

**Summary of Public Comments and Agency's Response:** A summary of comments made by the public and the agency's response may be obtained from the promulgating agency or viewed at the office of the Registrar of Regulations.

### **CHAPTER 250** **REGULATIONS RELATING TO PROPERTY AND** **SURETY BAIL BONDSMAN**

#### **Part I** **Definitions**

### **6VAC20-250-10. Definitions.**

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

**"Agent [ ~~bail bondsman~~ ] " means a [ person who is a ] licensed [ ~~property~~ ] bail bondsman who [ ~~is in the~~ employment of another has been given power of attorney to act on behalf of a ] licensed property bail bondsman**

[ ~~whose collateral requirement is met by the principal bail bondsman pursuant to §9.1-185.5 of the Code of Virginia~~ ].

"Armed" means a bail bondsman who carries or has immediate access to a firearm in the performance of his duties.

"Bail" means the pretrial release of a person from custody upon those terms and conditions specified by order of an appropriate judicial officer.

"Bail bondsman" means any person who is licensed by the department who engages in the business of bail bonding and is thereby authorized to conduct business in all courts of the Commonwealth.

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

"Bond" means the posting by a person or his surety of a written promise to pay a specific sum, secured or unsecured, ordered by an appropriate judicial officer as a condition of bail to assure performance of the terms and conditions contained in the recognizance.

"Certificate" means a certificate issued by a judge on or before June 30, 2005, pursuant to former §19.2-152.1 of the Code of Virginia.

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

"Firearm endorsement" means a method of regulation, which identifies a person licensed as a bail bondsman who has successfully completed the annual firearms training and has met the requirements as set forth in this regulation.

"Licensee" means a licensed bail bondsman.

[ "~~License number~~" means the official number issued to a bail bondsman licensed by the department.

"Manual processing fee" means a fee charged for applications not submitted to the department utilizing available online application processing procedures. ]

[ "~~Principal bail bondsman~~" means a licensed property bail bondsman who provides the collateral requirements for himself and any agent bail bondsmen in his employment. ]

"Property bail bondsman" means a person pursuant to this article who, for compensation, enters into a bond or [ ~~bonds for others, whether as a principal or surety, or otherwise does so through his agent and who~~ ] pledges real property, cash or certificates of deposit issued by a federally insured institution, or any combination thereof as security for a bond as defined in §19.2-119 of the Code of Virginia that has been posted to assure performance of terms and conditions specified by order of an appropriate judicial officer as a condition of bail.

[ "~~Private security services training school~~" means a training school that is certified or licensed by the department pursuant to §9.1-139 of the Code of Virginia for the specific purpose of training regulated personnel in at least one category of the compulsory minimum training standards. ]

"Recognizance" means a signed commitment by a person to appear in court as directed and to adhere to any other terms ordered by an appropriate judicial officer as a condition of bail.

"Surety bail bondsman" means a person licensed pursuant to this article who is also licensed by the State Corporation Commission as a property and casualty insurance agent, and who sells, solicits, or negotiates surety insurance as defined in §38.2-121 of the Code of Virginia on behalf of insurers licensed in the Commonwealth, pursuant to which the insurer becomes surety on or guarantees a bond, as defined in §19.2-119 of the Code of Virginia, that has been posted to assure performance of terms and conditions specified by order of an appropriate judicial officer as a condition of bail.

[ "~~Training school~~" means a training school that is certified or licensed by the department for the specific purpose of training regulated personnel in at least one category of the compulsory minimum training standards. ]

Part II  
Fees

**6VAC20-250-20. Fees.**

A. Schedule of fees. The [ nonrefundable application processing ] fees listed below reflect the costs [ that are sufficient to cover all expenses for administration and operation of the program. These fees include the costs ] of handling, issuance, and production associated with administering and processing applications for licensing and other administrative requests for services relating to bail bonding services.

Bail bondsman license application (Initial/Renewal)	\$900
Licensure category fee:	
Surety	\$100
[ <del>Property (agent)</del> Agent ]	\$100
Property [ <del>(principal)</del> ]	\$250
Firearms endorsement (annually)	\$30
Fingerprint card processing	[ <del>\$60</del> \$50 ]
Replacement photo identification	\$30
Reinstatement	\$250

---

# Regulations

---

In-service alternate training credit [ ~~\$50~~ \$25 ]

[ Manual processing fee ] [ \$20 ]

## B. Dishonor of fee payment due to insufficient funds.

1. The department may suspend the license it has granted any person who submits a check or similar instrument for payment of a fee required by statute or regulation that is not honored by the financial institution upon which the check or similar instrument is drawn.

2. The suspension shall become effective upon receipt of written notice of the dishonored payment. Upon notification of the suspension, the licensee may request that the suspended license or authority be reinstated, provided payment of the dishonored amount plus any penalties or fees required under the statute or regulation accompanies the request. Suspension under this provision shall be exempt from the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia).

### Part III

#### Licensing Procedures and Requirements

#### **6VAC20-250-30. Bail bondsman eligibility.**

A. Persons required to be licensed as a bail bondsman pursuant to §9.1-102.47 of the Code of Virginia, shall meet all licensure requirements in this section. Persons who carry or have access to a firearm while on duty must have a valid license with a firearm endorsement as described under 6VAC20-250-80. If carrying a handgun concealed, the person must also have a valid concealed handgun permit and the written permission of his employer pursuant to §18.2-308 of the Code of Virginia.

B. Each person applying for a bail bondsman license shall meet the minimum requirements for eligibility as follows:

1. Be a minimum of 18 years of age;
2. Be a United States citizen or legal resident alien of the United States; and
3. Have received a high school diploma or GED.
4. Have successfully completed all initial training requirements, pursuant to the compulsory minimum training standards in Part IV [ (6VAC20-250-130 et seq.) ] of this [ ~~regulation~~ chapter ].
5. Have successfully completed the bail bondsman exam required by the board at a certified or licensed private security services training school with a minimum passing grade of 70%.

C. The following persons are not eligible for licensure as bail bondsmen and may not be employed nor serve as the agent of a bail bondsman:

1. Persons who have been convicted of a felony within the Commonwealth, any other state, or the United States, who have not been pardoned, or whose civil rights have not been restored;

2. [ ~~Persons who are an employee, spouse of an employee or residing in the same household of an employee of a local or regional jail; sheriff's office; state or local police department; an office of an attorney for the Commonwealth; Department of Corrections; Department of Criminal Justice Services; or a local community corrections agency, or persons appointed as conservators of the peace pursuant to Article 4.1 (§9.1-150.1 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia.~~ Employees of a local or regional jail;

3. Employees of a sheriff's office;

4. Employees of a state or local police department;

5. Persons appointed as conservators of the peace pursuant to Article 4.1 (§9.1-150.1 et seq.) of Chapter 1 of Title 9.1 of the Code of Virginia;

6. Employees of an office of an attorney for the Commonwealth;

7. Employees of the Department of Corrections, Department of Criminal Justice Services, or a local pretrial or community-based probation services agency; and

8. Spouses of or any persons residing in the same household as persons referred to in subdivisions 2 through 7 of this subsection.

D. The exclusions in subsection C of this section shall not be construed to limit the ability of a licensed bail bondsman to employ or contract with a licensed bail enforcement agent authorized to do business in the Commonwealth. ]

#### **6VAC20-250-40. Initial bail bondsman license application.**

A. Prior to the issuance of any bail bondsman license, each bondsman applicant shall:

1. Pass the bail bondsman exam as prescribed by the board at a certified or licensed private security services training school with a minimum passing grade of 70%. Any applicant who improperly uses notes or other reference materials, or otherwise cheats on the exam, shall be ineligible to become a licensed bail bondsman.

2. Successfully complete entry-level training, and firearms training if applicable, pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-250-130 et seq.) of this chapter [  ~~;~~ ]

3. File with the department a completed application for such license on the form and in the manner provided by the department.

4. Submit fingerprints to the department pursuant to 6VAC20-250-50 [ ~~3~~ . ]

5. Submit the appropriate nonrefundable application processing fee and appropriate category fee to the department.

6. Maintain a physical address in Virginia where records required to be maintained by the Code of Virginia and this regulation are kept and available for inspection by the department. A post office box is not a physical address [ ~~3~~ . ]

7. Provide the legal entity name, all fictitious names and physical addresses of all companies under which he carries out his bail bonding business.

B. Additionally, prior to the issuance of a property bail bondsman license, each property bail bondsman applicant shall provide proof of collateral of \$200,000 on his bonds and proof of collateral of \$200,000 on the bonds of each of his agents. Any collateral that is not in the form of real estate, cash, or certificates of deposit issued by a FDIC-insured financial institution shall be specifically approved by the department before it may be used as collateral.

C. A property bail bondsman license will not be issued if the true market value of the equity in his collateral of real estate, cash or certificates of deposit issued by a federally insured institution, or any combination thereof does not meet or exceed \$200,000 [ on his bonds or the bonds of each of his agents ] .

1. If the property used as collateral is real estate, such real estate shall be located in the Commonwealth. In addition, the property bail bondsman applicant shall submit to the department:

a. A true copy of the current real estate tax assessment thereof, certified by the appropriate assessing officer of the locality wherein such property is located or, at the option of the property bail bondsman, an appraisal of the fair market value of the real estate, which appraisal shall have been prepared by a licensed real estate appraiser, within one year of its submission.

b. A new appraisal, if, at its discretion, the department so orders for good cause shown prior to certification. At the discretion of the department, after the original submission of any property appraisal or tax assessment, further appraisals or tax assessments for that property may not be required more than once every five years.

c. An affidavit by the property bail bondsman applicant that states, to the best of such person's

knowledge, the amount of equity in the real estate, and the amounts due under any obligations secured by liens or similar encumbrances against the real estate, including any delinquent taxes, as of the date of the submission. At its discretion, the department may require additional documentation to verify these amounts.

2. If the property used as collateral consists of cash or certificates of deposit, the property bail bondsman applicant shall submit to the department verification of the amounts, and the names of the financial institution in which they are held. [ At its discretion, the department may require additional documentation to verify these amounts. ]

3. Any property bail bondsman issued a certificate by a judge pursuant to former §19.2-152.1 of the Code of Virginia, prior to July 1, 1989, who has continuously maintained his certification and who has never provided to a court collateral of \$200,000 or more, shall continue to be exempt from the \$200,000 collateral requirements specified above. Those property bail bondsmen who are exempted from this provision shall satisfy all of the other requirements in this article for bail bondsmen, and shall provide to the department the collateral amount to which they may bond and provide proof of his prior certification by obtaining a certified copy of (i) the certificate issued pursuant to former §19.2-152.1 of the Code of Virginia and (ii) the documents held by the originating court that stated the collateral amount for which they were able to bond.

4. Each property bail bondsman, if so directed by the department, shall place a deed of trust on the real estate that he is using for the limit of his expected bonded indebtedness to secure the Commonwealth and shall name the attorney for the Commonwealth of the affected locality as trustee under the deed of trust, and furnish the department an acceptable appraisal and title certificate of the real estate subject to any such deed of trust.

5. Each [ ~~principal~~ ] property bail bondsman applicant shall submit signed documentation authorizing special power of attorney [ from an individual or appropriate resolutions or other authorizing documentation from a business entity, ] for the purpose of bonding on any collateral provided for licensure that is not legally in the sole ownership of the [ ~~principal~~ ] property bail bondsman.

6. Each agent [ ~~property~~ ] bail bondsman applicant shall submit signed documentation authorizing special power of attorney [ from an individual or appropriate resolutions or other authorizing documentation from a business entity, ] for the purpose of bonding on any

---

# Regulations

---

collateral provided for licensure by the [ principal property ] bail bondsman.

D. Prior to the issuance of a surety bail bondsman license, each surety bail bondsman applicant shall:

1. Submit proof of current licensing as a property and casualty insurance agent validated by the State Corporation Commission.

2. Submit copies of each qualifying power of attorney that will be used to provide surety. All qualifying powers of attorney filed with the department shall contain the name and contact information for both the surety agent and the registered agent of the issuing company. In the event an applicant for a surety bail bondsman license is unable to obtain a qualifying power of attorney prior to the issuance of his license, the department may issue a letter of temporary licensure for not more than 30 days on the condition that each qualifying power of attorney obtained be filed within the 30 days. This temporary license does not permit a surety bail bondsman to write bail bonds for any insurance company without first filing the company qualifying power of attorney with the department.

## **6VAC20-250-50. Fingerprint processing.**

A. Each person applying for [ initial or renewal ] licensure as a bail bondsman shall submit to the department:

1. One completed fingerprint card provided by the department or another electronic method approved by the department;

2. A fingerprint processing application;

3. The applicable nonrefundable fee; and

4. All criminal history conviction information on a form provided by the department.

B. The department shall submit those fingerprints to the Virginia State Police for the purpose of conducting a Virginia Criminal History Records search and a National Criminal Records search to determine whether the person or persons have a record of conviction.

C. Fingerprint cards found to be unclassifiable will suspend action on the application pending the re-submittal of a classifiable fingerprint card. The applicant shall be so notified in writing and shall submit a new fingerprint card within 30 days before the processing of his application shall resume. After 30 days, the initial fingerprint application process will be required to include applicable application fees.

D. If the applicant is denied by DCJS, the department will notify the applicant by letter regarding the reasons for the denial.

## **6VAC20-250-60. Application sanctions/denial, probation, suspension and revocation.**

A. The department may deny a license in which any person has been convicted in any jurisdiction of any felony. Any plea of nolo contendere shall be considered a conviction for the purposes of this regulation. The record of a conviction authenticated in such form as to be admissible in evidence under the laws of the jurisdiction where convicted shall be admissible as prima facie evidence of such conviction.

B. The department may deny a license in which any person has not maintained good standing in every jurisdiction where licensed; has had his license denied upon initial application, suspended, revoked, surrendered, or not renewed; or has otherwise been disciplined in connection with a disciplinary action prior to applying for licensing in Virginia.

C. Any false or misleading statement on any state application or supporting documentation is grounds for denial or revocation and may be subject to criminal prosecution.

D. The department may deny licensure to a person for other just cause.

E. A licensee shall be subject to disciplinary action for violations or noncompliance with the Code of Virginia or this regulation. Disciplinary action shall be in accordance with procedures prescribed by the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia). The disciplinary action may include but is not limited to a letter of censure, fine, probation, suspension or revocation.

## **6VAC20-250-70. License issuance.**

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

B. Each license shall be issued to the applicant named on the application and shall be valid only for the person named on the license. No license shall be assigned or otherwise transferred to another person.

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

## **6VAC20-250-80. Additional category application.**

Licensed individuals seeking to add categories to a current license must:

1. Submit a properly completed application provided by the department;

2. Meet all licensure requirements pursuant to 6VAC20-250-40 B through D; and

3. Submit the applicable, nonrefundable category fee.

**6VAC20-250-90. Firearm endorsement.**

A. In addition to applying for a bail bondsman license, each applicant who carries or has immediate access to a firearm while on duty must apply for such endorsement on a form and in the manner prescribed by the board and containing any information the board requires.

B. Prior to the issuance of a firearm endorsement, each applicant shall:

1. Successfully complete the entry-level firearms training, pursuant to the compulsory minimum training standards set forth in Part IV (6VAC20-250-130 et seq.) of this chapter; and

2. Submit the appropriate nonrefundable application-processing fee to the department.

C. Upon completion of the application requirements, the department may issue a firearm endorsement for a period not to exceed 12 months.

D. Firearm endorsements may be reissued for a period not to exceed a period of 12 months when the applicant has met the following requirements:

1. Filed with the department a completed application for such endorsement on the form and in the manner provided by the department at least 30 days prior to expiration of their current endorsement;

2. Successfully completed the firearms retraining pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-250-130 et seq.) of this chapter; and

3. Submitted the appropriate nonrefundable application processing fee to the department.

**6VAC20-250-100. License renewal application.**

A. [~~The department should receive applications~~ Each applicant ] for licensure renewal [ ~~at least shall submit an application no later than~~ ] 30 days prior to [ ~~the~~ ] expiration [ ~~of the current license~~ ] . The department will provide a renewal notification to the last known mailing address of the licensed person. However, if a renewal notification is not received by the person, it is the responsibility of the person to ensure renewal requirements are filed with the department.

B. Each person applying for license renewal shall meet the minimum requirements for eligibility as follows:

1. Successfully complete the in-service training, and firearms retraining if applicable pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-250-130 et seq.) of this chapter; and

2. Be in good standing in every jurisdiction where licensed. This subdivision shall not apply to any probationary periods during which the person is eligible to operate under the license.

C. The department may renew a license when the department receives the following:

1. A properly completed renewal application provided by the department;

2. Fingerprint cards submitted pursuant to 6VAC20-250-50;

3. The applicable, nonrefundable license renewal fee, and appropriate category fee;

4. Proof of successful completion of in-service training pursuant to the compulsory minimum training standards set forth under Part IV (6VAC20-250-130 et seq.) of this chapter; and

5. All other documentation listed in 6VAC20-250-40 B and C.

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

E. Any renewal application received by the department shall meet all renewal requirements prior to the expiration date of a license or shall be subject to the initial bail bondsman license application requirements pursuant to 6VAC20-250-40.

**6VAC20-250-110. License termination.**

A. Any surety bail bondsman license issued pursuant to this part shall terminate immediately upon the termination of the licensee's property and casualty insurance agent license, and may not be applied for again until the person has been issued a new property and casualty insurance agent license.

B. [ Any property bail bondsman license or agent bail bondsman license pursuant to this article shall terminate immediately if the collateral requirements are not maintained and may not be applied for again until the person has met the collateral requirements pursuant to 6VAC20-250-40. ]

C. ] A [ ~~surety~~ ] bail bondsman may apply for reinstatement of the terminated license no more than 120 days from termination with the appropriate reinstatement application and nonrefundable fees. After 120 days application for a bail bondsman license shall be subject to the initial bail bondsman license application requirements pursuant to 6VAC20-250-40.

---

# Regulations

---

## **6VAC20-250-120. Replacement state issued identification.**

Licensed person seeking a replacement state issued photo identification shall submit to the department:

1. A properly completed application provided by the department; and
2. The applicable, nonrefundable application fee.

### Part IV

### Compulsory Minimum Training Standards for Bail Bondsmen

#### Article 1

#### Training Requirements

### **6VAC20-250-130. Entry-level training.**

A. Each bail bondsman as defined by §9.1-185 of the Code of Virginia, must meet the compulsory minimum training standards herein established, unless provided for otherwise in accordance with this regulation.

B. Training must be completed at a private security services training school certified or licensed by the department.

C. Training will be credited only if application for licensure is submitted to the department within 12 months of completion of training.

D. Hour requirement. The compulsory minimum entry-level training hour requirement by category, excluding examinations, practical exercises and range qualification, shall be:

1. Bail bondsman core training - 40 hours
2. Firearms training - 14 hours

E. Course content. The compulsory minimum entry-level training course content by category, excluding examinations, mandated practical exercises and range qualification, shall be as provided in this subsection.

Core subjects. The entry-level curriculum set forth the following areas identified as:

#### I. Orientation - two hours.

##### A. Ethical standards

1. Professionalism
2. Misrepresentation
3. Conflicts of interest
4. Information protection, confidentiality, and discretion requirements

B. Brief introduction to Code of Virginia and regulations relating to bail bondsman

#### II. Law - 12 hours plus one practical exercise.

##### A. Code of Virginia and regulations relating to bail bondsman

1. Definitions
2. Licensing procedures and requirements
3. Compulsory minimum training standards
4. Standards of practice and prohibited acts
5. Administrative requirements/standards of conduct
6. Administrative reviews, complaints, procedures, and responsibilities

##### B. Basic law

1. Legal terminology and definitions
2. Purpose and function of law
3. U.S. Constitution
  - a. Amendments
  - b. Bill of Rights
4. Landmark cases
5. Limitations and liability

##### C. Surety and property law

1. Surety bail bondsman
  - a. Insurance companies
  - b. Agent vs. attorney-in-fact
  - c. Virginia qualification requirements
2. Property bail bondsman
  - a. Virginia property requirements
  - b. Agent requirements

##### D. Courts

1. Civil court system
  - a. Federal
  - b. State
  - c. Local jurisdiction
  - d. Definitions
  - e. Civil judicial procedures
2. Criminal court system
  - a. State and federal
  - b. Legal authority and related issues
  - c. Liability concerns

- d. Definitions/interpretations
- e. Magistrates
- E. Release from legal obligation
  - 1. When defendant answers charge
  - 2. Circulate the bail piece release
  - 3. Special considerations
    - a. The recognizance
    - b. Preliminary hearing
    - c. Bond continuation pending pre-sentence report
    - d. Sentencing
    - e. Withhold findings
    - f. Bond reinstatement

III. Fugitive recovery - 24 hours plus one practical exercise.

- A. Legal procedures
  - 1. Bondsman's legal right to recover
  - 2. Notice of show cause hearing
  - 3. Entry of finding of default
  - 4. Payment of forfeiture
  - 5. Recovery: [ ~~12~~ 24 ] months from entry of finding of default
  - 6. Section 9.1-185.15 of the Code of Virginia, recovery of bailees
- B. Criminal statutes
  - 1. Liability considerations/liability insurance
  - 2. Case law
  - 3. Law enforcement
    - a. State
    - b. Federal
  - 4. Reasonable force to effect apprehension
- C. Use of recovery agents in Virginia
  - 1. Virginia legal requirements
  - 2. Recovery agents authority
  - 3. Employee vs. independent contractor
  - 4. Liability considerations/liability insurance
- D. Investigative techniques
  - 1. Surveillance

- 2. Court research
- 3. Law-enforcement coordination
- 4. Interviewing
- 5. Impersonation and misrepresentation
- 6. Reference materials and resource list
- 7. Skip-tracing techniques
- 8. Fugitive identification

E. Recovery procedures

- 1. Pursuit
  - a. Foot
  - b. Vehicular
  - c. Other
- 2. Entry and search
- 3. Perimeter/interior room control

F. Agent survival

- 1. Confrontation management
- 2. Use of force
- 3. Deadly force
- 4. Escalation of force
- 5. Emergency procedures

G. Apprehension of a fugitive

- 1. Compliant versus noncompliant procedures
- 2. Search of person
  - a. Personal items
  - b. Seizure of contraband
- 3. Handcuffing techniques
- 4. Rights of the accused
- 5. Detainment and transportation
- 6. Interstate transport
- 7. False arrest

IV. Responsibilities of bondsman and remanding to custody two hours plus one practical exercise.

- A. Recovery in Virginia
- B. Recovery out of Virginia: Uniform Extradition Act
- C. International recovery
- D. Legal detainment facilities
- E. Entering the jail or sally port

---

# Regulations

---

F. Signing the bail piece/return to court

G. Hospital procedures for injuries

V. Documentation - two hours plus one practical exercise.

A. Required by the courts

B. Required by DCJS

C. Recordkeeping

D. Reporting

E. Retaining records

VI. Written examination

Total hours (excluding exam) - 40 hours

## **6VAC20-250-140. In-service training.**

A. Each person licensed with the department as a bail bondsman shall complete the compulsory in-service training standards within the last 12 months preceding the expiration date of licensure. If in-service training is not completed by the expiration date of licensure, entry-level training will be required pursuant to initial licensure requirements pursuant to 6VAC20-250-40.

B. Course content. The compulsory minimum in-service training course content by category, excluding examinations, practical exercises and range qualification, shall be as follows:

Bail Bondsman core subjects:

1. Legal authority - 2 hours

2. Job-related training - 6 hours

Total hours - 8 hours

## **6VAC20-250-150. In-service alternative training credit.**

Persons who have completed training that meets or exceeds the compulsory minimum training standards promulgated by the board for in-service training required for the individual's particular category may be authorized credit for such training, provided the training has been completed within 12 months of the expiration date of the licensure period during which in-service training is required. Such training must be provided by a third-party organization offering services or expertise for the particular training category. Official documentation of the following must accompany the application for in-service alternative training credit:

1. Information regarding the sponsoring organization, including documentation regarding the instructor for each session;

2. An outline of the training session material, including the dates, times and specific subject matter;

3. Proof of attendance and successful completion; and

4. The applicable, nonrefundable application fee.

## **6VAC20-250-160. Training extension.**

A. An extension of the time period to meet in-service training requirements may be approved only under specific circumstances, which do not allow bail bondsmen to complete the required procedures within the prescribed time period. The following are the only circumstances for which extensions may be granted:

1. Extended illness;

2. Extended injury; and

3. Military or foreign service.

B. A request for extension shall:

1. Be submitted in writing, dated and signed by the licensee prior to the expiration date of the time limit required for completion of the requirements;

2. Indicate the projected date that the person will be able to comply with the requirements; and

3. Include a copy of the physician's record of the injury or illness or a copy of the government orders.

C. No extension will be approved for licenses that have expired.

D. Applications for additional extensions may be approved upon written request of the licensee.

E. Approved extensions may only be granted for a period not to exceed 12 months.

## Article 2

### Firearms Training Requirements

## **6VAC20-250-170. General firearms training requirements.**

Firearms training endorsement is required for all bail bondsmen who carry or have access to a firearm while on duty. Each person who carries or has access to firearms while on duty shall qualify with each type of action and caliber of firearm to which he has access.

## **6VAC20-250-180. Firearms (handgun/shotgun) entry-level training.**

All armed bail bondsmen must satisfactorily complete the firearms classroom training, practical exercises and range training, as prescribed in the Regulations Relating to Private Security Services (6VAC20-171) for handgun and for shotgun, if applicable, prior to the issuance of the firearms endorsement.

## **6VAC20-250-190. Firearms (handgun/shotgun) retraining.**

On an annual basis all armed bail bondsman must requalify for a firearms endorsement by satisfactorily

completing firearms classroom training, practical exercises and range training, as prescribed in the Regulations Relating to Private Security Services (6VAC20-171) for handgun and for shotgun, if applicable.

**6VAC20-250-200. Prior firearms training exemption.**

A. Persons having previous department-approved firearms training may be authorized credit for such training that meets or exceeds the compulsory minimum training standards for a firearm endorsement, provided such training has been completed within the 12 months preceding the date of application. Official documentation of the following must accompany the application for partial in-service training credit:

1. Completion of department-approved firearms training; and
2. Qualification at a Virginia criminal justice agency, academy or correctional department.

B. Individuals requesting a training exemption shall file an application furnished by the department and include the applicable, nonrefundable application fee. The department may issue a training exemption on the basis of individual qualifications as supported by required documentation.

Article 3  
Training Sessions

**6VAC20-250-210. Bail bondsmen and firearms training sessions.**

A. Training sessions will be conducted by private security services training schools certified or licensed under the Regulations Relating to Private Security Services (6VAC20-171) or by the department in accordance with requirements established in this chapter. Adherence to the administrative requirements, attendance and standards of conduct are the responsibility of the training school, training school director and instructor of the training session.

B. Administrative requirements.

1. In a manner approved by the department, a notification to conduct a training session shall be submitted to the department. All notifications shall be received by the department, or postmarked if mailed, no less than seven calendar days prior to the beginning of each training session to include the date, time, instructors and location of the training session. The department may allow a session to be conducted with less than seven calendar days of notification with prior approval. Session notifications require no fee from the training school. A notification to conduct a training session shall be deemed to be in compliance unless the department notifies the training school director to the contrary.

2. Notification of any changes to the dates, times, location or cancellation of a future training session must be submitted to the department in writing and received by the department at least 24 hours in advance of the scheduled starting time of the class. In the event that a session must be cancelled on the scheduled date, the department must be notified immediately followed by a cancellation in writing as soon as practical.

3. On a form provided by the department, the training school director shall issue an original training completion form and training certificate to each student who satisfactorily completes a training session no later than five business days following the training completion date.

4. In a manner approved by the department, the training school director shall submit an original training completion roster to the department affirming each student's successful completion of the session. The training completion roster shall be received by the department within seven calendar days, or postmarked if mailed, no later than five business days following the training completion date.

5. A written examination shall be administered at the conclusion of each entry-level training session. The examination shall be based on the applicable learning objectives. The student must attain a minimum grade of 70% for all entry-level training examinations to satisfactorily complete the training session.

6. Firearms classroom training shall be separately tested and graded. Individuals must achieve a minimum score of 70% on the firearms classroom training examination.

7. Failure to achieve a minimum score of 70% on the firearms classroom written examination will exclude the individual from the firearms range training.

8. To successfully complete the firearms range training; the individual must achieve a minimum qualification score of 75% of the scoring value of the target.

9. To successfully complete the bail bondsman entry-level training session, the individual must:

- a. Successfully complete each of the three graded practical exercises required; and
- b. Pass the written examination with a minimum score of 70%.

C. Attendance.

1. Individuals enrolled in an approved training session are required to be present for the hours required for each training session.

2. Tardiness and absenteeism will not be permitted. Individuals violating these provisions will be required to

---

# Regulations

---

make up any training missed. Such training must be completed within 60 days after the completion of the training session. Individuals not completing the required training within this period are required to complete the entire training session.

3. Individuals that do not successfully complete the compulsory minimum training standards of the training session shall not be reported to the department except where required.

4. Each individual attending an approved training session shall comply with the regulations promulgated by the board and any other rules within the authority of the training school. If the training school director or instructor considers a violation of the rules detrimental to the training of other students or to involve cheating on examinations, the training school director or instructor may expel the individual from the school. Notification of such action shall immediately be reported to the employing firms and the department.

## D. Standards of conduct.

1. The training school, training school director and instructor shall at all times conform to the application requirements, administrative requirements and standards of conduct established for certification as a training school and instructor.

2. Training sessions will be conducted by DCJS-certified instructors or other individuals authorized to provide instruction.

3. Training sessions will be conducted utilizing lesson plans developed including at a minimum the compulsory minimum training standards established pursuant to this chapter.

4. Instruction shall be provided in no less than 50-minute classes.

5. Training sessions may not exceed nine hours of classroom instruction per day. Range qualification and practical exercises shall not be considered classroom instruction; however, total training, including the maximum allotment of nine hours classroom instruction and applicable range qualification and practical exercises, shall not exceed 12 hours per day. This does not include time allotted for breaks, meals and testing.

6. All audiovisual training aids must be accompanied by a period of instruction where the instructor reviews the content of the presentation and the students are provided the opportunity to ask questions regarding the content.

7. A training session must adhere to the minimum compulsory training standards and must be presented in its entirety. Training school directors may require

additional hours of instruction, testing or evaluation procedures.

8. A training session must provide accurate and current information to the students.

9. Mandated training conducted not in accordance with the Code of Virginia and this chapter is null and void.

10. A duplicate set of instructor course materials including all student materials shall be made available to any department inspector during the training session, if requested.

## Part V

### Recordkeeping Standards and Reporting Requirements

#### **6VAC20-250-220. Recordkeeping standards.**

A. The bail bondsman shall retain the following for a minimum of three calendar years from the date of the termination of the liability:

1. Copies of recognizance, documentary evidence of terms of agreement between principal, indemnitor and licensed bail bondsman.

2. Copies of all written representations made to any court or to any public official for the purpose of avoiding a forfeiture of bail, setting aside a forfeiture, or causing a defendant to be released on his own recognizance.

3. Copies of all affidavits and receipts made in connection with collateral received in the course of business.

4. Evidence of the return of any security or collateral received in the course of business, including a copy of the receipt showing when and to whom the collateral was returned.

5. Copies of all written documentation in connection with the recovery of a bailee pursuant to 6VAC20-250-260.

B. Upon request of the department, a bail bondsman shall provide any documents required to be kept pursuant to this section.

#### **6VAC20-250-230. Reporting requirements.**

A. Each licensed bail bondsman shall report within 30 calendar days to the department any change in his residence, name, business name or business address, and ensure that the department has the names and all fictitious names of all companies under which he carries out his bail bonding business.

B. [ Each licensed bail bondsman arrested for a felony shall submit a copy of the warrant of arrest within seven days to the department.

C. ] Each licensed bail bondsman [ arrested or ] convicted of a felony shall report within 30 calendar days to the department the facts and circumstances regarding the [ arrest or ] criminal conviction.

[ ~~C. D.~~ ] Each licensed bail bondsman shall report to the department, within 30 calendar days of the final disposition, of the matter any administrative action taken against him by another governmental agency in the Commonwealth or in another jurisdiction. Such report shall include a copy of the order, consent to order or other relevant legal documents.

[ ~~D. E.~~ ] Each licensed bail bondsman shall report to the department within 24 hours any event in which he discharges a firearm during the course of his duties.

[ ~~E. F.~~ ] Each licensed property bail bondsman shall submit to the department, on a prescribed form, not later than the fifth day of each month, a list of all outstanding bonds on which he was obligated as of the last day of the preceding month, together with the amount of the penalty of each such bond.

[ ~~F. G.~~ ] Each licensed [ ~~principal~~ ] property bail bondsman shall report to the department any change in the number of agents in his employ within seven days of such change and concurrently provide proof of collateral of \$200,000 for each new agent, in accordance with subsection C of §9.1-185.5 of the Code of Virginia.

[ ~~G. H.~~ ] Each licensed agent bail bondsman shall report to the department [ ~~any change in termination of~~ ] his employment within seven days of such [ ~~change termination~~ ] .

[ ~~H. I.~~ ] Each licensed [ ~~principal~~ ] property bail bondsman shall report to the department within five business days [ ~~any change in legal ownership or~~ ] if any new lien, encumbrance, or deed of trust is placed on any real estate that is being used as collateral on his or his agents' bonds as well as the amount it is securing. The reporting requirement deadline is deemed to begin as soon as the licensed property bail bondsman learns [ ~~of any change in legal ownership or~~ ] of the new lien, encumbrance, or deed of trust, or should have reasonably known [ ~~of the change in legal ownership or~~ ] that such a lien, encumbrance, or deed of trust had been recorded.

[ ~~I. J.~~ ] Each licensed surety bail bondsman shall report to the department within 30 days any change in his employment or agency status with a licensed insurance company. If the surety bail bondsman receives a new qualifying power of attorney from an insurance company, he shall forward a copy thereof within 30 days to the department, in accordance with subdivision D 2 of §9.1-185.5 of the Code of Virginia.

Part VI

Administrative Requirements/Standards of Conduct

**6VAC20-250-240. General requirements.**

All bail bondsman are required to maintain administrative requirements and standards of conduct as determined by the Code of Virginia, department guidelines and this regulation.

**6VAC20-250-250. Professional conduct standards; grounds for disciplinary actions.**

A. Any violations of the restrictions or standards under this statute shall be grounds for placing on probation, refusal to issue or renew, sanctioning, suspension or revocation of the bail bondsman's license. A licensed bail bondsman is responsible for ensuring that his employees, partners and persons contracted to perform services for or on behalf of the bonding business comply with all of these provisions, and do not violate any of the restrictions that apply to bail bondsmen. Violations by a bondsman's employee, partner, or agent may be grounds for disciplinary action against the bondsman, including probation, suspension or revocation of license. Upon notification from the State Corporation Commission of a license suspension, the department shall immediately suspend a surety bondsman's license, pending the results of an investigation.

B. A licensed bail bondsman shall not:

1. Knowingly commit, or be a party to, any material fraud, misrepresentation, concealment, conspiracy, collusion, forgery, scheme or device whereby any other person lawfully relies upon the word, representation, or conduct of the bail bondsman.
2. Solicit sexual favors or extort additional consideration as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors.
3. Conduct a bail bond transaction that demonstrates bad faith, dishonesty, coercion, incompetence, extortion or untrustworthiness.
4. Coerce, suggest, aid and abet, offer promise of favor, or threaten any person on whose bond he is surety or offers to become surety, to induce that person to commit any crime.
5. Give or receive, directly or indirectly, any gift of any kind to any nonelected public official or any employee of a governmental agency involved with the administration of justice, including but not limited to law-enforcement personnel, magistrates, judges, and jail employees, as well as attorneys. De minimis gifts, not to exceed \$50 per year per recipient, are acceptable, provided the purpose of the gift is not to directly solicit

---

# Regulations

---

business, or would otherwise be a violation of board regulations or the laws of the Commonwealth.

6. Fail to comply with any of the statutory or regulatory requirements governing licensed bail bondsmen.

7. Fail to cooperate with any investigation by the department.

8. Fail to comply with any subpoena issued by the department.

9. Provide materially incorrect, misleading, incomplete or untrue information in a license application, renewal application, or any other document filed with the department.

10. Provide bail for any person if he is also an attorney representing that person.

11. Provide bail for any person if the bondsman was initially involved in the arrest of that person.

C. A licensed bail bondsman shall ensure that each recognizance on all bonds for which he signs shall contain [ ~~the his~~ ] name, license number and contact information.

D. A surety bail bondsman shall in addition ensure that each recognizance for which he signs contains the contact information for both the surety agent and the registered agent of the issuing company.

E. An administrative fee may be charged by a bail bondsman, not to exceed reasonable costs and must be disclosed in writing. Reasonable costs may include, but are not limited to, travel, court time, recovery fees, phone expenses, administrative overhead and postage.

F. A property bail bondsman shall not enter into any bond if the aggregate of the penalty of such bond and all other bonds, on which he has not been released from liability, is in excess of [ ~~four times~~ ] the true market value of the equity in his real estate, cash or certificates of deposit issued by a federally insured institution, or any combination thereof.

G. A property bail bondsman or his agent shall not refuse to cover any forfeiture of bond against him or refuse to pay such forfeiture after notice and final order of the court.

H. A surety bail bondsman shall not refuse to cover any forfeiture of bond against him or refuse to pay such forfeiture after notice and final order of the court.

I. A surety bail bondsman shall not write bail bonds on any qualifying power of attorney for which a copy has not been filed with the department.

J. A surety bail bondsman shall not violate any of the statutes or regulations that govern insurance agents.

K. A licensed bail bondsman shall disclose in writing to the indemnitor if the bail bondsman has the knowledge that the bailee is being held in multiple jurisdictions.

[ ~~L. A licensed bail bondsman shall not violate any provision specified in protective orders served on a potential bailee pursuant to §16.1-253.1 of the Code of Virginia.~~ ]

## **6VAC20-250-260. Solicitation of business; standards, restrictions and requirements.**

A. Only licensed bail bondsmen shall be authorized to solicit bail bond business in the Commonwealth.

B. A licensed bail bondsman shall not:

1. Solicit bail bond business or have any person solicit on his behalf by directly initiating contact with any person in any court, jail, lock-up, or surrounding government property.

2. Leave any type of advertising material in any court, jail, lock-up or surrounding government property.

3. Loiter by any jail or magistrate's office unless there on legitimate business.

[ ~~4. Communicate with any inmate without first notifying the sheriff of jailor of their intent to communicate with such inmate.~~

~~5. 4.] Refer a client or a principal for whom he has posted bond to an attorney for financial profit or other consideration.~~

## **6VAC20-250-270. Recovery of bailees; methods of capture; standards and requirements; limitations.**

A. During the recovery of a bailee, a bail bondsman shall have a copy of the relevant recognizance for the bailee. In the event a bail bondsman is recovering the bailee of another bondsman, he shall also have written authorization from the bailee's bondsman obtained prior to affecting the capture. The department shall develop the written authorization form to be used in such circumstances.

B. A bail bondsmen shall not enter a residential structure without first verbally notifying the occupants who are present at the time of the entry.

C. Absent exigent circumstances, a bail bondsman shall give prior notification of at least 24 hours to local law enforcement or state police of the intent to apprehend a bailee. In all cases, a bail bondsman shall inform local law enforcement within 30 minutes of capturing a bailee.

D. A bail bondsman shall not break any laws of the Commonwealth in the act of apprehending a bailee.

E. A bail bondsman shall adhere to the recovery requirements pursuant to §19.2-149 of the Code of Virginia.

F. A bail bondsman must complete and maintain the information on the recovery of a bailee on a form prescribed by the department.

**6VAC20-250-280. Collateral received in the course of business; standards and requirements.**

A. A licensed bail bondsman shall be permitted to accept collateral security or other indemnity from the principal, which shall be returned upon final termination of liability on the bond, including the conclusion of all appeals or appeal periods. Such collateral security or other indemnity required by the bail bondsman shall be reasonable in relation to the amount of the bond.

B. When a bondsman accepts collateral, he shall give a written receipt to the depositor. The receipt shall provide a full description of the collateral received and the terms of redemption or forfeiture. The receipt shall also include the depositor's name and contact information.

C. Any bail bondsman who receives collateral in connection with a bail transaction shall receive such collateral in a fiduciary capacity, and prior to any forfeiture of bail shall keep it separate and apart from any other funds or assets of such bail bondsman. In the event a bondsman receives collateral in the nature of a tangible good, it shall be a per se violation of the bail bondsman's fiduciary duty to make personal use of any such collateral unless there is a proper forfeiture of bail.

D. Any collateral received shall be returned with all due diligence to the person who deposited it with the bail bondsman or any assignee other than the bail bondsman as soon as the obligation is discharged and all fees owed to the bail bondsman have been paid. In any event, after a specific request for the return of the collateral by the depositor, the collateral shall be returned within 15 days after all fees owed have been paid.

**6VAC20-250-290. Uniforms and identification; standards and restrictions.**

A. A bail bondsman shall not wear, carry, or display any uniform, badge, shield, or other insignia or emblem that implies he is an agent of state, local, or federal government.

B. A bail bondsman shall wear or display only identification issued by or whose design has been approved by the department.

1. A bail bondsman is required to visibly display [ ~~on his outermost clothing,~~ ] the photo identification license issued by the department [ ~~at all times~~ ] while on legitimate bail bonding business on government property.

2. A bail bondsman may display [ ~~only~~ an insignia or emblem that identifies ] his name and name of his

company on the front of his shirt or [ ~~jaeket~~ outermost wear while ] on government property as long as the insignia or emblem is no larger than 3 x 5 inches in its entirety.

Part VII

Complaints, Department Actions, Adjudication

Article 1

Complaints

**6VAC20-250-300. Submittal requirements.**

A. Any aggrieved or interested person may file a complaint against any person whose conduct and activities are regulated or required to be regulated by the board. The complaint must allege a violation of the law governing bail bondsman services or this regulation.

B. Complaints may be submitted:

1. In writing, or on a form provided by the department, by a signed complainant;

2. In writing, submitted anonymously, that provide sufficient detailed information for the department to conduct an investigation; or

3. Telephonically, providing the complaint alleges activities that constitute a life-threatening situation, or have resulted in personal injury or loss to the public or to a consumer, or that may result in imminent harm or personal injury, and that provide sufficient detailed information for the department to conduct an investigation.

**6VAC20-250-310. Department investigation.**

A. The department may initiate or conduct an investigation based on any information received or action taken by the department to determine compliance with the Code of Virginia and this regulation.

B. Documentation.

1. Persons regulated or required to be regulated by this regulation pursuant to the Code of Virginia are required to provide department investigators with any and all records required to be maintained by this regulation.

a. This shall not be construed to authorize the department to demand records protected under applicable federal and state laws. If such records are necessary to complete an investigation, the department may seek a subpoena to satisfy the request.

b. The department shall endeavor to review, and request as necessary, only those records required to verify alleged violations of compliance with the Code of Virginia and this regulation.

---

# Regulations

---

2. The department shall endeavor to keep any documentation, evidence or information on an investigation confidential until such time as adjudication has been completed, at which time information may be released upon request pursuant to applicable federal and state laws, rules or regulations.

## Article 2 Department Actions

### 6VAC20-250-320. Disciplinary action; sanctions; publication of records.

A. Each person subject to jurisdiction of this regulation who violates any statute or regulation pertaining to bail bondsman services shall be subject to sanctions imposed by the department regardless of criminal prosecution.

B. The department may impose any of the following sanctions, singly or in combination, when it finds the respondent in violation or in noncompliance of the Code of Virginia or of this regulation:

1. Letter of reprimand or censure;
2. Probation for any period of time;
3. Suspension of license or approval granted, for any period of time;
4. Revocation;
5. Refusal to issue or renew a license or approval;
6. Fine not to exceed \$2,500 per violation as long as the respondent was not criminally prosecuted; or
7. Remedial training.

[ ~~B~~. ~~C~~. ] The department may conduct hearings and issue cease and desist orders to persons who engage in activities prohibited by this regulation but do not hold a valid license, certification or registration. Any person in violation of a cease and desist order entered by the department shall be subject to all of the remedies provided by law and, in addition, shall be subject to a civil penalty payable to the party injured by the violation.

[ ~~C~~. ~~D~~. ] The director (chief administrative officer of the department) may summarily suspend a license under this regulation without a hearing, simultaneously with the filing of a formal complaint and notice for a hearing, if the director finds that the continued operations of the licensee would constitute a life-threatening situation, or has resulted in personal injury or loss to the public or to a consumer, or that may result in imminent harm, personal injury or loss.

[ ~~D~~. ~~E~~. ] All proceedings pursuant to this section are matters of public record and shall be preserved. The department may publish a list of the names and addresses of all licensees whose conduct and activities are subject to

this regulation and have been sanctioned or denied licensure or approval.

### 6VAC20-250-330. Fines, administrative and investigative costs.

The department may recover costs of any investigation and adjudication of any violations of the Code of Virginia or regulations that result in a sanction, including fine, probation, suspension, revocation or denial of any license. Such costs shall be in addition to any monetary penalty that may be imposed.

## Article 3 Adjudication

### 6VAC20-250-340. Hearing process.

Following a preliminary investigative process, the department may initiate action to resolve the complaint through an informal fact-finding conference or formal hearing as established in this regulation. Pursuant to the authority conferred in §9.1-141 C 6 of the Code of Virginia and in accordance with the procedures set forth by the Administrative Process Act (§2.2-4000 et seq. of the Code of Virginia) and the procedures prescribed herein, the department is empowered to receive, review, investigate and adjudicate complaints concerning the conduct of any person whose activities are regulated by the board. The board will hear and act upon appeals arising from decisions made by the director. In all case decisions, the Criminal Justice Services Board shall be the final agency authority.

### 6VAC20-250-350. Informal fact-finding conference.

The purpose of an informal fact-finding conference is to resolve allegations through informal consultation and negotiation. Informal fact-finding conferences shall be conducted in accordance with §2.2-4019 of the Code of Virginia. The respondent, the person against whom the complaint is filed, may appeal the decision of an informal fact-finding conference and request a formal hearing provided that written notification is given to the department within 30 days of the date the informal fact-finding decision notice was served, or the date it was mailed to the respondent, whichever occurred first. In the event the informal fact-finding decision was served by mail, three days shall be added to that period.

### 6VAC20-250-360. Formal hearing.

A. Formal hearing proceedings may be initiated in any case in which the basic laws provide expressly for a case decision, or in any case to the extent the informal fact-finding conference has not been conducted or an appeal thereto has been timely received. Formal hearings shall be conducted in accordance with §2.2-4020 of the Code of Virginia. The findings and decision of the director resulting from a formal hearing may be appealed to the board.

## TITLE 12. HEALTH

## STATE BOARD OF HEALTH

## Proposed Regulation

Title of Regulation: **12VAC5-490. Virginia Radiation Protection Regulations: Fee Schedule (amending 12VAC5-490-10, 12VAC5-490-20).**

Statutory Authority: §§32.1-229.1 and 32.1-229.2 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on September 19, 2008.

Agency Contact: Les Foldesi, Director, Bureau of Radiological Health, Department of Health, 109 Governor Street, Room 730, Richmond, VA 23219, telephone (804) 864-8151, FAX (804) 864-8155, or email les.foldesi@vdh.virginia.gov.

Basis: Section 32.1-229.1 of the Code of Virginia requires the Board of Health to establish fee schedules for registration of machines and for inspections of X-ray machines by Department of Health personnel (except for audit inspections initiated by the Department). Section 32.1-229.2 requires the Board of Health to set inspection fees to minimize competition with the private sector and include all reasonable costs.

Purpose: The proposed regulatory action addresses two sets of fees levied by the X-ray machine program: X-ray machine registration fees and X-ray machine inspection fees. With respect to the X-ray machine registration fees, the existing regulation is being amended due to the increased costs of maintaining a registration program for X-ray machines since publication of the fee schedule with an effective date of January 1, 1989. The registration fees need to be adjusted to decrease the growing reliance on general funds to support this activity. The X-ray machine inspection fees also need to be modified. There now exist several types of X-ray machines that did not exist in 1989, for which the agency does not have an appropriate inspection fee-fees for these machines are now included in the proposed X-ray machine inspection schedule. The personnel and travel cost to the agency for machine inspections have also increased since the fee schedule was established in 1989.

The harmful effects of radiation are well known, as well as the many beneficial applications of radiation in industry and healthcare. Adequate regulatory controls for the useful application of radiation is necessary to protect the health, safety and welfare of citizens. The Commonwealth seeks

B. After a formal hearing pursuant to §2.2-4020 of the Code of Virginia wherein a sanction is imposed to fine, or to suspend, revoke or deny issuance or renewal of any license or approval, the department may assess the holder thereof the cost of conducting such hearing when the department has final authority to grant such license [ ~~registration, certification~~ ] or approval, unless the department determines that the offense was inadvertent or done in good faith belief that such act did not violate a statute or regulation. The cost shall be limited to (i) the reasonable hourly rate for the hearing officer and (ii) the actual cost of recording the proceedings. This assessment shall be in addition to any fine imposed by sanctions.

**6VAC20-250-370. Appeals.**

The findings and the decision of the director may be appealed to the board provided that written notification is given to the attention of the Director of the Department of Criminal Justice Services within 30 days following the date notification of the hearing decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the hearing decision is served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

**6VAC20-250-380. Court review; appeal of final agency order.**

A. [ ~~The agency's final administrative decision (final agency orders) may be appealed. Any person affected by, and claiming the unlawfulness of the agency's final case decision, shall have the right to direct review thereof by an appropriate and timely court action. Such appeal actions shall be initiated in the circuit court of jurisdiction in which the party applying for review resides; save, if such party is not a resident of Virginia, the venue shall be in the city of Richmond, Virginia. The final administrative decision may be appealed pursuant to §2.2-4026 of the Code of Virginia. ]~~

B. Notification shall be given to the attention of the Director of the Department of Criminal Justice Services in writing within 30 days of the date notification of the board decision was served, or the date it was mailed to the respondent, whichever occurred first. In the event the board decision was served by mail, three days shall be added to that period. (Rule 2A:2 of Rules of the Virginia Supreme Court.)

C. During all judicial proceedings incidental to such disciplinary action, the sanctions imposed by the board shall remain in effect unless the court issues a stay of the order.

VA.R. Doc. No. R05-279; Filed July 1, 2008, 3:01 p.m.



---

# Regulations

---

to fully cover the costs of the X-ray machine program from registration fees by SFY2010.

Substance: 12VAC5-490-10 increases the X-ray machine registration fee of \$15 annually to \$50 for those facilities on an annual inspection frequency; to increase the fee of \$15 to \$50 every three years for those facilities on a three-year inspection cycle; and to consider higher registration fees for radiation therapy machines and particle accelerators.

12VAC5-490-20 amends the X-ray machine inspection fees for the various types of X-ray machines based on existing costs to the agency and to develop inspection fees for bone densitometers; combination dental panoramic and cephalometric machines; and other X-ray machine types that were not included in the fee schedule.

Issues:

1. Primary advantages and disadvantages to the public: The primary advantage to the public is that the X-ray machine registration and inspection activities will rely less on general funds to support these activities and more on the users of the X-ray equipment.

There are no disadvantages to the public in promulgating the proposed fee schedule.

2. Primary advantages and disadvantages to the agency and Commonwealth: Approving the proposed fee structure will allow the Commonwealth to recover more of the costs associated with carrying out the legislative mandate.

There are no disadvantages to the agency and Commonwealth in promulgating the proposed fee schedule.

3. Other pertinent matters of interest to the regulated community: X-ray machine registrants have an interest in keeping inspection fees as low as possible.

Private inspectors of X-ray machines have an interest in assuring that inspection fees by agency inspectors do not hurt their business by undercutting the private sector pricing, and §32.1-229.2 of the Code of Virginia requires the agency to establish inspection fees in such a manner so as to minimize competition with the private inspector while recovering costs.

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

Summary of the Proposed Amendments to Regulation. The State Board of Health proposes to 1) increase the X-ray machine registration fees, 2) increase inspection fees for most X-ray machines and decrease inspection fees for Veterinary, Podiatric, and Cephalometric machines, 3) establish inspection fees for four new types of machines/surveys.

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

Estimated Economic Impact. These regulations establish fees for the registration and inspection of X-ray machines. In Virginia, approximately 17,000 X-ray machines are used in 3,127 dental facilities, 584 chiropractic facilities, 230 podiatry offices, 1,305 medical facilities, 742 veterinary facilities, 215 state facilities, 5 state hospitals, and 99 other hospitals. Depending on the type of X-ray machines, facilities are subject to annual or three-year registration and inspection cycles.

Inspections can be performed by either Virginia Department of Health (VDH) personnel or by licensed private inspectors. According to VDH, approximately 200 private inspectors perform about 90% of the inspections while VDH personnel perform about 10% of the inspections. The inspection fees established in these regulations do not apply to private inspectors. However, registration fees are the same regardless of the entity that performs the inspections.

VDH notes that fees have not been changed since 1987. However, due to general inflation, higher personnel costs, higher travel costs, higher office supply costs, higher postage fees, etc. the program's expenses have grown significantly higher than the revenues generated. For example, the registration fee revenues are estimated to be about \$120,000 to \$135,000 annually and the inspection fees are estimated to generate approximately \$85,000 per year under the current fee schedule. On the other hand, approximately \$400,000 is needed to support the X-ray program. Also, due to technological advancements there have been new types of X-ray machines and surveys that inspection fees need to be established for.

The proposed changes will increase the X-ray machine registration fees from \$15 annually to \$50 annually for facilities on an annual inspection cycle and from \$15 every three years to \$50 every three years for facilities on a three-year inspection cycle.

Also, the inspections fees will be changed by machine types as follows: increase inspection fee for general radiographic machines (includes Chiropractic and Special Purpose X-ray systems) from \$190 to \$230; increase inspection fee for Fluoroscopic and C-arm Fluoroscopic machines from \$190 to \$230; increase inspection fee for Combination machines (General Purpose-Fluoroscopic) from \$380 to \$460; increase inspection fee for Dental Intraoral and Panoramic machines from \$65 to \$90; decrease inspection fee for Veterinary machines from \$190 to \$160; decrease inspection fee for Podiatric machines from \$190 to \$90; decrease inspection fee for Cephalometric machines from \$190 to \$120.

Finally, the proposed changes will establish inspection fees for four new machine and survey types as follows: \$90 for Bone Densitometry machines; \$210 for Combination machines (Dental Panoramic and Cephalometric); \$250 for Shielding review for dental facilities; \$450 for Shielding review for radiographic, chiropractic, veterinary, fluoroscopic, or podiatric facilities.

VDH estimates that the proposed changes in the registration and inspection fees will close the gap between the program revenues and the expenditures. That is the proposed changes are expected to increase fee revenues by approximately \$180,000 - \$195,000 so that the program will be able to generate just enough revenues to cover its costs.

One of the main economic effects of the proposed changes is a net increase in the fee revenues that the X-ray facilities would be paying. Even though the proposed fee changes are significantly higher than the current fees proportionally, the dollar increase in fees are minor compared to revenues generated by a typical machine. Thus, it is unlikely that the fee increases will have a significant effect on the operations of X-ray facilities.

Another economic effect is expected to be on the private inspectors. Higher inspection fees charged by VDH are expected to either increase demand for private inspections or allow them to charge higher fees.

Finally, proposed net increase in X-ray registration and inspection revenues will help the program recover its costs. Under the current fee schedule, general funds are used to subsidize X-ray registration and inspection program. With the increased revenues, the program is expected to be self funding and additional revenues are expected to reduce the drain on general funds which could be used for variety of other public programs.

**Businesses and Entities Affected.** The proposed regulations apply to registration and inspection of 17,000 X-ray machines used in 3,127 dental facilities, 584 chiropractic facilities, 230 podiatry offices, 1,305 medical facilities, 742 veterinary facilities, 215 state facilities, 5 state hospitals, and 99 other hospitals. The proposed regulations are also expected to have an indirect effect on approximately 200 private X-ray inspectors.

**Localities Particularly Affected.** The proposed fee increases do not affect any particular locality more than others.

**Projected Impact on Employment.** No significant direct effect on employment is expected. However, if the newly available general funds due to fee increases are spent rather than saved, a positive impact on employment may be expected.

**Effects on the Use and Value of Private Property.** No significant direct effect on the use and value of private property is expected. However, the net asset value of X-ray businesses should decrease commensurately with the increased compliance costs.

**Small Businesses: Costs and Other Effects.** Majority of the affected entities are believed to be small businesses. Thus, the costs and other effects discussed above apply to small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** In order to make the X-ray registration and inspection program self funding and be able continue to provide the same level of services it currently does, there is no known better alternative method.

**Real Estate Development Costs.** No significant direct effect on real estate development costs is expected.

**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 department concurs generally with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

*The proposed amendments increase X-ray machine registration fees and inspection fees for most X-ray machines; decrease inspection fees for veterinary,*

# Regulations

*podiatric, and cephalometric machines; and include additional types of X-ray machines in the inspection fee schedule.*

## 12VAC5-490-10. Registration fees.

All operators or owners of diagnostic X-ray machines used in the healing arts and capable of producing radiation shall pay the following registration fee:

~~\$15~~ \$50 for each machine and additional tube(s) that have a required annual inspection, collected annually;

~~\$15~~ \$50 for each machine and additional tube(s) that have a required inspection every three years, collected every three years.

All operators or owners of therapeutic X-ray, particle accelerators, and teletherapy machines used in the healing arts capable of producing radiation shall pay the following annual registration fee:

~~\$15~~ \$50 for each machine with a maximum beam energy of less than ~~1Mev~~ 500 KVp;

~~\$15~~ \$50 for each machine with a maximum beam energy of ~~1Mev~~ 500 KVp or greater.

Where the operator or owner of the aforementioned machines is a state agency or local government, that agency is exempt from the payment of the registration fee.

## 12VAC5-490-20. Inspection fees.

The following fees shall be charged for surveys requested by the registrant and performed by a Department of Health inspector:

Type	Cost Per Tube
General Radiographic (includes: Chiropractic, <del>Mammographic,</del> Podiatric, Veterinary, <del>Cephalometric,</del> and Special Purpose X-ray Systems)	<del>\$190</del> <u>\$230</u>
Fluoroscopic, C-arm Fluoroscopic	<del>\$190</del> <u>\$230</u>
Combination (General Purpose-Fluoroscopic)	<del>\$380</del> <u>\$460</u>
Dental Intraoral, <del>Cephalometric</del> and Panographic	<del>\$65</del> <u>\$90</u>
Veterinary	<u>\$160</u>
Podiatric	<u>\$90</u>
Cephalometric	<u>\$120</u>
Bone Densitometry	<u>\$90</u>
Combination (Dental Panographic)	<u>\$210</u>

and Cephalometric)	
Shielding Review for Dental Facilities	<u>\$250</u>
Shielding Review for Radiographic, Chiropractic, Veterinary, Fluoroscopic, or Podiatric Facilities	<u>\$450</u>

VA.R. Doc. No. R07-114a; Filed June 26, 2008, 3:19 p.m.

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Emergency Regulation

Title of Regulation: **12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-130).**

Statutory Authority: §§32.1-324 and 32.1-325 of the Code of Virginia.

Effective Dates: July 2, 2008, through July 1, 2009.

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:

*The Administrative Process Act (§2.2-4011) states that an "emergency situation" is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date.*

*The agency is proposing this regulatory action to comply with Item 306 OO of the 2008 Appropriation Act that gives DMAS authority to implement prior authorization and utilization review for community-based mental health services for children and adults. In recent years, the utilization of certain community-based mental health services has increased substantially. Intensive in-home services expenditures are expected to increase 25% during SFY 2008. In order to address these expected increases in utilization the General Assembly provided DMAS authority to implement prior authorization of these services in order to ensure that such services are provided based on Medicaid service criteria.*

*This action implements new prior authorization for intensive in-home services for children and adolescents. DMAS already has regulations that*

*address prior authorization for children's group home services (Levels A & B) and performs utilization review for community-based mental health services. Therefore those aspects of the Item 306 OO of the 2008 General Assembly are already in operation and need not be addressed in this package.*

*The particular change implemented in this action is directed to 12VAC30-50-130 B 5 a (community mental health services). This subsection describes intensive in-home services to children and adolescents under age 21, which includes the following: crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. Intensive in-home services are already limited annually to 26 weeks. The amendment adds the requirement for prior authorization for intensive in-home services.*

**12VAC30-50-130. Skilled nursing facility services, EPSDT, and family planning.**

A. Skilled nursing facility services (other than services in an institution for mental diseases) for individuals 21 years of age or older.

Service must be ordered or prescribed and directed or performed within the scope of a license of the practitioner of the healing arts.

B. Early and periodic screening and diagnosis of individuals under 21 years of age, and treatment of conditions found.

1. Payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities, and the accompanying attendant physician care, in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination.

2. Routine physicals and immunizations (except as provided through EPSDT) are not covered except that well-child examinations in a private physician's office are covered for foster children of the local social services departments on specific referral from those departments.

3. Orthoptics services shall only be reimbursed if medically necessary to correct a visual defect identified by an EPSDT examination or evaluation. The department shall place appropriate utilization controls upon this service.

4. Consistent with the Omnibus Budget Reconciliation Act of 1989 §6403, early and periodic screening, diagnostic, and treatment services means the following services: screening services, vision services, dental services, hearing services, and such other necessary health care, diagnostic services, treatment, and other measures described in Social Security Act §1905(a) to correct or ameliorate defects and physical and mental illnesses and conditions discovered by the screening services and which are medically necessary, whether or not such services are covered under the State Plan and notwithstanding the limitations, applicable to recipients ages 21 and over, provided for by the Act §1905(a).

5. Community mental health services.

a. Intensive in-home services to children and adolescents under age 21 shall be time-limited interventions provided typically but not solely in the residence of a child who is at risk of being moved into an out-of-home placement or who is being transitioned to home from out-of-home placement due to a documented medical need of the child. These services provide crisis treatment; individual and family counseling; and communication skills (e.g., counseling to assist the child and his parents to understand and practice appropriate problem solving, anger management, and interpersonal interaction, etc.); case management activities and coordination with other required services; and 24-hour emergency response. These services shall be limited annually to 26 weeks. Authorization is required for Medicaid reimbursement.

b. Therapeutic day treatment shall be provided two or more hours per day in order to provide therapeutic interventions. Day treatment programs, limited annually to 780 units, provide evaluation; medication; education and management; opportunities to learn and use daily living skills and to enhance social and interpersonal skills (e.g., problem solving, anger management, community responsibility, increased impulse control, and appropriate peer relations, etc.); and individual, group and family psychotherapy.

c. Community-Based Services for Children and Adolescents under 21 (Level A).

(1) Such services shall be a combination of therapeutic services rendered in a residential setting. The residential services will provide structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results

---

## Regulations

---

in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) In addition to the residential services, the child must receive, at least weekly, individual psychotherapy that is provided by a licensed mental health professional.

(3) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

(4) Authorization is required for Medicaid reimbursement.

(5) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(6) Providers must be licensed by the Department of Social Services, Department of Juvenile Justice, or Department of Education under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(7) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management.

(8) The facility/group home must coordinate services with other providers.

### d. Therapeutic Behavioral Services (Level B).

(1) Such services must be therapeutic services rendered in a residential setting that provides structure for daily activities, psychoeducation, therapeutic supervision and psychiatric treatment to ensure the attainment of therapeutic mental health goals as identified in the individual service plan (plan of care). Individuals qualifying for this service must demonstrate medical necessity for the service arising from a condition due to mental, behavioral or emotional illness that results in significant functional impairments in major life activities in the home, school, at work, or in the community. The service must reasonably be expected to improve the child's condition or prevent regression so that the services will no longer be needed. DMAS will reimburse only for services provided in facilities or programs with no more than 16 beds.

(2) Authorization is required for Medicaid reimbursement.

(3) Room and board costs are not reimbursed. Facilities that only provide independent living services are not reimbursed.

(4) Providers must be licensed by the Department of Mental Health, Mental Retardation, and Substance Abuse Services (DMHMRSAS) under the Standards for Interdepartmental Regulation of Children's Residential Facilities (22VAC42-10).

(5) Psychoeducational programming must include, but is not limited to, development or maintenance of daily living skills, anger management, social skills, family living skills, communication skills, and stress management. This service may be provided in a program setting or a community-based group home.

(6) The child must receive, at least weekly, individual psychotherapy and, at least weekly, group psychotherapy that is provided as part of the program.

(7) Individuals must be discharged from this service when other less intensive services may achieve stabilization.

6. Inpatient psychiatric services shall be covered for individuals younger than age 21 for medically necessary stays for the purpose of diagnosis and treatment of mental health and behavioral disorders identified under EPSDT when such services are rendered by:

a. A psychiatric hospital or an inpatient psychiatric program in a hospital accredited by the Joint Commission on Accreditation of Healthcare Organizations; or a psychiatric facility that is accredited by the Joint Commission on Accreditation of Healthcare Organizations, the Commission on Accreditation of Rehabilitation Facilities, the Council on Accreditation of Services for Families and Children or the Council on Quality and Leadership.

b. Inpatient psychiatric hospital admissions at general acute care hospitals and freestanding psychiatric hospitals shall also be subject to the requirements of 12VAC30-50-100, 12VAC30-50-105, and 12VAC30-60-25. Inpatient psychiatric admissions to residential treatment facilities shall also be subject to the requirements of Part XIV (12VAC30-130-850 et seq.) of this chapter.

c. Inpatient psychiatric services are reimbursable only when the treatment program is fully in compliance with 42 CFR Part 441 Subpart D, as contained in 42 CFR 441.151 (a) and (b) and 441.152 through 441.156. Each admission must be preauthorized and the treatment must meet DMAS requirements for clinical necessity.

7. Hearing aids shall be reimbursed for individuals younger than 21 years of age according to medical necessity when provided by practitioners licensed to engage in the practice of fitting or dealing in hearing aids under the Code of Virginia.

C. Family planning services and supplies for individuals of child-bearing age.

1. Service must be ordered or prescribed and directed or performed within the scope of the license of a practitioner of the healing arts.

2. Family planning services shall be defined as those services that delay or prevent pregnancy. Coverage of such services shall not include services to treat infertility nor services to promote fertility.

VA.R. Doc. No. R08-1328; Filed July 2, 2008, 11:30 a.m.

### Emergency Regulation

**Title of Regulation:** 12VAC30-120. Waivered Services (amending 12VAC30-120-70, 12VAC30-120-90, 12VAC30-120-140, 12VAC30-120-211, 12VAC30-120-213, 12VAC30-120-225, 12VAC30-120-229, 12VAC30-120-237, 12VAC30-120-247, 12VAC30-120-700, 12VAC30-120-710, 12VAC30-120-754, 12VAC30-120-758, 12VAC30-120-762, 12VAC30-120-770, 12VAC30-120-900, 12VAC30-120-910, 12VAC30-120-920, 12VAC30-120-970, 12VAC30-120-1500, 12VAC30-120-1550; adding 12VAC30-120-2000, 12VAC30-120-2010).

**Statutory Authority:** §§32.1-324 and 32.1-325 of the Code of Virginia.

**Effective Dates:** July 1, 2008, through June 30, 2009.

**Agency Contact:** Jason Rachel, Project Manager, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-2984, FAX (804) 786-1680, or email jason.rachel@dmas.virginia.gov.

**Preamble:**

*Section 2.2-4011 of the Administrative Process Act states that an emergency situation is: (i) a situation involving an imminent threat to public health or safety; or (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law requires that a regulation shall be effective in 280 days or less from its enactment, or in which federal regulation requires a regulation to take effect no later than 280 days from its effective date. Item 302 HHH of the 2008 Appropriation Act directed DMAS to implement the Money Follows the Person program within 280 days of the Act.*

*This regulation is required in order to establish the regulatory structure for the successful implementation of the Money Follows the Person (MFP) Demonstration. This regulation must be promulgated and the regulations must be in effect in order to receive CMS approval to begin the MFP Demonstration in July 2008.*

*The purpose of the MFP Demonstration is to strengthen Virginia's long-term services and supports using available funds to "follow the person" by supporting individuals who choose to transition from long-term care institutions into the community. The MFP Demonstration is one of the Governor's set priorities for community integration of persons who reside in institutions. This initiative also reflects a strong collaborative approach with this administration and the legislature to coordinate and continually build upon rebalancing efforts of the Commonwealth's long-term support system (i.e., increasing the use of home- and community-based care services (HCBS) rather than institutional long-term care services). This collaborative approach has enabled the Commonwealth over the past several years to be resourceful in balancing the state's budget without cutting Medicaid long-term support services.*

*These emergency regulations reflect the needed changes to the following five HCBS waivers to support individuals who choose to transition from long-term care institutions into the community. They are the Technology Assisted (Tech), HIV/AIDS, Elderly or Disabled with Consumer Direction (EDCD), Mental Retardation (MR) and Individual and Family Developmental Disabilities Support (IFDDS) Waivers.*

*The changes to these five waivers include (i) adding the services of Personal Emergency Response System (PERS), Medication Monitoring, and Transition Services to the Tech Waiver; (ii) adding the services of Transition Coordination, Environmental Modifications, Assistive Technology, and Transition Services to the EDCD Waiver; (iii) adding the services of PERS and Medication Monitoring, Environmental Modifications, Assistive Technology, Transition Services to the HIV/AIDS Waiver; and (iv) adding Transition Services to the MR and IFDDS Waivers.*

*Two of these services, Transition Coordination and Transition Services, are new waiver services. Language has been developed based on CMS guidelines and a review of how other states define and utilize these services. In addition, existing waiver services (PERS, Medication Monitoring, Environmental Modifications and Assistive Technology) are being expanded to other waivers in an effort to facilitate the transition from institutional*

---

# Regulations

---

living to community living. The new services mentioned above are being added as follows: Transition Services is being added to the AIDS, EDCD, IFDDS, MR and Tech Waivers to provide one-time funding (up to \$5,000 per person, per lifetime) to assist with costs incurred by individuals who are transitioning into the community. Examples of expenses include rent and utility deposits and necessary furniture. One other service, Transition Coordination, is added to the EDCD Waiver to assist institutionalized transitioning into the EDCD Waiver because a case management service currently does not exist in this program. This service will be time-limited and the coordinator will assist the individual up to three months prior to leaving the institutional setting and up to nine months following the individual's discharge into the community. All other HCBS waivers already have a case management service that can assist institutionalized individuals with transitioning into these programs.

Finally, this regulation addresses changes to units of service for provider billing purposes. DMAS is currently being directed by the federal Medicaid authority, the Centers for Medicare and Medicaid Services (CMS), to no longer use preset units of service for Medicaid Waiver reimbursement. DMAS is working with CMS to establish time-based billing for the DMAS fee schedule for Waiver services, and this is reflected in the MFP regulations.

## Part II

### Home and Community-Based Services for Technology Assisted Individuals

#### 12VAC30-120-70. Definitions.

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

"Activities of daily living (ADL)" means personal care tasks, i.e., bathing, dressing, toileting, transferring, bowel/bladder control, and eating/feeding. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Adult" means an individual who either is 21 years of age or is past 21 years of age.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Child" means an individual who has not yet reached his 21st birthday.

"Congregate living arrangement" means one in which two or more recipients live in the same household and may share receipt of health care services from the same provider or providers.

"Congregate private duty nursing" means nursing provided to two or more recipients in a group setting.

"DMAS" means the Department of Medical Assistance Services.

"Environmental modifications" means physical adaptations to a house, or place of residence, which shall be necessary to ensure the individual's health or safety, or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual. Such modifications must exceed reasonable accommodation requirements of the Americans with Disabilities Act (42 USC §1201 et seq.).

"Health care coordinator" means the registered nurse who is responsible for ensuring that the assessment, care planning, monitoring, and review activities as required by DMAS are accomplished. This individual may be either an employee of DMAS or a DMAS contractor.

"Health care coordination" means a comprehensive needs assessment, determination of cost effectiveness, and the coordination of the service efforts of multiple providers in order to avoid duplication of services and to ensure the individual's access to and receipt of needed services.

"Instrumental activities of daily living (IADL)" means social tasks, i.e., meal preparation, shopping, housekeeping, laundry, money management. A person's degree of independence in performing these activities is a part of determining appropriate level of care and services. The provision of IADLs is limited to the individual receiving services and not to family members or other person in the household. Meal preparation is planning, preparing, cooking and serving food. Shopping is getting to and from the store, obtaining/paying for groceries and carrying them home. Housekeeping is dusting, washing dishes, making beds, vacuuming, cleaning floors, and cleaning kitchen/bathroom. Laundry is washing/drying clothes. Money management is paying bills, writing checks, handling cash transactions, and making change.

"Medical equipment and supplies" means those articles prescribed by the attending physician, generally recognized by the medical community as serving a diagnostic or therapeutic purpose and as being a medically necessary element of the home care plan. Items covered are medically necessary equipment and supplies needed to

assist the individual in the home environment, without regard to whether those items are covered by the Plan.

"Objective Scoring Criteria" means the evaluative tool to be used to determine the appropriateness for an individual's admission to these services.

"Personal emergency response systems" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. 12VAC30-120-970 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Personal assistance" means care provided by an aide or respiratory therapist trained in the provision of assistance with ADLs or IADLs.

"Plan of care" means the written plan of services and supplies certified by the attending physician needed by the individual to ensure optimal health and safety for an extended period of time.

~~"Primary caregiver" means either a family member or other person who takes primary responsibility for providing assistance to the recipient or recipients for care they are unable to provide for himself or themselves~~ the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

"Providers" means those individuals or facilities registered, licensed, or certified, or both, as appropriate, and enrolled by DMAS to render services to Medicaid recipients eligible for services.

"Respite care services" means temporary skilled nursing services designed to relieve the family of the care of the technology assisted individual for a short period or periods of time (a maximum of 15 days per year or 360 hours per 12-month period). In a congregate living arrangement, this same limit shall apply per household. Respite care shall be provided in the home of the individual's family or caretaker.

~~"Routine respiratory therapy" means services that can be provided on a regularly scheduled basis. Therapy interventions may include: (i) monitoring of oxygen in~~

~~blood; (ii) evaluation of pulmonary functioning; and (iii) maintenance of respiratory equipment.~~

"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Technology assisted" means any individual defined as chronically ill or severely impaired who needs both a medical device to compensate for the loss of a vital body function and substantial and ongoing skilled nursing care to avert death or further disability and whose illness or disability would, in the absence of services approved under this waiver, require admission to or prolonged stay in a hospital, nursing facility, or other medical long-term care facility.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

## **12VAC30-120-90. Covered services and provider requirements.**

A. Private duty nursing service shall be covered for individuals enrolled in the technology assisted waiver services. This service shall be provided through either a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract for private duty nursing or a day care center licensed by the Virginia Department of Social Services which employs registered nurses and is enrolled by DMAS to provide congregate private duty nursing. At a minimum, the private duty nurse shall either be a licensed practical nurse or a registered nurse with a current and valid license issued by the Virginia State Board of Nursing.

1. For individuals under 21 whether living separately or congregately, during the first 30 days after the individual's admission to the waiver service, private duty nursing is covered for 24 hours per day if needed and appropriate to assist the family in adjustment to the care associated with technology assistance. After 30 days, private duty nursing shall be reimbursed for a maximum of 16 hours per 24-hour period per household. The department may grant individual exceptions, not to exceed 30 total days per annum, to these maximum limits based on documented emergency needs of the individual and the case, which continue to meet requirements for cost effectiveness of community

---

## Regulations

---

services. Such consideration of documented emergency needs shall not include applicable additional emergency costs.

2. For individuals over the age of 21 years whether living separately or congregately, private duty nursing shall be reimbursed for a maximum of 16 hours within a 24-hour period per household provided that the cost-effectiveness standard is not exceeded for the individual's care.

3. In no instance, shall DMAS approve an ongoing plan of care or ongoing multiple plans of care per household which result in approval of more than 16 hours of private duty nursing in a 24-hour period per household.

4. Individuals who no longer meet the patient qualifications for either children or adults cited in 12VAC30-120-80 may be eligible for private duty nursing for the number of hours per 24-hour period previously approved in the plan of care not to exceed two weeks from the date the attending physician certifies the cessation of daily technology assistance.

5. The hours of private duty nursing approved for coverage shall be limited by either medical necessity or cost effectiveness or both.

6. Congregate private duty nursing shall be limited to a maximum ratio of one private duty nurse to two waiver recipients. When three or more waiver recipients share a home, ratios will be determined by the combined needs of the residents.

B. Provided that the cost-effectiveness standard shall not be exceeded, respite care service shall be covered for a maximum of 360 hours within a ~~12-month period~~ calendar year per household for individuals who are qualified for technology assisted waiver services and who have a primary caregiver, other than the provider, who requires relief from the burden of caregiving. This service shall be provided by skilled nursing staff (registered nurse or licensed practical nurse licensed to practice in the Commonwealth) under the direct supervision of a home health agency licensed or certified by the Virginia Department of Health for Medicaid participation and with which DMAS has a contract to provide private duty nursing.

C. Provided that the cost-effectiveness standard shall not be exceeded, durable medical equipment and supplies shall be provided for individuals qualified for technology services. All durable medical equipment and supplies, including nutritional supplements, which are covered under the State Plan and those medical equipment and supplies, including such items which may be defined as assistive technology and environmental modifications which are not covered under the State Plan but are medically necessary and cost effective for the individual's maintenance in the

community, shall be covered. This service shall be provided by persons qualified to render it. Durable medical equipment and supplies shall be necessary to maintain the individual in the home environment.

1. Medical equipment and supplies shall be prescribed by the attending physician and included in the plan of care, and must be generally recognized as serving a diagnostic or therapeutic purpose and being medically necessary for the home care of the individual.

2. Vendors of durable medical equipment and supplies related to the technology upon which the individual is dependent shall have a contract with DMAS to provide services.

3. In addition to providing the ventilator or other respiratory-devised support and associated equipment and supplies, the vendor providing the ventilator shall ensure the following:

a. 24 hour on-call for emergency services;

b. Technicians to make regularly scheduled maintenance visits at least every 30 days and more often if called;

c. Replacement or repair of equipment and supplies as required; and

d. Respiratory therapist registered or certified with the National Board for Respiratory Care (NBRC) on call 24 hours per day and stationed within two hours of the individual's home to facilitate immediate response. The respiratory therapist shall be available for routine respiratory therapy as well as emergency care. In the event that the Department of Health Professions implements through state law a regulation requiring registration, certification or licensure for respiratory therapists to practice in the Commonwealth, DMAS shall require all respiratory therapists providing services to this technology assisted population to be duly registered, licensed or certified.

D. Provided that the cost-effectiveness standard shall not be exceeded, personal assistance services shall be covered for individuals over the age of 21 who require some assistance with activities of daily living and instrumental activities of daily living but do not require and are able to do without skilled interventions during portions of their day or are able to self perform a portion of their ADLs or IADLs or direct their skilled care needs during the period when personal assistance would be provided. Personal assistance services shall be rendered by a provider who has a DMAS provider agreement to provide personal care, home health care, and private duty nursing. At a minimum, the staff providing personal assistance must have been certified through coursework as either personal care aides,

home health aides, homemakers, personal care attendants, or registered or certified respiratory therapists.

E. Assistive technology services shall be covered for individuals enrolled in the technology assisted waiver. 12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service.

F. Environmental modifications services shall be covered for individuals enrolled in the technology assisted waiver. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service.

G. Transition services shall be covered for individuals enrolled in the technology assisted waiver. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

Part III

Home and Community-Based Services for Individuals with Acquired Immunodeficiency Syndrome (AIDS) and AIDS-Related Complex

**12VAC30-120-140. Definitions.**

"Acquired Immune Deficiency Syndrome" or "AIDS" means the most severe manifestation of infection with the Human Immunodeficiency Virus (HIV). The Centers for Disease Control and Prevention (CDC) lists numerous opportunistic infections and cancers that, in the presence of HIV infection, constitute an AIDS diagnosis.

"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is part of determining appropriate level of care and service needs.

"Agency-directed services" means services for which the provider agency is responsible for hiring, training, supervising, and firing of the staff.

"Appeal" means the process used to challenge DMAS when it takes action or proposes to take action that will adversely affect, reduce, or terminate the receipt of benefits.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment. 12VAC30-120-762 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Asymptomatic" means without symptoms. This term is usually used in the HIV/AIDS literature to describe an individual who has a positive reaction to one of several tests for HIV antibodies but who shows no clinical symptoms of the disease.

"Case management" means continuous reevaluation of need, monitoring of service delivery, revisions to the plan of care and coordination of services for individuals enrolled in the HIV/AIDS waiver.

"Case manager" means the person who provides services to individuals who are enrolled in the waiver that enable the continuous assessment, coordination, and monitoring of the needs of the individuals who are enrolled in the waiver. The case manager must possess a combination of work experience and relevant education that indicates that the case manager possesses the knowledge, skills, and abilities at entry level, as established by the Department of Medical Assistance Services in 12VAC30-120-170 to conduct case management.

"Cognitive impairment" means a severe deficit in mental capability that affects areas such as thought processes, problem solving, judgment, memory, or comprehension and that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

"Consumer-directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the consumer-directed plan of care, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed personal assistance and respite care services. The CD services facilitator cannot be the individual, the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver who is responsible for employing the assistant.

"Current functional status" means the degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DMAS-96 form" means the Medicaid Funded Long-Term Care Service Authorization Form, which is a part of the preadmission screening packet and must be completed by a Level One screener on a Preadmission Screening Team. It designates the type of service the individual is eligible to receive.

---

# Regulations

---

"DMAS-122 form" means the Patient Information Form used by the provider and the local DSS to exchange information regarding the responsibility of a Medicaid-eligible individual to make payment toward the cost of services or other information that may affect the eligibility status of an individual.

"DSS" means the Department of Social Services.

"Designated preauthorization contractor" means the entity that has been contracted by DMAS to perform preauthorization of services.

"Enteral nutrition products" means enteral nutrition listed in the durable medical equipment manual that is prescribed by a physician to be necessary as the primary source of nutrition for the individual's health care plan (due to the prevalence of conditions of wasting, malnutrition, and dehydration) and not available through any other food program.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC §1201 et seq.), necessary to ensure the individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Fiscal agent" means an agency or organization that may be contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of the individual who is receiving consumer-directed personal assistance services and consumer-directed respite services.

"HIV-symptomatic" means having the diagnosis of HIV and having symptoms related to the HIV infection.

"Home- and community-based care" means a variety of in-home and community-based services reimbursed by DMAS (case management, personal care, private duty nursing, respite care consumer-directed personal assistance, consumer-directed respite care, and enteral nutrition products) authorized under a Social Security Act §1915 (c) AIDS Waiver designed to offer individuals an alternative to inpatient hospital or nursing facility placement. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid inpatient hospital or nursing facility placement. DMAS, or the designated preauthorization contractor, shall give prior authorization for any Medicaid-reimbursed home and community-based care.

"Human Immunodeficiency Virus (HIV)" means the virus which leads to acquired immune deficiency syndrome (AIDS). The virus weakens the body's immune system and, in doing so, allows "opportunistic" infections and diseases to attack the body.

"Instrumental activities of daily living" or "IADL" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"Personal emergency response systems" or "PERS" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision. 12VAC30-120-970 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Participating provider" means an individual, institution, facility, agency, partnership, corporation, or association that has a valid contract with DMAS and meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS to provide Medicaid waiver services.

"Personal assistant" means a domestic servant for purposes of this part and exemption from Worker's Compensation.

"Personal services" or "PAS" means long-term maintenance or support services necessary to enable an individual to remain at or return home rather than enter an inpatient hospital or a nursing facility. Personal assistance services include care specific to the needs of a medically stable, physically disabled individual. Personal assistance services include, but are not limited to, assistance with ADLs, bowel/bladder programs, range of motion exercises, routine wound care that does not include sterile technique, and external catheter care. Supportive services are those that substitute for the absence, loss, diminution, or impairment of a physical function. When specified, supportive services may include assistance with IADLs that are incidental to the care furnished or that are essential to the health and welfare of the individual. Personal assistance services shall not include either practical or professional nursing services as defined in ~~Chapters 30 and 34 of Title 54.1~~ §32.1-162.7 of the Code of Virginia and 12VAC5-381-360, as appropriate.

"Personal care agency" means a participating provider that renders services designed to offer an alternative to institutionalization by providing eligible individuals with personal care aides who provide personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter an inpatient hospital or a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, instrumental activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. It shall be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"Preadmission Screening Authorization Form" means a part of the preadmission screening packet that must be filled out by a Level One screener on a preadmission screening team. It gives preadmission authorization to the provider and the individual for Medicaid services, and designates the type of service the individual is authorized to receive.

"Preadmission screening committee/team" or "PAS committee" or "PAS team" means the entity contracted with DMAS that is responsible for performing preadmission screening. For individuals in the community, this entity is a committee comprised of a nurse from the local health department and a social worker from the local department of social services. For individuals in an acute care facility who require preadmission screening, this entity is a team of nursing and social work staff. A physician must be a member of both the local committee and the acute care team.

"Preadmission screening" or "PAS" means the process to (i) evaluate the functional, nursing, and social needs of individuals referred for preadmission screening; (ii) analyze what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) develop the service plan.

"Private duty nursing" means individual and continuous nursing care provided by a registered nurse or a licensed practical nurse under the supervision of a registered nurse.

"Program" means the Virginia Medicaid program as administered by the Department of Medical Assistance Services.

"Reconsideration" means the supervisory review of information submitted to DMAS or the designated preauthorization contractor in the event of a disagreement

of an initial decision that is related to a denial in the reimbursement of services already rendered by a provider.

"Respite care" means services specifically designed to provide a temporary, periodic relief to the primary caregiver of an individual who is incapacitated or dependent due to AIDS. Respite care services include assistance with personal hygiene, nutritional support and environmental maintenance authorized as either episodic, temporary relief or as a routine periodic relief of the caregiver.

Consumer-directed respite care services may only be offered to individuals who have an unpaid primary caregiver who requires temporary relief to avoid institutionalization of the individual. Respite services are designed to focus on the need of the unpaid caregiver for temporary relief and to help prevent the breakdown of the unpaid caregiver due to the physical burden and emotional stress of providing continuous support and care to the individual.

"Respite care agency" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing eligible individuals with respite care aides who provide respite care services.

"Service plan" means the written plan of services certified by the PAS team physician as needed by the individual to ensure optimal health and safety for the delivery of home and community-based care.

"State Plan for Medical Assistance" or "the Plan" or "the State Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that assesses an individual's social, physical health, mental health, and functional abilities.

---

# Regulations

---

## Part IV Mental Retardation Waiver

### Article 1 Definitions and General Requirements

#### **12VAC30-120-211. Definitions.**

"Activities of daily living" or "ADL" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Appeal" means the process used to challenge adverse actions regarding services, benefits and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" or "AT" means specialized medical equipment and supplies to include devices, controls, or appliances, specified in the consumer service plan but not available under the State Plan for Medical Assistance, which enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies and equipment necessary to the proper functioning of such items, and durable and nondurable medical equipment not available under the Medicaid State Plan.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 1 (§37.2-100) of Title 37.2 of the Code of Virginia that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the locality that it serves.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means the individual on behalf of the community services board or behavioral health authority possessing a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12VAC30-50-450.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, support, and socialization, provided to an adult (age 18 and over). The provision of companion services does not entail hands-on care. It is provided in accordance with a therapeutic goal in the consumer service plan and is not purely diversional in nature.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical and level of care information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer-directed model" means services for which the individual and the individual's family/caregiver, as appropriate, is responsible for hiring, training, supervising, and firing of the staff.

"Consumer-directed (CD) services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and the individual's family/caregiver, as appropriate, by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for consumer-directed companion, personal assistance, and respite services.

"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive mental retardation waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The individual service plans are incorporated in the CSP by the case manager.

"Crisis stabilization" means direct intervention to persons with mental retardation who are experiencing serious psychiatric or behavioral challenges that jeopardize their current community living situation, by providing temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional

placement or prevent other out-of-home placement. This service shall be designed to stabilize the individual and strengthen the current living situation so the individual can be supported in the community during and beyond the crisis period.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Developmental risk" means the presence before, during or after an individual's birth of conditions typically identified as related to the occurrence of a developmental disability and for which no specific developmental disability is identifiable through existing diagnostic and evaluative criteria.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts or special opportunities to eligible individuals and the individual's family/caregivers, as appropriate, as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual and the individual's family/caregiver, as appropriate, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's and the individual's family/caregiver's, as appropriate, use of the providers' services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the MR Waiver and DMHMRSAS has verified the availability of a MR Waiver slot for that individual, and

DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals who have disabilities on a shift and usually involves interactions with the public and with coworkers without disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site (when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act) that are necessary to ensure the individual's health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to the individual.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Fiscal agent" means an agency or organization within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal assistance, respite, and companion services.

"Health Planning Region" or "HPR" means the federally designated geographical area within which health care needs assessment and planning takes place, and within which health care resource development is reviewed.

"Health, welfare, and safety standard" means that an individual's right to receive a waiver service is dependent on a finding that the individual needs the service, based on appropriate assessment criteria and a written individual service plan and that services can safely be provided in the community.

"Home- and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act to be offered to persons with mental retardation and children younger than age six who are at developmental risk who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR.)

"ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health, as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the total

---

# Regulations

---

needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping, laundry, and money management.

"ISAR" means the Individual Service Authorization Request and is the DMAS form used by providers to request prior authorization for MR waiver services.

"Mental retardation" or "MR" means ~~mental retardation a disability~~ as defined by the American Association on ~~Mental Retardation~~ (AAMR) Intellectual and Developmental Disabilities (AAIDD).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for services until all required information is received by DMHMRSAS.

"Personal assistance services" means assistance with activities of daily living, instrumental activities of daily living, access to the community, self-administration of medication, or other medical needs, and the monitoring of health status and physical condition.

"Personal assistant" means a person who provides personal assistance services.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment. The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving

and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for providing such care.

"Qualified mental retardation professional" or "QMRP" means a professional possessing: (i) at least one year of documented experience working directly with individuals who have mental retardation or developmental disabilities; (ii) a bachelor's degree in a human services field including, but not limited to, sociology, social work, special education, rehabilitation counseling, or psychology; and (iii) the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Residential support services" means support provided in the individual's home by a DMHMRSAS-licensed residential provider or a DSS-approved provider of adult foster care services. This service is one in which training, assistance, and supervision is routinely provided to enable individuals to maintain or improve their health, to develop skills in activities of daily living and safety in the use of community resources, to adapt their behavior to community and home-like environments, to develop relationships, and participate as citizens in the community.

"Respite services" means services provided to individuals who are unable to care for themselves, furnished on a short-term basis because of the absence or need for relief of those unpaid persons normally providing the care.

"Services facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and the individual's family/caregiver, as appropriate, by ensuring the development and monitoring of the Consumer-Directed Services Individual Service Plan, providing employee management training, and completing ongoing review activities as required by DMAS for services with an option of a consumer-directed model. These services include companion, personal assistance, and respite services.

"Skilled nursing services" means services that are ordered by a physician and required to prevent institutionalization, that are not otherwise available under the State Plan for Medical Assistance and that are provided by a licensed registered professional nurse, or by a licensed practical nurse under the supervision of a licensed registered professional nurse, in each case who is licensed to practice in the Commonwealth.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS

identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment.

"Support plan" means the report of recommendations resulting from a therapeutic consultation.

"Therapeutic consultation" means activities to assist the individual and the individual's family/caregiver, as appropriate, staff of residential support, day support, and any other providers in implementing an individual service plan.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

**12VAC30-120-213. General coverage and requirements for MR waiver services.**

A. Waiver service populations. Home- and community-based waiver services shall be available through a §1915(c) of the Social Security Act waiver for the following individuals who have been determined to require the level of care provided in an ICF/MR.

1. Individuals with mental retardation; or
2. Individuals younger than the age of six who are at developmental risk. At the age of six years, these individuals must have a diagnosis of mental retardation to continue to receive home and community-based waiver services specifically under this program. Mental Retardation (MR) Waiver recipients who attain the age of six years of age, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for transfer to the IFDDS Waiver effective up to their seventh birthday. Psychological evaluations (or standardized developmental assessment for children under six years of age) confirming diagnoses must be completed less than one year prior to transferring to the IFDDS Waiver. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver, subject to the approval of the slot by CMS. The case manager will submit the current Level

of Functioning Survey, CSP and psychological evaluation (or standardized developmental assessment for children under six years of age) to DMAS for review. Upon determination by DMAS that the individual is appropriate for transfer to the IFDDS Waiver, the case manager will provide the family with a list of IFDDS Waiver case managers. The case manager will work with the selected IFDDS Waiver case manager to determine an appropriate transfer date and submit a DMAS-122 to the local DSS. The MR Waiver slot will be held by the CSB until the child has successfully transitioned to the IFDDS Waiver. Once the child has successfully transitioned, the CSB will reallocate the slot.

B. Covered services.

1. Covered services shall include: residential support services, day support, supported employment, personal assistance (both consumer-directed and agency-directed), respite services (both consumer-directed and agency-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, prevocational services, personal emergency response systems (PERS), and companion services (both consumer-directed and agency-directed), and transition services.

2. These services shall be appropriate and necessary to maintain the individual in the community. Federal waiver requirements provide that the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in ~~Intermediate Care Facilities for the Mentally Retarded~~ an ICF/MR under the State Plan that would have been provided had the waiver not been granted.

3. Waiver services shall not be furnished to individuals who are inpatients of a hospital, nursing facility, ICF/MR, or inpatient rehabilitation facility. Individuals with mental retardation who are inpatients of these facilities may receive case management services as described in 12VAC30-50-450. The case manager may recommend waiver services that would promote exiting from the institutional placement; however, these services shall not be provided until the individual has exited the institution.

4. Under this §1915(c) waiver, DMAS waives §1902(a)(10)(B) of the Social Security Act related to comparability.

C. Requests for increased services. All requests for increased waiver services by MR Waiver recipients will be reviewed under the health, welfare, and safety standard. This standard assures that an individual's right to receive a waiver service is dependent on a finding that the individual

---

# Regulations

---

needs the service, based on appropriate assessment criteria and a written ISP and that services can safely be provided in the community.

D. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

E. Urgent criteria. The CSB/BHA will determine, from among the individuals included in the urgent category, who should be served first, based on the needs of the individual at the time a slot becomes available and not on any predetermined numerical or chronological order.

1. The urgent category will be assigned when the individual is in need of services because he is determined to meet one of the criteria established in subdivision 2 of this subsection and services are needed within 30 days. Assignment to the urgent category may be requested by the individual, his legally responsible relative, or primary caregiver. The urgent category may be assigned only when the individual, the individual's spouse, or the parent of an individual who is a minor child would accept the requested service if it were offered. Only after all individuals in the Commonwealth who meet the urgent criteria have been served can individuals in the nonurgent category be served. Individuals in the nonurgent category are those who meet the diagnostic and functional criteria for the waiver, including the need for services within 30 days, but who do not meet the urgent criteria. In the event that a CSB/BHA has a vacant slot and does not have an individual who meets the urgent criteria, the slot can be held by the CSB/BHA for 90 days from the date it is identified as vacant, in case someone in an urgent situation is identified. If no one meeting the urgent criteria is identified within 90 days, the slot will be made available for allocation to another CSB/BHA in the Health Planning Region (HPR). If there is no urgent need at the time that the HPR is to make a regional reallocation of a waiver slot, the HPR shall notify DMHMRSAS. DMHMRSAS shall have the authority to reallocate said slot to another HPR or CSB/BHA where there is unmet urgent need. Said authority must be exercised, if at all, within 30 days from receiving such notice.

2. Satisfaction of one or more of the following criteria shall indicate that the individual should be placed on the urgent need of waiver services list:

a. Both primary caregivers are 55 years of age or older, or if there is one primary caregiver, that primary caregiver is 55 years of age or older;

b. The individual is living with a primary caregiver, who is providing the service voluntarily and without pay, and the primary caregiver indicates that he can no longer care for the individual with mental retardation;

c. There is a clear risk of abuse, neglect, or exploitation;

d. A primary caregiver has a chronic or long-term physical or psychiatric condition or conditions which significantly limits the abilities of the primary caregiver or caregivers to care for the individual with mental retardation;

e. Individual is aging out of publicly funded residential placement or otherwise becoming homeless (exclusive of children who are graduating from high school); or

f. The individual with mental retardation lives with the primary caregiver and there is a risk to the health or safety of the individual, primary caregiver, or other individual living in the home due to either of the following conditions:

(1) The individual's behavior or behaviors present a risk to himself or others which cannot be effectively managed by the primary caregiver even with generic or specialized support arranged or provided by the CSB/BHA; or

(2) There are physical care needs (such as lifting or bathing) or medical needs that cannot be managed by the primary caregiver even with generic or specialized supports arranged or provided by the CSB/BHA.

F. Reevaluation of service need and utilization review. Case managers shall complete reviews and updates of the CSP and level of care as specified in 12VAC30-120-215 D. Providers shall meet the documentation requirements as specified in 12VAC30-120-217 B.

## **12VAC30-120-225. Consumer-directed model of service delivery.**

A. Criteria.

1. The MR Waiver has three services, companion, personal assistance, ~~and~~ respite, and the individual model of supported employment ~~which that~~ may be provided through a consumer-directed model.

2. Individuals who choose the consumer-directed model must have the capability to hire ~~and~~ train, and fire their own personal ~~assistants~~ assistant or ~~companions~~ companion and supervise the assistant's or companion's performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.

3. ~~The~~ If the services model elected by the individual, or the family/caregiver, as appropriate, is not agency

directed, then the individual, or if the individual is unable, then family/caregiver, shall be the employer in this service, and therefore shall be responsible for hiring, training, supervising, and firing assistants and companions. Specific employer duties include checking of references of personal assistants/companions, determining that personal assistants/companions meet basic qualifications, training assistants/companions, supervising the assistant's/companion's performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual and the individual's family/caregiver, as appropriate, must have a back-up plan in case the assistant/companion does not show up for work as expected or terminates employment without prior notice.

4. Individuals choosing consumer-directed models of service delivery must receive support from a CD services facilitator. This is not a separate waiver service, but is required in conjunction with consumer-directed personal assistance, respite, or companion services. The CD services facilitator will be responsible for assessing the individual's particular needs for a requested CD service, assisting in the development of the ISP, providing training to the individual and the individual's family/caregiver, as appropriate, on his responsibilities as an employer, and providing ongoing support of the consumer-directed models of services. The CD services facilitator cannot be the individual, the individual's case manager, direct service provider, spouse, or parent of the individual who is a minor child, or a family/caregiver employing the assistant/companion. If an individual enrolled in consumer-directed services has a lapse in services facilitator for more than 90 consecutive days, the case manager must notify DMHMRSAS and the consumer-directed services will be discontinued.

5. DMAS shall provide for fiscal agent services for consumer-directed personal assistance services, consumer-directed companion services, and consumer-directed respite services. The fiscal agent will be reimbursed by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle the responsibilities of employment taxes for the individual. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.

B. Provider qualifications. In addition to meeting the general conditions and requirements for home- and community-based services participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, the CD services facilitator must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitator and maintain provider status, the CD services facilitator shall have sufficient resources to perform the required activities. In addition, the CD services facilitator must have the ability to maintain and retain business and professional records sufficient to document fully and accurately the nature, scope, and details of the services provided.

2. It is preferred that the CD services facilitator possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator have two years of satisfactory experience in a human service field working with persons with mental retardation. The facilitator must possess a combination of work experience and relevant education that indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills, and abilities must be documented on the provider's application form, found in supporting documentation, or be observed during a job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:

a. Knowledge of:

(1) Types of functional limitations and health problems that may occur in persons with mental retardation, or persons with other disabilities, as well as strategies to reduce limitations and health problems;

(2) Physical assistance that may be required by people with mental retardation, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(3) Equipment and environmental modifications that may be required by people with mental retardation that reduce the need for human help and improve safety;

(4) Various long-term care program requirements, including nursing home and ICF/MR placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal assistance, respite, and companion services;

(5) MR waiver requirements, as well as the administrative duties for which the services facilitator will be responsible;

(6) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in service planning;

(7) Interviewing techniques;

(8) The individual's right to make decisions about, direct the provisions of, and control his consumer-

---

# Regulations

---

directed personal assistance, companion and respite services, including hiring, training, managing, approving time sheets, and firing an assistant/companion;

(9) The principles of human behavior and interpersonal relationships; and

(10) General principles of record documentation.

b. Skills in:

(1) Negotiating with individuals and the individual's family/caregivers, as appropriate, and service providers;

(2) Assessing, supporting, observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to individuals with mental retardation; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for individuals who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing; and

(6) Develop a rapport and communicate with persons of diverse cultural backgrounds.

3. If the CD services facilitator is not a RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.

4. Initiation of services and service monitoring.

a. For consumer-directed services, the CD services facilitator must make an initial comprehensive home visit to collaborate with the individual and the individual's family/caregiver, as appropriate, to identify the needs, assist in the development of the ISP with the individual and the individual's family/caregiver, as appropriate, and provide employee management training. The initial comprehensive home visit is done only once upon the individual's entry into the consumer-directed model of service regardless of the number or type of consumer-directed services that an individual chooses to receive.

If an individual changes CD services facilitators, the new CD services facilitator must complete a reassessment visit in lieu of a comprehensive visit.

b. After the initial visit, the CD services facilitator will continue to monitor the companion, or personal assistant ISP quarterly and on an as-needed basis. The CD services facilitator will review the utilization of consumer-directed respite services, either every six months or upon the use of 300 respite services hours, whichever comes first.

c. A face-to-face meeting with the individual must be conducted at least every six months to reassess the individual's needs and to ensure appropriateness of any CD services received by the individual.

5. During visits with the individual, the CD services facilitator must observe, evaluate, and consult with the individual and the individual's family/caregiver, as appropriate, and document the adequacy and appropriateness of consumer-directed services with regard to the individual's current functioning and cognitive status, medical needs, and social needs.

6. The CD services facilitator must be available to the individual by telephone.

7. The CD services facilitator must submit a criminal record check pertaining to the assistant/companion on behalf of the individual and report findings of the criminal record check to the individual and the individual's family/caregiver, as appropriate, and the program's fiscal agent. If the individual is a minor, the assistant/companion must also be screened through the DSS Child Protective Services Central Registry. Assistants/companions will not be reimbursed for services provided to the individual effective the date that the criminal record check confirms an assistant/companion has been found to have been convicted of a crime as described in §37.2-416 of the Code of Virginia or if the assistant/companion has a confirmed record on the DSS Child Protective Services Central Registry. The criminal record check and DSS Child Protective Services Central Registry finding must be requested by the CD services facilitator within 15 calendar days of employment. The services facilitator must maintain evidence that a criminal record check was obtained and must make such evidence available for DMAS review.

8. The CD services facilitator shall review timesheets during the face-to-face visits or more often as needed to ensure that the number of ISP-approved hours is not exceeded. If discrepancies are identified, the CD services facilitator must discuss these with the individual to resolve discrepancies and must notify the fiscal agent.

9. The CD services facilitator must maintain a list of persons who are available to provide consumer-directed personal assistance, consumer-directed companion, or consumer-directed respite services.

10. The CD services facilitator must maintain records of each individual as described in 12VAC30-120-211, 12VAC30-120-223, and 12VAC30-120-233.

11. Upon the individual's request, the CD services facilitator shall provide the individual and the individual's family/caregiver, as appropriate, with a list of persons who can provide temporary assistance until the assistant/companion returns or the individual is able to select and hire a new personal assistant/companion. If an individual is consistently unable to hire and retain the employment of an assistant/companion to provide consumer-directed personal assistance, companion, or respite services, the CD services facilitator will make arrangements with the case manager to have the services transferred to an agency-directed services provider or to discuss with the individual and the individual's family/caregiver, as appropriate, other service options.

**12VAC30-120-229. Day support services.**

A. Service description. Day support services shall include a variety of training, assistance, support, and specialized supervision for the acquisition, retention, or improvement of self-help, socialization, and adaptive skills. These services are typically offered in a nonresidential setting that allows peer interactions and community and social integration.

B. Criteria. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings other than the individual's own residence that allows an opportunity for being productive and contributing members of communities.

C. Types of day support. The amount and type of day support included in the individual's service plan is determined according to the services required for that individual. There are two types of day support: center-based, which is provided primarily at one location/building, or noncenter-based, which is provided primarily in community settings. Both types of day support may be provided at either intensive or regular levels.

D. Levels of day support. There are two levels of day support, intensive and regular. To be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) requires physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) has extensive disability-related difficulties and requires additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii)

requires extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units and service limitations. Day support services are billed ~~in units. Units shall be defined as:~~ according to the DMAS fee schedule.

- ~~1. One unit is 1 to 3.99 hours of service a day.~~
- ~~2. Two units are 4 to 6.99 hours of service a day.~~
- ~~3. Three units are 7 or more hours of service a day.~~

Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS. Noncenter-based day support services must be separate and distinguishable from either residential support services or personal assistance services. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing. The supporting documentation must provide an estimate of the amount of day support required by the individual. Service providers are reimbursed only for the amount and level of day support services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered. This service shall be limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP year. If this service is used in combination with prevocational and/or group supported employment services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP year.

F. Provider requirements. In addition to meeting the general conditions and requirements for home- and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, day support providers need to meet additional requirements.

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services.
2. In addition to licensing requirements, day support staff must also have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. All providers of day support services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.
3. Required documentation in the individual's record. The provider must maintain records of each individual

---

# Regulations

---

receiving services. At a minimum, these records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the day support environment and community settings.

b. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports and training needs;

(2) The individual's goals and measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. Documentation confirming the individual's attendance and amount of time in services and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units, or their equivalent under the DMAS fee schedule, provided.

d. Documentation indicating whether the services were center-based or noncenter-based.

e. Documentation regarding transportation. In instances where day support staff are required to ride with the individual to and from day support, the day support staff time can be billed as day support, provided that the billing for this time does not exceed 25% of the total time spent in the day support activity for that day. Documentation must be maintained to verify that billing for day support staff coverage during transportation does not exceed 25% of the total time spent in the day support for that day.

f. If intensive day support services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive day support services, there must be clear documentation of the ongoing needs and associated staff supports.

g. Documentation indicating that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as

needed. The results of the review must be submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual and the individual's family/caregiver, as appropriate.

h. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

## **12VAC30-120-237. Prevocational services.**

A. Service description. Prevocational services are services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services, (excluding supported employment programs). Activities included in this service are not primarily directed at teaching specific job skills but at underlying habilitative goals such as accepting supervision, attendance, task completion, problem solving, and safety.

B. Criteria. In order to qualify for prevocational services, the individual shall have a demonstrated need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

C. Service units and service limitations. Billing is ~~for one unit of service~~ in accordance with the DMAS fee schedule.

~~1. Units shall be defined as:~~

~~a. One unit is 1 to 3.99 hours of service a day.~~

~~b. Two units are 4 to 6.99 hours of service a day.~~

~~c. Three units are 7 or more hours of service a day.~~

1. This service is limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP year. If this service is used in combination with day support and /or group-supported employment services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP year.

2. Prevocational services can be provided in center- or noncenter-based settings. Center-based means services are provided primarily at one location/building and noncenter-based means services are provided primarily in community settings. Both center-based or noncenter-based prevocational services may be provided at either regular or intensive levels.

3. Prevocational services can be provided at either a regular or intensive level. For prevocational services to

be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

4. There must be documentation regarding whether prevocational services are available in vocational rehabilitation agencies through §110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA, documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize them as a waiver expenditure.

5. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

D. Provider requirements. In addition to meeting the general conditions and requirements for home-based and community-based services participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, prevocational providers must also meet the following qualifications:

1. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services for DRS, or be licensed by DMHMRSAS as a provider of day support services.

2. Providers must ensure and document that persons providing prevocational services have training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations. All providers of prevocational services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.

3. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving prevocational services. At a minimum, the records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the prevocational environment and community settings.

b. An ISP, which contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required or desired supports, and training needs;

(2) The individual's goals and measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

c. Documentation indicating that the ISP goals, objectives, and activities have been reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and that the results of these reviews have been submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual and the individual's family/caregiver, as appropriate.

d. Documentation confirming the individual's attendance, amount of time spent in services, and type of services rendered, and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units, or their equivalent under the DMAS fee schedule, provided.

e. Documentation indicating whether the services were center-based or noncenter-based.

f. Documentation regarding transportation. In instances where prevocational staff are required to ride with the individual to and from prevocational services, the prevocational staff time can be billed for prevocational services, provided that billing for this time does not exceed 25% of the total time spent in prevocational services for that day. Documentation must be maintained to verify that billing for prevocational staff coverage during transportation does not exceed 25% of the total time spent in the prevocational services for that day.

---

# Regulations

---

g. If intensive prevocational services are requested, documentation indicating the specific supports and the reasons they are needed. For ongoing intensive prevocational services, there must be clear documentation of the ongoing needs and associated staff supports.

h. Documentation indicating whether prevocational services are available in vocational rehabilitation agencies through §110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA).

i. A copy of the most recently completed DMAS-122. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

## 12VAC30-120-247. Supported employment services.

### A. Service description.

1. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

2. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disability need ongoing support to perform in a work setting.

3. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by ~~a job coach~~ an employment assistant as defined in 12VAC30-120-211 to an individual in a supported employment position. Group supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports.

### B. Criteria.

1. Only job development tasks that specifically include the individual are allowable job search activities under the MR waiver supported employment and only after determining this service is not available from DRS.

2. In order to qualify for these services, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing

supports, and that because of his disability, he needs ongoing support to perform in a work setting.

3. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings.

4. The ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP based on the intensity and duration of the service delivered.

### C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one hour units. This service is limited to 40 hours per week.

2. Group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) will be billed ~~at the unit rate. For group models of supported employment, units shall be defined as:~~ according to the DMAS fee schedule.

~~a. One unit is 1 to 3.99 hours of service a day.~~

~~b. Two units are 4 to 6.99 hours of service a day.~~

~~c. Three units are 7 or more hours of service a day.~~

This service is limited to 780 units, or its equivalent under the DMAS fee schedule, per CSP year. If this service is used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per CSP year.

3. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home-based and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, supported employment provider qualifications include:

1. Supported Group and agency-directed individual supported employment shall be provided only by agencies that are DRS vendors of supported employment services;

2. Required documentation in the individual's record. The provider must maintain a record regarding each individual receiving supported employment services. At a minimum, the records must contain the following:

a. A functional assessment conducted by the provider to evaluate each individual in the supported employment environment and related community settings.

b. Documentation indicating individual ineligibility for supported employment services through DRS or IDEA. If the individual is not eligible through IDEA, documentation is required only for the lack of DRS funding;

c. An ISP that contains, at a minimum, the following elements:

(1) The individual's strengths, desired outcomes, required/desired supports and training needs;

(2) The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

(3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;

(4) A timetable for the accomplishment of the individual's goals and objectives;

(5) The estimated duration of the individual's needs for services; and

(6) Provider staff responsible for the overall coordination and integration of the services specified in the plan.

d. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, annually, and more often as needed, modified as appropriate, and the results of these reviews submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual and the individual's family/caregiver, as appropriate.

e. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time can be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing for supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

f. There must be a copy of the completed DMAS-122 in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

## Part VIII

### Individual and Family Developmental Disabilities Support Waiver

#### Article 1

#### General Requirements

#### **12VAC30-120-700. Definitions.**

"Activities of daily living (ADL)" means personal care tasks, e.g., bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and services.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110, Eligibility and Appeals, and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county or a combination of counties or cities or cities and counties under Chapter 6 (§37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"CARF" means the Rehabilitation Accreditation Commission, formerly known as the Commission on Accreditation of Rehabilitation Facilities.

"Case management" means services as defined in 12VAC30-50-490.

"Case manager" means the provider of case management services as defined in 12VAC30-50-490.

"Centers for Medicare and Medicaid Services" or "CMS" means the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Community-based waiver services" or "waiver services" means a variety of home and community-based services paid for by DMAS as authorized under a §1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in

---

# Regulations

---

combination, based on the documented need for the service or services to avoid ICF/MR placement.

"Community services board" or "CSB" means the local agency established by a city or county or combination of counties or cities, or cities and counties, under Chapter 5 (§37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Companion" means, for the purpose of these regulations, a person who provides companion services.

"Companion services" means nonmedical care, supervision and socialization provided to an adult (age 18 and older). The provision of companion services does not entail hands-on care. It is provided in accordance with a therapeutic goal in the plan of care and is not purely diversional in nature.

"Consumer-directed employee" means, for purposes of these regulations, a person who provides consumer-directed services, personal care, companion services, and/or respite care, who is also exempt from workers' compensation.

"Consumer-directed services" means personal care, companion services, and/or respite care services where the individual or his family/caregiver, as appropriate, is responsible for hiring, training, supervising, and firing of the employee or employees.

"Consumer-directed (CD) services facilitator" means the provider enrolled with DMAS who is responsible for management training and review activities as required by DMAS for consumer-directed services.

"Crisis stabilization" means direct intervention for persons with related conditions who are experiencing serious psychiatric or behavioral challenges, or both, that jeopardize their current community living situation. This service must provide temporary intensive services and supports that avert emergency psychiatric hospitalization or institutional placement or prevent other out-of-home placement. This service shall be designed to stabilize individuals and strengthen the current living situations so that individuals may be maintained in the community during and beyond the crisis period.

"Current functional status" means an individual's degree of dependency in performing activities of daily living.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means DMAS employees who perform utilization review, preauthorize service type and intensity, provide technical assistance, and review of individual level of care criteria.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Day support" means training in intellectual, sensory, motor, and affective social development including awareness skills, sensory stimulation, use of appropriate behaviors and social skills, learning and problem solving, communication and self care, physical development, services and support activities. These services take place outside of the individual's home/residence.

"Direct marketing" means either (i) conducting directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) mailing directly; (iii) paying "finders' fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) continuous, periodic marketing activities to the same prospective individual or his family/caregiver, as appropriate, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or his family/caregiver's, as appropriate, use of the providers' services.

"Enroll" means that the individual has been determined by the IFDDS screening team to meet the eligibility requirements for the waiver, DMAS has approved the individual's plan of care and has assigned an available slot to the individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"Entrepreneurial model" means a small business employing eight or fewer individuals with disabilities on a shift and may involve interactions with the public and coworkers with disabilities.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act, necessary to ensure individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal

guidelines that prescribe specific preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Face-to-face visit" means the case manager or service provider must meet with the individual in person and that the individual should be engaged in the visit to the maximum extent possible.

"Family/caregiver training" means training and counseling services provided to families or caregivers of individuals receiving services in the IFDDS Waiver.

"Fiscal agent" means an entity handling employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed services.

"Home" means, for purposes of the IFDDS Waiver, an apartment or single family dwelling in which no more than four individuals who require services live with the exception of siblings living in the same dwelling with family. This does not include an assisted living facility or group home.

"Home\_ and community-based waiver services" means a variety of home and community-based services reimbursed by DMAS as authorized under a §1915(c) waiver designed to offer individuals an alternative to institutionalization. Individuals may be preauthorized to receive one or more of these services either solely or in combination, based on the documented need for the service or services to avoid ICF/MR placement.

"ICF/MR" means a facility or distinct part of a facility certified as meeting the federal certification regulations for an Intermediate Care Facility for the Mentally Retarded and persons with related conditions. These facilities must address the residents' total needs including physical, intellectual, social, emotional, and habilitation. An ICF/MR must provide active treatment, as that term is defined in 42 CFR 483.440(a).

"IFDDS screening team" means the persons employed by the entity under contract with DMAS who are responsible for performing level of care screenings for the IFDDS Waiver.

"IFDDS Waiver" means the Individual and Family Developmental Disabilities Support Waiver.

"In-home residential support services" means support provided primarily in the individual's home, which includes training, assistance, and specialized supervision to enable the individual to maintain or improve his health; assisting in performing individual care tasks; training in activities of daily living; training and use of community resources; providing life skills training; and adapting behavior to community and home-like environments.

"Instrumental activities of daily living (IADL)" means meal preparation, shopping, housekeeping, laundry, and money management.

"Mental retardation" means a disability as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD).

"MR Waiver" means the mental retardation waiver.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Pend" means delaying the consideration of an individual's request for authorization of services until all required information is received by DMAS.

"Person-centered planning" means a process, directed by the individual or his family/caregiver, as appropriate, intended to identify the strengths, capacities, preferences, needs and desired outcomes of the individual.

"Personal care provider" means a participating provider that renders services to prevent or reduce inappropriate institutional care by providing eligible individuals with personal care aides to provide personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable individuals to remain in or return to the community rather than enter an Intermediate Care Facility for the Mentally Retarded. Personal care services include assistance with activities of daily living, instrumental activities of daily living, access to the community, medication or other medical needs, and monitoring health status and physical condition. This does not include skilled nursing services with the exception of skilled nursing tasks that may be delegated in accordance with 18VAC90-20-420 through 18VAC90-20-460.

"Personal emergency response system (PERS)" is an electronic device that enables certain individuals to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"Plan of care" means a document developed by the individual or his family/caregiver, as appropriate, and the individual's case manager addressing all needs of individuals of home and community-based waiver services, in all life areas. Supporting documentation developed by waiver service providers is to be incorporated in the plan of care by the case manager. Factors to be considered when these plans are developed must include, but are not limited to, individuals' ages, levels of functioning, and preferences.

---

# Regulations

---

"Preauthorized" means the preauthorization agent has approved a service for initiation and reimbursement ~~prior to the commencement~~ of the service by the service provider.

"Primary caregiver" means the ~~main~~ primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for such care.

"Qualified developmental disabilities professional" or "QDDP" means a professional who (i) possesses at least one year of documented experience working directly with individuals who have related conditions; (ii) is one of the following: a doctor of medicine or osteopathy, a registered nurse, a provider holding at least a bachelor's degree in a human service field including, but not limited to, sociology, social work, special education, rehabilitation engineering, counseling or psychology, or a provider who has documented equivalent qualifications; and (iii) possesses the required Virginia or national license, registration, or certification in accordance with his profession, if applicable.

"Related conditions" means those persons who have autism or who have a severe chronic disability that meets all of the following conditions identified in 42 CFR 435.1009:

1. It is attributable to:
  - a. Cerebral palsy or epilepsy; or
  - b. Any other condition, other than mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.
2. It is manifested before the person reaches age 22.
3. It is likely to continue indefinitely.
4. It results in substantial functional limitations in three or more of the following areas of major life activity:
  - a. Self-care.
  - b. Understanding and use of language.
  - c. Learning.
  - d. Mobility.
  - e. Self-direction.
  - f. Capacity for independent living.

"Respite care" means services provided for unpaid caregivers of eligible individuals who are unable to care for themselves and are provided on an episodic or routine

basis because of the absence of or need for relief of those unpaid persons who routinely provide the care.

"Respite care provider" means a participating provider that renders services designed to prevent or reduce inappropriate institutional care by providing respite care services for unpaid caregivers of eligible individuals.

"Screening" means the process conducted by the IFDDS screening team to evaluate the medical, nursing, and social needs of individuals referred for screening and to determine eligibility for an ICF/MR level of care.

"Skilled nursing services" means nursing services (i) listed in the plan of care that do not meet home health criteria, (ii) required to prevent institutionalization, (iii) not otherwise available under the State Plan for Medical Assistance, (iv) provided within the scope of the state's Nursing Act (§54.1-3000 et seq. of the Code of Virginia) and Drug Control Act (§54.1-3400 et seq. of the Code of Virginia), and (v) provided by a registered professional nurse or by a licensed practical nurse under the supervision of a registered nurse who is licensed to practice in the state. Skilled nursing services are to be used to provide training, consultation, nurse delegation as appropriate and oversight of direct care staff as appropriate.

"Slot" means an opening or vacancy of waiver services for an individual.

"Specialized supervision" means staff presence necessary for ongoing or intermittent intervention to ensure an individual's health and safety.

"State Plan for Medical Assistance" or "the Plan" means the document containing the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supporting documentation" means the specific plan of care developed by the individual and waiver service provider related solely to the specific tasks required of that service provider. Supporting documentation helps to comprise the overall plan of care for the individual, developed by the case manager and the individual.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and provision of ongoing or intermittent assistance and specialized supervision to enable an individual to maintain paid employment.

"Therapeutic consultation" means consultation provided by members of psychology, social work, rehabilitation engineering, behavioral analysis, speech therapy, occupational therapy, psychiatry, psychiatric clinical nursing, therapeutic recreation, or physical therapy or behavior consultation to assist individuals, parents, family

members, in-home residential support, day support and any other providers of support services in implementing a plan of care.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence where the person is directly responsible for his or her own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"VDH" means the Virginia Department of Health.

### **12VAC30-120-710. General coverage and requirements for all home and community-based waiver services.**

A. Waiver service populations. Home-based and community-based services shall be available through a §1915(c) waiver. Coverage shall be provided under the waiver for individuals six years of age and older with related conditions as defined in 12VAC30-120-700, including autism, who have been determined to require the level of care provided in an ICF/MR. The individual must not have a diagnosis of mental retardation as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD). Mental Retardation (MR) Waiver recipients who are six years of age on or after October 1, 2002, who are determined to not have a diagnosis of mental retardation, and who meet all IFDDS Waiver eligibility criteria, shall be eligible for and shall transfer to the IFDDS Waiver effective with their sixth birthday. Psychological evaluations confirming diagnoses must be completed less than one year prior to the child's sixth birthday. These recipients transferring from the MR Waiver will automatically be assigned a slot in the IFDDS Waiver. Such slot shall be in addition to those slots available through the screening process described in 12VAC30-120-720 B and C.

#### B. Covered services.

1. Covered services shall include in-home residential supports, day support, prevocational services, supported employment, personal care (both agency-directed and consumer-directed), respite care (both agency-directed and consumer-directed), assistive technology, environmental modifications, skilled nursing services, therapeutic consultation, crisis stabilization, personal emergency response systems (PERS), family/caregiver training, ~~and~~ companion services (both agency-directed and consumer-directed), and transition services.

2. These services shall be appropriate and medically necessary to maintain these individuals in the community. Federal waiver requirements provide that

the average per capita fiscal year expenditures under the waiver must not exceed the average per capita expenditures for the level of care provided in ICFs/MR under the State Plan that would have been made had the waiver not been granted.

3. Under this §1915(c) waiver, DMAS waives subdivision (a)(10)(B) of §1902 of the Social Security Act related to comparability.

#### C. Eligibility criteria for emergency access to the waiver.

1. Subject to available funding and a finding of eligibility under 12VAC30-120-720, individuals must meet at least one of the emergency criteria of this subdivision to be eligible for immediate access to waiver services without consideration to the length of time an individual has been waiting to access services. In the absence of waiver services, the individual would not be able to remain in his home. The criteria are as follows:

- a. The primary caregiver has a serious illness, has been hospitalized, or has died;
- b. The individual has been determined by the DSS to have been abused or neglected and is in need of immediate waiver services;
- c. The individual demonstrates behaviors that present risk to personal or public safety;
- d. The individual presents extreme physical, emotional, or financial burden at home, and the family or caregiver is unable to continue to provide care; or
- e. The individual lives in an institutional setting and has a viable discharge plan in place.

2. When emergency slots become available:

- a. All individuals who have been found eligible for the IFDDS Waiver but have not been enrolled shall be notified by either DMAS or the individual's case manager.
- b. Individuals and their family/caregivers shall be given 30 calendar days to request emergency consideration.
- c. An interdisciplinary team of DMAS professionals shall evaluate the requests for emergency consideration within 10 calendar days from the 30-calendar day deadline using the emergency criteria to determine who will be assigned an emergency slot. If DMAS receives more requests than the number of available emergency slots, then the interdisciplinary team will make a decision on slot allocation based on need as documented in the request for emergency consideration. A waiting list of emergency cases will not be kept.

---

# Regulations

---

D. Appeals. Individual appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-599.

## 12VAC30-120-754. Supported employment services.

### A. Service description.

1. Supported employment services shall include training in specific skills related to paid employment and provision of ongoing or intermittent assistance or specialized training to enable an individual to maintain paid employment. Each supporting documentation must confirm whether supported employment services are available to the individual in vocational rehabilitation agencies through the Rehabilitation Act of 1973 or in special education services through 20 USC §1401 of the Individuals with Disabilities Education Act (IDEA). Providers of these DRS and IDEA services cannot be reimbursed by Medicaid with the IFDDS Waiver funds. Waiver service providers are reimbursed only for the amount and type of habilitation services included in the individual's approved plan of care based on the intensity and duration of the service delivered. Reimbursement shall be limited to actual interventions by the provider of supported employment, not for the amount of time the recipient is in the supported employment environment.

2. Supported employment may be provided in one of two models. Individual supported employment is defined as intermittent support, usually provided one on one by a job coach for an individual in a supported employment position. Group supported employment is defined as continuous support provided by staff for eight or fewer individuals with disabilities in an enclave, work crew, or bench work/entrepreneurial model. The individual's assessment and plan of care must clearly reflect the individual's need for training and supports.

### B. Criteria for receipt of services.

1. Only job development tasks that specifically include the individual are allowable job search activities under the IFDDS Waiver supported employment and only after determining this service is not available from DRS or IDEA.

2. In order to qualify for these services, the individual shall have a demonstrated need for training, specialized supervision, or assistance in paid employment and for whom competitive employment at or above the minimum wage is unlikely without this support and who, because of the disability, needs ongoing support, including supervision, training and transportation to perform in a work setting.

3. A functional assessment must be conducted to evaluate each individual in his work environment and related community settings.

4. The supporting documentation must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the plan of care based on the intensity and duration of the service delivered.

### C. Service units and service limitations.

1. Supported employment for individual job placement is provided in one-hour units. This service is limited to 40 hours per week.

2. Group models of supported employment (enclaves, work crews, bench work, and entrepreneurial model of supported employment) will be billed ~~at the unit rate according to the DMAS fee schedule.~~

a. ~~One unit is 1 to 3.99 hours of service a day.~~

b. ~~Two units are 4 to 6.99 or more hours of service a day.~~

c. ~~Three units are 7 or more hours of service a day.~~

3. Supported employment services are limited to 780 units per plan of care year. If used in combination with prevocational and day support services, the combined total units for these services cannot exceed 780 units, or its equivalent under the DMAS fee schedule, per plan of care year.

4. For the individual job placement model reimbursement ~~of supported employment~~ will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-730 and 12VAC30-120-740, supported employment providers must meet the following requirements:

1. Supported employment services shall be provided by agencies that are programs certified by CARF the Commission on Accreditation of Rehabilitation Facilities (CARF) to provide supported employment services or are DRS vendors of supported employment services.

2. Individual ineligibility for supported employment services through DRS or IDEA must be documented in the individual's record, as applicable. If the individual is eligible ineligible to receive services through ~~the Individuals with Disabilities Education Act~~ IDEA

documentation is required only for lack of DRS funding. Acceptable documentation would include a copy of a letter from DRS or the local school system or a record of a ~~phone~~ telephone call (name, date, person contacted) documented in the case manager's case notes, Consumer Profile/Social assessment or on the supported employment supporting documentation. Unless the individual's circumstances change, the original verification may be forwarded into the current record or repeated on the supporting documentation or revised Social Assessment on an annual basis.

3. Supporting documentation and ongoing documentation consistent with licensing regulations, if a DMHMRSAS licensed program.

4. For non-DMHMRSAS programs certified as supported employment programs, there must be supporting documentation that contains, at a minimum, the following elements:

a. The individual's strengths, desired outcomes, required/desired supports and training needs;

b. The individual's goals and, for a training goal, a sequence of measurable objectives to meet the above identified outcomes;

c. Services to be rendered and the frequency of services to accomplish the above goals and objectives;

d. All entities that will provide the services specified in the statement of services;

e. A timetable for the accomplishment of the individual's goals and objectives;

f. The estimated duration of the individual's needs for services; and

g. Entities responsible for the overall coordination and integration of the services specified in the plan of care.

5. Documentation must confirm the individual's attendance, the amount of time the individual spent in services, and must provide specific information regarding the individual's response to various settings and supports as agreed to in the supporting documentation objectives. Assessment results should be available in at least a daily note or weekly summary.

6. The provider must review the supporting documentation with the individual, and this written review submitted to the case manager, at least semi-annually, with goals, objectives and activities modified as appropriate. For the annual review and in cases where the plan of care is modified, the plan of care must be reviewed with the individual or his family/caregiver, as appropriate.

7. In instances where supported employment staff are required to ride with the individual to and from supported employment activities, the supported employment staff time may be billed for supported employment provided that the billing for this time does not exceed 25% of the total time spent in supported employment for that day. Documentation must be maintained to verify that billing supported employment staff coverage during transportation does not exceed 25% of the total time spent in supported employment for that day.

8. There must be a copy of the completed DMAS-122 form in the record. Providers must clearly document efforts to obtain the DMAS-122 form from the case manager.

### **12VAC30-120-758. Environmental modifications.**

A. Service description. Environmental modifications shall be defined as those physical adaptations to the individual's primary home or primary vehicle used by the individual, documented in the individual's plan of care, that are necessary to ensure the health, welfare, and safety of the individual, or that enable the individual to function with greater independence in the primary home and, without which, the individual would require institutionalization. Such adaptations may include the installation of ramps and grab-bars, widening of doorways, modification of bathroom facilities, or installation of specialized electrical and plumbing systems that are necessary to accommodate the medical equipment and supplies that are necessary for the welfare of the individual. Excluded are those adaptations or improvements to the home that are of general utility and are not of direct medical or remedial benefit to the individual, such as carpeting, roof repairs, central air conditioning, etc. Adaptations that add to the total square footage of the home shall be excluded from this benefit, except when necessary to complete an adaptation, as determined by DMAS or its designated agent. All services shall be provided in the individual's primary home in accordance with applicable state or local building codes. All modifications must be prior authorized by the prior authorization agent. Modifications may be made to a vehicle if it is the primary vehicle being used by the individual. This service does not include the purchase of vehicles.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modifications of a remedial or medical benefit offered in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically improve the individual's personal functioning. This service shall encompass those items not otherwise covered in the State Plan for Medical Assistance or through another program. Environmental modifications

---

## Regulations

---

shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. Environmental modifications shall be available to individuals who are receiving case management services ~~in addition to at least one other waiver service.~~ To receive environmental modifications in the EDCD and IFDDS waivers, the individual must be receiving at least one other waiver service. A maximum limit of \$5,000 may be reimbursed per plan of care or calendar year, as appropriate to the waiver in which the individual is enrolled. Costs for environmental modifications shall not be carried over from year to year. All environmental modifications must be prior authorized by the prior authorization agent prior to billing. Modifications shall not be used to bring a substandard dwelling up to minimum habitation standards. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.

Case managers, or the requesting provider if no case manager is available, must, upon completion of each modification, meet face-to-face with the individual and his family/caregiver, as appropriate, to ensure that the modification is completed satisfactorily and is able to be used by the individual.

D. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based waiver services participating providers as specified in 12VAC30-120-160, 12VAC30-120-730 and, 12VAC30-120-740, and 12VAC30-120-930, as appropriate, environmental modifications must be provided in accordance with all applicable state or local building codes by contractors who have a provider agreement with DMAS. Providers may not be spouses or parents of the individual. Modifications must be completed within the plan of care or the calendar year in which the modification was authorized, as appropriate to the waiver in which the individual is enrolled.

### **12VAC30-120-762. Assistive technology.**

A. Service description. Assistive technology (AT) is available to recipients who are receiving at least one other waiver service and may be provided in a residential or nonresidential setting. ~~Assistive technology (AT) AT~~ is the specialized medical equipment and supplies, including those devices, controls, or appliances, specified in the plan of care, but not available under the State Plan for Medical Assistance, that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live. This service also includes items necessary for life support, ancillary supplies, and equipment necessary to the proper functioning of such items.

B. Criteria. In order to qualify for these services, the individual must have a demonstrated need for equipment or modification for remedial or direct medical benefit primarily in an individual's primary home, primary vehicle used by the individual, community activity setting, or day program to specifically serve to improve the individual's personal functioning. This shall encompass those items not otherwise covered under the State Plan for Medical Assistance. Assistive technology shall be covered in the least expensive, most cost-effective manner.

C. Service units and service limitations. ~~Assistive technology (AT) AT~~ is available to individuals receiving at least one other waiver service and may be provided in the individual's home or community setting. A maximum limit of \$5,000 may be reimbursed per plan of care year or the calendar year, as appropriate to the waiver in which the individual is enrolled or calendar year, as appropriate to the waiver being received. Costs for assistive technology cannot be carried over from year to year and must be preauthorized each plan of care year. AT will not be approved for purposes of convenience of the caregiver/provider or restraint of the individual. An independent, professional consultation must be obtained from qualified professionals who are knowledgeable of that item for each AT request prior to approval by the prior authorization agent, and may include training on such AT by the qualified professional. All ~~assistive technology AT~~ must be prior authorized by the prior authorization agent prior to billing. Also excluded are modifications that are reasonable accommodation requirements of the Americans with Disabilities Act, the Virginians with Disabilities Act, and the Rehabilitation Act.

D. Provider requirements. In addition to meeting the general conditions and requirements for home- and community-based care participating providers as specified in 12VAC30-120-160, 12VAC30-120-730 and, 12VAC30-120-740, assistive technology and 12VAC30-120-930, AT shall be provided by providers having a current provider participation agreement with DMAS as durable medical equipment and supply providers. Independent, professional consultants include speech/language therapists, physical therapists, occupational therapists, physicians, behavioral therapists, certified rehabilitation specialists, or rehabilitation engineers. Providers that supply ~~assistive technology AT~~ for an individual may not perform assessment/consultation, write specifications, or inspect the ~~assistive technology AT~~ for that individual. Providers of services may not be spouses or parents of the individual. AT must be delivered within the plan of care year, or within a year from the start date of the authorization, as appropriate to the waiver, in which the individual is enrolled.

**12VAC30-120-770. Consumer-directed model of service delivery.**

## A. Criteria.

1. The IFDDS Waiver has three services, companion, personal care, and respite services, that may be provided through a consumer-directed model.
2. Individuals who are eligible for consumer-directed services must have the capability to hire and, train, and fire their consumer-directed employees and supervise the employee's work performance. If an individual is unable to direct his own care or is under 18 years of age, a family/caregiver may serve as the employer on behalf of the individual.
3. Responsibilities as employer. The individual, or if the individual is unable, then a family caregiver, is the employer in this service and is responsible for hiring, training, supervising, and firing employees. Specific duties include checking references of employees, determining that employees meet basic qualifications, training employees, supervising the employees' performance, and submitting timesheets to the fiscal agent on a consistent and timely basis. The individual or his family/caregiver, as appropriate, must have an emergency back-up plan in case the employee does not show up for work.
4. DMAS shall contract for the services of a fiscal agent for consumer-directed personal care, companion, and respite care services. The fiscal agent will be paid by DMAS to perform certain tasks as an agent for the individual/employer who is receiving consumer-directed services. The fiscal agent will handle responsibilities for the individual for employment taxes. The fiscal agent will seek and obtain all necessary authorizations and approvals of the Internal Revenue Services in order to fulfill all of these duties.
5. Individuals choosing consumer-directed services must receive support from a CD services facilitator. Services facilitators assist the individual or his family/caregiver, as appropriate, as they become employers for consumer-directed services. This function includes providing the individual or his family/caregiver, as appropriate, with management training, review and explanation of the Employee Management Manual, and routine visits to monitor the employment process. The CD services facilitator assists the individual/employer with employer issues as they arise. The services facilitator meeting the stated qualifications may also complete the assessments, reassessments, and related supporting documentation necessary for consumer-directed services if the individual or his family/caregiver, as appropriate, chooses for the CD services facilitator to perform these tasks rather than the case manager. Services facilitation

services are provided on an as-needed basis as determined by the individual, family/caregiver, and CD services facilitator. This must be documented in the supporting documentation for consumer-directed services and the services facilitation provider bills accordingly. If an individual enrolled in consumer-directed services has a lapse in consumer-directed services for more than 60 consecutive calendar days, the case manager must notify DMAS so that consumer-directed services may be discontinued and the option given to change to agency-directed services.

B. Provider qualifications. In addition to meeting the general conditions and requirements for home and community-based care participating providers as specified in 12VAC30-120-730 and 12VAC30-120-740, services facilitators providers must meet the following qualifications:

1. To be enrolled as a Medicaid CD services facilitation provider and maintain provider status, the CD services facilitation provider must operate from a business office and have sufficient qualified staff who will function as CD services facilitators to perform the service facilitation and support activities as required. It is preferred that the employee of the CD services facilitation provider possess a minimum of an undergraduate degree in a human services field or be a registered nurse currently licensed to practice in the Commonwealth. In addition, it is preferable that the CD services facilitator has two years of satisfactory experience in the human services field working with individuals with related conditions.
2. The CD services facilitator must possess a combination of work experience and relevant education which indicates possession of the following knowledge, skills, and abilities. Such knowledge, skills and abilities must be documented on the application form, found in supporting documentation, or be observed during the job interview. Observations during the interview must be documented. The knowledge, skills, and abilities include:
  - a. Knowledge of:
    - (1) Various long-term care program requirements, including nursing home, ICF/MR, and assisted living facility placement criteria, Medicaid waiver services, and other federal, state, and local resources that provide personal care services;
    - (2) DMAS consumer-directed services requirements, and the administrative duties for which the individual will be responsible;
    - (3) Interviewing techniques;

---

# Regulations

---

(4) The individual's right to make decisions about, direct the provisions of, and control his consumer-directed services, including hiring, training, managing, approving time sheets, and firing an employee;

(5) The principles of human behavior and interpersonal relationships; and

(6) General principles of record documentation.

(7) For CD services facilitators who also conduct assessments and reassessments, the following is also required. Knowledge of:

(a) Types of functional limitations and health problems that are common to different disability types and the aging process as well as strategies to reduce limitations and health problems;

(b) Physical assistance typically required by people with developmental disabilities, such as transferring, bathing techniques, bowel and bladder care, and the approximate time those activities normally take;

(c) Equipment and environmental modifications commonly used and required by people with developmental disabilities that reduces the need for human help and improves safety;

(d) Conducting assessments (including environmental, psychosocial, health, and functional factors) and their uses in care planning.

b. Skills in:

(1) Negotiating with individuals or their family/caregivers, as appropriate, and service providers;

(2) Observing, recording, and reporting behaviors;

(3) Identifying, developing, or providing services to persons with developmental disabilities; and

(4) Identifying services within the established services system to meet the individual's needs.

c. Abilities to:

(1) Report findings of the assessment or onsite visit, either in writing or an alternative format for persons who have visual impairments;

(2) Demonstrate a positive regard for individuals and their families;

(3) Be persistent and remain objective;

(4) Work independently, performing position duties under general supervision;

(5) Communicate effectively, orally and in writing;

(6) Develop a rapport and communicate with different types of persons from diverse cultural backgrounds; and

(7) Interview.

3. If the CD services facilitator is not an RN, the CD services facilitator must inform the primary health care provider that services are being provided and request skilled nursing or other consultation as needed.

4. Initiation of services and service monitoring.

a. If the services facilitator has responsibility for individual assessments and reassessments, these must be conducted as specified in 12VAC30-120-766 and 12VAC30-120-776.

b. Management training.

(1) The CD services facilitation provider must make an initial visit with the individual or his family/caregiver, as appropriate, to provide management training. The initial management training is done only once upon the individual's entry into the service. If an individual served under the waiver changes CD services facilitation providers, the new CD services facilitator must bill for a regular management training in lieu of initial management training.

(2) After the initial visit, two routine visits must occur within 60 days of the initiation of care or the initial visit to monitor the employment process.

(3) For personal care services, the CD services facilitation provider will continue to monitor on an as needed basis, not to exceed a maximum of one routine visit every 30 calendar days but no less than the minimum of one routine visit every 90 calendar days per individual. After the initial visit, the CD services facilitator will periodically review the utilization of companion services at a minimum of every six months and for respite services, either every six months or upon the use of 300 respite care hours, whichever comes first.

5. The CD services facilitator must be available to the individual or his family/caregiver, as appropriate, by telephone during normal business hours, have voice mail capability, and return phone calls within 24 hours or have an approved back-up CD services facilitator.

6. The CD services fiscal contractor for DMAS must submit a criminal record check within 15 calendar days of employment pertaining to the consumer-directed employees on behalf of the individual or family/caregiver and report findings of the criminal record check to the individual or his family/caregiver, as appropriate.

7. The CD services facilitator shall verify bi-weekly timesheets signed by the individual or his family caregiver, as appropriate, and the employee to ensure that the number of plan of care approved hours are not exceeded. If discrepancies are identified, the CD services facilitator must contact the individual to resolve discrepancies and must notify the fiscal agent. If an individual is consistently being identified as having discrepancies in his timesheets, the CD services facilitator must contact the case manager to resolve the situation.

8. Consumer-directed employee registry. The CD services facilitator must maintain a consumer-directed employee registry, updated on an ongoing basis.

9. Required documentation in individuals' records. CD services facilitators responsible for individual assessment and reassessment must maintain records as described in 12VAC30-120-766 and 12VAC30-120-776. For CD services facilitators conducting management training, the following documentation is required in the individual's record:

- a. All copies of the plan of care, all supporting documentation related to consumer-directed services, and all DMAS-122 forms.
- b. CD services facilitator's notes recorded and dated at the time of service delivery.
- c. All correspondence to the individual, others concerning the individual, and to DMAS.
- d. All training provided to the consumer-directed employees on behalf of the individual or his family/caregiver, as appropriate.
- e. All management training provided to the individuals or his family/caregivers, as appropriate, including the responsibility for the accuracy of the timesheets.
- f. All documents signed by the individual or his family/caregiver, as appropriate, that acknowledge the responsibilities of the services.

Part IX

Elderly or Disabled with Consumer Direction Waiver

**12VAC30-120-900. Definitions.**

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

"Activities of daily living" or "ADLs" means tasks such as bathing, dressing, toileting, transferring, and eating/feeding. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Adult day health care center" or "ADHC" means a DMAS-enrolled provider that offers a community-based day program providing a variety of health, therapeutic, and social services designed to meet the specialized needs of those elderly and disabled individuals at risk of placement in a nursing facility. The ADHC must be licensed by DSS as an ADHC.

"Adult day health care services" means services designed to prevent institutionalization by providing participants with health, maintenance, and coordination of rehabilitation services in a congregate daytime setting.

"Agency-directed services" means services provided by a personal care agency.

"Americans with Disabilities Act" or "ADA" means the United States Code pursuant to 42 USC §12101 et seq.

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Assistive technology" means specialized medical equipment and supplies including those devices, controls, or appliances specified in the plan of care but not available under the State Plan for Medical Assistance that enable individuals to increase their abilities to perform activities of daily living, or to perceive, control, or communicate with the environment in which they live, or that are necessary to the proper functioning of the specialized equipment.

"Barrier crime" means those crimes as defined at §32.1-162.9:1 of the Code of Virginia.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the U.S. Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Cognitive impairment" means a severe deficit in mental capability that affects an individual's areas of functioning such as thought processes, problem solving, judgment, memory, or comprehension that interferes with such things as reality orientation, ability to care for self, ability to recognize danger to self or others, or impulse control.

"Consumer-directed services" means services for which the individual or family/caregiver is responsible for hiring, training, supervising, and firing of the personal care aide.

"Consumer-directed (CD) services facilitator" or "facilitator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver by ensuring the development and monitoring of the Consumer-Directed Services Plan of Care, providing employee management training, and completing ongoing review activities as required by

---

# Regulations

---

DMAS for consumer-directed personal care and respite services.

"Designated preauthorization contractor" means DMAS or the entity that has been contracted by DMAS to perform preauthorization of services.

"Direct marketing" means either (i) conducting either directly or indirectly door-to-door, telephonic, or other "cold call" marketing of services at residences and provider sites; (ii) using direct mailing; (iii) paying "finders fees"; (iv) offering financial incentives, rewards, gifts, or special opportunities to eligible individuals or family/caregivers as inducements to use the providers' services; (v) providing continuous, periodic marketing activities to the same prospective individual or family/caregiver, for example, monthly, quarterly, or annual giveaways as inducements to use the providers' services; or (vi) engaging in marketing activities that offer potential customers rebates or discounts in conjunction with the use of the providers' services or other benefits as a means of influencing the individual's or family/caregiver's use of the providers' services.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Elderly or Disabled with Consumer Direction Waiver" or "EDCD waiver" means the CMS-approved waiver that covers a range of community support services offered to individuals who are elderly or disabled who would otherwise require a nursing facility level of care.

"Environmental modifications" means physical adaptations to a house, place of residence, primary vehicle or work site, when the work site modification exceeds reasonable accommodation requirements of the Americans with Disabilities Act (42 USC §1201 et seq.), necessary to ensure the individuals' health and safety or enable functioning with greater independence when the adaptation is not being used to bring a substandard dwelling up to minimum habitation standards and is of direct medical or remedial benefit to individuals. 12VAC30-120-758 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Fiscal agent" means an agency or division within DMAS or contracted by DMAS to handle employment, payroll, and tax responsibilities on behalf of individuals who are receiving consumer-directed personal care services and respite services.

"Home-based and community-based waiver services" or "waiver services" means the range of community support

services approved by the CMS pursuant to §1915(c) of the Social Security Act to be offered to persons who are elderly or disabled who would otherwise require the level of care provided in a nursing facility. DMAS or the designated preauthorization contractor shall only give preauthorization for medically necessary Medicaid reimbursed home and community care.

"Individual" means the person receiving the services established in these regulations.

"Instrumental activities of daily living" or "IADLs" means tasks such as meal preparation, shopping, housekeeping and laundry. An individual's degree of independence in performing these activities is a part of determining appropriate level of care and service needs.

"Medication monitoring" means an electronic device, which is only available in conjunction with Personal Emergency Response Systems, that enables certain individuals at high risk of institutionalization to be reminded to take their medications at the correct dosages and times.

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and has a current, signed provider participation agreement with DMAS.

"Personal care agency" means a participating provider that provides personal care services.

"Personal care aide" means a person who provides personal care services.

"Personal care services" means long-term maintenance or support services necessary to enable the individual to remain at or return home rather than enter a nursing facility. Personal care services are provided to individuals in the areas of activities of daily living, access to the community, monitoring of self-administered medications or other medical needs, and the monitoring of health status and physical condition. Where the individual requires assistance with activities of daily living, and where specified in the plan of care, such supportive services may include assistance with instrumental activities of daily living. Services may be provided in home and community settings to enable an individual to maintain the health status and functional skills necessary to live in the community or participate in community activities.

"Personal emergency response system (PERS)" means an electronic device and monitoring service that enable certain individuals at high risk of institutionalization to secure help in an emergency. PERS services are limited to those individuals who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time, and who would otherwise require extensive routine supervision.

"PERS provider" means a certified home health or a personal care agency, a durable medical equipment provider, a hospital, or a PERS manufacturer that has the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and services calls), and PERS monitoring. PERS providers may also provide medication monitoring.

"Plan of care" means the written plan developed by the provider related solely to the specific services required by the individual to ensure optimal health and safety while remaining in the community.

"Preadmission screening" means the process to: (i) evaluate the functional, nursing, and social supports of individuals referred for preadmission screening; (ii) assist individuals in determining what specific services the individuals need; (iii) evaluate whether a service or a combination of existing community services are available to meet the individuals' needs; and (iv) refer individuals to the appropriate provider for Medicaid-funded nursing facility or home and community-based care for those individuals who meet nursing facility level of care.

"Preadmission Screening Committee/Team" means the entity contracted with DMAS that is responsible for performing preadmission screening pursuant to §32.1-330 of the Code of Virginia.

"Primary caregiver" means the primary person who consistently assumes the role of providing direct care and support of the individual to live successfully in the community without compensation for providing such care.

"Respite care agency" or "respite care facility" means a participating provider that renders respite services.

"Respite services" means those short-term personal care services provided to individuals who are unable to care for themselves because of the absence of or need for the relief of those unpaid caregivers who normally provide the care.

"State Plan for Medical Assistance" or "State Plan" means the regulations identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Transition coordinator" means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver, as appropriate, with the activities associated with transitioning from an institution to the community. 12VAC30-120-2000 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement

to a living arrangement in a private residence where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

"Uniform Assessment Instrument" or "UAI" means the standardized multidimensional questionnaire that is completed by the Preadmission Screening Team that assesses an individual's physical health, mental health, and social and functional abilities to determine if the individual meets the nursing facility level of care.

**12VAC30-120-910. General coverage and requirements for Elderly or Disabled with Consumer Direction Waiver services.**

A. EDCD Waiver services populations. Home- and community-based waiver services shall be available through a §1915(c) of the Social Security Act waiver for the following Medicaid-eligible individuals who have been determined to be eligible for waiver services and to require the level of care provided in a nursing facility:

1. Individuals who are elderly as defined by §1614 of the Social Security Act; or
2. Individuals who are disabled as defined by §1614 of the Social Security Act.

B. Covered services.

1. Covered services shall include: adult day health care, personal care (both consumer-directed and agency-directed), respite services (~~both~~ (consumer-directed, agency-directed, and facility-based), ~~and~~ PERS, assistive technology, environmental modifications, transition coordinator and transition services.

2. These services shall be medically appropriate and medically necessary to maintain the individual in the community and prevent institutionalization.

3. A recipient of EDCD Waiver services may receive personal care (agency- and consumer-directed), respite care (agency- and consumer-directed), adult day health care, transition services, transition coordination, assistive technology, environmental modifications, and PERS services in conjunction with hospice services, regardless of whether the hospice provider receives reimbursement from Medicare or Medicaid for the services covered under the hospice benefit. Services under this waiver will not be available to hospice recipients unless the hospice can document the provision of at least 21 hours per week of homemaker/home health aide services and that the recipient needs personal care-type services that exceed this amount.

4. Under this §1915(c) waiver, DMAS waives §§1902(a)(10)(B) and (C) of the Social Security Act related to comparability of services.

---

# Regulations

---

## 12VAC30-120-920. Individual eligibility requirements.

A. The Commonwealth has elected to cover low-income families with children as described in §1931 of the Social Security Act; aged, blind, or disabled individuals who are eligible under 42 CFR 435.121; optional categorically needy individuals who are aged and disabled who have incomes at 80% of the federal poverty level; the special home and community-based waiver group under 42 CFR 435.217; and the medically needy groups specified in 42 CFR 435.320, 435.322, 435.324, and 435.330.

1. Under this waiver, the coverage groups authorized under §1902(a)(10)(A)(ii)(VI) of the Social Security Act will be considered as if they were institutionalized for the purpose of applying institutional deeming rules. All recipients under the waiver must meet the financial and nonfinancial Medicaid eligibility criteria and meet the institutional level of care criteria. The deeming rules are applied to waiver eligible individuals as if the individual were residing in an institution or would require that level of care.

2. Virginia shall reduce its payment for home and community-based services provided to an individual who is eligible for Medicaid services under 42 CFR 435.217 by that amount of the individual's total income (including amounts disregarded in determining eligibility) that remains after allowable deductions for personal maintenance needs, deductions for other dependents, and medical needs have been made, according to the guidelines in 42 CFR 435.735 and §1915(c)(3) of the Social Security Act as amended by the Consolidated Omnibus Budget Reconciliation Act of 1986. DMAS will reduce its payment for home and community-based waiver services by the amount that remains after the following deductions:

a. For individuals to whom §1924(d) applies (Virginia waives the requirement for comparability pursuant to §1902(a)(10)(B)), deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours per week, earned income shall be disregarded up to a maximum of both earned and unearned income up to 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for

maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with only a spouse at home, the community spousal income allowance determined in accordance with §1924(d) of the Social Security Act;

(3) For an individual with a family at home, an additional amount for the maintenance needs of the family determined in accordance with §1924(d) of the Social Security Act; and

(4) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under the state law but not covered under the State Plan.

b. For individuals to whom §1924(d) of the Social Security Act does not apply, deduct the following in the respective order:

(1) An amount for the maintenance needs of the individual that is equal to 165% of the SSI income limit for one individual. Working individuals have a greater need due to expenses of employment; therefore, an additional amount of income shall be deducted. Earned income shall be deducted within the following limits: (i) for individuals employed 20 hours or more, earned income shall be disregarded up to a maximum of 300% of SSI and (ii) for individuals employed at least eight but less than 20 hours, earned income shall be disregarded up to a maximum of 200% of SSI. However, in no case, shall the total amount of income (both earned and unearned) that is disregarded for maintenance exceed 300% of SSI. If the individual requires a guardian or conservator who charges a fee, the fee, not to exceed an amount greater than 5.0% of the individual's total monthly income, is added to the maintenance needs allowance. However, in no case shall the total amount of the maintenance needs allowance (basic allowance plus earned income allowance plus guardianship fees) for the individual exceed 300% of SSI. (The guardianship fee is not to exceed 5.0% of the individual's total monthly income.);

(2) For an individual with a family at home, an additional amount for the maintenance needs of the family that shall be equal to the medically needy income standard for a family of the same size; and

(3) Amounts for incurred expenses for medical or remedial care that are not subject to payment by a third party including Medicare and other health insurance premiums, deductibles, or coinsurance charges and necessary medical or remedial care recognized under state law but not covered under the State Plan.

B. Assessment and authorization of home and community-based services.

1. To ensure that Virginia's home and community-based waiver programs serve only Medicaid eligible individuals who would otherwise be placed in a nursing facility, home and community-based waiver services shall be considered only for individuals who are eligible for admission to a nursing facility. Home and community-based waiver services shall be the critical service to enable the individual to remain at home and in the community rather than being placed in a nursing facility.

2. The individual's eligibility for home and community-based services shall be determined by the Preadmission Screening Team after completion of a thorough assessment of the individual's needs and available support. If an individual meets nursing facility criteria, the Preadmission Screening Team shall provide the individual and family/caregiver with the choice of Elderly or Disabled with Consumer Direction Waiver services or nursing facility placement.

3. The Preadmission Screening Team shall explore alternative settings or services to provide the care needed by the individual. When Medicaid-funded home and community-based care services are determined to be the critical services necessary to delay or avoid nursing facility placement, the Preadmission Screening Team shall initiate referrals for services.

4. Medicaid will not pay for any home and community-based care services delivered prior to the individual establishing Medicaid eligibility and prior to the date of the preadmission screening by the Preadmission Screening Team and the physician signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96).

5. Before Medicaid will assume payment responsibility of home and community-based services, preauthorization must be obtained from the designated preauthorization contractor on all services requiring preauthorization. Providers must submit all required

information to the designated preauthorization contractor within 10 business days of initiating care or within 10 business days of receiving verification of Medicaid eligibility from the local DSS. If the provider submits all required information to the designated preauthorization contractor within 10 business days of initiating care, services may be authorized beginning from the date the provider initiated services but not preceding the date of the physician's signature on the Medicaid Funded Long-Term Care Services Authorization Form (DMAS-96). If the provider does not submit all required information to the designated preauthorization contractor within 10 business days of initiating care, the services may be authorized beginning with the date all required information was received by the designated preauthorization contractor, but in no event preceding the date of the Preadmission Screening Team physician's signature on the DMAS-96 form.

6. Once services for the individual have been authorized by the designated preauthorization contractor, the provider/services facilitator will submit a Patient Information Form (DMAS-122), along with a written confirmation of level of care eligibility from the designated preauthorization contractor, to the local DSS to determine financial eligibility for the waiver program and any patient pay responsibilities. After the provider/services facilitator has received written notification of Medicaid eligibility by DSS and written enrollment from the designated preauthorization contractor, the provider/services facilitator shall inform the individual or family/caregiver so that services may be initiated.

7. The provider/services facilitator with the most billable hours must request an updated DMAS-122 form from the local DSS annually and forward a copy of the updated DMAS-122 form to all service providers when obtained.

8. Home-based and community-based care services shall not be offered or provided to any individual who resides in a nursing facility, an intermediate care facility for the mentally retarded, a hospital, an assisted living facility licensed by DSS ~~or an Adult Foster Care provider certified by DSS, that serves five or more individuals,~~ or a group home licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services with exception of transition coordination, transition services, assistive technology and environmental modifications. Additionally, home and community-based care services shall not be provided to any individual who resides outside of the physical boundaries of the Commonwealth, with the exception of brief periods of time as approved by DMAS or the designated preauthorization contractor. Brief periods of

---

# Regulations

---

time may include, but are not necessarily restricted to, vacation or illness.

9. Certain home-based and community-based services shall not be available to individuals residing in an assisted living facility licensed by DSS that serves four individuals. These services are: respite, PERS, environmental modifications and transition services. Personal care services are limited to five hours per day.

C. Appeals. Recipient appeals shall be considered pursuant to 12VAC30-110-10 through 12VAC30-110-380. Provider appeals shall be considered pursuant to 12VAC30-10-1000 and 12VAC30-20-500 through 12VAC30-20-560.

## **12VAC30-120-970. Personal emergency response system (PERS).**

A. Service description. PERS is a service that monitors individual safety in the home and provides access to emergency assistance for medical or environmental emergencies through the provision of a two-way voice communication system that dials a 24-hour response or monitoring center upon activation and via the individual's home telephone line. PERS may also include medication monitoring devices.

B. Standards for PERS equipment. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) safety standard Number 1635 for digital alarm communicator system units and Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring manual reset by the recipient.

C. Criteria. PERS services are limited to those individuals ages 14 and older who live alone or are alone for significant parts of the day and who have no regular caregiver for extended periods of time and who would otherwise require extensive routine supervision. PERS may only be provided in conjunction with personal care (agency- or consumer-directed), respite (agency- or consumer-directed), or adult day health care. An individual may not receive PERS if he has a cognitive impairment as defined in 12VAC30-120-900.

1. PERS can be authorized when there is no one else, other than the individual, in the home who is competent and continuously available to call for help in an emergency. If the individual's caregiver has a business in the home, such as, but not limited to, a day care center, PERS will only be approved if the individual is evaluated as being dependent in the categories of

"Behavior Pattern" and "Orientation" on the Uniform Assessment Instrument (UAI).

2. Medication monitoring units must be physician ordered. In order to receive medication monitoring services, an individual must also receive PERS services. The physician orders must be maintained in the individual's file.

### D. Services units and services limitations.

1. A unit of service shall include administrative costs, time, labor, and supplies associated with the installation, maintenance, adjustments, and monitoring of the PERS. A unit of service equals the one-month rental of PERS, the price of which is set by DMAS. The one-time installation of the unit includes installation, account activation, and individual and caregiver instruction. The one-time installation fee shall also include the cost of the removal of the PERS equipment.

2. PERS service must be capable of being activated by a remote wireless device and be connected to the individual's telephone line. The PERS console unit must provide hands-free voice-to-voice communication with the response center. The activating device must be waterproof, automatically transmit to the response center an activator low battery alert signal prior to the battery losing power, and be able to be worn by the individual.

3. In cases where medication monitoring units must be filled by the provider, the person filling the unit must be a registered nurse, a licensed practical nurse, or a licensed pharmacist. The units can be refilled every 14 days. There must be documentation of this in the individual's record.

E. Provider requirements. In addition to meeting the general conditions and requirements for home-based and community-based waiver participating providers as specified in 12VAC30-120-80, 12VAC30-120-160, and 12VAC30-120-930, PERS providers must also meet the following qualifications and requirements:

1. A PERS provider must be either a personal care agency, a durable medical equipment provider, a hospital, a licensed home health provider, or a PERS manufacturer. All such providers shall have the ability to provide PERS equipment, direct services (i.e., installation, equipment maintenance, and service calls), and PERS monitoring;

2. The PERS provider must provide an emergency response center with fully trained operators who are capable of (i) receiving signals for help from an individual's PERS equipment 24 hours a day, 365 or 366 days per year as appropriate; (ii) determining whether an emergency exists; and (iii) notifying an emergency

response organization or an emergency responder that the PERS individual needs emergency help;

3. A PERS provider must comply with all applicable Virginia statutes, all applicable regulations of DMAS, and all other governmental agencies having jurisdiction over the services to be performed;

4. The PERS provider has the primary responsibility to furnish, install, maintain, test, and service the PERS equipment, as required, to keep it fully operational. The provider shall replace or repair the PERS device within 24 hours of the individual's notification of a malfunction of the console unit, activating devices, or medication monitoring unit and shall provide temporary equipment while the original equipment is being repaired;

5. The PERS provider must properly install all PERS equipment into a PERS individual's functioning telephone line within seven days of the request unless there is appropriate documentation of why this timeframe cannot be met. The PERS provider must furnish all supplies necessary to ensure that the system is installed and working properly. The PERS provider must test the PERS device monthly, or more frequently if needed, to ensure that the device is fully operational;

6. The PERS installation shall include local seize line circuitry, which guarantees that the unit will have priority over the telephone connected to the console unit should the telephone be off the hook or in use when the unit is activated;

7. A PERS provider must maintain a data record for each PERS individual at no additional cost to DMAS or the individual. The record must document all of the following:

- a. Delivery date and installation date of the PERS;
- b. Individual/caregiver signature verifying receipt of the PERS device;
- c. Verification by a test that the PERS device is operational, monthly or more frequently as needed;
- d. Updated and current individual responder and contact information, as provided by the individual or the individual's caregiver; and
- e. A case log documenting the individual's utilization of the system, all contacts, and all communications with the individual, caregiver, and responders;

8. The PERS provider must have backup monitoring capacity in case the primary system cannot handle incoming emergency signals;

9. All PERS equipment must be approved by the Federal Communications Commission and meet the Underwriters' Laboratories, Inc. (UL) Safety Standard

Number 1635 for digital alarm communicator system units and Safety Standard Number 1637 for home health care signaling equipment. The UL listing mark on the equipment will be accepted as evidence of the equipment's compliance with such standard. The PERS device must be automatically reset by the response center after each activation, ensuring that subsequent signals can be transmitted without requiring a manual reset by the individual;

10. A PERS provider must furnish education, data, and ongoing assistance to DMAS and the designated preauthorization contractor to familiarize staff with the services, allow for ongoing evaluation and refinement of the program, and instruct the individual, caregiver, and responders in the use of the PERS services;

11. The emergency response activator must be activated either by breath, by touch, or by some other means, and must be usable by individuals who are visually or hearing impaired or physically disabled. The emergency response communicator must be capable of operating without external power during a power failure at the individual's home for a minimum period of 24 hours and automatically transmit a low battery alert signal to the response center if the backup battery is low. The emergency response console unit must also be able to self-disconnect and redial the backup monitoring site without the individual resetting the system in the event it cannot get its signal accepted at the response center;

12. PERS providers must be capable of continuously monitoring and responding to emergencies under all conditions, including power failures and mechanical malfunctions. It is the PERS provider's responsibility to ensure that the monitoring agency and the monitoring agency's equipment meets the following requirements. The PERS provider must be capable of simultaneously responding to multiple signals for help from individuals' PERS equipment. The PERS provider's equipment must include the following:

- a. A primary receiver and a backup receiver, which must be independent and interchangeable;
- b. A backup information retrieval system;
- c. A clock printer, which must print out the time and date of the emergency signal, the PERS individual's identification code, and the emergency code that indicates whether the signal is active, passive, or a responder test;
- d. A backup power supply;
- e. A separate telephone service;

---

# Regulations

---

f. A toll-free number to be used by the PERS equipment in order to contact the primary or backup response center; and

g. A telephone line monitor, which must give visual and audible signals when the incoming telephone line is disconnected for more than 10 seconds;

13. The PERS provider must maintain detailed technical and operation manuals that describe PERS elements, including the installation, functioning, and testing of PERS equipment; emergency response protocols; and recordkeeping and reporting procedures;

14. The PERS provider shall document and furnish within 30 days of the action taken a written report for each emergency signal that results in action being taken on behalf of the individual. This excludes test signals or activations made in error. This written report shall be furnished to the personal care provider, the respite care provider, the CD services facilitation provider, the transition coordinator, case manager, as appropriate to the waiver in which the individual is enrolled or, in cases where the individual only receives ADHC services, to the ADHC provider;

15. The PERS provider is prohibited from performing any type of direct marketing activities to Medicaid individuals; and

16. The PERS provider must obtain and keep on file a copy of the most recently completed Patient Information form (DMAS-122). Until the PERS provider obtains a copy of the DMAS-122 form, the PERS provider must clearly document efforts to obtain the completed DMAS-122 form from the personal care provider, respite care provider, the CD services facilitation provider, the transition coordinator, case manager, or the ADHC provider, as appropriate to the waiver in which the individual is enrolled.

## Part X

### Day Support Waiver for Individuals with Mental Retardation

#### **12VAC30-120-1500. Definitions.**

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

"Appeal" means the process used to challenge adverse actions regarding services, benefits, and reimbursement provided by Medicaid pursuant to 12VAC30-110 and 12VAC30-20-500 through 12VAC30-20-560.

"Behavioral health authority" or "BHA" means the local agency, established by a city or county under Chapter 6 (§37.2-600 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental

retardation, and substance abuse services in the locality that it serves.

"Case management" means the assessing and planning of services; linking the individual to services and supports identified in the consumer service plan; assisting the individual directly for the purpose of locating, developing or obtaining needed services and resources; coordinating services and service planning with other agencies and providers involved with the individual; enhancing community integration; making collateral contacts to promote the implementation of the consumer service plan and community integration; monitoring to assess ongoing progress and ensuring services are delivered; and education and counseling that guides the individual and develops a supportive relationship that promotes the consumer service plan.

"Case manager" means the individual who performs case management services on behalf of the community services board or behavioral health authority, and who possesses a combination of mental retardation work experience and relevant education that indicates that the individual possesses the knowledge, skills and abilities as established by the Department of Medical Assistance Services in 12VAC30-50-450.

"CMS" means the Centers for Medicare and Medicaid Services, which is the unit of the federal Department of Health and Human Services that administers the Medicare and Medicaid programs.

"Community services board" or "CSB" means the local agency, established by a city or county or combination of counties or cities under Chapter 5 (§37.2-500 et seq.) of Title 37.2 of the Code of Virginia, that plans, provides, and evaluates mental health, mental retardation, and substance abuse services in the jurisdiction or jurisdictions it serves.

"Comprehensive assessment" means the gathering of relevant social, psychological, medical, and level of care information by the case manager and is used as a basis for the development of the consumer service plan.

"Consumer service plan" or "CSP" means documents addressing needs in all life areas of individuals who receive Day Support Waiver services, and is comprised of individual service plans as dictated by the individual's health care and support needs. The case manager incorporates the individual service plans in the CSP.

"Date of need" means the date of the initial eligibility determination assigned to reflect that the individual is diagnostically and functionally eligible for the waiver and is willing to begin services within 30 days. The date of need is not changed unless the person is subsequently found ineligible or withdraws their request for services.

"Day support services" means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

"Day Support Waiver for Individuals with Mental Retardation" or "Day Support Waiver" means the program that provides day support, prevocational services, and supported employment to individuals on the Mental Retardation Waiver waiting list who have been assigned a Day Support Waiver slot.

"DMAS" means the Department of Medical Assistance Services.

"DMAS staff" means persons employed by the Department of Medical Assistance Services.

"DMHMRSAS" means the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DMHMRSAS staff" means persons employed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"DRS" means the Department of Rehabilitative Services.

"DSS" means the Department of Social Services.

"Enroll" means that the individual has been determined by the case manager to meet the eligibility requirements for the Day Support Waiver and DMHMRSAS has verified the availability of a Day Support Waiver slot for that individual, and DSS has determined the individual's Medicaid eligibility for home and community-based services.

"EPSDT" means the Early Periodic Screening, Diagnosis and Treatment program administered by DMAS for children under the age of 21 according to federal guidelines that prescribe preventive and treatment services for Medicaid-eligible children as defined in 12VAC30-50-130.

"Home-based and community-based waiver services" or "waiver services" means the range of community support services approved by the Centers for Medicare and Medicaid Services (CMS) pursuant to §1915(c) of the Social Security Act to be offered to persons with mental retardation who would otherwise require the level of care provided in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

"Individual" means the person receiving the services or evaluations established in these regulations.

"Individual service plan" or "ISP" means the service plan related solely to the specific waiver service. Multiple ISPs help to comprise the overall consumer service plan.

"Intermediate Care Facility for the Mentally Retarded" or "ICF/MR" means a facility or distinct part of a facility certified by the Virginia Department of Health as meeting the federal certification regulations for an intermediate care facility for the mentally retarded and persons with related conditions. These facilities must address the total needs of the residents, which include physical, intellectual, social, emotional, and habilitation, and must provide active treatment.

"Mental retardation" or "MR" means ~~mental retardation a disability~~ as defined by the American Association on ~~Mental Retardation (AAMR)~~ Intellectual and Developmental Disabilities (AAIDD).

"Participating provider" means an entity that meets the standards and requirements set forth by DMAS and DMHMRSAS, and has a current, signed provider participation agreement with DMAS.

"Preauthorized" means that an individual service has been approved by DMHMRSAS prior to commencement of the service by the service provider for initiation and reimbursement of services.

"Prevocational services" means services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services (excluding supported employment programs). The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

"Slot" means an opening or vacancy of waiver services for an individual.

"State Plan for Medical Assistance" or "Plan" means the Commonwealth's legal document approved by CMS identifying the covered groups, covered services and their limitations, and provider reimbursement methodologies as provided for under Title XIX of the Social Security Act.

"Supported employment" means work in settings in which persons without disabilities are typically employed. It includes training in specific skills related to paid employment and the provision of ongoing or intermittent assistance and specialized supervision to enable an individual with mental retardation to maintain paid employment.

---

# Regulations

---

## 12VAC30-120-1550. Services: day support services, prevocational services and supported employment services.

### A. Service descriptions.

1. Day support means training, assistance, and specialized supervision in the acquisition, retention, or improvement of self-help, socialization, and adaptive skills, which typically take place outside the home in which the individual resides. Day support services shall focus on enabling the individual to attain or maintain his maximum functional level.

2. Prevocational services means services aimed at preparing an individual for paid or unpaid employment, but are not job-task oriented. Prevocational services are provided to individuals who are not expected to be able to join the general work force without supports or to participate in a transitional sheltered workshop within one year of beginning waiver services (excluding supported employment programs). The services do not include activities that are specifically job-task oriented but focus on concepts such as accepting supervision, attendance, task completion, problem solving and safety. Compensation, if provided, is less than 50% of the minimum wage.

3. Supported employment services are provided in work settings where persons without disabilities are employed. It is especially designed for individuals with developmental disabilities, including individuals with mental retardation, who face severe impediments to employment due to the nature and complexity of their disabilities, irrespective of age or vocational potential.

a. Supported employment services are available to individuals for whom competitive employment at or above the minimum wage is unlikely without ongoing supports and who because of their disability need ongoing support to perform in a work setting.

b. Supported employment can be provided in one of two models. Individual supported employment shall be defined as intermittent support, usually provided one-on-one by a job coach to an individual in a supported employment position. Group-supported employment shall be defined as continuous support provided by staff to eight or fewer individuals with disabilities in an enclave, work crew, bench work, or entrepreneurial model. The individual's assessment and CSP must clearly reflect the individual's need for training and supports.

### B. Criteria.

1. For day support services, individuals must demonstrate the need for functional training, assistance, and specialized supervision offered primarily in settings

other than the individual's own residence that allow an opportunity for being productive and contributing members of communities.

2. For prevocational services, the individual must demonstrate the need for support in skills that are aimed toward preparation of paid employment that may be offered in a variety of community settings.

3. For supported employment, the individual shall have demonstrated that competitive employment at or above the minimum wage is unlikely without ongoing supports, and that because of his disability, he needs ongoing support to perform in a work setting.

a. Only job development tasks that specifically include the individual are allowable job search activities under the Day Support waiver supported employment and only after determining this service is not available from DRS.

b. A functional assessment must be conducted to evaluate the individual in his work environment and related community settings.

C. Service types. The amount and type of day support and prevocational services included in the individual's service plan is determined according to the services required for that individual. There are two types of services: center-based, which is provided primarily at one location/building, and noncenter-based, which is provided primarily in community settings. Both types of services may be provided at either intensive or regular levels. For supported employment, the ISP must document the amount of supported employment required by the individual. Service providers are reimbursed only for the amount and type of supported employment included in the individual's ISP.

D. Intensive level criteria. For day support and prevocational services to be authorized at the intensive level, the individual must meet at least one of the following criteria: (i) require physical assistance to meet the basic personal care needs (toileting, feeding, etc); (ii) have extensive disability-related difficulties and require additional, ongoing support to fully participate in programming and to accomplish his service goals; or (iii) require extensive constant supervision to reduce or eliminate behaviors that preclude full participation in the program. In this case, written behavioral objectives are required to address behaviors such as, but not limited to, withdrawal, self-injury, aggression, or self-stimulation.

E. Service units. Day support, prevocational and group models of supported employment (enclaves, work crews, bench work and entrepreneurial model of supported employment) are billed in units. Units shall be defined as: accordance with the DMAS fee schedule.

- ~~1. One unit is 1 to 3.99 hours of service a day.~~
- ~~2. Two units are 4 to 6.99 hours of service a day.~~
- ~~3. Three units are 7 or more hours of service a day.~~
- ~~4. Supported employment for individual job placement is provided in one-hour units.~~

F. Service limitations.

1. There must be separate supporting documentation for each service and each must be clearly differentiated in documentation and corresponding billing.
2. The supporting documentation must provide an estimate of the amount of services required by the individual. Service providers are reimbursed only for the amount and type of services included in the individual's approved ISP based on the setting, intensity, and duration of the service to be delivered.
3. Day support, prevocational and group models of supported employment services shall be limited to a total of 780 units per CSP year, or its equivalent under the DMAS fee schedule. If an individual receives a combination of day support, prevocational and/or supported employment services, the combined total shall not exceed 780 units per CSP year, or its equivalent under the DMAS fee schedule.
4. The individual job placement model of supported employment is limited to 40 hours per week.
5. For day support services:
  - a. Day support cannot be regularly or temporarily provided in an individual's home or other residential setting (e.g., due to inclement weather or individual illness) without prior written approval from DMHMRSAS.
  - b. Noncenter-based day support services must be separate and distinguishable from other services.
6. For the individual job placement model, reimbursement of supported employment will be limited to actual documented interventions or collateral contacts by the provider, not the amount of time the individual is in the supported employment situation.

G. Provider requirements. In addition to meeting the general conditions and requirements for home and community-based participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, service providers must meet the following requirements:

1. The provider of day support services must be licensed by DMHMRSAS as a provider of day support services. The provider of prevocational services must be a vendor of extended employment services, long-term employment services, or supported employment services

for DRS, or be licensed by DMHMRSAS as a provider of day support services.

2. Supported employment shall be provided only by agencies that are DRS vendors of supported employment services;

3. In addition to any licensing requirements, persons providing day support or prevocational services are required to participate in training in the characteristics of mental retardation and appropriate interventions, training strategies, and support methods for persons with mental retardation and functional limitations prior to providing direct services. All providers of services must pass an objective, standardized test of skills, knowledge, and abilities approved by DMHMRSAS and administered according to DMHMRSAS' defined procedures.

4. Required documentation in the individual's record. The provider agency must maintain records of each individual receiving services. At a minimum these records must contain the following:

- a. A functional assessment conducted by the provider to evaluate each individual in the service environment and community settings.
- b. An ISP that contains, at a minimum, the following elements:
  - (1) The individual's strengths, desired outcomes, required or desired supports and training needs;
  - (2) The individual's goals and, a sequence of measurable objectives to meet the above identified outcomes;
  - (3) Services to be rendered and the frequency of services to accomplish the above goals and objectives;
  - (4) A timetable for the accomplishment of the individual's goals and objectives as appropriate;
  - (5) The estimated duration of the individual's needs for services; and
  - (6) The provider staff responsible for the overall coordination and integration of the services specified in the ISP.

~~c.~~ c. Documentation confirming the individual's attendance and amount of time in services, type of services rendered, and specific information regarding the individual's response to various settings and supports as agreed to in the ISP objectives. An attendance log or similar document must be maintained that indicates the date, type of services rendered, and the number of hours and units provided.

---

# Regulations

---

~~e.~~ d. Documentation indicating whether day support or prevocational services were center-based or noncenter-based.

~~f.~~ e. In instances where staff are required to ride with the individual to and from the service in order to provide needed supports as specified in the ISP, the staff time can be billed as day support, prevocational or supported employment services, provided that the billing for this time does not exceed 25% of the total time spent in the day support, prevocational or supported employment activity for that day. Documentation must be maintained to verify that billing for staff coverage during transportation does not exceed 25% of the total time spent in the service for that day.

~~g.~~ f. If intensive day support or prevocational services are requested, there shall be documentation indicating the specific supports and the reasons they are needed. For ongoing intensive services, there must be clear documentation of the ongoing needs and associated staff supports.

~~h.~~ g. The ISP goals, objectives, and activities must be reviewed by the provider quarterly, ~~and~~ and annually, ~~and~~ or more often as needed and the results of the review submitted to the case manager. For the annual review and in cases where the ISP is modified, the ISP must be reviewed with the individual or family/caregiver.

~~i.~~ h. Copy of the most recently completed DMAS-122 form. The provider must clearly document efforts to obtain the completed DMAS-122 form from the case manager.

~~j.~~ i. For prevocational or supported employment services, documentation regarding whether prevocational or supported employment services are available through §110 of the Rehabilitation Act of 1973 or through the Individuals with Disabilities Education Act (IDEA). If the individual is not eligible for services through the IDEA, documentation is required only for lack of DRS funding. When services are provided through these sources, the ISP shall not authorize such services as a waiver expenditure.

~~k.~~ j. Prevocational services can only be provided when the individual's compensation is less than 50% of the minimum wage.

## **12VAC30-120-2000. Transition coordinator.**

### A. Service description.

1. Transition coordination means the DMAS-enrolled provider who is responsible for supporting the individual and family/caregiver, as appropriate, with the activities associated with transitioning from an

institution to the community pursuant to the Elderly or Disabled with Consumer Direction waiver.

2. Transition coordination services include, but are not limited to, the development of a transition plan; the provision of information about services that may be needed, in accordance with the timeframe specified by federal law, prior to the discharge date, during and after transition; the coordination of community-based services with the case manager if case management is available; linkage to services needed prior to transition such as housing, peer counseling, budget management training, and transportation; and the provision of ongoing support for up to 12 months after discharge date.

### B. Criteria.

1. In order to qualify for these services, the individual shall have a demonstrated need for transition coordination of any of these services. Documented need shall indicate that the service plan cannot be implemented effectively and efficiently without such coordination from this service. Transition coordination services must be prior authorized by DMAS or its designated agent.

2. The individual's service plan shall clearly reflect the individual's needs for transition coordination provided to the individual, family/caregivers, and providers in order to implement the service plan effectively. The service plan includes, at a minimum: (i) a summary or reference to the assessment; (ii) goals and measurable objectives for addressing each identified need; (iii) the services, supports, and frequency of service to accomplish the goals and objectives; (iv) target dates for accomplishment of goals and objectives; (v) estimated duration of service; (vi) the role of other agencies if the plan is a shared responsibility; and (vii) the staff responsible for coordination and integration of services, including the staff of other agencies if the plan is a shared responsibility.

C. Service units and limitations. The unit of service shall be specified by the DMAS fee schedule. The services shall be explicitly detailed in the supporting documentation. Travel time is an in-kind expense within this service and is not billable as a separate item. Transition coordination may not be billed solely for purposes of monitoring. Transition coordination shall be available to individuals who are transitioning from institutional care to the community. Transition coordination service providers shall be reimbursed according to the amount and type of service authorized in the service plan based on a monthly fee for service.

D. Provider requirements. In addition to meeting the general conditions and requirements for home-based and

community-based care participating providers as specified in 12VAC30-120-217 and 12VAC30-120-219, transition coordinators shall meet the following qualifications:

1. Transition coordinators shall be employed by one of the following: a local government agency; a private, nonprofit organization qualified under 26 USC §501(c)(3); or a fiscal management service with experience in providing this service.

2. A qualified transition coordinator shall possess, at a minimum, a bachelor's degree in human services or health care and relevant experience that indicates the individual possesses the following knowledge, skills, and abilities. These shall be documented on the transition coordinator's job application form or supporting documentation, or observable in the job or promotion interview. The transition coordinator shall be at least 21 years of age.

3. Knowledge. Transition coordinators shall have knowledge of aging, independent living, the impact of disabilities and transition planning; individual assessments (including psychosocial, health, and functional factors) and their uses in service planning, interviewing techniques, individuals' rights, local human and health service delivery systems, including support services and public benefits eligibility requirements, principles of human behavior and interpersonal relationships, interpersonal communication principles and techniques, general principles of file documentation, the service planning process, and the major components of a service plan.

4. Skills. Transition coordinators shall have skills in negotiating with individuals and service providers; observing, and reporting behaviors; identifying and documenting an individual's needs for resources, services and other assistance; identifying services within the established services system to meet the individual's needs; coordinating the provision of services by diverse public and private providers; analyzing and planning for the service needs of the individual; and assessing individuals using DMAS' authorized assessment forms.

5. Abilities. Transition coordinators shall have the ability to demonstrate a positive regard for individuals and their families or designated guardian; be persistent and remain objective; work as a team member, maintaining effective interagency and intraagency working relationships; work independently, performing position duties under general supervision; communicate effectively, both verbally and in writing; develop a rapport; communicate with different types of persons from diverse cultural backgrounds; and interview.

## **12VAC30-120-2010. Transition services.**

A. Service description. "Transition services" means set-up expenses for individuals who are transitioning from an institution or licensed or certified provider-operated living arrangement to a living arrangement in a private residence, which may include an adult foster home, where the person is directly responsible for his own living expenses. 12VAC30-120-2010 provides the service description, criteria, service units and limitations, and provider requirements for this service.

The individual's transition from an institution to the community shall have a transition coordinator in order to receive EDCD Waiver services or a case manager or health care coordinator if he shall be receiving services through either the HIV/AIDS, IFDDS, MR or Technology Assisted Waivers.

B. Criteria for receipt of services. In order to be provided, transition services shall be prior authorized by DMAS or its designated agent. These services include rent or utility deposits, basic furniture and appliances, health and safety assurances, and other reasonable expenses incurred as part of a transition. For the purposes of transition services, an institution means an ICF/MR, a nursing facility, or a specialized care facility/hospital as defined at 42 CFR 435.1009. Transition services do not apply to an acute care admission to a hospital.

### **C. Service units and limitations.**

1. Services are available for one transition per individual and must be expended within nine months from the date of authorization. The total cost of these services shall not exceed \$5,000, per person lifetime limit coverage of transition costs to residents of nursing facilities, specialized care facility/hospitals, or ICF/MR, who are Medicaid recipients and are able to return to the community. The \$5,000 maximum allowance must be expended within nine months from the date of authorization for transition services. It shall not be available to the individual after that period of time. The DMAS designated fiscal agent shall manage the accounting of the transition service. The transition coordinator for the EDCD Waiver or the case manager or health care coordinator, as appropriate to the waiver, shall ensure that the funding spent is reasonable and does not exceed the \$5,000 maximum limit.

### **2. Allowable costs include, but are not limited to:**

- a. Security deposits that are required to obtain a lease on an apartment or home;
- b. Essential household furnishings required to occupy and use a community domicile, including furniture, window coverings, food preparation items, and bed/bath linens;

---

# Regulations

---

c. Set-up fees or deposits for utility or services access, including telephone, electricity, heating and water;

d. Services necessary for the individual's health, safety, and welfare such as pest eradication and one-time cleaning prior to occupancy;

e. Moving expenses;

f. Fees to obtain a copy of a birth certificate or an identification card or driver's license; and

g. Activities to assess need, arrange for, and procure needed resources.

3. The services are furnished only to the extent that they are reasonable and necessary as determined through the service plan development process, are clearly identified in the service plan and the person is unable to meet such expense, or when the services cannot be obtained from another source. The expenses do not include monthly rental or mortgage expenses, food, regular utility charges, or household items that are intended for purely diversional/recreational purposes. This service does not include services or items that are covered under other waiver services such as chore, homemaker, environmental modifications and adaptations, or specialized supplies and equipment.

D. Provider requirements. Providers must be enrolled as a Medicaid Provider for Transition Coordination or Case Management and work with the DMAS designated agent to receive reimbursement for the purchase of appropriate transition goods or services on behalf of the individual.

**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

Virginia Uniform Assessment Instrument (UAI) (1994).

Consent to Exchange Information, DMAS-20 (rev. 4/03).

Provider Aide/LPN Record Personal/Respite Care, DMAS-90 (rev. 12/02).

LPN Skilled Respite Record, DMAS-90A (eff. 7/05).

Personal Assistant/Companion Timesheet, DMAS-91 (rev. 8/03).

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the

CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

Medicaid Funded Long-Term Care Service Authorization Form, DMAS-96 (rev. 10/06).

Screening Team Plan of Care for Medicaid-Funded Long Term Care, DMAS-97 (rev. 12/02).

Provider Agency Plan of Care, DMAS-97A (rev. 9/02).

Consumer Directed Services Plan of Care, DMAS-97B (rev. 1/98).

Community-Based Care Recipient Assessment Report, DMAS-99 (rev. 4/03).

Consumer-Directed Personal Attendant Services Recipient Assessment Report, DMAS-99B (rev. 8/03).

MI/MR Level I Supplement for EDCD Waiver Applicants, DMAS-101A (rev. 10/04).

Assessment of Active Treatment Needs for Individuals with MI, MR, or RC Who Request Services under the Elder or Disabled with Consumer-Direction Waivers, DMAS-101B (rev. 10/04).

AIDS Waiver Evaluation Form for Enteral Nutrition, DMAS-116 (6/03).

Patient Information Form, DMAS-122 (rev. ~~12/98~~ 11/07).

Technology Assisted Waiver/EPSTDT Nursing Services Provider Skills Checklist for Individuals Caring for Tracheostomized and/or Ventilator Assisted Children and Adults, DMAS-259.

Home Health Certification and Plan of Care, CMS-485 (rev. 2/94).

IFDDS Waiver Level of Care Eligibility Form (eff. 5/07).

**PATIENT INFORMATION**

Medicaid ID: \_\_\_\_\_ Provider Name \_\_\_\_\_  
 Recipient Name: \_\_\_\_\_ SSN: \_\_\_\_\_ DOB: \_\_\_\_\_  
 Address: \_\_\_\_\_

**I. Provider Section**

**Patient Status: (Complete Appropriate Blocks)**

Patient admitted to this facility/service on \_\_\_\_\_ (date)  
 Patient discharged or expired on \_\_\_\_\_ (date)  
 Discharged to:  Home  Hospital  Other Facility  Expired

Case in need of review/DMAS 122 requested  
 Personal Funds Account balance \$ \_\_\_\_\_ as of \_\_\_\_\_ (date).  
 Patient's income or deductions have changed: \_\_\_\_\_

Medicaid Per Diem Rate: \$ \_\_\_\_\_  
 Explain/other: \_\_\_\_\_

Prepared by Name: \_\_\_\_\_ Title: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Date: \_\_\_\_\_

**II. DSS Section**

**Eligibility Information: (Complete Appropriate Blocks)**

Is eligible for full Medicaid services beginning \_\_\_\_\_ (date)  
 Is eligible for QMB Medicaid only  Is eligible for Medicare premium payment only  
 Is ineligible for Medicaid services  
 \* Is ineligible for Medicaid payment of LTC services from \_\_\_\_\_ to \_\_\_\_\_  
 Has Medicare Part A insurance  Has other health insurance  Has LTC insurance

**III. Patient Pay Information**

	MMYY	MMYY	MMYY
Effective Date	_____	_____	_____
Patient Pay Amount	\$ _____	\$ _____	\$ _____

\*See Instructions for distribution on this form.

NOTE: Medicaid long-term care providers cannot collect more than the Medicaid rate from the patient. Income is used for the cost of care in the month in which it is received, e.g., the SSA check received in January is used toward the cost of care in January.

Eligibility Worker Name: \_\_\_\_\_  
 Agency Name: \_\_\_\_\_ FIPS Code: \_\_\_\_\_  
 Telephone: \_\_\_\_\_ Fax Number: \_\_\_\_\_ Date: \_\_\_\_\_

DMAS-122, Revision 11.28.2007

## **PATIENT INFORMATION**

**FORM NUMBER: DMAS-122**

**PURPOSE OF FORM**--To allow the local DSS and the nursing facility or Medicaid Community-based Care provider to exchange information regarding:

1. The Medicaid eligibility status of a patient;
2. The amount of income an eligible patient must pay to the provider toward the cost of care;
3. A change in the patient's level of care;
4. Admission or discharge of a patient to an institution or Medicaid CBC services, or death of a patient;
5. Other information known to the provider that might cause a change in the eligibility status or patient pay amounts.

**USE OF FORM**--Initiated by either the local DSS or the provider of care. The local DSS must complete the form for each nursing facility or CBC waiver patient at the time initial eligibility is determined or when a Medicaid enrolled recipient enters a nursing facility or CBC services. A new form must be prepared by the local DSS whenever there is any change in the patient's circumstances that results in a change in the amount of patient pay or the patient's eligibility status. The local DSS must send an updated form to the provider at least once a year, even if there is no change in patient pay.

The provider must use the form to show admission date, to request a Medicaid eligibility status, Medicaid recipient I.D., and patient pay amount; to notify the local DSS of changes in the patient's circumstances, discharge or death.

**NUMBER OF COPIES**--Original and one copy for nursing facility patients and original and two copies for CBC patients.

**DISTRIBUTION OF COPIES**--For nursing facility patients, send the original to the nursing facility. For Medicaid CBC patients, refer to section **M1470.800.B2** in order to determine where the original and any copies of this form are sent. Place a copy of the DMAS-122 forms in the eligibility case file. When a period of disqualification for Medicaid payment of LTC services is established for an individual, send a copy of the DMAS-122 to: DMAS, Long-Term Care, Facility and Home Based Services Unit, 600E Broad Street, Richmond, Virginia 23219.

**INSTRUCTIONS FOR PREPARATION OF THE FORM**--Complete the heading with the name of the nursing home or Medicaid CBC provider, the address, the patient's name, Social Security number, and Medicaid recipient I.D. number.

Section I must be completed by the provider by checking the appropriate boxes or filling in the appropriate lines corresponding to the change or information that is being reported. The individual that is completing the form on behalf of the provider must furnish their name, title, telephone numbers and the date the form was completed.

Section II must be completed by the local DSS by checking the appropriate boxes or filling in the appropriate lines corresponding to the change or information that is being reported. The Eligibility Worker for the local agency must furnish their name, agency name, agency FIPS code, telephone numbers and the date the form was completed.

Section III, Patient Pay Information --To be completed by the local department of social services Eligibility Worker. Enter month and year in which the patient pay amount is effective. Enter the patient pay amount under the appropriate month and year.

DOCUMENTS INCORPORATED BY REFERENCE

Mental Retardation: Definition, Classification, and Systems of Supports, 10th Edition, 2002, American Association on Mental Retardation.

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DMS-IV-TR), 2000, American Psychiatric Association.

Underwriter's Laboratories Safety Standard 1635, Standard for Safety Digital Alarm Communicator System Units, Third Edition; January 31, 1996, with revisions through August 15, 2005.

Underwriter's Laboratories Safety Standard 1637, Standard for Safety Home Health Care Signaling Equipment, Fourth Edition, December 29, 2006.

VA.R. Doc. No. R08-1107; Filed June 25, 2008, 10:04 a.m.

◆ ————— ◆  
**TITLE 15. JUDICIAL**

**VIRGINIA STATE BAR**

**Final Regulation**

REGISTRAR'S NOTICE: The Virginia State Bar 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 which by the Constitution is expressly granted any of the powers of a court of record.

Title of Regulation: **15VAC5-80. Regulations Under the Virginia Consumer Real Estate Settlement Protection Act (amending 15VAC5-80-50).**

Statutory Authority: §§6.1-2.21 and 6.1-2.25 of the Code of Virginia.

Effective Date: July 1, 2008.

Agency Contact: Mary Yancey Spencer, Deputy Executive Director, Virginia State Bar, 707 East Main Street, Richmond, VA 23219, telephone (804) 775-0575 or email spencer@vsb.org.

Summary:

*The amendment increases the minimum CRESPA surety bond from \$100,000 to \$200,000 in accordance with Chapter 92 of the 2008 Acts of Assembly.*

**15VAC5-80-50. Attorney settlement agent compliance.**

A. Attorney settlement agent certification. Each attorney settlement agent shall, at the time of initial registration and each subsequent reregistration, certify on the form available

from the Bar for that purpose, that the attorney settlement agent has in full force and effect the following insurance and bond coverages, and that such coverages will be maintained in full force and effect throughout the time the attorney settlement agent acts, offers or intends to act in that capacity:

1. A lawyer's professional liability insurance policy issued by a company authorized to write such insurance in Virginia providing first dollar coverage and limits of at least \$250,000 per claim covering the licensed attorney acting, offering or intending to act as a settlement agent. The policy may also cover other attorneys practicing in the same firm or legal entity.
2. A blanket fidelity bond or employee dishonesty insurance policy issued by a company authorized to write such bonds or insurance in Virginia providing limits of at least \$100,000 covering all other employees of the attorney settlement agent or the legal entity in which the attorney settlement agent practices.
3. A surety bond issued by a company authorized to write such bonds in Virginia, on a form approved by the Virginia State Bar, providing limits of at least ~~\$100,000~~ \$200,000 covering the licensed attorney acting, offering or intending to act as a settlement agent. A copy of the approved bond form is available from the Bar. The bond may also cover other attorney settlement agents practicing in the same firm or legal entity. The original surety bond must be attached to the attorney settlement agent's certification form and furnished to the Bar; a surety bond on which a law firm is named as principal may be furnished by the firm or any one attorney settlement agent in the firm, with other such attorney settlement agents in the same firm attaching a copy to their forms.

The Bar reserves the right to require other evidence of the above insurance and bond coverages beyond the attorney's certification and surety bond, at its discretion.

An attorney settlement agent who has no employees other than the attorney settlement agent or other licensed owner(s), partner(s), shareholder(s), or member(s) of the legal entity in which the attorney settlement agent practices may apply to the Bar for a waiver of the coverage required in subdivision A 2 of this section, using the waiver request form available from the Bar. Such waiver requests will be acted on by the Executive Committee of the Bar, whose decision shall constitute final action by the agency.

B. Separate fiduciary trust account. Each attorney settlement agent shall maintain one or more separate and distinct fiduciary trust account(s) used only for the purpose of handling funds received in connection with escrow, closing or settlement services. Funds received in connection with real estate transactions not covered by CRESPA may also be deposited in and disbursed from such account(s). All funds received by an attorney settlement agent in connection with

---

# Regulations

---

escrow, closing or settlement services shall be deposited in and disbursed from the separate fiduciary account(s) in conformity with both the Bar's disciplinary rules and CRESPA. These separate fiduciary trust accounts shall be maintained in the same manner and subject to the same rules as those promulgated by the Bar for other lawyer trust accounts, as well as in conformity with CRESPA. One separate fiduciary trust account may be maintained and used by all attorney settlement agents practicing in the same firm or legal entity.

C. Settlement statements. All settlement statements for escrow, closing and settlement services governed by CRESPA and these regulations shall be in writing and identify, by name and business address, the settlement agent.

D. Complaints against attorney settlement agents. The Bar shall receive complaints and/or investigate alleged violations of CRESPA or these regulations by attorney settlement agents. If, after investigation, the Bar does not have reasonable cause to believe that one or more violations of CRESPA and/or these regulations have occurred, the Bar may dismiss the complaint as unfounded.

If, after investigation, the Bar has reasonable cause to believe that one or more violations have occurred, the following procedures shall apply:

1. The attorney settlement agent shall be notified in writing of the alleged violation(s).
2. The attorney settlement agent shall have 30 days from the date of such notification to respond in writing to the alleged violations. If, after receipt of the response, the Bar no longer has reasonable cause to believe that one or more violations of CRESPA and/or these regulations have occurred, the Bar may dismiss the complaint as unfounded.
3. If the Bar believes the alleged violation presents or presented a risk to consumers protected under CRESPA, the Bar may request a hearing and issue an order requiring the attorney settlement agent to appear at the hearing, whether or not the attorney settlement agent has responded in writing to the notice of alleged violation(s) or the 30-day response time period has lapsed.
4. In conducting investigations of alleged violations of CRESPA and/or these regulations by attorney settlement agents, the Bar, by Bar Counsel, shall have the authority to issue summonses or subpoenas to compel the attendance of witnesses and the production of documents necessary and material to any inquiry.
5. The following shall be applicable to hearings on alleged violations of CRESPA and/or these regulations:
  - a. Hearings shall be held before the disciplinary board within 60 days of the issuance of the Bar's order to appear.

b. The standard of proof of violations of CRESPA or these regulations shall be clear and convincing evidence.

c. Hearings shall be conducted in the same manner as attorney misconduct hearings as set out in Rules of Court, Part Six, Section IV, Paragraph 13.

d. Agreed dispositions may be entered into in the same manner as agreed dispositions at the disciplinary board in attorney misconduct cases.

e. The attorney settlement agent's prior disciplinary record and prior record of violations of CRESPA and/or these regulations shall be made available to the disciplinary board during the sanction stage of a hearing. The prior record of violations of CRESPA and/or these regulations may be made available to Bar subcommittees, district committees, the disciplinary board or a three-judge circuit court prior to the imposition of any sanction for attorney misconduct.

f. If the attorney settlement agent is found to have violated CRESPA and/or these regulations, the attorney settlement agent may be subject to the following penalties, at the disciplinary board's discretion:

- (1) A penalty not exceeding \$5,000 for each violation;
- (2) Revocation or suspension of the attorney settlement agent's registration; and
- (3) Any other sanction available to the disciplinary board in attorney disciplinary proceedings under the rules of the Virginia Supreme Court, including, but not limited to, revocation or suspension of the attorney settlement agent's license to practice law.

6. The disciplinary board shall assess costs in accordance with the same rules and procedures that apply to the imposition of costs in attorney misconduct cases.

7. All matters and proceedings pertaining to alleged violations of CRESPA and/or these regulations are public. Related attorney misconduct cases shall be heard by the disciplinary board together with alleged violations of CRESPA and/or these regulations. Any related disability issues shall be heard by the disciplinary board separately.

8. The Clerk of the Disciplinary System of the Bar shall maintain files and records pertaining to ended cases involving alleged violations of CRESPA and/or these regulations. The clerk shall follow the same file destruction policies that are utilized in attorney misconduct cases.

9. The Bar may proceed against an attorney settlement agent for alleged violations of CRESPA and/or these regulations notwithstanding that the attorney settlement agent has resigned from the practice of law, surrendered his license to practice law in the Commonwealth of Virginia or had his license to practice law in the Commonwealth of Virginia revoked.

10. An appeal from an order of the disciplinary board imposing sanctions under CRESPA and/or these regulations shall be conducted in accordance with the provisions of Rules of Court, Part Six, Section IV, Paragraph 13 pertaining to an appeal of an order of the disciplinary board imposing sanctions upon findings of attorney misconduct.

VA.R. Doc. No. R08-1272; Filed June 24, 2008, 2:27 p.m.

## TITLE 16. LABOR AND EMPLOYMENT

### DEPARTMENT OF LABOR AND INDUSTRY

#### Final Regulation

**REGISTRAR'S NOTICE:** The following regulations of the Department of Labor and Industry are exempt from the Administrative Process Act in accordance with §2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Department of Labor and Industry will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 16VAC15-21. Maximum Garnishment Amounts (amending 16VAC15-21-30).

**Statutory Authority:** §§34-29 and 40.1-28.10 of the Code of Virginia.

**Effective Date:** August 21, 2008.

**Agency Contact:** Wendy Inge, Director, Division of Labor and Employment Law, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-3224, FAX (804) 371-2324, TTY (804) 786-2376, or email wendy.inge@doli.virginia.gov.

**Summary:**

*In 2007, Congress passed HR2206, U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007, which includes a provision that raises the federal minimum wage rate to \$6.55 per hour as of July 24, 2008. The amendments reflect this change in the minimum wage and delete a reference to a nonexistent subdivision.*

**16VAC15-21-30. Calculation of maximum garnishment amounts for an ordinary debt.**

A. Weekly earnings.

1. If the amount of weekly disposable earnings equals 40 times the federal minimum wage rate (F.M.W.R.) or less, nothing may be withheld for garnishment.

2. If the weekly disposable earnings exceed 40 times the federal minimum wage rate (F.M.W.R.), the maximum amount that can be withheld for garnishment shall be either 25% of the weekly disposable earnings or the amount by which the weekly disposable earnings exceed 40 times the F.M.W.R., whichever is less, so long as the amount withheld does not reduce the weekly disposable earnings below 40 times the F.M.W.R. Based on a federal minimum wage rate of ~~\$5.85~~ \$6.55 per hour, 40 times the F.M.W.R. is ~~\$234~~ \$262. Thus, for example, as of July 24, ~~2007~~ 2008, if the weekly disposable earnings are less than or equal to ~~\$234~~ \$262, nothing may be withheld for garnishment. An increase in the F.M.W.R. will increase the amount of weekly disposable earnings that would be shielded from garnishment.

B. Biweekly earnings. The maximum amount which may be withheld for garnishment from biweekly earnings shall be calculated in the same manner as described for weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1; and A 2 ~~and A 3~~ of this section shall be multiplied by 2.

C. Semimonthly earnings. The maximum amount which may be withheld for garnishment from semimonthly earnings shall be calculated in the same manner as described for weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1; and A 2 ~~and A 3~~ of this section shall be multiplied by 2.16665.

D. Monthly earnings. The maximum amount of monthly disposable earnings which may be withheld for garnishment shall be calculated in the same manner as weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1; and A 2, ~~and A 3~~ of this section shall be multiplied by 4.33330.

E. Earnings for a period of more than one month. The maximum amount which may be withheld in garnishment for work periods in excess of one month shall be calculated in the same manner as described for weekly earnings in subsection A of this section, except that the corresponding weekly amounts in subdivisions A 1; and A 2 ~~and A 3~~ of this section shall be multiplied by the number of weeks worked. The number of weeks worked shall be calculated by dividing the total number of days in the period worked by 7, calculated to 4 decimal places.

VA.R. Doc. No. R08-1383; Filed June 25, 2008, 10:31 a.m.

---

# Regulations

---

## Final Regulation

**Title of Regulation:** 16VAC15-30. Virginia Rules and Regulations Declaring Hazardous Occupations (amending 16VAC15-30-190).

**Statutory Authority:** §§40.1-6 and 40.1-100 of the Code of Virginia.

**Effective Date:** August 21, 2008.

**Agency Contact:** Wendy Inge, Director, Division of Labor and Employment Law, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804)786-3224, FAX (804)371-2324, TTY (804)786-2376, or email wendy.inge@doli.virginia.gov.

### Summary:

*This final exempt regulation is submitted to bring the regulation into compliance with state law. The General Assembly amended §40.1-79.1 of the Code of Virginia to permit counties, cities, or towns to authorize by ordinance any person residing anywhere in the Commonwealth, aged 16 years or older, who is a member of a volunteer fire company within such county, city or town with parental or guardian approval, to seek certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs; and to work with or participate fully in all activities of the volunteer fire company, provided the minor has attained certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs.*

### 16VAC15-30-190. Fire fighting.

The following activities involving fire fighting are prohibited:

1. Minors 16 years and 17 years of age shall not enter a burning structure.

The term "burning structure" as used in this restriction shall not include a structure which contains burning materials.

2. Minors 14 years and 15 years of age shall not participate in fire fighting or support activities at the fire scene, enter a burning structure, enter a structure which contains burning materials, or engage in any other activity prohibited in this chapter.

3. Minors under 14 years of age shall not participate in any activity related to fire fighting.

4. Exemptions. A county, city or town may authorize by ordinance that a 16 or 17 year old minor who resides in the Commonwealth, who is a member of a volunteer fire company, within that locality, with the approval of a parent or guardian, may seek certification under National Fire

Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs, and, after attaining such certification, may work with or participate fully in all activities of the volunteer fire company. A local ordinance may not require minors who achieved certification under National Fire Protection Association 1001, level one, firefighter standards, as administered by the Department of Fire Programs, on or before January 1, 2006, between age 15 and 16, to repeat the certification after the sixteenth birthday.

A trainer or instructor of the aforesaid minors and any member of a paid or volunteer fire company who supervises any such minors shall be exempt from child labor law provisions in the Code of Virginia concerning cruelty and injuries to children, provided that the provisions of §40.1-100 of the Code of Virginia have not been violated when the minor has been engaged in the activities of a volunteer fire company, and provided that either the volunteer fire company or the governing body of the county, city or town has purchased insurance that provides coverage for injuries to, or the death of, a minor in performing such firefighting activities.

VA.R. Doc. No. R08-1384; Filed June 25, 2008, 10:30 a.m.

---

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF ACCOUNTANCY

#### Withdrawal of Proposed Regulation

**Title of Regulation:** 18VAC5-21. Board of Accountancy Regulations (amending 18VAC5-21-30).

**Statutory Authority:** §§54.1-4402, 54.1-4403 and 54.1-4410 of the Code of Virginia.

The Board of Accountancy has WITHDRAWN the proposed regulation entitled, 18VAC5-21, Board of Accountancy Regulations, which was published in 24:9 VA.R. 1224-1230 January 7, 2008. On May 18, 2008, the board voted to rescind its proposed regulation imposing a deadline of December 31, 2008, based on numerous states reducing the education requirement.

**Agency Contact:** Nancy Taylor Feldman, Executive Director, Board of Accountancy, 3600 West Broad Street, Suite 378, Richmond, VA 23230-4916, telephone (804) 367-8540, FAX (804) 367-2174, TTY (804) 367-9753, or email boa@boa.virginia.gov.

VA.R. Doc. No. R07-211; Filed June 19, 2008, 8:33 a.m.

## BOARD OF NURSING

### Fast-Track Regulation

**Title of Regulation:** 18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-110).

**Statutory Authority:** §§54.1-2400 and 54.1-3005 of the Code of Virginia.

**Public Hearing Information:**

July 24, 2008 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on August 20, 2008.

**Effective Date:** September 4, 2008.

**Agency Contact:** Jay P. Douglas, R.N., Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

**Basis:** Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards including the responsibility to promulgate regulations, establish renewal schedules and levy fees. Section 54.1-3005 of the Code of Virginia authorizes the board to promulgate regulations relating to certified nurse aides.

**Purpose:** An amendment allows medication aides to mix, dilute or reconstitute glucagon. When regulations were written, it was agreed that medication aides would not have the education and training to mix, dilute or reconstitute drugs in an assisted living facility. The one exception to that prohibition was insulin, because it is essential for health and safety of residents for aides to be able to care for those with diabetes. If a medication aide is trained and authorized to administer insulin for diabetic residents in assisted living, they must also be able to administer glucagon, which is a rescue drug for such patients. The fact that glucagon must also be reconstituted or diluted was overlooked in the original drafting. Therefore, the amendment is essential to protect the health and safety of diabetic residents in assisted living facilities where medication aides are used to administer drugs.

**Rationale for Using Fast-Track Process:** The board has determined that a fast-track process is appropriate because there is no controversy with this action. It will correct an omission in the initial regulations that became effective July 1, 2007. A medication aide who administers insulin for diabetic residents in an assisted living facility must also be able to administer glucagon, which is a rescue drug for such patients, so this action is necessary for patient safety.

**Substance:** Subsection B currently prohibits a medication aide from mixing, diluting or reconstituting two or more drug products, with the exception of insulin. The amendment will add an exception for glucagon.

**Issues:** The advantage to the public of the amendment may be that it will facilitate the ability of medication aides to care for diabetic residents of assisted living facilities. There are no disadvantages, since medication aides receive training in mixing glucagon in their educational programs. There are no disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its Regulation Governing the Registration of Medication Aides to allow medication aides to mix and administer glucagon.

Result of Analysis. The benefits of this proposed regulatory change likely exceed its costs.

Estimated Economic Impact. Current regulations (promulgated in 2007) prohibit medication aides from mixing, diluting or reconstituting any drug except for insulin. The Department of Health Professions (DHP) reports that the Board inadvertently left glucagon out of regulatory language that allows medication aides to mix and administer insulin to diabetic residents of assisted living facilities. The Board proposes to correct this oversight by amending these regulations so that medication aides will be able to mix and administer glucagon as well as insulin.

Glucagon is a rescue drug that is administered to diabetics who have gone into insulin shock. Currently, medication aides are required to complete a training module that covers preparing and administering both insulin and glucagon. Adding language to these regulations that allows medication aides to mix glucagon will likely benefit diabetic residents as they will likely get proper treatment more quickly if they go into insulin shock. Owners of assisted living facilities will benefit because, absent a fix of this oversight, they would likely have to hire other individuals who have the authority to mix and dilute (licensed practical nurses, licensed registered nurses, pharmacists or doctors) at a likely higher hourly wage to ensure that diabetic residents got proper in-house treatment. This change is unlikely to cause any costs for any individual affected by these regulations.

Businesses and Entities Affected. These proposed regulations affect all medication aides, and the assisted living facilities where they are employed, as well as any diabetic residents of assisted living facilities. DHP reports that there are currently 76 medication aides registered with the Board and 625 assisted living facilities licensed by the Department of Social Services. As registration is not required until December 31,

---

# Regulations

---

2008, the number of registered medication aides is likely to rise at the end of this year.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action will likely allow assisted living facilities to continue employing medication aides to mix and administer glucagon (as needed) to diabetic patients. Absent this regulatory change, owners of these facilities would likely have to hire other individuals who have the authority to mix and dilute (licensed practical nurses, licensed registered nurses, pharmacists or doctors) at a likely higher hourly wage.

**Effects on the Use and Value of Private Property.** This regulatory action will likely allow owners of private assisted living facilities to avoid having to employ (likely higher paid) individuals who are authorized to mix, dilute and reconstitute drugs specifically to administer glucagon. To the extent that this allows these owners to keep costs down, they will not experience a decrease in their profits.

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are likely to avoid costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are likely to avoid costs on account of this regulatory action.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 Board of Nursing concurs with the analysis of the Department of Planning and Budget on a fast-track action for 18VAC90-60, Regulations Governing the Registration of Medication Aides, to permit the mixing and diluting of glucagon.

**Summary:**

*The amendment allows an exception to the prohibition for medication aides in assisted living facilities to mix, dilute or reconstitute drugs for the dilution or mixing of glucagon.*

**18VAC90-60-110. Standards of practice.**

A. A medication aide shall:

1. Document and report all medication errors and adverse reactions immediately to the licensed healthcare professional in the facility or to the client's prescriber;
2. Give all medications in accordance with the prescriber's orders and instructions for dosage and time of administration and document such administration in the client's record; and
3. Document and report any information giving reason to suspect the abuse, neglect or exploitation of clients immediately to the licensed healthcare professional in the facility or to the facility administrator.

B. A medication aide shall not:

1. Transmit verbal orders to a pharmacy;
2. Make an assessment of a client or deviate from the medication regime ordered by the prescriber;
3. Mix, dilute or reconstitute two or more drug products, with the exception of insulin or glucagon; or
4. Administer by intramuscular or intravenous routes or medications via a nasogastric or percutaneous endoscopic gastric tube.

VA.R. Doc. No. R08-1204; Filed July 1, 2008, 10:16 a.m.

**BOARD OF LONG-TERM CARE ADMINISTRATORS**

**Fast-Track Regulation**

**Title of Regulation: 18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-95, 18VAC95-30-150, 18VAC95-30-180).**

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

## Public Hearing Information:

July 23, 2008 - 9:30 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 20, 2008.

Effective Date: September 4, 2008.

Agency Contact: Lisa Russell Hahn, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4424, FAX (804) 527-4413, or email [lisa.hahn@dhp.virginia.gov](mailto:lisa.hahn@dhp.virginia.gov).

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the Board of Long-Term Care Administrators, to promulgate regulations.

The specific authorization to promulgate regulations for implementation of licensure of assisted living facility administrators is found in Chapter 31 (§54.1-3100 et seq.) of Title 54.1.

Purpose: The amendments address the need for qualifying more persons for licensure in assisted living facilities. Chapters 610 and 924 of the 2005 Acts of Assembly required the Board of Long-Term Care Administrators to promulgate regulations for the licensure and regulation of administrators in assisted living facilities. An enactment specified that the statutory requirement for all facilities licensed to provide assisted living care to have a licensed administrator becomes effective one year after the effective date of the regulations. Staff of the board believes that some smaller facilities may have significant difficulty in meeting the current requirements, so changes were suggested that would enable more current administrators to qualify and would make it less burdensome for licensees to serve as preceptors for those in training. Since minimal competency for all licensees is assured by passage of a national examination in assisted living and residential care, the board believes the reduction in required experience will not jeopardize the health, safety and welfare of the residents served in an assisted living facility. If, however, there are not a sufficient number of persons able to qualify for licensure, there could be assisted living facilities that would have to close their doors. Should that be the result, it could jeopardize the health, safety and welfare of persons who would be unable to care for themselves in another environment.

Rationale for Using Fast-Track Process: Because of serious concerns about the availability of qualified persons to be licensed as assisted living administrators, the board has determined that a fast-track process is appropriate. While there is some concern about lowering standards, the experience track for current administrators is time-limited and

can only be utilized for one year (until January 2, 2009). The board also has assurance that requiring passage of the national examination may eliminate those who do not have the basic knowledge and skills to be licensed administrators.

Substance: The board has acted to reduce the experience required for initial licensure of current assisted living facility administrators from two years to one year and to allow the experience to count immediately preceding application, rather than immediately preceding the effective date of regulations (January 2, 2008). Additionally, the years of previous health care related experience required in order for persons to receive credit towards the assisted living facility administrator-in-training (ALF AIT) program has been reduced from two years to one year.

The board has also proposed to lessen the requirements for a person to serve as a preceptor for someone in an ALF AIT by reducing the required number of years of experience as a full-time administrator from two years to one year. The proposal will also provide that the board may waive the required application and fee for a person who wants to be a preceptor for assisted living and who is already approved as a preceptor for nursing home licensure.

Issues: The advantage to the public of the amendments may be that it will facilitate the licensure of current administrators and the ability of persons to gain required experience through an ALF AIT program. By doing so, there should be more administrators qualified for licensure and reduce the risk of forcing some facilities to close. With less burdensome requirements for preceptors, there should be more opportunities for persons to be trained, which will ensure a supply of licensed administrators for the future. There are no disadvantages; passage of an examination remains a measure of minimal competency, reducing some of the experience requirements should not be problematic.

There are no advantages or disadvantages to the agency or the Commonwealth. The board staff is supportive of increasing the opportunities for licensure and for training.

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

Summary of the Proposed Amendments to Regulation. The Board of Long-Term Administrators (Board) proposes to amend its recently promulgated licensure requirements for assisted living facility administrators.

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

Estimated Economic Impact. Under regulations which became effective January 2, 2008, assisted living facility administrators who have worked two of the four years, before this regulation's effective date, as a full-time assisted living facility (ALF) administrator or assistant administrator, and who have passed the national exam, are eligible for licensure.

---

## Regulations

---

Full-time regional administrators are also currently eligible for licensure as ALF administrators so long as they have worked in their current position for two of the four years preceding January 2, 2008, have at least two years experience as a facility administrator and have passed the national exam. Applications for licensure under these rules must be received (or post-dated) by January 2, 2009.

With a few exceptions, current regulations require any individual who will not have the experience required to be licensed under rules for current administrators to complete 640 hours of training under the supervision of a preceptor that is registered with the Board (and to pass the national exam). Under exceptions to this rule, licensure applicants who have worked full-time as an assistant ALF administrator, assistant nursing home administrator or a hospital administrator for two of the four years immediately preceding licensure application will only have to complete 320 hours of training. Applicants who already hold multi-state registered nursing licensure privileges and who have worked in an administrative level supervisory position in nursing in an ALF or nursing home for two of the four years immediately preceding licensure application also only have to complete 320 hours of training. Applicants who are licensed practical nurses (LPN) or who hold multi-state LPN licensure privileges and who have worked in an administrative level supervisory position in nursing in an ALF nursing home for two of the four years immediately preceding licensure application only have to complete 480 hours of training.

Under current regulations, individuals who want to serve as preceptors for ALF administrators in training (AIT) programs must meet Board requirements and pay a \$50 registration fee.

The Board proposes to amend these regulations so that individuals who are currently working as ALF administrators, assistant administrators, or full time regional administrators will only be required to have worked one of the four years preceding licensure application (rather than these regulations' effective date) in their qualifying positions in order to be eligible for licensure. Applicants will still have to pass the national exam and the deadline for licensure under rules for licensure of current administrators remains January 2, 2009. After that date, all licensed assisted living facilities are statutorily required to be under the supervision of an administrator licensed by the Board. Similarly, the Board also proposes to only require professions which are eligible for shorter training periods to have worked in a qualifying position for one of the four years immediately preceding licensure application.

The Board is proposing these changes because, under current regulations, there will likely not be enough ALF administrators licensed by January 2, 2009 to allow all assisted living facilities to have one in their employ. The Department of Health Professions (DHP) reports that there are approximately 600 assisted living facilities that will be

required to have a licensed administrator by January 2, 2009 but there are only eight individuals who are currently licensed as ALF administrators. DHP also reports that are likely some individuals who are currently administering assisted living facilities who will not be able to meet the experience requirements in current regulations and that the eight ALF preceptors that are currently registered with the Board may not be able to train enough new administrators before January 2, 2009 to make up the difference.

Decreasing experience requirements and extending the cutoff date for experience for current administrators will allow more individuals to qualify for licensure more quickly. This will likely benefit owners of assisted living facilities, current and future ALF administrators and the public that is served by assisted living facilities. Owners of assisted living facilities will be better able to meet the legislature's deadline for having a licensed administrator in charge of their facilities. Current (unlicensed) ALF administrators will be more likely to meet the revised licensure requirements and, so, will be more likely to retain their jobs past the January 2009 deadline. Individuals who wish to be ALF administrators in the future will be able to qualify for licensure more quickly. Residents of assisted living facilities will be less likely to suffer the expense and upheaval of having to move because their facility closed due to the lack of a required licensed ALF administrator. These benefits likely far outweigh any costs that might arise from the chance that lower experience requirements might affect resident care. All ALF administrators will have to pass a national competency exam which should guard against any degradation of services to residents.

Because there are very few (eight) individuals who have registered as ALF AIT preceptors, the Board proposes to waive the application process and fee for individuals who are already approved as preceptors for nursing home licensure. This change will likely encourage more preceptors to take on the job of training ALF administrators which will, in turn, allow more of these individuals to be trained and licensed. More licensed administrators will allow owners of assisted living facilities more choice as to who they hire. This is likely to eventually decrease labor costs for these facilities.

**Businesses and Entities Affected.** DHP reports that there are approximately 600 assisted living facilities and eight ALF administrators that are currently licensed by the Board. DHP also reports that eight ALF AIT preceptors are currently registered with the Board. All these entities, plus any individuals or businesses that might seek licensure (or registration) in the future, will be affected by these regulatory changes.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action will likely increase the number of individuals who are currently

eligible for licensure as ALF administrators and will increase the number of individuals who choose to complete licensure requirements in the future. In the short run, this should ease the tight labor market for licensed ALF administrators that has been created by previous legislative and regulatory action. In the long run, employment in this field will only increase as new assisted living facilities open.

**Effects on the Use and Value of Private Property.** This regulatory action will likely mitigate the adverse impact that the lack of licensed ALF administrators would have on assisted living facilities after January 2, 2009. After this date, owners of these facilities who are unable to comply with the law would be forced to shut down their business. In that instance, the value of affected businesses would be driven down to what owners could sell their land, building and equipment (office furniture, etc) for.

**Small Businesses: Costs and Other Effects.** These regulatory changes will likely mitigate costs that small business assisted living facilities would otherwise likely incur.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** These regulatory changes will likely mitigate costs that small business assisted living facilities would otherwise likely incur.

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

**Legal Mandate.**The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18 VAC95-30, Regulations Governing the Practice of Assisted Living Administrators.

Summary:

*The amendments reduce the experience required for initial licensure of current assisted living facility administrators from two years to one year and allow the experience to count immediately preceding application, rather than immediately preceding the effective date of regulations (January 2, 2008). Additionally, the years of previous health care related experience required in order for persons to receive credit towards the assisted living facility administrator-in-training (ALF AIT) program has been reduced from two years to one year.*

*The amendments lessen the requirements for a person to serve as a preceptor for someone in an ALF AIT by reducing the required number of years of experience as a full-time administrator from two years to one year. The proposal also provides that the board may waive the required application and fee for a person who wants to be a preceptor for assisted living and who is already approved as a preceptor for nursing home licensure.*

Part III  
Requirements for Licensure

**18VAC95-30-95. Licensure of current administrators.**

A. Until January 2, 2009, any person who has served in one of the following positions for the period of ~~two~~ one of the four years immediately preceding ~~the effective date of these regulations (January 2, 2008)~~ application for licensure may be licensed by the board:

1. A full-time administrator of record in accordance with requirements of 22VAC40-72-200, or an assistant administrator in an assisted living facility ~~licensed in the Commonwealth of Virginia~~, as documented on an application for licensure; or
2. A full-time regional administrator with onsite supervisory responsibilities for one or more assisted living facilities with at least two years of previous experience as the administrator of an assisted living facility as documented on an application for licensure.

B. Persons who are applying for licensure based on experience as an administrator as specified in subsection A of this section shall document a passing grade on the national credentialing examination for administrators of assisted living facilities approved by the board.

---

# Regulations

---

## 18VAC95-30-150. Required hours of training.

A. The ALF AIT program shall consist of hours of continuous training as specified in 18VAC95-30-100 A 1 in a facility as prescribed in 18VAC95-30-170 to be completed within 24 months. An extension may be granted by the board on an individual case basis. The board may reduce the required hours for applicants with certain qualifications as prescribed in subsection B of this section.

B. An ALF AIT applicant with prior health care work experience may request approval to receive hours of credit toward the total hours as follows:

1. An applicant who has been employed full time for ~~two~~ one of the past four years immediately prior to application as an assistant administrator in a licensed assisted living facility or nursing home or as a hospital administrator shall complete 320 hours in an ALF AIT;
2. An applicant who holds a license or a multistate licensure privilege as a registered nurse and who has held an administrative level supervisory position in nursing for at least ~~two~~ one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 320 hours in an ALF AIT; or
3. An applicant who holds a license or a multistate licensure privilege as a licensed practical nurse and who has held an administrative level supervisory position in nursing for at least ~~two~~ one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 480 hours in an ALF AIT.

## 18VAC95-30-180. Preceptors.

A. Training in an ALF AIT program shall be under the supervision of a preceptor who is registered or recognized by a licensing board.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;
2. Be employed full-time as an administrator in a training facility or facilities for a minimum of ~~two~~ one of the past four years immediately prior to registration or be a regional administrator with on-site supervisory responsibilities for a training facility or facilities; and
3. Submit an application and fee as prescribed in 18VAC95-30-40. The board may waive such application and fee for a person who is already approved as a preceptor for nursing home licensure.

C. A preceptor shall:

1. Provide direct instruction, planning and evaluation;

2. Be routinely present with the trainee in the training facility; and

3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

VA.R. Doc. No. R08-1191; Filed July 1, 2008, 10:15 a.m.

## BOARD OF PSYCHOLOGY

### Proposed Regulation

Title of Regulation: **18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-121, 18VAC125-20-122).**

Statutory Authority: §§54.1-2400 and 54.1-3606.1 of the Code of Virginia.

Public Hearing Information:

July 24, 2008 - 9:30 a.m. - Department of Health Professions, Conference Center, 2nd floor, 9960 Mayland Drive, Richmond, Virginia

Public Comments: Public comments may be submitted until 5 p.m. on September 19, 2008.

Agency Contact: Evelyn B. Brown, Executive Director, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4697, FAX (804) 327-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

Basis: Regulations are promulgated under the general authority of Chapter 24 (§54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Psychology the authority to promulgate regulations to administer the regulatory system. The specific statutory mandate for continuing education requirements is found in §54.1-3606.1 of the Code of Virginia.

Purpose: Continuing education hours have been required for renewal of licensure since 2004, so the board has now encountered several issues relating to its requirements that it intends to address in the promulgation of amendments that will clarify the regulations and make them less burdensome for licensee compliance. The Code of Virginia requires "criteria for continuing education courses that are directly related to the respective license and scope of practice of school psychology, applied psychology and clinical psychology. Approved continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders." Therefore, any modification of the continuing education requirements must protect the health and safety of the public by conforming to the Code of

Virginia in relating to the practice of the psychologist in his care and treatment of clients or patients.

Substance: Included in its proposed amendments are a reduction in the number of hours that must be obtained in face-to-face courses, which is currently set at half of the 14 required hours. The board reduced the number to six of the 14 hours but also included real-time interactive hours as face-to-face. Also included is specification of the term "educational experiences" to include learning activities such as research and publication; acceptance of courses approved by other state boards of psychology to facilitate renewal for psychologists who are licensed in more than one jurisdiction; clarifications of associations, organizations and institutions that are approved providers; and elimination of board approval of individual providers in regulation.

Issues: There are no advantages or disadvantages to the public. The changes will not significantly affect the quality or amount of continuing education received by psychologists and therefore should have no affect on their competency to practice.

There are no disadvantages to the agency or the Commonwealth. There would be an advantage to the board and its staff to eliminate the application process for individuals who want themselves or their businesses approved as continuing education providers. Deletion of the continuing education approval process would eliminate an expensive and time-consuming activity that does not provide significant benefit to licensees or the consumers/patients they serve.

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

Summary of the Proposed Amendments to Regulation. The Board of Psychology (Board) proposes to make amendments to the regulation that include: (1) allowing licensees to satisfy continuing education requirements through courses that emphasize the ethics, standards of practice, or laws governing the profession of psychology in any state, not just in Virginia; (2) reducing the continuing education hours required to be face-to-face from seven to six (out of an annual continuing education requirement of fourteen hours) and allowing those face-to-face hours to be either face-to-face or real-time interactive<sup>1</sup>; (3) allowing the presentation of a seminar, workshop, or course, or the publication of an article or book in a recognized publication, be counted towards up to four hours of continuing education hours as long as the hours are credited only once for each unique course/piece and are not credited toward the face-to-face requirement; (4) allowing a maximum of 14 hours as continuing education to be accepted for an academic course directly related to the practice of psychology; (5) deleting the means by which course providers not listed as continuing education providers can apply for approval by the Board as continuing education providers.

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

Estimated Economic Impact. Under current regulation, a minimum of 1.5 of the 14 hours of continuing education required for license renewal must be in courses that emphasize the ethics, standards of practice, or laws governing the profession of psychology in Virginia. Under the proposed amendment, the same courses for the same number of hours will be required, but the standards or laws will no longer be limited to those in Virginia. The Board is proposing this change because some Virginia licensees practice in other states and the standards of practice or laws governing the profession are not substantially different from state to state. This amendment will benefit those psychologists licensed in Virginia who practice out of state, since they will no longer have to complete courses that are effectively redundant. There are no foreseeable costs to this amendment, as those psychologists practicing only in Virginia are not likely to change their behavior or choice of courses based on this amendment. Therefore, the benefit of this proposal outweighs the cost.

Under current regulation, at least seven of the 14 hours of continuing education required for license renewal must be earned in face-to-face educational experiences. Under the proposed amendment, not only will the number of required face-to-face hours be reduced to six, but the six hours can be earned either in face-to-face *or* real-time interactive educational experiences. Real-time interactive experiences include courses in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation. The impetus for this change was a petition from a psychologist to reduce or eliminate altogether the requirement for face-to-face hours. Both the Board and some practicing psychologists feel, however, that there is merit in requiring psychologists to acquire some continuing education in an interactive setting with peers in the profession. The reduction to six hours was made because this makes it easier for licensees to acquire the hours in one full-day course or two half-day courses. The allowance of real-time interactive courses to complete the requirements gives licensees the option of completing the requirement through online courses, which reduces the travel time or other inconveniences of the face-to-face requirement.

The benefit of both changes is that licensees have the option of expending fewer resources to complete their continuing education requirement. Licensees can still complete seven hours of face-to-face continuing education if they feel it is important, but they can also complete only six hours of face-to-face or they can use the real-time interactive option to make the hours easier to complete. There will be a cost to these amendments only if lowering the face-to-face hours or allowing for real-time interactive courses lowers the quality of the continuing education and therefore reduces the

---

## Regulations

---

effectiveness or qualification of the psychologist. Since the Board argues that the benefit of the face-to-face courses is in the instructor and peer interaction, the real-time interactive courses should provide the same benefit; therefore, the substitution should not impose a cost. Also, the Board does not believe that lowering the face-to-face/real-time interactive requirement from seven hours to six hours is enough of a reduction in the requirement to compromise the quality of the continuing education. Therefore, the costs to this amendment should be minimal—if any—and will be outweighed by the benefits to licensees.

The proposed regulation includes language that would allow licensees to use presentations of seminars, workshops, or courses, or the publication of articles or books in a recognized publication, to complete some of their required hours of continuing education. The Board feels that there is substantial learning that must occur on behalf of the author or presenter in course preparation and in the publication of an article or book. This learning, therefore, should be able to be counted towards continuing education as long as it does not take away from other continuing education that the Board also feels is critical to the practice of psychology. For this reason, no more than four hours per renewal cycle can be completed through course preparation or publication (combined), the hours may be credited only once for each unique course or publication, and the face-to-face requirement discussed in the earlier paragraph cannot be fulfilled by these activities. The benefit of this amendment is that licensees have more flexibility, especially those licensees whose scholarly expertise is sought. Given the stipulations made in the regulation, it does not seem likely that this amendment will reduce the quality of the continuing education or in the practice of psychology. Therefore, the benefits of this amendment outweigh the costs.

Under the current regulation, any regionally accredited institution of higher learning is approved to provide continuing education, but there is no specification for converting academic credit hours to continuing education credit hours. The proposed amendment specifies that a maximum of 14 hours will be accepted for each academic course directly related to the practice of psychology. Since 14 hours of continuing education is required for each renewal, if a licensee took one academic course, their continuing education requirement for the renewal year would be fulfilled. The benefit of this amendment is a clarification for licensees and the Board regarding the equivalency of an academic course in continuing education. Since this does not represent a change in policy, there is no cost to this amendment. Therefore, the benefit of this amendment outweighs the cost.

The current regulation outlines a process by which an individual course provider can apply for approval by the Board as a continuing education provider. The Board proposes to eliminate this process and rely on a very broad listing of providers listed in the regulation. Any individual who currently has board approval for a course may continue

to offer the course that is approved until approval expires two years from issuance. Thereafter, such an individual would need to offer the course through an entity, institution, or organization approved in subsection A of the proposed regulation. The Board is proposing this change because approval of continuing education providers has become problematic. It is very time-consuming to obtain the necessary documentation about a course offering and presenter and if the offering is from someone out-of-state or someone unknown to board members, there is little or no knowledge about the quality of the course and no opportunity for follow-up to ensure that it is presented as described. The Board does not have the expertise, the staff or the system to ensure that individuals are qualified to provide continuing education. In addition, §54.1-3606.1.B of the Code of Virginia provides that “any licensed hospital, accredited institution of higher education, or national state or local health, medical, psychological, or mental health association or organization may submit applications to the Board for approval as a provider of continuing education courses satisfying the requirements of the Board’s regulations.” Therefore, the Board has no specific statutory authority to approve individuals as providers of continuing education. For these reasons, the Board feels it is better to rely on the professional associations, hospitals, and educational institutions to determine approval of continuing education.

There are two major benefits to this amendment; the Board will not have to use its resources to try to determine the qualification of an individual course or provider, and the quality of the continuing education offerings can be ensured by relying on those organizations with the resources and qualification to determine the quality of the offering. The cost is to individuals who would like to offer continuing education to psychologists. Instead of being able to apply directly to the Board for approval of the course, the individuals will have to gain approval through the institutions listed in the regulation.<sup>2</sup> Given the breadth of institutions, associations, and organizations that are available to give approval, however, it does not seem that the cost of either providing or acquiring continuing education will be considerably higher. Therefore, the benefits of ensuring the quality of the continuing education outweigh any potential costs of the amendment.

**Businesses and Entities Affected.** The individuals affected by the regulation are those persons licensed by the Board of Psychology and those individuals who have been approved as continuing education providers. There are a total of 2069 licensees who will be affected by this proposal: 45 applied psychologists, 1912 clinical psychologists, and 104 school psychologists. In addition, there are eight continuing education providers who will be affected.

**Localities Particularly Affected.** The proposals do not disproportionately affect specific localities.

Projected Impact on Employment. The proposed change is not anticipated to have any significant impact on employment.

Effects on the Use and Value of Private Property. By increasing the flexibility with which psychologists can fulfill their continuing education requirement (fewer face-to-face hours, allowing the substitution of real-time interactive courses, allowing a presentation or publication to count towards continuing education), this amendment could increase the value of a psychologist's practice, and thereby increase the value of private property.

Small Businesses: Costs and Other Effects. Most psychologists practice in small businesses. The proposed change could provide a benefit to these small businesses by increasing the flexibility with which psychologists can fulfill their continuing education requirement, thereby allowing psychologists to spend more time in the practice of psychology, and thereby increasing the value of their business.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There is no alternative method that will achieve the stated policy goals more efficiently.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

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.

<sup>1</sup> Real-time interactive is defined as a course in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation.

<sup>2</sup> The proposed regulation will read as follows. The following organizations, associations, or institutions are approved by the Board to provide continuing education: (1) Any psychological association recognized by the profession or providers approved by such an association. (2) Any association or organization of mental health, health or psychoeducational providers recognized by the profession or providers approved by such an association or organization. (3) Any association or organization providing courses related to forensic psychology recognized by the profession or providers approved by such an association or organization. (4) Any regionally accredited institution of higher learning. (5) Any governmental agency or facility that offers mental health, health, or psychoeducational services. (6) Any licensed hospital or facility that offers mental health, health, or psychoeducational services. (7) Any association or organization that has been approved as a continuing competency provider by a psychology board in another state or jurisdiction.

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Psychology concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC125-20, Regulations Governing the Practice of Psychology, relating to changes in continuing education requirements.

**18VAC125-20-121. Continuing education course requirements for renewal of an active license.**

A. ~~After January 1, 2004, licensees~~ Licensees shall be required to have completed a minimum of 14 hours of board-approved continuing education courses each year for annual licensure renewal. A minimum of 1.5 of these hours shall be in courses that emphasize the ethics, standards of practice or laws governing the profession of psychology ~~in Virginia~~.

B. For the purpose of this section, "course" means an organized program of study, classroom experience or similar educational experience that is directly related to the practice of psychology and is provided by a board-approved provider that meets the criteria specified in 18VAC125-20-122.

1. At least half six of the required hours shall be earned in face-to-face or real-time interactive educational experiences. Real-time interactive shall include a course in which the learner has the opportunity to interact with the presenter and participants during the time of the presentation.

2. The board may approve up to four hours per renewal cycle for specific educational experiences to include:

a. Presentation of a continuing education program, seminar, workshop or course offered by an approved provider and directly related to the practice of psychology. Hours may only be credited one time, regardless of the number of times the presentation is given, and may not be credited toward the face-to-face requirement.

b. Publication of an article or book in a recognized publication directly related to the practice of psychology. Hours may only be credited one time, regardless of the

---

# Regulations

---

number of times the writing is published, and may not be credited toward the face-to-face requirement.

C. Courses must be directly related to the scope of practice in the category of licensure held. Continuing education courses for clinical psychologists shall emphasize, but not be limited to, the diagnosis, treatment and care of patients with moderate and severe mental disorders.

D. The board may grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date. Such extension shall not relieve the licensee of the continuing education requirement.

E. The board may grant an exemption for all or part of the continuing education requirements for one renewal cycle due to circumstances determined by the board to be beyond the control of the licensee.

## **18VAC125-20-122. Continuing education providers.**

A. The following organizations, associations or institutions are ~~recognized~~ approved by the board as ~~providers of to provide~~ continuing education:

1. Any ~~board approved~~ psychological association recognized by the profession or providers approved by such an association.
2. Any ~~board approved~~ association or organization of mental health, health or psychoeducational providers recognized by the profession or providers approved by such an association or organization.
3. Any ~~board approved~~ association or organization providing courses related to forensic psychology recognized by the profession or providers approved by such an association or organization.
4. Any regionally accredited institution of higher learning. A maximum of 14 hours will be accepted for each academic course directly related to the practice of psychology.
5. Any governmental agency or facility that offers mental health, health or psychoeducational services.
6. Any licensed hospital or facility that offers mental health, health or psychoeducational services.
7. Any association or organization that has been approved as a continuing competency provider by a psychology board in another state or jurisdiction.

~~B. Course providers not listed in subsection A of this section may apply for approval by the board as continuing education providers.~~

- ~~1. To be considered for board approval, a continuing education provider shall submit:~~

~~a. Documentation of an instructional plan for continuing education courses that are primarily psychological in nature with systematized instruction provided by licensed psychologists or other licensed mental health service providers; and~~

~~b. The provider review fee set forth under 18VAC125-20-30.~~

~~2. Board approval of continuing education providers under this subsection shall expire two years from the date of issuance, and may be renewed upon submission of documentation and provider review fee as required by the board.~~

~~C. B.~~ Continuing education providers approved under subsection A ~~or B~~ of this section shall:

1. Maintain documentation of the course titles and objectives and of licensee attendance and completion of courses for a period of four years.
2. Monitor attendance at classroom or similar face-to-face educational experiences.
3. Provide a certificate of completion for licensees who successfully complete a course.

VA.R. Doc. No. R07-240; Filed July 1, 2008, 10:16 a.m.

## **REAL ESTATE APPRAISER BOARD**

### **Final Regulation**

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10, 18VAC130-20-70, 18VAC130-20-180, 18VAC130-20-200, 18VAC130-20-230).**

Statutory Authority: §54.1-2013 of the Code of Virginia.

Effective Date: September 1, 2008.

Agency Contact: Christine Martine, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804)367-8552, FAX (804)527-4299, or email [reappraisers@dpor.virginia.gov](mailto:reappraisers@dpor.virginia.gov).

### Summary:

*The amendments (i) reword the definitions of “certified residential real estate appraiser” and “licensed residential real estate appraiser” to ensure that appraisers provide review appraisals only for those properties for which they are licensed to appraise, (ii) amend application requirements for prelicensure courses and instructors to require that submitted applications be completed within 12 months of the date of receipt of the application and fee, (iii) require that licensees produce documents requested by the board within 10 working days of the request and broaden the definition of*

*documents to include work files and electronic records, (iv) repeal the requirement that the records be made available only at the licensee's place of business, (v) require that the licensee respond to any inquiry made by the board within 21 days and not just the complaints requested under 18VAC130-20-180 H 1, (vi) prohibit a licensee from providing false, misleading, or incomplete information in the investigation of a complaint filed with the board, and (vii) no longer allow credit for licensing to be awarded for prelicensure courses completed by challenge examination without classroom attendance.*

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

Part I  
General

**18VAC130-20-10. Definitions.**

The following words and terms, when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC §3301 et seq.), as amended.

"Appraiser" means one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

"Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a transaction value up to \$250,000.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, on-line learning, correspondence courses, etc.).

"Experience" as used in this chapter includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee/staff appraiser experience" means experience acquired as either a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in

---

# Regulations

---

accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An adequate identification of the real estate and the interests being appraised;
- b. The purpose of the report, date of value, and date of report;
- c. A definition of the value being appraised;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value;
- h. Disclosure of assumptions or limiting conditions, if any; and
- i. Signature of appraiser.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in Standard 2 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of

experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports which meet minimum standards. For appraisal reports dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value;
- f. The usual valuation approaches for the property type being appraised or the reason for excluding any of these approaches;
- g. A reconciliation and conclusion as to the property's value; and
- h. Disclosure of assumptions or limiting conditions, if any.

For appraisal reports dated subsequent to July 1, 1991, the minimum standards for written appraisal reports are those as prescribed in the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal files which meet minimum standards. For mass appraisals dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An adequate identification of the real estate and the interests being appraised;
- b. The effective date of value;
- c. A definition of the value being appraised if other than fee simple;
- d. A determination of highest and best use;
- e. An estimate of land value; and
- f. Those recognized methods and techniques that are necessary to produce a credible appraisal.

For mass appraisal reports, the minimum standards for these appraisal reports are those as prescribed in Standard 6 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions, which written reports must meet minimum standards. For appraisal reviews dated prior to July 1, 1991, these minimum standards include the following (if any item is not applicable, the applicant shall adequately state the reasons for the exclusions):

- a. An identification of the report under review, the real estate and real property interest being appraised, the effective date of the opinion in the report under review, and the date of the review;
- b. A description of the review process undertaken;
- c. An opinion as to the adequacy and appropriateness of the report being reviewed, and the reasons for any disagreement;
- d. An opinion as to whether the analyses, opinions, and conclusions in the report under review are appropriate and reasonable, and the development of any reasons for any disagreement;
- e. Signature of reviewer.

For appraisal review reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 3 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in this capacity will be considered under the cosigner subcategory of fee/staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, but is not necessarily limited to, the following:

- Absorption Study
- Ad Valorem Tax Study
- Annexation Study
- Assemblage Study
- Assessment Study
- Condominium Conversion Study
- Cost-Benefit Study
- Cross Impact Study
- Depreciation/Cost Study
- Distressed Property Study
- Economic Base Analysis
- Economic Impact Study
- Economic Structure Analysis
- Eminent Domain Study
- Feasibility Study
- Highest and Best Use Study
- Impact Zone Study
- Investment Analysis Study
- Investment Strategy Study
- Land Development Study
- Land Suitability Study
- Land Use Study
- Location Analysis Study
- Market Analysis Study
- Market Strategy Study
- Market Turning Point Analysis
- Marketability Study
- Portfolio Study
- Rehabilitation Study
- Remodeling Study
- Rental Market Study
- Right of Way Study
- Site Analysis Study
- Utilization Study
- Urban Renewal Study
- Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports which meet minimum standards. For real estate consulting reports dated prior to July 1, 1991, these minimum standards

---

# Regulations

---

include the following (if any item is not applicable, the applicant shall so state the reasons for the exclusions):

- a. A definition of the problem;
- b. An identification of the real estate under consideration (if any);
- c. Disclosure of the client's objective;
- d. The effective date of the consulting assignment and date of report;
- e. The information considered, and the reasoning that supports the analyses, opinions, and conclusions;
- f. Any assumptions and limiting conditions that affect the analyses, opinions, and conclusions;
- g. Signature of real estate appraiser.

For real estate consulting reports dated subsequent to July 1, 1991, the minimum standards for these appraisal reports are those as prescribed in Standard 4 of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements specified in this chapter. Inactive licenses do not meet the requirements set forth in §54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value is less than \$1 million. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction value up to \$250,000.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in §54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing

education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with §54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent" is any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, or licensed residential real estate appraiser who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of

the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

### **18VAC130-20-70. Requirement for the certification of appraisal education instructors.**

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, and §54.1-2013 of the Code of Virginia, instructors teaching prelicense educational offerings who are not employed or contracted by accredited colleges, universities, junior and community colleges, adult distributive or marketing education programs are required to be certified by the board. Effective January 1, 2003, all Uniform Standards of Professional Appraisal Practice courses taught for prelicense and continuing education credit must be taught by instructors certified by the Appraiser Qualifications Board. Applications received by the department or its agent must be complete within 12 months of the date of the receipt of the license application and fee by the Department of Professional and Occupational Regulation or its agent.

### **18VAC130-20-180. Standards of professional practice.**

A. The provisions of subsections C through J of this section shall not apply to local, state and federal employees performing in their official capacity.

B. Maintenance of licenses. The board shall not be responsible for the failure of a licensee, registrant, or certificate holder to receive notices, communications and correspondence.

#### 1. Change of address.

a. All licensed real estate appraisers, appraiser trainees, and certified instructors shall at all times keep the board informed in writing of their current home address and shall report any change of address to the board within 30 days of such change.

b. Registered real estate appraisal business entities shall at all times keep the board informed in writing of their

current business address and shall report any change of address to the board within 30 days of such change.

#### 2. Change of name.

a. All real estate appraisers, appraiser trainees, and certified instructors shall promptly notify the board in writing and provide appropriate written legal verification of any change of name.

b. Registered real estate appraisal business entities shall promptly notify the board of any change of name or change of business structure in writing. In addition to written notification, corporations shall provide a copy of the Certificate of Amendment from the State Corporation Commission, partnerships shall provide a copy of a certified Partnership Certificate, and other business entities trading under a fictitious name shall provide a copy of the certificate filed with the clerk of the court where business is to be conducted.

3. Upon the change of name or address of the registered agent, associate, or partner, or sole proprietor designated by a real estate appraisal business entity, the business entity shall notify the board in writing of the change within 30 days of such event.

4. No license, certification or registration issued by the board shall be assigned or otherwise transferred.

5. All licensees, certificate holders and registrants shall operate under the name in which the license or registration is issued.

6. All certificates of licensure, registration or certification in any form are the property of the Real Estate Appraiser Board. Upon death of a licensee, dissolution or restructure of a registered business entity, or change of a licensee's, registrant's, or certificate holder's name or address, such licenses, registrations, or certificates must be returned with proper instructions and supplemental material to the board within 30 days of such event.

7. All appraiser licenses issued by the board shall be visibly displayed.

#### C. Use of signature and electronic transmission of report.

1. The signing of an appraisal report or the transmittal of a report electronically shall indicate that the licensee has exercised complete direction and control over the appraisal. Therefore, no licensee shall sign or electronically transmit an appraisal which has been prepared by an unlicensed person unless such work was performed under the direction and supervision of the licensee in accordance with §54.1-2011 C of the Code of Virginia.

2. All original appraisal reports shall be signed by the licensed appraiser. For narrative and letter appraisals, the

---

# Regulations

---

signature and final value conclusion shall appear on the letter of transmittal and certification page. For form appraisals, the signature shall appear on the page designated for the appraiser's signature and final estimate of value. All temporary licensed real estate appraisers shall sign and affix their temporary license to the appraisal report or letter for which they obtained the license to authenticate such report or letter. Appraisal reports may be transmitted electronically. Reports prepared without the use of a seal shall contain the license number of the appraiser.

- a. An appraiser may provide market analysis studies or consulting reports, which do not constitute appraisals of market value provided such reports, studies or evaluations shall contain a conspicuous statement that such reports, studies or valuations are not an appraisal as defined in §54.1-2009 of the Code of Virginia.
- b. Application of the seal and signature or electronic transmission of the report indicates acceptance of responsibility for work shown thereon.
- c. The seal shall conform in detail and size to the design illustrated below:



\*The number on the seal shall be the 10-digit number or the last 6 digits, or the last significant digits on the license issued by the board.

D. Development of appraisal. In developing a real property appraisal, all licensees shall comply with the provisions of the Uniform Standards of Professional Appraisal Practice (USPAP) in the edition in effect at the time of the reports' preparation. If the required definition of value uses the word "market," licensees must use the definition of market value set forth in USPAP "DEFINITIONS."

E. Appraisal report requirements. In reporting a real property appraisal, a licensee shall meet the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

F. Reviewing an appraisal. In performing a review appraisal, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in

effect at the time of the reports' preparation. The reviewer's signature and seal shall appear on the certification page of the report.

G. Mass appraisals. In developing and reporting a mass appraisal for ad valorem tax purposes, a licensee shall comply with the requirements of the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

H. Recordkeeping requirements.

1. A licensee or registrant of the Real Estate Appraiser Board shall, upon request or demand, promptly produce to the board or any of its agents within 10 working days of the request, any document, book, or record, work file or electronic record in a licensee's possession concerning any appraisal which the licensee performed, or for which the licensee is required to maintain records for inspection ~~and copying~~ by the board or its agents. ~~These records shall be made available at the licensee's place of business during regular business hours.~~ The board or any of its agents may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

2. Upon the completion of an assignment, a licensee or registrant shall return to the rightful owner, upon demand, any document or instrument which the licensee possesses.

3. The appraiser trainee shall be entitled to obtain copies of appraisal reports he prepared. The supervising appraiser shall keep copies of appraisal reports for a period of at least five years or at least two years after final disposition of any judicial proceedings in which testimony was given, whichever period expires last.

I. Disclosure requirements. A licensee appraising property in which he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, has any interest shall disclose, in writing, to any client such interest in the property and his status as a real estate appraiser licensed in the Commonwealth of Virginia. As used in the context of this chapter, "any interest" includes but is not limited to an ownership interest in the property to be appraised or in an adjacent property or involvement in the transaction, such as deciding whether to extend credit to be secured by such property.

J. Competency. A licensee shall abide by the Competency Rule as stated in the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

K. Unworthiness.

1. A licensee shall act as a certified general real estate appraiser, certified residential real estate appraiser or licensed residential real estate appraiser in such a manner

as to safeguard the interests of the public, and shall not engage in improper, fraudulent, or dishonest conduct.

2. A licensee may not have been convicted, found guilty or pled guilty, regardless of adjudication, in any jurisdiction of the United States of a misdemeanor involving moral turpitude or of any felony there being no appeal pending therefrom or the time for appeal having elapsed. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. A certified copy of a final order, decree, or case decision by a court with the lawful authority to issue such order, decree, or case decision shall be admissible as prima facie evidence of such guilt.

3. A licensee shall inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty, regardless of adjudication, of any felony or of a misdemeanor involving moral turpitude.

4. A licensee may not have had a license or certification as a real estate appraiser which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction.

5. A licensee shall inform the board in writing within 30 days of the suspension, revocation or surrender of an appraiser license or certification in connection with a disciplinary action in any other jurisdiction, and a licensee shall inform the board in writing within 30 days of any appraiser license or certification which has been the subject of discipline in any jurisdiction.

6. A licensee shall perform all appraisals in accordance with Virginia Fair Housing Law, §36-96.1 et seq. of the Code of Virginia.

7. A licensee shall respond to an inquiry by the board or its agents, other than requested under 18VAC130-20-180 H 1, within 21 days.

8. A licensee shall not provide false, misleading or incomplete information in the investigation of a complaint filed with the board.

Part V  
Educational Offerings

**18VAC130-20-200. Requirement for the approval of appraisal educational offerings.**

Pursuant to the mandate of Title 11 of the Federal Financial Institutions Reform, Recovery and Enforcement Act of 1989, §54.1-2013 of the Code of Virginia, and the qualifications criteria set forth by the Appraisal Qualifications Board of the Appraisal Foundation, all educational offerings submitted for prelicensure and continuing education credit shall be approved by the board. Educational offerings that have been approved by the Appraiser Qualifications Board shall be considered to have met the standards for approval set forth in this chapter. Prelicense course applications received by the

department or its agent must be complete within 12 months of the date of the receipt of the application and fee by the department or its [ agents agent ].

**18VAC130-20-230. Procedures for awarding prelicense and continuing education credits.**

A. Course credits shall be awarded only once for courses having substantially equivalent content.

B. Proof of completion of such course, seminar, workshop or conference may be in the form of a transcript, certificate, letter of completion or in any such written form as may be required by the board. All courses, seminars and workshops submitted for prelicensure and continuing education credit must indicate the number of classroom hours.

C. Information which may be requested by the board in order to further evaluate course content includes, but is not limited to, course descriptions, syllabi or textbook references.

D. All transcripts, certificates, letters of completion or similar documents submitted to verify completion of seminars, workshops or conferences for continuing education credit must indicate successful completion of the course, seminar, workshop or conference. Applicants must furnish written proof of having received a passing grade in all prelicense education courses submitted.

~~E. Credit may be awarded for prelicensure courses completed by challenge examination without classroom attendance, if such credit was granted by the course provider prior to July 1, 1990, and provided that the board is satisfied with the quality of the challenge examination that was administered by the course provider.~~

~~F. E.~~ All courses [ ] seminars, workshops, or conferences, submitted for satisfaction of continuing education requirements must be satisfactory to the board.

~~G. F.~~ Prelicense courses. A distance education course may be acceptable to meet the classroom hour requirement or its equivalent provided that the course is approved by the board, the learner successfully completes a written examination proctored by an official approved by the presenting entity, college or university, the course meets the requirements for qualifying education established by the Appraiser Qualifications Board, the course is equivalent to the minimum of 15 classroom hours and meets one of the following conditions:

1. The course is presented by an accredited (Commission on Colleges or a regional accreditation association) college or university that offers distance education programs in other disciplines; or
2. The course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either the approval of the Appraisal Qualifications Board through its

---

# Regulations

---

course approval program or the approval of the board for the content of the course.

**H. G.** Continuing education. Distance education courses may be acceptable to meet the continuing education requirement provided that the course is approved by the board, is a minimum of two classroom hours, meets the requirements for continuing education established by the Appraiser Qualifications Board and meets one of the following conditions:

1. The course is presented to an organized group in an instructional setting with a person qualified and available to answer questions, provide information, and monitor student attendance;
2. The course has been presented by an accredited (Commission on Colleges or regional accreditation association) college or university that offers distance education programs in other disciplines and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable); or
3. The course has received approval of the International Distance Education Certification Center (IDECC) for the course design and delivery mechanism and either the approval of the Appraiser Qualifications Board through its course approval program or the approval of the board for the content of the course and the student successfully completes a written examination proctored by an official approved by the presenting college or university or by the sponsoring organization consistent with the requirements of the course accreditation; or if a written examination is not required for accreditation, the student successfully completes the course mechanisms required for accreditation that demonstrate mastery and fluency (said mechanisms must be present in a course without an exam in order to be acceptable).

**H. H.** A teacher of appraisal courses may receive education credit for the classroom hour or hours taught. These credits shall be awarded only once for courses having substantially equivalent content.

**NOTICE:** The forms used in administering 18VAC130-20, Real Estate Appraiser Board Rules and Regulations, are not being published; however, the name of each form is listed below. The forms are available for public inspection at the Department of Professional and Occupational Regulation, 9960 Mayland Drive, Richmond, Virginia, or at the office of

the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS

Real Estate Appraiser Board License Application, 40LIC (rev. [ ~~8/07~~ 2/08 ] ).

Real Estate Appraiser Board Experience Log, 40EXP (rev. [ ~~8/07~~ 2/08 ] ).

Real Estate Appraiser Board Experience Verification Form, 40EXPVER (rev. 8/07).

[ Real Estate Appraiser Board ] Experience Requirements, 40EXPREQ ( [ ~~eff. 8/07~~ rev. 2/08 ] ).

Real Estate Appraiser Board Trainee License Application, 40TRLIC (rev. [ ~~8/07~~ 2/08 ] ).

Real Estate Appraiser Board Trainee Supervisor Verification Form, 40TRSUP (rev. [ ~~8/07~~ 6/08 ] ).

Real Estate Appraiser Business Registration Application, 40BUS (rev. 8/07).

Real Estate Appraiser Board [ ~~New~~ Pre-license ] Course Application, 40CRS (rev. [ ~~8/07~~ 9/07 ] ).

Real Estate Appraiser Board Instructor Certificate Application, 40INSTR (rev. 8/07).

Real Estate Appraiser Board Renewal Course Application, 40RENCRS (rev. 8/07).

Real Estate Appraiser Board Activate Application, 40ACT (rev. 8/07).

Real Estate Appraiser Board Temporary License Application, 40LIC (rev. 8/07).

VA.R. Doc. No. R06-333; Filed June 24, 2008, 4:09 p.m.

## BOARD OF SOCIAL WORK

### Fast-Track Regulation

**Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-50, 18VAC140-20-70).**

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

**Public Hearing Information:**

August 14, 2008 - 9 a.m. - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

**Public Comments:** Public comments may be submitted until 5 p.m. on August 20, 2008.

**Effective Date:** September 4, 2008.

**Agency Contact:** Evelyn B. Brown, Executive Director, Department of Health Professions, 9960 Mayland Drive,

Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4488, FAX (804) 527-4435, or email [evelyn.brown@dhp.virginia.gov](mailto:evelyn.brown@dhp.virginia.gov).

**Basis:** Regulations are promulgated under the general authority of Chapter 24 (§54.1-2400 et seq.) of Title 54.1 of the Code of Virginia. Section 54.1-2400 provides the Board of Social Work the authority to promulgate regulations to administer the regulatory system.

**Purpose:** The purpose of the first action is to eliminate confusion that persons sometimes express about the "part-time equivalency" language in the section on supervised experience. Clarity in the regulation may result in better compliance without unnecessary time spent in the residency.

Additionally, the purpose of a limitation on the time an applicant can take to sit for the licensing examination is intended to ensure the minimal competency of such applicant. If someone has completed his education and supervised clinical experience many years ago, but has not practiced in the field of social work in the interim, even passage of the examination would not assure that his knowledge and skills are adequate to protect the health and welfare of the clients that he would be treating.

**Rationale for Using Fast-Track Process:** The fast-track process is being used to promulgate the amendments because there is unanimous agreement with the changes proposed. The action is not controversial and will resolve questions and issues that have come to the board in recent months.

**Substance:** The proposed action eliminates reference to part-time equivalency in supervised experience because it is confusing and unnecessary. The board also proposes to establish a requirement that an applicant must sit for the licensing examination within two years of approval or must reapply and meet requirements in effect at the time.

**Issues:** There are no advantages or disadvantages to the public. Candidates who do not take the licensing examination within a reasonable time following completion of their education and clinical experience are not likely to be as qualified to provide clinical care to clients. Therefore, the time limit of taking the exam may be beneficial in assuring minimal competency. There are no advantages or disadvantages to the agency or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Board of Social Work (Board) proposes to amend its regulations to mandate that candidates for licensure sit for a Board approved exam within two years of application approval. The Board also proposes to remove duplicative language from the section of these regulations that govern experience requirements.

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

**Estimated Economic Impact.** Current regulations specify that applicants for licensure must pass a written examination but do not set a time limit on when this exam must be taken. The Board proposes to amend these regulations to require applicants to take the written exam within two years of the date that their application is approved by the Board. If applicants do not take an exam within two years, these proposed regulations would require them to re-apply and meet whatever licensure requirements are current at the time of the new application.

The Board proposes this amendment to allow Board staff to follow Department of Health Professions' (DHP) policy for record retention. This policy specifies that Boards should retain incomplete applications (including applications that lack proof that the applicant has taken the exam) for a year. This policy allows Boards to vary from this time restraint so long as the variance is in favor of the applicant. The Board also proposes this amendment to avoid situations where long spans of time elapse between an applicant completing the education/experience that prepares him for the exam and taking the exam.

This regulatory change will benefit the Board, which will be able to better manage its record keeping, and may also benefit applicants for licensure if the requirement that they take the exam when the information on which they will be tested is fresh in their mind leads to higher exam passage rates. To the extent that fairly contemporaneous education/experience and testing help insure better client service, the public that is served by licensed clinical social workers and licensed social workers may also benefit from this change. Applicants who do not take the exam within two years will incur another application fee (this fee is currently \$100) and may incur extra costs for obtaining more education/experience if, then current, regulations require it. Although the Board has no firm estimate of the number of applicants for licensure that would be affected, this number is likely to be miniscule. Accordingly, the benefits associated with this regulatory change will likely outweigh the costs.

**Businesses and Entities Affected.** These regulatory changes will affect all of this Board's applicants for licensure. In 2007, the Board newly licensed 275 licensed clinical social workers and 60 licensed social workers.

**Localities Particularly Affected.** No locality will be particularly affected by this proposed regulatory action.

**Projected Impact on Employment.** This regulatory action will likely have no impact on employment in the Commonwealth.

**Effects on the Use and Value of Private Property.** This regulatory action will likely have no affect on the use or value of private property in the Commonwealth.

---

# Regulations

---

**Small Businesses: Costs and Other Effects.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Small businesses in the Commonwealth are unlikely to incur any costs on account of this regulatory action.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with §2.2-4007.04 of the Administrative Process Act and Executive Order Number 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 Analysis: The Board of Social Work concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC140-20, Regulations Governing the Practice of Social Work, relating to the time period in which to take the licensure examination.

Summary:

*The board is clarifying regulations by eliminating references to part-time work in the section on supervised postmaster's degree experience required for licensure as a clinical social worker. The total of 3,000 hours within no less than two years or no more than four years is unchanged. A requirement to take an examination within two years of application approval is added for consistency with document retention policies of the department and to resolve an issue of a candidate who*

*returns to take the examination years after completion and approval of his education and experience.*

**18VAC140-20-50. Education and experience requirements for licensed clinical social worker.**

A. Education. The applicant shall hold a minimum of a master's degree from an accredited school of social work. Graduates of foreign institutions shall establish the equivalency of their education to this requirement through the Foreign Equivalency Determination Service of the Council of Social Work Education.

1. The degree program shall have included a graduate clinical course of study; or
2. The applicant shall provide documentation of having completed specialized experience, course work or training acceptable to the board as equivalent to a clinical course of study.

B. Supervised experience. Supervised experience obtained prior to December 23, 1998, may be accepted towards licensure if this supervision met the requirements of the board which were in effect at the time the supervision was rendered. Supervised experience obtained in nonexempt settings in Virginia without prior written board approval will not be accepted toward licensure.

1. Registration. An individual who proposes to obtain supervised post-master's degree experience in Virginia shall, prior to the onset of such supervision:

- a. Register on a form provided by the board and completed by the supervisor and the supervised individual; and
- b. Pay the registration of supervision fee set forth in 18VAC140-20-30.

2. Hours. The applicant shall have completed a minimum of 3,000 hours of supervised post-master's degree experience in the delivery of clinical social work services ~~or the equivalent in part-time experience~~. A minimum of one hour of individual face-to-face supervision shall be provided each week for a total of at least 100 hours.

- a. Experience shall be acquired in no less than two nor more than four years.
- b. Supervisees shall average no less than 15 hours per week in face-to-face client contact for a minimum of 1,380 hours ~~in the two-year period~~. The remaining hours may be spent in ancillary duties and activities supporting the delivery of clinical services.

3. An individual who does not become a candidate for licensure after four years of supervised experience shall submit evidence to the board showing why the training should be allowed to continue.

C. Requirements for supervisors.

1. The supervisor shall be a licensed clinical social worker in the jurisdiction in which the clinical services are being rendered with at least five years post-Master of Social Work clinical experience. The board may consider supervisors with commensurate qualifications if the applicant can demonstrate an undue burden due to geography or disability.

2. The supervisor shall:

a. Be responsible for the casework activities of the prospective applicant as set forth in this subsection once the supervisory arrangement is accepted;

b. Review and approve the diagnostic assessment and treatment plan of a representative sample of the clients assigned to the applicant during the course of supervision. The sample should be representative of the variables of gender, age, diagnosis, length of treatment and treatment method within the client population seen by the applicant. It is the applicant's responsibility to assure the representativeness of the sample that is presented to the supervisor. The supervisor shall be available to the applicant on a regularly scheduled basis for supervision. The supervisor will maintain documentation, for five years post supervision, of which clients were the subject of supervision;

c. Provide supervision only for those casework activities for which the supervisor has determined the applicant is competent to provide to clients;

d. Provide supervision only for those activities for which the supervisor is qualified; and

e. Evaluate the supervisee's knowledge and document minimal competencies in the areas of an identified theory base, application of a differential diagnosis, establishing and monitoring a treatment plan, development and appropriate use of the professional relationship, assessing the client for risk of imminent danger, and implementing a professional and ethical relationship with clients.

3. Supervision between members of the immediate family (to include spouses, parents, and siblings) will not be approved.

D. Supervision requirements for applicants in exempt practices. Individuals may obtain the required supervision and experience without registration of supervision provided such experience:

- 1. Is obtained in an exempt practice; and
2. Meets all other requirements for supervised experience as set forth in this section.

Part III
Examinations

18VAC140-20-70. Examination requirement.

A. An applicant for licensure by the board as a social worker or clinical social worker shall pass a written examination prescribed by the board.

B. The board shall establish passing scores on the written examination.

C. A candidate approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

VA.R. Doc. No. R08-1109; Filed July 1, 2008, 10:15 a.m.

TITLE 20. PUBLIC UTILITIES AND TELECOMMUNICATIONS

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: 20VAC5-414. Bad Check Charges and Late Payment Charges (adding 20VAC5-414-10 through 20VAC5-414-70).

Statutory Authority: §12.1-13 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until August 21, 2008.

Agency Contact: Katie Cummings, Deputy Director, Division of Communications, State Corporation Commission, P.O. Box 1197, 1300 East Main Street, Richmond, VA 23218, telephone (804) 371-9101, FAX (804) 371-9069, or email katie.cummings@scc.virginia.gov.

Summary:

The proposed regulations govern local exchange telecommunications carriers in the determination and calculation of charges for bad or dishonored checks and payments not made by the customer by the stated due

---

# Regulations

---

*date on his bill. The regulations address bad check charges and late payment charges for local exchange telecommunications carriers notwithstanding 20VAC5-10-10. The proposed regulations define terms used and set forth a basis for understanding the proposed chapter; set forth the ability of a local exchange telecommunications carrier to impose a charge for checks made in payment by a customer that are dishonored by the payor bank, and set forth a maximum charge that may be imposed; set forth the ability of a local exchange telecommunications carrier to assess a late payment charge for bills that are not paid by the due date stated on the bill and set forth calculation options for the charge; and set forth the commission's authority to grant exceptions to any provision of the rules, which is consistent with and similar to the language used in other chapters. The proposed regulations reflect changes suggested by the Virginia Telephone Industry Association in Case No. PUC-2008-00037, "Application of the Virginia Telecommunications Industry Association for change in 20VAC5-10-10 regarding bad check charges and late payment charges."*

AT RICHMOND, JUNE 27, 2008

COMMONWEALTH OF VIRGINIA, ex rel.  
STATE CORPORATION COMMISSION

CASE NO. PUC-2008-00054

Ex Parte: Adoption of New Rules Governing  
Late Payment and Bad Check Charges for  
Local Exchange Telephone Companies

ORDER PRESCRIBING NOTICE AND INVITING  
COMMENTS

On April 23, 2008, the Virginia Telecommunications Industry Association ("VTIA") filed an Application with the State Corporation Commission ("Commission") requesting modification of the rules governing the authority of utilities to charge customers for bad checks and late payments, 20 VAC 5-10-10 B and C. *See* Case No. PUC-2008-00037.

By order entered concurrently with this one, the VTIA's Application was granted in part and denied in part and Case No. PUC-2008-00037 was dismissed. Consistent with the order dismissing Case No. PUC-2008-00037, the Commission is initiating a separate rulemaking to consider the VTIA's request for changes to the limits on bad check charges and late payment fees that may be charged by telephone companies. A separate chapter for telecommunications, Chapter 414, has been proposed for this purpose. If adopted, the new chapter would be codified as 20 VAC 5-414-10 et seq.

NOW THE COMMISSION, pursuant to § 12.1-13 of the Code of Virginia and 5 VAC 5-20-100 of the Commission's Rules of Practice and Procedure, finds that interested parties

should be permitted to comment on, propose modifications or supplements to, or to request a hearing on the proposed new rules (20 VAC 5-414-10 et seq.), which the Commission has appended hereto as Attachment A and now considers. Consideration of these proposed rules by the Commission is not a determination that they are appropriate or necessary.

Accordingly, IT IS ORDERED THAT:

(1) This matter is docketed and assigned Case No. PUC-2008-00054.

(2) The Commission's Division of Information Resources shall forward the proposed new rules (Chapter 414), Attachment A herein, to the Registrar of Virginia for publication in the Virginia Register of Regulations.

(3) The Commission's Division of Information Resources shall make a downloadable version of the proposed new rules, Attachment A, available for access by the public at the Commission's website, <http://www.scc.virginia.gov/case>. The Clerk of the Commission shall make a copy of the proposed new rules available for public inspection and provide a copy, free of charge, in response to any written request for one.

(4) Interested persons wishing to submit written comments supporting, opposing or relating to the proposed new rules shall file such comments with the Clerk of the Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before August 21, 2008, making reference to Case No. PUC-2008-00054. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website, <http://www.scc.virginia.gov/case>.

(5) On or before September 22, 2008, the Commission Staff is directed to file a Response to the comments that are filed with the Commission.

(6) On or before August 21, 2008, any interested person may request a hearing on the proposed new rules by filing a request for hearing with the Clerk of the Commission, P.O. Box 2118, Richmond, Virginia, making reference to Case No. PUC-2008-00054. If the Commission schedules a hearing in connection with the proposed new rules, it will enter a subsequent scheduling order and that order will be available for viewing on the Commission's website, <http://www.scc.virginia.gov/case>. If a request for hearing is not received, the Commission may consider the matter and enter an order based upon the papers filed herein.

(7) On or before July 14, 2008, the Commission's Division of Information Resources shall publish the following notice as classified advertising in newspapers of general circulation throughout the Commonwealth of Virginia.

NOTICE TO THE PUBLIC OF A PROCEEDING TO  
CONSIDER NEW RULES GOVERNING BAD CHECK  
CHARGES AND LATE PAYMENT CHARGES FOR  
LOCAL EXCHANGE TELEPHONE COMPANIES

CASE NO. PUC-2008-00054

The Virginia Telecommunications Industry Association ("VTIA") has requested that the State Corporation Commission ("Commission") consider modifications to the fees that telephone companies may charge for bad checks and for late payments. The Commission will consider whether new rules should be adopted in response to the VTIA's request.

The VTIA's proposal would permit a telephone company to increase its bad check charge up to \$30.00. In addition, the proposed rules would permit a telephone company to establish monthly late charges of \$5.00 and \$20.00 for residential and business customers, respectively.

Interested parties may obtain a copy of the proposed new rules by visiting the Commission's website, <http://www.scc.virginia.gov/case>, or by requesting a copy from the Clerk of the Commission. The Clerk's office will provide a copy of the proposed new rules to any interested party, free of charge, in response to any written request for one.

Interested persons wishing to submit written comments supporting, opposing or relating to the proposed new rules shall file such comments with the Clerk of the Commission, P.O. Box 2118, Richmond, Virginia 23218, on or before August 21, 2008, making reference to Case No. PUC-2008-00054. Interested persons desiring to submit comments electronically may do so by following the instructions found on the Commission's website, <http://www.scc.virginia.gov/case>.

On or before August 21, 2008, any interested person may file a request for hearing with the Clerk of the Commission at the address set forth above, making reference to Case No. PUC-2008-00054. If the Commission schedules a hearing in connection with the proposed new rules, the Commission will enter a subsequent scheduling order and that order will be available for viewing on the Commission's website, <http://www.scc.virginia.gov/case>. If a request for hearing is not received, the Commission may enter an order on the papers filed.

VIRGINIA STATE CORPORATION COMMISSION

(8) This matter is continued for further orders of the Commission.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to: C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of Attorney General, 900 East Main Street, 2nd Floor,

Richmond, Virginia 23219; Richard D. Gary, Esquire, and Noelle J. Coates, Esquire, Counsel for Virginia Telecommunications Industry Association, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; all local exchange carriers certificated in Virginia as set out in Appendix A; all interexchange carriers certificated in Virginia as set out in Appendix B; and the Commission's Office of General Counsel and Division of Communications.

CHAPTER 414  
BAD CHECK CHARGES AND LATE PAYMENT  
CHARGES

**20VAC5-414-10. Definitions.**

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

"Bad check charge" means a service charge imposed for a check received in payment of a customer's account, which check is lawfully dishonored by the payor bank.

"Commission" means the State Corporation Commission.

"Customer" means any person, firm, partnership, corporation, or lawful entity that purchases local exchange telecommunications services.

"Late payment charge" means a fee assessed against any customer charges not timely paid.

"Local exchange carrier (LEC)" means a provider, certificated pursuant to Chapter 10.1 (§56-265.1 et seq.) of Title 56 of the Code of Virginia, offering local exchange services.

**20VAC5-414-20. (Reserved.)**

**20VAC5-414-30. Bad check charge.**

A LEC's bad check charge shall be governed by this section notwithstanding 20VAC5-10-10. A LEC may impose and collect a charge for every check received in payment of a customer's account, which check is lawfully dishonored by the payor bank. Provided, however, the charge shall be uniformly applied to all customers of the LEC, but in no event shall the individual charge exceed \$30.

**20VAC5-414-40. (Reserved.)**

**20VAC5-414-50. Late payment charge.**

A. A LEC's late payment charge shall be governed by this section notwithstanding 20VAC5-10-10.

B. A LEC may assess a late payment charge for any charges not timely paid by the customer.

C. Calculation of the late payment charge shall be as follows:

---

# Regulations

---

1. A LEC may assess a late payment charge of:
  - a. One and one-half percent per month; or
  - b. Five dollars per bill for a residential customer account and \$20 per bill for a business customer account.
2. Appropriate calculation of either late payment charge shall be made at the time of each successive, usual billing date.
3. The amount of any late payment charge shall be included as a separately identified line item upon the current bill.

D. Before implementing a late payment charge program, the LEC must show on a customer's bill, in addition to other necessary and required information, the date on which the bill is delivered to the United States mail, or delivered to the customer's premises, together with showing the date by which payment must be received by the LEC to avoid late payment charges.

E. In no case shall payment for current service be considered overdue if received by the LEC within 20 days from the mailing date or delivered date of the bill.

F. The late payment charge shall not be applied to any amount billed as taxes that the LEC is required to collect on behalf of a local government.

## **20VAC5-414-60. (Reserved.)**

## **20VAC5-414-70. Commission authority.**

The commission may, at its discretion, grant exceptions to any provision of this chapter.

VA.R. Doc. No. R08-1391; Filed June 27, 2008, 3:41 p.m.

---

## **TITLE 23. TAXATION**

### **DEPARTMENT OF TAXATION**

#### **Fast-Track Regulation**

Title of Regulation: **23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-693).**

Statutory Authority: §58.1-203 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comments: Public comments may be submitted until 5 p.m. on September 19, 2008.

Effective Date: October 6, 2008.

Agency Contact: Kristen Peterson, Tax Policy Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA

23261-7185, telephone (804) 371-2340, FAX (804) 371-2355, or email [kristen.peterson@tax.virginia.gov](mailto:kristen.peterson@tax.virginia.gov).

Basis: Section 58.1-203 of the Code of Virginia provides that the "Tax Commissioner shall have the power to issue regulations relating to the interpretation and enforcement of the laws of this Commonwealth governing taxes administered by the Department."

Purpose: The emergency regulation was promulgated on July 26, 2007, and will expire on July 25, 2008. The language contained in the 2006 Budget Bill, requiring that the true object test be applied at the order level, rather than at the contract level, will remain in effect.

This regulatory action is intended to perpetuate the emergency regulation. As with the emergency regulation, this regulation provides a summary of the law, as applied prior to July 1, 2006, and describes the change in law as a result of the budget language. Definitions for statements of work are included, as are definitions for orders, which encompass task orders, delivery orders, and similar work orders. The regulation also provides an explanation and examples as to the treatment of subcontractors to a governmental contract. In addition, based upon mandates included in the 2006 Budget Bill, this regulation includes examples to illustrate when a contractor is deemed to have exercised taxable interim use of tangible personal property purchased pursuant to a government contract, as well as examples in which exempt interim use is made incidental to a resale to the government. The regulation deviates from the emergency regulation only to the extent that it adds a definition for contractor, includes additional examples to provide further clarification, and makes minor style changes, pursuant to the Virginia Register Style Manual.

Rationale for Using Fast-Track Process: As mandated by the provisions of the Budget Bill, the department worked closely with the government contracting industry to develop the emergency regulation. The department solicited suggestions, comments, and additional information as to industry practices in order to define terms, develop relevant examples and to ensure accuracy of the provisions of the emergency regulation.

The department has continued to work with the government contracting industry in developing the permanent regulation. The department made several changes to the emergency regulation text based on additional comments received from the industry subsequent to the promulgation of the emergency regulation. A draft of the permanent regulation was then submitted to the industry, which had no objections to the changes made subsequent to promulgation of the emergency regulation. The department has made no substantive changes to the proposed regulation following the distribution of the draft to the government contracting industry. As the department has worked closely with the government contracting industry to develop this regulation, the

department expects this regulatory action to be noncontroversial.

Substance: The concepts set forth in the emergency regulation are retained, but additional examples and definitions are added to provide further clarification as to the new application of the true object test.

Issues: This regulatory action will ease voluntary taxpayer compliance and the department's administration of the state tax laws by providing clarification as to the treatment of government contracts following the expiration of the emergency regulation on July 25, 2008. The regulation will provide a summary of the law, as applied prior to July 1, 2006, and describe the change in law as a result of the budget language. Definitions for statements of work will be included, as will definitions for orders, which will encompass task orders, delivery orders and similar work orders. The regulation will also provide an explanation and examples as to the treatment of subcontractors to a governmental contract. The regulation will also include examples to illustrate when a contractor is deemed to have exercised taxable interim use of tangible personal property purchased pursuant to a government contract, as well as examples where exempt interim use is made incidental to a resale to the government. By clarifying these concepts, the department ensures uniform application of the tax laws to taxpayers, particularly, businesses contracting with government entities. In addition, businesses will be better equipped to predict the tax consequences of transactions and avoid unanticipated tax assessments as the result of audits.

As this regulation perpetuates an emergency regulation mandated by the 2006 Budget Bill, this regulatory action poses 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. Pursuant to Item 268 of Chapter 3, 2006 Acts of Assembly, the Department of Taxation proposes to promulgate the new interpretation of the "true object" test as it applies to retail sales and use tax liability of government contractors. Proposed changes have been in effect since July 2006 under the legislative language. Also, an emergency regulation has been in effect since July 2007.

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

Estimated Economic Impact. Pursuant to Item 268 of Chapter 3, 2006 Acts of Assembly, the Department of Taxation (Department) proposes to promulgate the new interpretation of the "true object" test as it applies to retail sales and use tax liability of government contractors. Prior to this legislative change, Department had made taxability determinations regarding the true object of the transaction based upon the

true object of the underlying contract between the government entity and the contractor. The General Assembly mandated in 2006 that the department make its taxability determinations based upon the true object of each separate "work order", "statement of work" and "task order."

The legislation further mandated promulgation of emergency regulations to illustrate how the taxability determinations shall be made. The proposed regulations are permanent replacement regulations for the existing emergency regulations.

While the 2006 legislative change likely had reduced sales and use tax revenues significantly, the economic effects of the legislative action cannot be attributed to this proposed regulatory action.

Also, emergency regulations have been in effect since July 2007. Thus, the benefits associated with clarification of the legislative intent have already been present and no significant immediate economic effect is expected upon promulgation of the proposed regulations.

Businesses and Entities Affected. The proposed regulations apply to government contractors doing business in Virginia. According to a 2001 Fiscal Impact Statement prepared by the Department approximately 3500 federal contractors are estimated to be doing business in Virginia in 1999.

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

Projected Impact on Employment. No significant impact on employment is expected.

Effects on the Use and Value of Private Property. No significant impact on the use and value of private property is expected.

Small Businesses: Costs and Other Effects. No significant costs and other effects on small businesses is expected.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No adverse impact on small businesses is expected.

Real Estate Development Costs. No adverse impact on real estate development costs is expected.

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

---

# Regulations

---

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 agrees with the Department of Planning and Budget's economic impact analysis.

## Summary:

*The 2006 Budget Bill (Chapter 3, 2006 Acts of Assembly, Special Session I) changed the application of the true object test under the Retail Sales and Use Tax, as it applies to contractors doing business with the federal, state, and local governments. Prior to this change, government contractors applied the "true object test" to the underlying contract between the contractor and the government entity to determine the retail sales and use tax application. The 2006 Budget Bill changed the process by requiring that, effective July 1, 2006, for task orders, work orders, or statements of work executed on or after July 1, 2006, application of the sales and use tax to government contracts would be determined based upon the true object of each separate task order, work order, or statement of work, issued in furtherance of the contract, rather than the overall contract.*

*Under the terms of the budget bill, the Department of Taxation (TAX) was required to work with the government contracting industry to promulgate an emergency regulation on or before June 30, 2007, to implement this change in tax policy. The current regulatory action will provide a permanent regulation replacing the emergency regulation.*

*The regulation provides for the application of the true object test to the order level for contracts between contractors and government entities. Examples and definitions are added to clarify the new application of the true object test.*

## **23VAC10-210-693. Government contractors.**

The appropriate tax treatment of purchases of tangible personal property by persons who contract with the federal government, the state or its political subdivisions, is based

~~upon whether the contract is for the sale of tangible personal property (e.g., a computerized data retrieval system) or for the provision of an exempt service (e.g., facilities management or real property construction). If a contract is for the sale of tangible personal property, a contractor may purchase such tangible personal property exempt from the tax using a resale exemption certificate, Form ST 10. The tangible personal property may be resold to the government exempt of the tax.~~

~~However, if a contract is for the provision of services, the contractor is deemed to be the taxable user and consumer of all tangible personal property used in performing its services, even though title to the property provided may pass to the government or the contractor may be fully and directly reimbursed by the government, or both.~~

~~See 23VAC10-210-410 for further explanation of the tax treatment of government contractors.~~

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

"Add-ons" mean additional obligations subsequent to the execution of the original contract or order, including modifications to contracts or orders.

"Classified contract" means a contract in which the contractor or its employees must have access to classified information during contract performance.

"Classified contract agent" means an auditor employed by the department who has been authorized to review secure or classified contracts.

"Contractor" means an entity that contracts to perform all or a portion of a contract for a government entity. For purposes of this section, the term contractor shall include a prime contractor, contractor, subcontractor, or any other term conveying the same obligation, whether incurred by contracting directly with the government entity or with another contractor, to perform the work under the contract.

"Department" means the Virginia Department of Taxation.

"Government" or "government entity" means the United States government, the Commonwealth of Virginia, and any agency, board, commission, political subdivision or instrumentality of the Commonwealth of Virginia. The terms "government" and "government entity" do not include any foreign governments, other state governments of the United States, or any political subdivisions of such other state governments.

"Indeterminate purpose contract" means a contract in which the sale of the tangible personal property or the provision of services is dependent upon some future action of the purchaser for which the exact amount of time and quantity cannot be determined at the time the contract is entered into.

"Mixed contract" means a contract between a government entity and a contractor that involves the contractor both rendering a service and providing tangible personal property to the government entity under that contract.

"Order" means a specific task assigned to a contractor pursuant to a contract with a government entity. For purposes of this regulation, the term "order" shall include, but not be limited to, task orders, delivery orders, work orders, contract line item numbers (CLINs), and shall also include orders issued under a subcontract for fulfillment of work or products required under a general contractor's prime contract with the government and add-ons to existing contracts or orders. The term "order" shall not include a vendor order issued by a contractor to a vendor.

"Purchase for resale" means any tangible personal property or taxable service purchased by a government contractor with the intent of resale to a government agency and that is not used by the contractor for any purpose that is inconsistent with holding the property for resale to the government. "Purchase for resale" also includes tangible personal property to be incorporated into a manufactured product, that will be sold to the government entity.

"Real property contract" means a contract between a contractor and a government entity in which the contractor contracts to perform construction, reconstruction, installation, repair, or any other service with respect to real estate, or fixtures thereon, including highways, and in connection therewith, to furnish tangible personal property.

"Statement of work" means a description of work that must be completed in order to fulfill a contractual obligation. A "statement of work" may be for the provision of a service or the transfer of tangible personal property, or both. A "statement of work" may be associated with the overall purpose of a government contract, or may be a separate and distinct subordinate activity under the overall purpose of a contract. A statement of work may be included in a contract, or in an order, as defined herein.

"Subcontractor" means a contractor who contracts to perform all or a portion of a general or prime contractor's contract with a government entity. For purposes of this regulation, a subcontractor shall be deemed as such regardless of how far removed the contractor is from the general or prime contractor. A subcontractor may be referred to by any other term that conveys the relationship at any tier between the contractor and the entity to perform the work under the subcontract.

"True object test" means the method of determining whether a particular transaction that involves both the rendering of a service and the provision of tangible personal property constitutes the sale of a service or the sale of tangible personal property.

"Vendor" means a person who is not a contractor or subcontractor, and who transfers tangible personal property by sale.

"Vendor order" means a commercial document or form completed by a contractor and issued to a vendor requesting that the vendor provide certain tangible personal property only. For examples of vendor orders, see subsection E of this section.

B. Treatment of mixed government contracts, contracts solely for the provision of services or solely for the provision of tangible personal property, and real property contracts. Where a transaction between a government entity and a contractor involves both the rendering of a service and the provision of tangible personal property, the transaction is deemed a mixed transaction, and the true object of the transaction must be examined to determine the taxability of the transaction.

However, where a transaction between a government entity and a contractor is solely for the provision of tangible personal property, solely for the provision of services, or constitutes a real property contract, application of the true object test is not necessary.

Example 1: Contractor A enters into a transaction with the federal government under which it must furnish personnel to staff a federal government agency's human resources department. Under the terms of the contract, Contractor A is not required to provide any equipment or supplies to the government. Because the transaction is purely for the provision of services, application of the true object test is not necessary. Contractor A will be deemed the taxable user and consumer of all tangible personal property used in performing its services.

Example 2: Contractor B enters into a transaction to purchase a computer system for the federal government. The terms of the contract also require that the contractor develop and oversee training, such that outside assistance will not be required to assist government personnel in the operation and maintenance of the computer system. Because the transaction is a mixed transaction requiring Contractor B to provide services (training) as well as tangible personal property (the computer system), application of the true object test is necessary. The true object of the transaction is the provision of a computer system, thus tangible personal property purchased or leased pursuant to this contract can be purchased for resale exempt of the retail sales and use tax.

C. True object test; generally. In order to determine whether a particular transaction that involves both the rendering of a service and the provision of tangible personal property constitutes a sale of a service or of tangible personal property, the true object of the transaction must be examined. The appropriate tax treatment of purchases of tangible personal property by persons who contract with the government or its

---

## Regulations

---

political subdivisions is based upon whether the transaction is for the sale of tangible personal property (e.g., a computerized data retrieval system) or for the provision of an exempt service (e.g., real property facilities management). If a transaction is for the sale of tangible personal property, a contractor may purchase the tangible personal property exempt of the tax using a resale exemption certificate, Form ST-10. The tangible personal property may be resold to the government exempt of the tax.

However, if a transaction is for the provision of services, the contractor is deemed to be the taxable user and consumer of all tangible personal property used in performing its services, even though title to the property provided may pass to the government or the contractor may be fully and directly reimbursed by the government or both.

D. Tax treatment of government contracts executed prior to July 1, 2006. With respect to mixed contracts between government entities and contractors executed prior to July 1, 2006, the true object test shall be applied to the underlying contract without regard to the individual orders issued prior to July 1, 2006, in furtherance of the overall contract.

Example 3: Contractor A enters into an agreement with the federal government to modernize a signal acquisition system to address advances in signal interception and collection technology through the modification and customization of existing software. The contract is executed on January 1, 2004. Pursuant to the contract, the federal government issues orders specifying particular jobs under the umbrella of the contract. One order executed on January 10, 2004, requires Contractor A to provide support for the modification of government-owned software once it is customized. Using technical information that describes target signals, the contractor is required to deliver code modification, test the modification, and to make further modifications as required. A second order executed on January 15, 2004, requires Contractor A to acquire a computer workstation on which the modified software will be installed. Because both the contract and orders were executed prior to July 1, 2006, the true object test is applied to the underlying contract, without regard to the individual orders issued by the federal government in furtherance of the underlying contract. The true object of the contract is the provision of services related to a signal acquisition system, as the overall objective of the federal government is for Contractor A to use its expertise to address advances in signal interception and collection technology through the modification and customization of existing software. Contractor A is deemed the taxable user and consumer of all tangible personal property used in fulfilling the terms of the contract.

Example 4: Contractor B enters into a contract with the Commonwealth of Virginia on January 5, 2000, to implement a complete computer-based Traffic Signal Management System, consisting of a digital, computer based, networked,

central system providing direct communications with all intersections in the project area. A separate order executed on March 1, 2000, and issued pursuant to the contract requires Contractor B to furnish and integrate the complete computerized system, including all necessary communications equipment not provided by the local telephone company, central computers and peripherals, software, and other incidentals required to properly operate the system. An order executed on March 1, 2000, requires Contractor B to provide systems documentation and end-user training and support. Because the contracts and orders were entered into prior to July 1, 2006, the true object test is applied to the underlying contract, without regard to the individual orders issued in furtherance of the contract. Although Contractor B is contractually required to perform systems integration, end-user training, and support services, the true object of the contract is for the provision of a fully operational and automated Traffic Signal Management system. The required services are provided as part of the sale of the system. Therefore, the true object of the contract is the provision of tangible personal property to the Commonwealth of Virginia. Tangible personal property purchased or leased by Contractor B, the title to which passes to the Commonwealth, may be purchased exempt from the Virginia sales tax using resale exemption certificates.

Example 5: Contractor C enters into a contract with the federal government on June 30, 2005, to replace two antennas on a combat tank. A separate order issued on July 5, 2006, pursuant to the contract calls for integration and calibration of the two antennas. Although the contract was executed prior to July 1, 2006, the true object test will be applied to the separate order issued on July 5, 2006, as that order was issued on or after July 1, 2006, and therefore, falls under the new true object test policy effective July 1, 2006. The true object of the separate order is the provision of a service and Contractor C is deemed the taxable user and consumer of all tangible personal property used in providing those services.

With respect to indeterminate purpose contracts and basic ordering agreements executed prior to July 1, 2006, the true object test shall be applied to each individual order. If the true object of the individual order constitutes a sale of tangible personal property, the sale is treated as an exempt sale for resale to a government entity. The contractor may purchase tangible personal property exempt of tax as a sale for resale using a resale exemption certificate. If the true object of the individual order is the provision of a tax-exempt service, the contractor is the user and consumer of all tangible personal property used in providing the service as well as all tangible personal property that is transferred to the government entity.

Example 6: Contractor D enters into an indeterminate purpose contract with a government entity on January 1, 2005. The contract includes hourly rates for various labor categories and specifies that all supplies and services will be

ordered by individual orders. On March 1, 2005, the government entity issues a task order requiring Contractor D to provide 40 hours of system evaluation services. On April 1, 2005, the government entity issues a task order requiring Contractor D to provide 20 licenses for a Commercial Off the Shelf (COTS) software package. The true object test would be applied to the March 1 and April 1 task orders independently. Thus, the March 1 order is an order for services, and the April 1 order is an order for tangible personal property.

E. Tax treatment of orders executed on and after July 1, 2006. As of July 1, 2006, the application of the sales and use tax to all mixed contracts and indeterminate purpose contracts shall be based on application of the true object test to each individual order and not the original contract. If the true object of an order is the provision of a service, the government contractor is deemed the user and consumer of all tangible personal property used in providing the service. If the true object of the order is the sale of tangible personal property, tangible personal property purchased by the contractor to fulfill that order, even if not expressly identified by the terms of the order itself, may be purchased exempt of the tax, provided the property can be tied back to the order for resale. For add-ons to government contracts executed on or after July 1, 2006, the true object test will be applied to each separate add-on without regard to the true object of the original contract. This amended treatment of orders executed on and after July 1, 2006, shall not apply to vendor orders as defined in subsection A of this section.

Example 7: Contractor A enters into a ship outfitting contract with the U.S. Navy. A task order is issued to Subcontractor B to obtain safety equipment. Subcontractor B submits an order to Vendor C for the provision of unmodified lifejackets. The order submitted to Vendor C constitutes a vendor order, as defined in subsection A of this section. As such, the true object test does not apply to the vendor order. Instead, Subcontractor B must apply the true object test at the task order level to determine whether items purchased in furtherance of fulfilling that task order are subject to the retail sales and use tax.

Example 8: Contractor A enters into a facilities management contract with a state agency to include the provision of trash bags. Contractor A issues a task order to Subcontractor B to provide trash removal services. Subcontractor B submits an order to Vendor C for a large quantity of trash bags to fulfill the order. The order submitted to Vendor C constitutes a vendor order, as defined in subsection A of this section. As such, the true object test should be applied at the task order level, rather than to the vendor order. Because the task order constitutes an order for the provision of services, Subcontractor B must pay retail sales tax on the purchase of the trash bags.

Example 9: Contractor A enters into a contract with the federal government on January 1, 2007, to design and provide a turn-key integrated computer hardware and software system. The contract is divided into separate orders. Order 1 requires that Contractor A design the integrated system. Order 2 requires Contractor A to test and evaluate potential hardware and software components of the integrated system. Order 3 requires that Contractor A provide and deliver the integrated system. Order 4 requires that Contractor A maintain the system, including performing all necessary functions to keep the computerized system up and running, for a period of five years following delivery. The true object of Order 1 is the provision of services, as it requires Contractor A to design the integrated supply system. The true object of Order 2 is the provision of services, as it requires Contractor A to perform the functions of testing and evaluation. As such, Contractor A is deemed the taxable user and consumer of all tangible personal property used in fulfilling Orders 1 and 2. The true object of Order 3 is the provision of tangible personal property. The true object of Order 4 is the provision of tangible personal property. As such, Contractor A may purchase items to fulfill Orders 3 and 4 exempt of the tax as purchases for resale. Contractor A purchases servers, routers, disk arrays processors and software to fulfill Order 3. Contractor A's cost accounting records clearly differentiate purchases among the four separate orders. Although the terms of Order 3 only discuss a "turn-key computerized system" generally and do not identify the specific parts constituting that system, Contractor A's purchases of the servers, routers, disk arrays, processors, and software can be tied back to Order 3.

Example 10: Contractor A enters into a contract with an agency of the Commonwealth of Virginia on March 1, 2006, for the purchase and installation of a telecommunications system in Virginia. The government entity issues a separate order on August 1, 2006, requiring that Contractor A provide installation services. Because the separate order is issued after July 1, 2006, the true object test is applied to the separate order, rather than the underlying contract. The true object of the order is the provision of services. Contractor A is deemed the taxable user and consumer of all tangible personal property used in performing these services.

Example 11: Contractor D executes a contract with the federal government on March 1, 2010, for the construction of a ship. The provisions of the contract contain a separate order (Order 1) that calls for engineering studies and design. An additional order (Order 2) mandates that Contractor D obtain steel and components, which will later become affixed to the ship. The true object of Order 1 is the provision of services, including engineering studies and design. As such, Contractor D is deemed the taxable user and consumer of all tangible personal property purchased in fulfilling Order 1. The true object of Order 2 is the provision of tangible personal property to be incorporated into a manufactured

---

## Regulations

---

product sold to the government. As such, Contractor D can purchase the steel and components exempt of the tax for resale.

F. Transitional provisions for orders entered into prior to July 1, 2006. The true object test shall be applied to all orders issued under all mixed government contracts if executed on and after July 1, 2006, regardless of the date on which the original contract, add-on, or order was executed.

Example 12: Contractor B enters into a contract with a government entity on January 1, 2004. The contract requires Contractor B to sell and install a computer system to the government entity; therefore, the underlying true object of the contract is the sale of tangible personal property to the government entity. The contract is to be fulfilled by Contractor B over a five-year period with the final phase of the contract completed on or before December 31, 2008. From January 1, 2004, through June 30, 2006, all aspects of the contract will be treated as exempt sales of the tangible personal property to the government entity. Beginning July 1, 2006, the tax will be applied based on the true object of each individual order and taxed accordingly. Therefore, on and after July 1, 2006, if the true object of an order is the provision of a service, Contractor B will be liable for sales and use tax on all tangible personal property used in providing the service, even if the tangible personal property is eventually transferred to the government entity.

Example 13: Contractor C enters into a contract with a government entity on June 1, 2005. The underlying true object of the contract is the provision of janitorial services for a five-year period ending May 31, 2010. From June 1, 2005, through June 30, 2006, Contractor C will be the taxable user and consumer of all tangible personal property purchased for use in fulfilling the service contract. For all orders executed on and after July 1, 2006, the contractor will apply the true object test to each separate order. In orders for the sale of tangible personal property to the government, purchases under the order will be exempt, provided there is not a taxable interim use of the tangible personal property by the contractor prior to its sale to the government. In orders for the provision of a service, the contractor will be liable for the tax as user and consumer for purchases made pursuant to the order.

G. Interim use. If a contractor makes an interim use of tangible personal property held for resale to a government entity pursuant to an order for the purchase of tangible personal property, the use will constitute taxable interim use provided that the terms of the order in question call for the operation of the tangible personal property by the contractor and that operation is inconsistent with the holding of that property for resale.

However, if a contractor makes an interim use of tangible personal property held for resale to a government entity pursuant to an order, the use will constitute an exempt interim

use if the terms of the order in question call for the operation of the tangible personal property and that operation is consistent with the holding of that property for resale.

In most instances, the testing and approval of tangible personal property prior to its transfer to the government entity will constitute exempt interim use. Likewise, a sale that is contingent upon the demonstrated successful operation of tangible personal property purchased under the order will be exempt of the retail sales and use tax.

Example 14: Contractor A enters into a contract with a state government agency after July 1, 2006, to provide and maintain computer systems, including hardware and software to that agency. A task order issued pursuant to the contract requires Contractor A to design a software package to be distributed to the state government agency. Under the terms of the order, Contractor A must provide a training session for the duration of one week to government agency employees on the use of this computer software package. Employees of the government agency visit Contractor A's facilities for a "hands-on" training session, at which Contractor A uses the actual software it will send to the government agency. After training is completed, Contractor A repackages the software and ships it by common carrier to the government agency. Because Contractor A's use of the computers is integral to the sale of computer systems to the state government and because the use is consistent with the resale, the use is insufficient to destroy the resale status of the transaction. Contractor A has made an exempt "interim use" of the software, prior to shipping it to the government agency. Contractor A's purchase of the software is exempt.

Example 15: Contractor B enters into a contract with a state agency on January 1, 2007, to acquire and furnish equipment and materials that are elements and parts of a computerized Traffic Management System. The system would provide computerized highway surveillance and control for highways in the state of Virginia. Under the provisions of the contract, Contractor B is required to provide documentation and training services on the new system to the state agency's employees. A separate order requires that Contractor B provide computers as components of the system, and contains a provision providing that the sale of such computers to the state agency is contingent upon Contractor B's ability to demonstrate the successful operation of the computers for a two-year period. Because the sale is contingent upon the successful operation of the computers for a two-year period, such use constitutes exempt interim use, and the computers can be purchased exempt of the retail sales and use tax.

Example 16: Contractor C enters into a mixed contract with a state agency on January 1, 2007. Order 1 under the contract requires Contractor C to operate and maintain the state's Hazardous Waste Accumulation Facility. Order 2 of the contract requires Contractor C to provide containers to the state agency. Contractor C uses the containers to fulfill

another contract before passing the containers over to the state government. Contractor C's use of the containers to fulfill an outside contract, prior to passing these containers on to the state agency constitutes use that is inconsistent with the holding of that property for resale. This use is sufficient to destroy the resale status of the containers. Contractor C will be subject to tax on the purchase of these containers.

Example 17: Contractor D enters into a contract with a government entity to provide floor-cleaning services. The government entity issues an order to Contractor C for the purchase of mops and a separate task order for the provision of floor-cleaning services. Although Contractor C will use these mops to fulfill the service contract with the government entity, Contractor C's purchase of the mops under the individual order will be exempt from tax as a sale for resale. Contractor D's use of the mops does not constitute "taxable interim use" because this use was not directed under the individual order for the purchase of mops. Thus, Contractor D may purchase these mops exempt of the retail sales and use tax.

H. Real property contracts with government entities. If a contractor contracts with a governmental entity to perform construction or reconstruction with respect to real property, and in connection with this real property contract, agrees to furnish tangible personal property for use in real estate construction, the contractor shall be deemed to have purchased this tangible personal property for use and consumption and shall be liable for the sales and use tax on this tangible personal property.

Nothing in this regulation shall be construed to authorize the application of the true object test to real property contracts with government entities. A real property contractor is taxed on the cost price of any construction or installation supplies used or consumed in the performance of real property construction, installation or repair, regardless of whether the true object of the contract or order is for services or the sale of tangible personal property. Construction and installation supplies shall include, but not be limited to, structural steel, concrete, conduit, wiring, cabling, nuts, bolts, anchors, screws, nails, glue and other materials used or consumed by a government contractor in fulfilling a contract with any government entity. Nothing in this regulation shall be construed to exempt from the retail sales and use tax materials, equipment, or other tangible personal property purchased by a contractor for use in real property construction contracts with a government entity, regardless of whether title to such property passes directly to the government entity upon purchase by the contractor or if the contractor is reimbursed directly by the government entity for the cost of such property.

The modified application of the true object test to individual orders will not apply to contracts with a government entity to perform construction or reconstruction with respect to real

property. For more information on real property construction contracts with government entities, see 23VAC10-210-410.

## I. Subcontractor activities.

1. Generally. For purposes of this section, a subcontractor to a prime contractor with a government entity shall be granted the same tax treatment as the prime contractor when fulfilling its contractual obligations to the prime contractor. Thus, a subcontractor shall apply the true object test to the overall purpose of the subcontract, unless it contains individual orders that were executed on or after July 1, 2006, in which case the subcontractor must apply the true object test to each separate order to determine the tax application.

Example 18: General Contractor A enters into a contract with the federal government, under which General Contractor A will furnish, install and maintain a telecommunications system. General Contractor A furnishes the system and subcontracts with Subcontractor 1 to install the system and Subcontractor 2 to provide maintenance and repair services. Order 1 is issued to General Contractor A for the provision of the telecommunications system, Order 2 is issued to Subcontractor 1 to install the system and Orders 3 and 4 are issued to Subcontractor 2 to provide the maintenance and repair services. General Contractor A, Subcontractor 1 and Subcontractor 2 may apply the true object test to each separate order to determine the tax application of each separate order.

2. Subcontractor recordkeeping requirements. Every subcontractor under a subcontract that is in furtherance of a government contract will be required to maintain suitable records and documentation in order to accurately determine the true object of an order entered into in furtherance of a contract between a prime contractor and a government entity. If the subcontractor determines that the true object of an order is the provision of tangible personal property, the subcontractor must present an ST-10 resale exemption certificate in order to purchase the property exempt of the retail sales and use tax. Every subcontractor will be required to present an ST-10 resale exemption certificate for all such exempt transactions, regardless of how far removed the contractor is from the general contractor. If a prime contractor issues an order to a subcontractor in furtherance of a government contract, the prime contractor shall provide the subcontractor a task order number, a copy of the task order and the name of the government agency or other such documentation that would allow the subcontractor to prove that the order is in furtherance of a government contract.

Example 19: Contractor A enters into a contract with a state agency for the development of a computer system, which requires Contractor A to furnish computers to the

---

## Regulations

---

state agency. The state agency issues a task order for the provision of computers. The prime contractor issues a task order to Subcontractor 1, who issues a task order to Subcontractor 2 to provide the computers. Subcontractor 2 will be required to present the vendor with an ST-10 resale exemption certificate. Subcontractor 1 will be required to present an ST-10 resale exemption certificate to Subcontractor 2. The general contractor will be required to present Subcontractor 1 with an ST-10 resale exemption certificate. The state agency will be required to present to the prime contractor an ST-12 government exemption certificate.

J. Mixed invoices. In cases where a single vendor order or invoice for tangible personal property purchased by a government contractor includes items used in fulfilling two or more separate orders issued under a government contract, the government contractor shall determine the sales and use tax application based upon the true object of each of the two or more separate orders. Those items that will be used to fulfill the order for tangible personal property shall be deemed purchased pursuant to an order for tangible personal property and shall be exempt of the tax for resale. Those items that will be used to fulfill the order determined to be for the provision of services shall be deemed purchased pursuant to an order for the provision of services and shall be subject to the tax. Tax shall be paid on the cost price of items classified as items that are consumed in providing the services.

Example 20: Contractor E is under contract with a government entity that includes an order to supply 50 computer monitors to the government entity. The same contract contains a separate order requiring Contractor E to provide services to the government entity that require an additional 50 computer monitors for use by Contractor E. Contractor E purchases all 100 computer monitors from the same supplier under the same vendor order. The cost for the 50 monitors that will be supplied to the government will be exempt from the tax because the monitors are purchased pursuant to an order for which the true object is the provision of tangible personal property for resale. The remaining 50 computer monitors, to be used in providing services to the government entity under the contract will be fully taxable because they are purchased pursuant to an order for which the true object is the provision of a service. Contractor E should determine the total cost price of the 50 computer monitors based on the cost price of the monitors actually provided to the government entity in fulfillment of the service order.

K. Classified contracts. In cases where the true object of an order requires the review of a classified government contract, the department's authorized Classified Contract Agent will review the order to determine if the order is for the sale of tangible personal property or for the provision of services. In situations where it is impossible or infeasible to obtain a classified contract, the department may review other sources of information in determining the true object of the order;

however, the ultimate burden of proving that the true object of the transaction is the provision of tangible personal property or services rests with the contractor. Other sources of information may include, but are not limited to unclassified statements of work, redacted versions of classified contracts, or other source documents furnished by the government entity and the government contractor in determining the true object of the contract or orders.

L. Consumable goods. A contractor is taxed on the cost price of all office, cleaning, clothing and other supplies used or consumed by the contractor in the performance of any type of government contract, or after June 30, 2006, in the performance of any type of order with a government entity.

Example 21: Contractor A enters into a contract with the federal government to provide chemical analysis of certain water samples. Pencils, paper, and other office supplies to be used in performing the contract will constitute consumable goods and will be subject to sales tax.

M. Recordkeeping requirements of the contractor. Generally, the department will rely on the language used in each individual order to determine the true object of the transaction. In cases where the department is unable to determine the true object of an individual order, the department may consider other source documents to make its determination. Other documents may include, but are not limited to, the government agency's request for proposal, basic ordering agreements, chart of accounts, individual transactions performed under a separate order, and confirmation of either goods or services delivered. Despite the change in policy, the underlying contract should also be made available for review. It is the contractor's duty to retain suitable records and documentation in order to accurately determine the true object of an order entered into with government entities.

To determine whether a particular purchase was made to fulfill a particular order, the department shall rely on the normal books and records kept by the contractor in the ordinary course of its business. For example, if a contractor's books and records show that a purchase of property was charged to an account that identifies a specific order, those purchases should be deemed to be made to fulfill that order. The contractor may provide other information or documentation to identify the purchases that were made to fulfill that order, but shall not be required to produce any documentation not already kept by the contractor in the ordinary course of business. A particular purchase made by a contractor may be for resale even if the corresponding order does not expressly reference that specific purchase. The contractor is required to abide by the recordkeeping requirements set forth in 23VAC10-210-470.

N. Audit methodology. All government contractor audits will be conducted in accordance with audit procedures as established by the department, including but not limited to,

those procedures outlined in the department's Field Audit Procedure Manual.

**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

Combined Registration Application Form, Form R-1 (eff. 10/89).

Instructions for Completing Combined Registration, Form R-2 (eff. 10/89).

4½% Virginia Sales Tax Table (eff. 1/87).

Certificate of Registration, Form ST-4 (eff. 3/89).

Direct Payment Permit Sales and Use Tax Return, Form ST-6 (eff. 1/90).

Instructions for Form ST-6B, Form ST-6A (eff. 5/91).

Schedule of Local Sales and Use Taxes, Form ST-6B (eff. 9/88).

Consumer's Use Tax Return, Form ST-7 (eff. 4/91).

Consumer's Use Tax Return Worksheet, Form ST-7A (eff. 11/93).

Out-of-State Dealer's Use Tax Return, Form ST-8 (eff. 1/92).

Instructions for Preparing ST-8, Form ST-8A (eff. 5/94).

Dealer's Retail Sales & Use Tax Return, Form ST-9 (eff. 1/92).

Dealer's Worksheet for Computing State and Local Retail Sales & Use Tax, Form ST-9A (eff. 9/92).

Schedule of Local Taxes, Form ST-9B (eff. 7/90).

Sales and Use Tax Certificate of Exemption (For dealers who purchase tangible personal property for resale, lease or rental), Form ST-10 (eff. 4/88 rev. 10/99).

Sales and Use Tax Certificate of Exemption (For catalogs and other printed materials distributed outside of Virginia; property delivered to factor or agent for foreign export; advertising for placement in media; advertising supplements), Form ST-10A (eff. 3/86).

Sales and Use Tax Certificate of Exemption (For manufacturing, processing, refining, converting, mining, basic research and research and development in experimental or laboratory sense, or certified pollution control equipment; equipment, materials or supplies used in the production of a publication issued at least quarterly; high speed electrostatic duplicators; materials, containers, etc. for future used for packaging tangible personal property for shipment or sale.), Form ST-11 (eff. 6/94).

Sales and Use Tax Certificate of Exemption (For use by construction contractors and non-manufacturers when purchasing tangible personal property for usage directly in manufacturing products for sale or resale which are exempt from the tax; incorporation into real property in another state or foreign country which could be purchased free from the tax in such state or country; agricultural production, to be affixed to real property owned or leased by a farmer engaged in agricultural production for market.), Form ST-11A (eff. 6/94).

Sales and Use Tax Certificate of Exemption (For use by the Commonwealth of Virginia, a political subdivision of the Commonwealth of Virginia, or the United States.), Form ST-12.

Sales and Use Tax Certificate of Exemption (For use by certain nonprofit organizations that have been granted statutory exemption from the tax; medical and educational related.), Form ST-13 (eff. 6/94).

Sales and Use Tax Certificate of Exemption (For use by nonprofit churches), Form ST-13A (eff. 6/88).

Sales and Use Tax Certificate of Exemption (For use exclusively by an out-of-state dealer who purchases tangible personal property in VA for immediate transportation out of VA in his own vehicle for resale outside VA.), Form ST-14 (eff. 5/2/88).

Sales and Use Tax Certificate of Exemption (For use exclusively by an out-of-state dealer who purchases livestock in VA for immediate transportation out of VA for resale outside VA.), Form ST-14A (eff. 3/1/76).

Sales and Use Tax Certificate of Exemption (For use by individuals purchasing heating oil, artificial or propane gas, firewood or coal for domestic consumption.), Form ST-15 (eff. 9/81).

Sales and Use Tax Certificate of Exemption (For use by watermen who extract fish, bivalves, or crustaceans from waters for commercial purposes.), Form ST-16 (eff. 7/85).

Sales and Use Tax Certificate of Exemption (For use by harvesters of forest products.), Form ST-17 (eff. 6/94).

Sales and Use Tax Certificate of Exemption (For use by farmers engaged in agricultural production), Form ST-18 (eff. 5/94).

Sales and Use Tax Certificate of Exemption (For use by shipping lines engaged in interstate or foreign commerce, and by shipbuilding companies engaged in building, converting or repairing ships or vessel.), Form ST-19.

Sales and Use Tax Certificate of Exemption (For use by public service corporations, commercial radio, and television companies, cable television systems, taxicab operators and certain airlines.), Form ST-20 (eff. 3/89).

---

# Regulations

---

Sales and Use Tax Direct Payment Permit, Form ST-21 (eff. 2/94).

Virginia Consumers Use Tax Return for Individuals, Form CU-7 (eff. 9/93).

Dealer's Application for Certificate of Registration for Sales through Vending Machines, Form VM-1 (eff. 1/91).

Vending Machine Dealer's Return, Form VM-2 (eff. 9/89).

Dealer's Worksheet for Computing Tax on Sales Through Vending Machines, Form VM-2A (eff. 4/93).

Schedule of Local Vending Machine Sales Tax, Form VM-2B (eff. 9/89).

Form ST-10

**COMMONWEALTH OF VIRGINIA  
SALES AND USE TAX CERTIFICATE OF EXEMPTION**

**(For use by a Virginia dealer who purchases tangible personal property for resale,  
or for lease or rental, or who purchases materials or containers  
to package tangible personal property for sale)**

To: \_\_\_\_\_ Date \_\_\_\_\_  
(Name of supplier)

\_\_\_\_\_  
(Number and street or rural route) (City, town, or post office) (State) (ZIP Code)

The Virginia Retail Sales and Use Tax Act provides that the Virginia Sales and use tax shall not apply to tangible personal property purchased for resale; that such tax shall not apply to tangible personal property purchased for future use by a person for taxable lease or rental as an established business or part of an established business, or incidental or germane to such business, including a simultaneous purchase and taxable leaseback. The Act provides also that such tax shall not apply to packaging materials such as containers, labels, sacks, cans, boxes, drums or bags if the materials are marketed with a product being sold and become the property of the purchaser.

This Certificate of Exemption may not be used by a using or consuming construction contractor as defined in the Regulations.

The undersigned dealer hereby certifies that all tangible personal property purchased from the above named supplier on and after this date will be purchased for the purpose indicated below, unless otherwise specified on each order, and that this Certificate shall remain in effect until revoked in writing by the Department of Taxation. (Check proper box below.)

- 1. Tangible personal property for RESALE only.
- 2. Tangible personal property for future use by a person for taxable LEASE OR RENTAL as an established business, or part of an established business, or incidental or germane to such business, or a simultaneous purchase and taxable leaseback.
- 3. Packaging materials such as containers, labels, sacks, cans, boxes, drums or bags that are marketed with a product being sold and become the property of the purchaser.

Name of Dealer \_\_\_\_\_ **Certificate of  
Registration No.** \_\_\_\_\_

Trading as \_\_\_\_\_

Address \_\_\_\_\_  
(Number and street or rural route) (City, town, or post office) (State) (ZIP Code)

Kind of business engaged in by dealer \_\_\_\_\_

I certify that I am authorized to sign this Certificate of Exemption and that, to the best of my knowledge and belief, it is true and correct, made in good faith, pursuant to the Virginia Retail Sales and Use Tax Act.

By \_\_\_\_\_ (Signature) \_\_\_\_\_ (Title)

(If the dealer is a corporation, an officer of the corporation or other person authorized to sign on behalf of the corporation must sign; if a partnership, one partner must sign; if an unincorporated association, a member must sign; if a sole proprietorship, the proprietor must sign.)

*Information for supplier*—A supplier is required to have on file only one Certificate of Exemption properly executed by the dealer who buys tax exempt tangible personal property for the purpose indicated hereon.

Virginia Department of Taxation  
(REV. 10/99)

---

# Regulations

---

## Fast-Track Regulation

**Title of Regulation: 23VAC10-500. Business, Professional and Occupational License Tax Regulations (adding 23VAC10-500-10 through 23VAC10-500-820).**

**Statutory Authority:** §58.1-3701 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Public Comments:** Public comments may be submitted until 5 p.m. on September 19, 2008.

**Effective Date:** October 6, 2008.

**Agency Contact:** Joe Mayer, Lead Analyst, Department of Taxation, P.O. Box 27185, Richmond, VA 23261-7185, telephone (804) 371-2299, FAX (804) 371-2355, or email joseph.mayer@tax.virginia.gov.

**Basis:** Section 58.1-3701 of the Code of Virginia mandates that the department issue guidelines for the BPOL tax and update the guidelines triennially. Section 58.1-3701 of the Code of Virginia provides that "(a)fter July 1, 2001, the guidelines shall be subject to the Administrative Process Act." As the BPOL guidelines were last updated January 1, 2000, the authority for the current regulatory action is mandatory.

**Purpose:** Government must have predictable and adequate revenue to provide for the health, safety and welfare of its citizens. Tax regulations enhance customer service and voluntary compliance. The interpretations, examples, and other guidance in tax regulations ensure uniform application of the tax laws to taxpayers. Business taxpayers in particular find regulations essential in predicting the tax consequences of transactions and avoiding unanticipated tax assessments as the result of audits. Tax regulations also ensure that audits and other compliance activity cause the assessment and collection of the correct amount of tax.

Given the voluminous nature of the guidelines, the department is not attempting in this regulatory action to address the policy developed in the hundreds of BPOL ruling letters and advisory opinions issued by the department in the last decade. The department will, where appropriate, amend the BPOL regulation to incorporate these policies in subsequent regulatory actions.

**Rationale for Using Fast-Track Process:** The promulgation of the new BPOL regulation is necessary to comply with the mandate of §58.1-3701 of the Code of Virginia that the department issue guidelines for the BPOL tax, update the guidelines triennially and after July 1, 2001, the guidelines be subject to the Administrative Process Act (APA) (§2.2-4000 et seq. of the Code of Virginia).

To date, the department has fulfilled this mandate by issuing BPOL guidelines on July 1, 1995, January 1, 1997, and

January 1, 2000. Although §58.1-3701 of the Code of Virginia provides that BPOL guidelines issued prior to July 1, 2001, are not subject to the Administrative Process Act (APA), the department was required to "cooperate with and seek the counsel of local officials and interested groups and . . . not promulgate such guidelines without first conducting a public hearing." The department complied with this requirement by holding public hearings and consulting with working groups composed of representatives from local governments and businesses each time it revised the guidelines. As a result, taxpayers, tax practitioners and local government officials have become very familiar with the guidelines and have accepted the guidelines as established policy. Moreover, §58.1-3701 of the Code of Virginia provides that after July 1, 2001, the guidelines shall be accorded the weight of a regulation under §58.1-205 of the Code of Virginia.

As the revisions to the 2000 BPOL guidelines set forth in this regulatory action are limited to those necessary to conform to legislative changes and to changes in style or form or corrections of technical errors, they would qualify for exemption from the APA and the Virginia Register Act (§2.2-4100 et seq. of the Code of Virginia) under §2.2-4006 A 3 and 4 if the 2000 BPOL guidelines had been promulgated in accordance with the APA and the Virginia Register Act. As the BPOL guidelines are currently accorded the weight of a regulation and because the revisions to the 2000 BPOL guidelines set forth in this regulatory action are the type of changes that would qualify for exemption from the APA and the Virginia Register Act if they were made to an existing regulation, the department expects this regulatory action to be noncontroversial and is thus using the fast-track process.

**Substance:** The proposed BPOL regulation is based on the 2000 BPOL guidelines.

The vast majority of the amendments are nonsubstantive changes in style or form required by the Form, Style and Procedure Manual for Publication of Virginia Regulations (the manual) issued by the Virginia Code Commission. Additionally, other nonsubstantive changes in style or form were made to enhance readability. Virtually all of these amendments are self-evident. However, where necessary, an explanation is provided below the regulation. Examples of nonsubstantive changes in style or form include the following:

1. The regulation numbering scheme has been adopted.
2. Usage and grammar has been conformed to the requirements of the manual.
3. Definitional sections have been consolidated into 23VAC10-500-10.
4. Citations have been conformed to the requirements of the manual.

5. Text contained in the footnotes of the guidelines has been moved into the body of the regulations.

6. The guidelines' appendices have been incorporated into the text:

a. Appendix A has been moved to 23VAC10-500-10 and 23VAC10-500-60.

b. Appendix B has been moved to 23VAC10-500-520.

c. The first paragraph of Appendix D is now located in subsection B of 23VAC10-500-20. The second paragraph of Appendix D is now located in 23VAC10-500-50. The definitions of "nonprofit organization" and "charitable nonprofit organization" formerly located in Appendix D are now located in 23VAC10-500-10. The remainder of Appendix D is now located in 23VAC10-500-50.

Additionally, the guidelines have been amended to reference changes in Virginia statutory law. As the amendments simply highlight rather than interpret the legislative changes, no agency discretion was involved.

Certain materials published with the 2000 BPOL guidelines have been omitted from the regulations because these materials do not meet the definition of a "regulation." Section 2.2-4001 of the Code of Virginia provides that "regulation" means any statement of general application, having the force of law, affecting the rights or conduct of any person, adopted by an agency in accordance with the authority conferred on it by applicable basic laws (emphasis added)." On this basis, the following items have been omitted from the BPOL regulations:

1. Commissioner's transmittal letter (the first page of the 2000 BPOL guidelines).

2. Table of Contents (pages i and ii of the 2000 BPOL guidelines).

3. Introduction: A Brief History of the BPOL Tax (pages iii and iv of the 2000 BPOL Guidelines). This material was historical in nature.

4. Comment Boxes (located throughout the guidelines). This material consisted of annotations, which do not have the force of law.

5. "Appendix E: Public Documents" (pages 79 through 81 of the 2000 BPOL guidelines). This material consisted of an index, which does not have the force of law.

6. "Appendix F: BPOL Related Attorney General Opinions by Subject Matter in Chronological Sequence" (page 82 of the 2000 BPOL guidelines). This material consisted of an index, which does not have the force of law.

Certain materials that provide an overview or history of the BPOL laws have been omitted because they cannot fairly be considered to have the force of law. Additionally, these

materials simply repeat text found throughout the guidelines and their deletion may be considered a change in style or form exempt from the regulatory process under §2.2-4006 A 3 of the Code of Virginia. On these bases, the following items have been omitted from the BPOL regulations:

1. "Applicability and Operation of the BPOL Tax" chart.

2. BPOL Appeal Process Diagram Chart (page 50 of the 2000 BPOL guidelines).

3. "Appendix C: Legislative and Administrative History of the Tax" (pages 73 through 76 of the 2000 BPOL guidelines).

Issues: The primary advantage of this regulatory action to taxpayers, tax practitioners, local governments and the department is that the BPOL guidelines will be updated to reflect legislative changes effective since the last time the guidelines were updated on January 1, 2000. Additionally, this regulatory action will bring the department in compliance with the mandate of §58.1-3701 of the Code of Virginia that it update the BPOL guidelines triennially.

Otherwise, as the BPOL regulation is based on the 2000 BPOL guidelines, which are currently accorded the weight of a regulation by §58.1-3701 of the Code of Virginia, this regulatory action would have no advantages or disadvantages to the public, the department or the Commonwealth.

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

Summary of the Proposed Regulation. The Department of Taxation (Department) proposes to revise the existing Guidelines for Business, Professional and Occupational License Tax (Guidelines) and promulgate the Regulations for Business, Professional and Occupational License (BPOL) Tax based on the Guidelines. The current Guidelines were issued on January 1, 2000. According to §58.1-3701 of the Code of Virginia (Code), the Guidelines have been subject to the Administrative Process Act and accorded the weight of a regulation since July 1, 2001. Revisions to the 2000 Guidelines include incorporation of statutory changes subsequent to January 1, 2000, changes in style or form to enhance readability or as required by the Virginia Register Form, Style, and Procedure Manual (Manual), omission of non-necessary language, and corrections of technical errors.

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

Estimated Economic Impact. The Department proposes to revise the current Guidelines for BPOL Tax and promulgate the Regulations for BPOL Tax based on the Guidelines. Section 58.1-3701 of the Code of Virginia states that after July 1, 2001, the guidelines shall be subject to the Administrative Process Act and accorded the weight of a

---

# Regulations

---

regulation under §58.1-205. The Guidelines were last updated on January 1, 2000.

The Department proposes to incorporate the statutory changes that occurred after January 1, 2000, into the proposed regulations. These revisions will simply quote the language in the Code or provide references to the Code. Since the statutory changes are already in effect, and since the Code applies whenever there is a conflict between the Code and the regulations, these proposed revisions will likely not have any impact on the regulated community except enhancing the clarity of the regulations.

Examples of these revisions include:

1. Total assessments paid by condominium unit owners for common expenses will be exempt from the BPOL tax as provided by Chapter 303 of the 2002 Acts of Assembly.
2. Real estate brokers and agents will be allowed to claim exclusions for certain gross receipts as provided by Chapter 532 of the 2002 Acts of Assembly.
3. When the Department of Mines, Minerals and Energy (DMME) determines that the weekly U.S. retail gasoline price has increased by 20% or more in one week, and does not fall below that rate for 28 days, the gross receipts taxes on fuel sales of a gas retailer made in the following licensing year shall not exceed 110% of the gross receipt taxes on fuel sales made in the license year of the increase, as stated in Chapter 763 of the 2006 Acts of Assembly.
4. The license application due date will be changed from March 1 to the due date adopted by the localities, since Chapter 119 and Chapter 181 of the 2006 Acts of Assembly authorized localities to establish a license application due date between March 1 and May 1 no later than the 2007 license year.
5. Changes will be made to the review process and appeals process regarding local license and local business taxes as required by Chapter 364 of the 2002 Acts of Assembly and Chapter 927 of the 2005 Acts of Assembly.

The Department also proposes to make changes in style or form to enhance readability or as required by the Manual. Non-necessary language will be omitted and technical errors will be corrected. These proposed changes will improve the clarity of the regulation and will likely reduce the possibility of confusion.

**Businesses and Entities Affected.** Since the proposed promulgation of these regulations does not effectively change any requirements, no businesses or other entities are significantly affected.

**Localities Particularly Affected.** According to the Department, approximately 39 cities, 120 towns, and 45 counties impose some form of business license tax or fee. Since the proposed promulgation of these regulations does not effectively change any requirements, no localities are particularly affected.

**Projected Impact on Employment.** Since the proposed promulgation of these regulations does not effectively change any requirements, the proposed regulations will likely not have any impact on employment.

**Effects on the Use and Value of Private Property.** Since the proposed promulgation of these regulations does not effectively change any requirements, the proposed regulations will likely not have any impact on the use and value of private property.

**Small Businesses: Costs and Other Effects.** The proposed promulgation of these regulations will not adversely affect small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed promulgation of these regulations will not adversely affect small businesses.

**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 agrees with the Department of Planning and Budget's economic impact analysis.

Summary:

*The proposed amendments revise the existing Guidelines for Business, Professional and Occupational License Tax (guidelines) and promulgate the Regulations for Business, Professional and Occupational License (BPOL) Tax based on the guidelines. The current guidelines were issued on January 1, 2000. According to §58.1-3701 of the Code of Virginia, the guidelines have been subject to the Administrative Process Act and accorded the weight of a regulation since July 1, 2001. Revisions to the 2000 guidelines include incorporation of statutory changes subsequent to January 1, 2000, changes in style or form to enhance readability or as required by the Virginia Register Form, Style, and Procedure Manual, omission of unnecessary language, and corrections of technical errors.*

CHAPTER 500  
BUSINESS, PROFESSIONAL AND OCCUPATIONAL  
LICENSE TAX REGULATIONS

**23VAC10-500-10. Definitions.**

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

"Affiliated group" means:

1. One or more chains of corporations subject to inclusion connected through stock ownership with a common parent corporation that is a corporation subject to inclusion if:

a. Stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of each of the corporations subject to inclusion, except the common parent corporation, is owned directly by one or more of the other corporations subject to inclusion; and

b. The common parent corporation directly owns stock possessing at least 80% of the voting power of all classes of stock and at least 80% of each class of the nonvoting stock of at least one of the other corporations subject to inclusion. As used in this subdivision, the term "stock" does not include nonvoting stock that is limited and preferred as to dividends; the phrase "corporation subject to inclusion" means any corporation within the affiliated group irrespective of the state or country of its incorporation; and the term "receipts" includes gross receipts and gross income.

2. Two or more corporations if five or fewer persons who are individuals, estates, or trusts own stock possessing:

a. At least 80% of the total combined voting power of all classes of stock entitled to vote or at least 80% of the total value of shares of all classes of the stock of each corporation; and

b. More than 50% of the total combined voting power of all classes of stock entitled to vote or more than 50% of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

3. When one or more of the corporations subject to inclusion, including the common parent corporation, is a nonstock corporation, the term "stock" as used in this definition shall refer to the nonstock corporation membership or membership voting rights, as is appropriate to the context.

4. Two or more entities if such entities satisfy the requirements in this definition as if they were corporations and the ownership interests therein were stock (See 23VAC10-500-50).

"Amount in dispute," when used with respect to taxes due or assessed, means the amount specifically identified in the application for review, the appeal to the Tax Commissioner, or the appeal to the circuit court as disputed by the party filing such appeal (See 23VAC10-500-660 through 23VAC10-500-820).

"Ancillary" means subordinate to, subservient to, auxiliary to, or in aid of, that which is principal and primary (See 23VAC10-500-110).

"Appealable event" means an increase in the assessment of a local license tax payable by a taxpayer, the denial of a refund, or the assessment of a local license tax where none previously was assessed, arising out of the local assessing official's:

1. Examination of records, financial statements, books of account or other information for the purpose of determining the correctness of an assessment;

2. Determination regarding the rate or classification applicable to the licensable business;

3. Assessment of a local license tax when no return has been filed by the taxpayer; or

4. Denial of an application for correction of erroneous assessment attendant to the filing of an amended application for license (See 23VAC10-500-660 through 23VAC10-500-820).

"Appeal to the circuit court" means an application by a taxpayer to the appropriate circuit court for review of a local license tax assessment pursuant to §58.1-3984 of the Code of Virginia or an application by a taxpayer or a local assessing officer to the appropriate circuit court for review of the Tax Commissioner's determination, or any part thereof, pursuant to §§58.1-3703.1 A 7 and 58.1-3984 of the Code of Virginia (23VAC10-500-660 through 23VAC10-500-820).

---

# Regulations

---

"Appeal to the Tax Commissioner" means a taxpayer's application filed with the Tax Commissioner pursuant to §58.1-3703.1 A 5 c of the Code of Virginia (23VAC10-500-660 through 23VAC10-500-820).

"Application for review" means a taxpayer's written request filed with a local assessing officer for review of an assessment resulting from an appealable event made pursuant to §58.1-3703.1 A 5 a of the Code of Virginia (23VAC10-500-660 through 23VAC10-500-820).

"Apportionment" means the division of the volume of business done between taxing jurisdictions within which the business' income or purchases are generated (23VAC10-500-210).

"Assessment" means a determination as to the proper rate of tax, the measure to which the tax rate is applied, and ultimately the amount of tax, including additional or omitted tax, that is due. An assessment shall include a written assessment made pursuant to notice by the assessing official or a self-assessment made by a taxpayer upon the filing of a return (23VAC10-500-580).

"Audit" means an examination of records, financial statements, books of accounts, and other information to evaluate the correctness of a local license tax. An audit shall include, but is not limited to, an examination to determine the correctness of a classification of a licensable business, examinations resulting in adjustments made to gross receipts, tax, and other information contained in the taxpayer's return, and examinations resulting in the imposition of a local license tax when no return has been filed. An audit assessment is not a statutory assessment, a self-assessment, or an assessment resulting from the correction of mathematical errors. However, if an examination of records or other information takes place in conjunction with the above, the assessment may be appealable as an audit assessment (23VAC10-500-600).

"Base year" means the calendar year preceding the license year, except for contractors subject to the provisions of §58.1-3715 of the Code of Virginia. The local ordinance may provide for a different period for measuring the gross receipts of a business in the following situations: (i) for beginning businesses or (ii) to allow an option to use the same fiscal year as for federal income tax purposes.

"Business" means a course of dealing that requires the time, attention and labor of the person so engaged for the purpose of earning a livelihood or profit. It implies a continuous and regular course of dealing, rather than an irregular or isolated transaction. A person may be engaged in more than one business. If a person (i) advertises or otherwise holds himself out to the public as being engaged in a particular business or (ii) files tax returns, schedules and documents that are required only of persons engaged in a trade or business, he is

presumed to be engaged in business. However, a person may present evidence to overcome this presumption.

"Charitable nonprofit organization" means an organization that is described in §501(c)(3) of the Internal Revenue Code (26 USC §501(c)(3) and to which contributions are deductible by the contributor under §170 of the Internal Revenue Code (26 USC §170), except that educational institutions are limited to schools, colleges and other similar institutions of learning. To the extent that a charitable nonprofit organization is required to report income that is in fact "unrelated business taxable income" for federal income tax purposes under §511 et seq. of the Internal Revenue Code (26 USC §511 et seq.), such organization may be presumed to have gross receipts from an activity which, depending on the applicable classification, is licensable for BPOL purposes. The fact that a charitable nonprofit organization does not report any unrelated business taxable income for federal income tax purposes would not prevent the locality from requiring a license for the business activity; however, local officials may only determine whether a charitable nonprofit organization has unrelated taxable business income pursuant to §511 et seq. of the Internal Revenue Code (26 USC §511 et seq.) (23VAC10-500-40).

"Collection activity" means the use of any means, direct or indirect, to obtain payment of an assessment (23VAC10-500-660 through 23VAC10-500-820).

"Date of the assessment" means the date when a written notice of assessment is delivered to the taxpayer by the assessing officer or an employee of the assessing officer, or mailed to the taxpayer at the taxpayer's last known address. Self-assessments shall be deemed made as of the date a return is filed, or if no return is required, when the tax is paid.

"Definite place of business" means an office or a location at which occurs a regular and continuous course of dealing where one holds one's self out or avails one's self to the public for 30 consecutive days or more, exclusive of holidays and weekends. A definite place of business for a person engaged in business may include a location leased or otherwise obtained from another person on a temporary or seasonal basis and real property leased to another. A person's residence shall be deemed to be a definite place of business if there is no definite place of business maintained elsewhere and the person is not subject to licensure as a peddler or itinerant merchant (23VAC10-500-30).

"Entity" means a business organization, other than a sole proprietorship, that is a corporation, limited liability company, limited partnership, or limited liability partnership duly organized under the laws of the Commonwealth or another state (23VAC10-500-50).

"Filed" means the date a document is postmarked for first class delivery via United States Postal Service or when it is

received if any other method of delivery, including facsimile transmissions, is utilized.

"Final Local Determination" means a writing setting out the local assessing officer's final determination on a taxpayer's Application for Review, including facts and legal authority in support of the local assessing officer's position on each issue raised by the taxpayer (23VAC10-500-800).

"Financial services" means the buying, selling, handling, managing, and investing money, credit, securities, or other investments for others, as well as providing advice to others on such matters.

"Frivolous" means a finding, based upon specific facts, that the party asserting the appeal is unlikely to prevail upon the merits because the appeal is (i) not well grounded in fact; (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (iii) interposed for an improper purpose, such as to harass, to cause unnecessary delay in the payment of tax or a refund, or to create needless cost from the litigation; or (iv) otherwise frivolous (23VAC10-500-660 through 23VAC10-500-820).

"Fuel sale" or "fuel sales" shall mean retail sales of alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in §58.1-2201 of the Code of Virginia (23VAC10-500-100).

"Gas retailer" means a person or entity engaged in business as a retailer offering to sell at retail on a daily basis alternative fuel, blended fuel, diesel fuel, gasohol, or gasoline, as such terms are defined in §58.1-2201 of the Code of Virginia (23VAC10-500-100).

"Gross receipts" means the whole, entire, total receipts, of money or other consideration received by the taxpayer as a result of transactions with others besides himself and that are derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business, without deduction or exclusion except as provided by law. (23VAC10-500-70 and 23VAC10-500-90 for examples of items excluded from the definition of gross receipts).

"Jeopardized by delay" includes a finding, based upon specific facts, that the application is frivolous or that a taxpayer designs to (i) depart quickly from the locality, (ii) remove his property therefrom, (iii) conceal himself or his property within the locality, or (iv) do any other act tending to prejudice, or to render wholly or partially ineffectual, proceedings to collect the tax for the period in question (23VAC10-500-680 and 23VAC10-500-811).

"License year" means the calendar year for which a license is issued for the privilege of engaging in business.

"Local assessing officer" means the Commissioner of Revenue or chief assessing officer or his designee.

"Local officer responsible for collection activity" means the treasurer or other local officer responsible for collection activity, or his designee.

"Nonprofit organization" means an organization, other than a "charitable nonprofit organization," which is exempt from federal income tax under §501 of the Internal Revenue Code (26 USC §501). Activities conducted for consideration that are similar to activities that are conducted for consideration by for-profit businesses may be presumed to be activities that are subject to licensure. For example, a lunch counter operated by an organization open to members only, the proceeds from which are used to maintain the organization, may be subject to local license tax. In any case, gifts, contributions, and membership dues of nonprofit organizations would not be taxable gross receipts from the conduct of a business, nor could a locality impose a license fee on activities giving rise to such funds (23VAC10-500-40).

"Notice of intent to appeal" means the taxpayer's written statement filed with the local assessing officer that informs the local assessing officer of the taxpayer's intent to file an Application for Review. It also means the taxpayer's written statement filed with the local assessing officer and the Tax Commissioner informing of the taxpayer's intent to file an appeal to the Tax Commissioner (23VAC10-500-660 through 23VAC10-500-820).

"Professional services" means services performed by those practicing the professions as listed in 23VAC10-500-450. The word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit.

"Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. (23VAC10-500-340 for the application of purchases to the classification of wholesale merchants.)

"Real estate services" means providing a service for others with respect to the purchase, sale, lease, rental, or appraisal of real property.

"Retail sale" means a sale of goods, wares and merchandise for use or consumption by the purchaser or for any purpose other than resale by the purchaser, but does not include sales at wholesale to institutional, commercial, industrial, and governmental users that are classified as wholesale sales.

"Sales solicitation" is the act or acts directly related to selling particular items or goods to a particular person. See 23VAC10-500-170 for a discussion of situs of gross receipts of retailers and wholesalers (for wholesalers taxable on purchases, see 23VAC10-500-180). Sales solicitation does not include nonsolicitation activities prior or subsequent to sales solicitation activities.

---

# Regulations

---

"Services" mean things purchased by a customer that do not have physical characteristics, or that are not goods, wares, or merchandise. Specific types of services are defined further in the BPOL law. See, for example, the definitions of "financial services" and "professional services" in §58.1-3700.1 of the Code of Virginia.

"Situs of gross receipts" means the definite place of business that generated taxable gross receipts. If activities are conducted outside a definite place of business, gross receipts are taxable at the definite place of business where these activities are initiated, controlled or directed (23VAC10-500-150).

"Tax Commissioner" means the chief executive officer of the Department of Taxation, or his delegate, authorized pursuant to §58.1-3703.1 A 5 c of the Code of Virginia to issue a final determination on an appeal.

"Taxpayer" means a person, corporation, partnership, unincorporated association, or other business or representative thereof subject to a local license tax.

"Tax Year" means the same as license year, or the calendar year in which a license is issued.

"Volume" means gross receipts, sales, purchases, or other base for measuring a license tax which is related to the amount of business done.

"Wholesale sale" means a sale of goods, wares and merchandise for resale by the purchaser, including sales when the goods, wares and merchandise will be incorporated into goods for sale, and also includes sales to institutional, commercial, industrial, and governmental users which, because of the facts and circumstances surrounding the sales, such as the quantity, price, or other terms, indicate that they are consistent with sales at wholesale.

## **23VAC10-500-20. Authority to impose license tax.**

A. Section 58.1-3703 of the Code of Virginia authorizes localities to enact an ordinance levying a local license (BPOL) tax or a fee, or both for issuing a license. Every ordinance adopted or maintained by a locality that levies a license tax is required to be substantially similar to the provisions in §58.1-3703.1 of the Code of Virginia. Further, §§58.1-3703 and 58.1-3706 of the Code of Virginia set statutory maximums for license rates and fees. Localities may choose not to require a license or impose fees, or localities may assess rates and fees that are less than the maximums stated in the statute.

B. Localities may levy license taxes at rates above the statutory maximum only if subject to the "rollback" provisions of §58.1-3706 B of the Code of Virginia. Any locality that had, on January 1, 1978, a license tax rate for any of the categories listed in §58.1-3706 A of the Code of Virginia that is higher than the maximum prescribed in §58.1-3706 A of the Code of Virginia, may maintain a higher rate in

such category, but no higher than the rate applicable on January 1, 1978, subject to the following conditions: (i) a locality may not increase a rate on any category that is at or above the maximum prescribed for such category in §58.1-3706 A of the Code of Virginia; (ii) if a locality increases the rate on a category that is below the maximum, it shall apply all revenue generated by such increase to reduce the rate on a category or categories that are above such maximum; and (iii) a locality shall lower rates on categories that are above the maximums prescribed in §58.1-3706 A of the Code of Virginia for any tax year after 1982 if it receives more revenue in tax year 1981, or any tax year thereafter, than the revenue base for such year. The revenue base for tax year 1981 shall be the amount of revenue received from all categories in tax year 1980, plus one-third of the amount, if any, by which such revenue received in tax year 1981 exceeds the revenue received for tax year 1980. The revenue base for each tax year after 1981 shall be the revenue base of the preceding tax year plus one-third of the increase in the revenues of the subsequent tax year over the revenue base of the preceding tax year. If in any tax year the amount of revenues received from all categories exceeds the revenue base for such year, the rates shall be adjusted as follows: the revenues of those categories with rates at or below the maximum shall be subtracted from the revenue base for such year. The resulting amount shall be allocated to the category or categories with rates above the maximum in a manner determined by the locality, and divided by the gross receipts of such category for the tax year. The resulting rate or rates shall be applicable to such category or categories for the second tax year following the year whose revenue was used to make the calculation.

C. While localities must follow the exemptions, rates, classifications and thresholds as set forth in Chapter 37 (§58.1-3700 et seq.) of Title 58.1 of the Code of Virginia, their local ordinances may:

1. Set tax rates at levels lower than those authorized by state law, or select the classifications to tax or not tax;
2. Establish subclassifications within the classifications set out in state law and provide for different rates or exemptions for such subclassifications, as long as no rate exceeds the maximum permitted by state law;
3. Establish graduated tax rates for any classification or subclassification so that the rate increases or decreases with volume, as long as no rate exceeds the statutory maximum for the classification under state law; and
4. Establish a threshold amount of gross receipts below which no tax will be imposed, or a maximum tax for any classification.

D. Localities may establish classifications and subclassifications based upon reasonable distinctions in municipal policy, and through the establishment of

classifications and subclassifications, localities may choose to exempt certain categories of taxpayers.

E. Section 58.1-3704 of the Code of Virginia provides that no locality shall be required to impose either a license tax on merchants or a tax on the capital of merchants.

**23VAC10-500-30. Activities subject to license taxation.**

Where a Virginia locality has adopted a BPOL ordinance that requires a license, every person engaged in a licensable activity at a definite place of business in such locality must apply for a license. Whether or not a particular activity is in fact subject to license taxation depends upon the local ordinance. What constitutes a definite place of business is discussed in 23VAC10-500-10. See Uniform Ordinance provisions, §58.1-3703.1 of the Code of Virginia. Where a locality has adopted a BPOL ordinance requiring a license, a license is also required if a person has no definite place of business in a particular locality in Virginia but the person operates amusement machines in a locality or is classified as an itinerant merchant, peddler, carnival, circus, contractor subject to §58.1-3715 of the Code of Virginia, or a public service corporation as defined in §58.1-3731 of the Code of Virginia.

**23VAC10-500-40. Exemptions from the BPOL tax.**

A. Section 58.1-3703 C of the Code of Virginia prohibits local taxation of certain privileges that would otherwise be taxable. Those privileges are detailed in §58.1-3703 C of the Code of Virginia. Localities may not impose a license tax or fee on certain persons and privileges that include, but are not limited to, the following:

1. Certain public service corporations and motor carriers, common carriers, and other carriers of passengers or property formerly certified by the Interstate Commerce Commission or presently registered for insurance purposes with the Surface Transportation Board of the United States Department of Transportation, Federal Highway Administration;
2. The privilege of selling farm or domestic products or nursery products, or the planting of nursery products, as an incident to the sale thereof, outside of the regular market houses and sheds of such county, city or town, provided such products are grown or produced by the person offering them for sale;
3. The privilege of printing or publishing any newspaper, magazine, newsletter or other publication issued daily or regularly at average intervals not exceeding three months, provided the publication's subscription sales are exempt from state sales tax, or the privilege or right of operating or conducting any radio or television broadcasting station or service;

4. Manufacturers for the privilege of manufacturing and selling goods, wares and merchandise at wholesale at the place of manufacture;

5. Persons severing minerals from the earth for the privilege of selling the severed mineral at wholesale at the place of severance, except as provided in §§58.1-3712 and 58.1-3713 of the Code of Virginia;

6. A wholesaler for the privilege of selling goods, wares and merchandise to other persons for resale unless such wholesaler has a definite place of business or store in such county, city or town;

7. The privilege of renting, as the owner of such property, real property (except in certain grandfathered localities) other than hotels, motels, motor lodges, auto courts, tourist courts, travel trailer parks, lodging houses, rooming houses and boardinghouses;

8. Certain transactions of an entity that is a member of an affiliated group of entities with other members of the same affiliated group (See 23VAC10-500-10 and 23VAC10-500-50);

9. Any insurance company subject to taxation under Chapter 25 (§58.1-2500 et seq.) of Title 58.1 of the Code of Virginia or on any agent of such company;

10. Any bank or trust company subject to taxation under Chapter 12 (§58.1-1200 et seq.) of Title 58.1 of the Code of Virginia;

11. Certain nonprofit and charitable nonprofit organizations, which are defined separately in 23VAC10-500-10. As the kinds and sources of funds flowing to either nonprofit or charitable nonprofit organizations are different for purposes of the exemption from the BPOL tax;

12. Any venture capital fund or other investment fund, except commissions and fees of such funds;

13. On total assessments paid by condominium unit owners for common expenses; and

14. On or measured by receipts of a qualifying transportation facility directly or indirectly owned or title to which is held by the Commonwealth or any political subdivision thereof or by the United States as described in §58.1-3606.1 of the Code of Virginia and developed and/or operated pursuant to a concession under the Public-Private Transportation Act of 1995 (§56-556 et seq. of the Code of Virginia) or similar federal law.

B. See also, e.g., §§58.1-3703 B, 58.1-3712 through 58.1-3713.4, 58.1-3717 through 58.1-3721, and 58.1-3724 through 58.1-3730 of the Code of Virginia, which discuss specific types of businesses that are exempt from the local license tax. See also §§58.1-3714, 58.1-3715, and 58.1-3716 of the Code of Virginia. Also §58.1-3731 of the Code of Virginia

---

# Regulations

---

discusses BPOL taxes on specific types of public service companies.

## **23VAC10-500-50. Exemption for affiliated groups.**

A. An affiliated group is composed of two or more corporations or chains of corporations. An affiliated group may be composed of two or more other types of entities if such entities satisfy the requirements to be an affiliated group as if they were corporations and the ownership interests therein were stock. The terms "entity" and "affiliated group" are defined in 23VAC10-500-10. The filing of a consolidated income tax return is presumptive of an affiliated group, but not conclusive.

B. No locality shall impose a license fee or levy a license tax on gross receipts or purchases derived from transactions that occur between members of the affiliated group. Affiliated corporations are not exempt from the license tax or fee from gross receipts or purchases conducted with nonaffiliated entities. Localities may also levy a wholesale license tax on an affiliated corporation for sales to nonaffiliated entities, even if the tax would be based on purchases from an affiliated corporation. Sales by the affiliated corporation to a nonaffiliated entity means sales by the affiliated corporation to the nonaffiliated entity where goods sold by the affiliated corporation or its agent are manufactured or stored in the Commonwealth prior to their delivery to the nonaffiliated entity.

C. Affiliated groups are one of two types, either parent-subsubsidiary or brother-sister.

1. Parent-subsubsidiary control group. A parent-subsubsidiary affiliated group consists of one or more chains of corporations in which a parent corporation directly owns at least 80% of the stock of at least one of the corporations subject to inclusion in the affiliated group, and at least 80% of the stock of any corporations subject to inclusion in the affiliated group, other than the parent corporation, are owned directly by one or more of the corporations subject to inclusion in the affiliated group. The percentages of stock throughout this section refer to the voting power of all classes of stock and each class of nonvoting stock subject to inclusion. Stock does not include nonvoting stock that is limited and preferred as to dividends in §58.1-3700.1 1(b) of the Code of Virginia. For example:

a. Corp. A owns 80% of Corp. B. Corp. B owns 80% of Corp. C.

<u>Corp. A</u>	⇒	<u>80%</u>	⇒	<u>Corp. B</u>
↓				↓
<u>80%</u>				<u>50%</u>
↓				↓
<u>Corp C</u>				<u>Corp. F</u>

Corp. A is the common parent of a parent-subsubsidiary affiliated group of A, B and C corporations.

b. Corp. B owns 80% of Corp. C and 80% of Corp. D. Corp. C owns 50% of Corp. F. Corp. D owns 30% of Corp. F.

<u>Corp. B</u>	⇒	<u>80%</u>	⇒	<u>Corp. C</u>
↓				↓
<u>80%</u>				<u>50%</u>
↓				↓
<u>Corp D</u>	⇒	<u>30%</u>	⇒	<u>Corp. F</u>

Corp. B is the common parent of the B, C, D, and F affiliated group.

## 2. Brother-sister affiliated group.

a. A brother-sister affiliated group exists if the following elements occur:

(1) Two or more corporations are owned by five or fewer persons (or estates or trusts); and

(2) A total membership test is met. Total ownership occurs when the shareholder group owns at least 80% of the total value of all stock or the total voting power of all classes of stock entitled to vote; and

(3) A common ownership test is met. Common ownership occurs when the shareholder group owns more than 50% of the total value of all stock or the total voting power of all classes of stock entitled to vote. The stock held by each person (estate or trust) is considered only to the extent that the stock ownership is identical for each corporation.

b. The best way to apply this test is to put the respective shareholders and corporations into charts. Shareholders are listed down the first column and corporations are listed in the first row. Each shareholder's percentage of stock ownership is placed in the respective cell. The vertical columns are totaled to determine the 80% test. The horizontal columns are totaled into the identical ownership column and then the identical ownership column is totaled to determine the 50% test. Any owner who does not own at least some stock in each corporation is not considered in either the 50% test or the 80% test.

Example 1:

Individual shareholder A owns 30% of Corp. E, 40% of Corp. F, and 20% of Corp. G

Individual shareholder B owns 50% of Corp. E, 20% of Corp. F, and 30% of Corp. G

Individual shareholder C owns 10% of Corp. E, 20% of Corp. F, and 10% of Corp. G

Individual shareholder D owns 10% of Corp. E, 20% of Corp. F, and 30% of Corp. G

Shareholders	Corporations			Extent of Shareholder's Identical Ownership
	E Corp.	F Corp.	G Corp.	
A	30%	40%	20%	20%
B	50%	20%	30%	20%
C	10%	20%	10%	10%
D	10%	20%	30%	10%
Totals	100%	100%	90%	60%

The vertical columns are totaled to determine the 80% test. The horizontal columns are totaled to determine the 50% test. Since all three test are met, E, F & G are an affiliated group.

Example 2:

Same facts as in the first example except that Shareholder A owns 40% of Corp. E, Shareholder B owns 10% of Corp. F, Shareholder C owns 30% of Corp. G and Shareholder D owns 0% of Corp. E and 0% of Corp. G.

Shareholders	Corporations			Extent of Shareholder's Identical Ownership
	E Corp.	F Corp.	G Corp.	
A	40%	40%	20%	20%
B	50%	10%	30%	10%
C	10%	20%	30%	10%
D	0%	20%	0%	0%
Totals	100%	90%	80%	40%

Corporations E, F, and G are not an affiliated group because the 50% test is not met. Owner D is not considered in the calculation since D does not own stock in each corporation.

However, as shown in the following chart, Corporations E & F are an affiliated group in the previous example:

Shareholders	Corporations			Extent of Shareholder's Identical Ownership
	E Corp.	F Corp.	G Corp.	
A	40%	40%		40%
B	50%	10%		10%
C	10%	20%		10%
D	0%	20%		0%
Totals	100%	90%		60%

**23VAC10-500-60. Gross receipts.**

The definition of "gross receipts" is discussed in 23VAC10-500-10. Income that is not derived from the exercise of the privilege for which the taxpayer is licensed by the locality do not constitute gross receipts for purposes of BPOL taxation. Activities of a taxpayer that serve only the taxpayer's interest, and no other, do not give rise to gross receipts. Other exclusions and deductions from gross receipts are discussed in 23VAC10-500-70 through 23VAC10-500-90.

**23VAC10-500-70. Exclusions from gross receipts.**

A. Generally, gross receipts for license tax purposes exclude any amount not derived from the exercise of the licensed privilege to engage in a business or profession in the ordinary course of business. The following is a partial list for illustrative purposes:

1. Amounts received and paid to the United States, the Commonwealth or any county, city or town for the Virginia retail sales or use tax, for any local sales tax or any local excise tax on cigarettes, or amounts received for any federal or state excise taxes on motor fuels;
2. Amounts representing the liquidation of debt or the sale of a capital asset;
3. Amounts allowed by a business to its customers for returns and allowances;
4. Receipt of loan proceeds by a licensee where it is the obligor;
5. Return of principal either on a loan to a licensee-creditor or where a licensee sells a capital asset;
6. Rebates or discounts taken or received on account of purchases by the licensee;
7. Certain withdrawals from inventory; or
8. Investment income not directly related to an entity's exercise of its licensed privilege, unless the entity's licensable activity is that of financial services.

B. Examples:

---

# Regulations

---

1. A lawyer is advanced funds by his client to pay court filing fees and the cost of a court reporter. He also receives payment from City A on account of a refund of excess taxes paid by his client. With his client's permission, lawyer deducts from the tax refund the cost of his services for handling the tax case, including telephone tolls, meals, copying and certain other charges the client has agreed to reimburse. The lawyer is taxable on the amount of his fee including any amount separately billed to the client. Amounts advanced to pay expenses on the client's behalf are not gross receipts, nor is the amount of the tax refund because it is received by the lawyer as the client's agent. "Trust fund" receipts, technically speaking, are not derived from the exercise of a licensable privilege; therefore, "trust fund" receipts do not constitute gross receipts.

2. A lawyer handles a real estate closing for a real estate developer and receives the sale proceeds, net after costs withheld by the purchaser's attorney. He mails the proceeds, net of his fee, to the real estate developer. The lawyer is taxable only on his fee, and not on the full sales proceeds of the transaction. The developer is taxable on the whole of the proceeds of the transaction, including the fee withheld by the attorney.

3. Corp. C, in County D, Virginia purchases a portfolio of loans for its own account. So long as the corporation's activities in the locality are limited to purchasing and holding portfolios for its own account, there is no tax.

4. Same facts as in Example 3 except that Corp. C sells interests in its investment pools through public offerings. There is no tax. Proceeds attributable to capital transactions in the nature of raising capital in the equity markets are not subject to BPOL tax.

## **23VAC10-500-80. Deductions from gross receipts.**

A. The following shall be deducted from gross receipts:

1. Any amount paid for computer hardware or software sold to the U.S. or a state government provided certain holding and contractual requirements are met; and

2. Any receipts attributable to a business conducted in another state or foreign country in which the taxpayer, or its shareholders, partners or members in lieu of the taxpayer, is liable for an income or other tax based upon income. A Virginia taxpayer is liable for an income or other tax based upon income if the taxpayer files a return for an income or income-like tax in that state or foreign country. The Virginia taxpayer, however, need not actually pay any tax to take the deduction.

B. Examples:

1. Merchant sells goods to a North Carolina resident and ships the goods to him in that state. Gross receipts from the sale of the goods are attributable to a definite place of business in Virginia. North Carolina imposes an income

tax and merchant files a North Carolina income tax return. Merchant reports sales delivered to customers in North Carolina in the numerator of its sales factor for North Carolina income tax apportionment purposes. Gross receipts from sales delivered in North Carolina are deductible from merchant's Virginia BPOL taxable gross receipts (or the cost of the purchases are deductible from the tax base if the merchant is taxable on purchases.)

2. Same facts as in Example 1 except that sales are delivered to a customer in Ohio. In Ohio, merchant pays either a tax based on income or based on net worth, whichever is greater. Merchant files the appropriate Ohio tax return. Gross receipts (or the cost of purchases if merchant is taxable on purchases) from sales delivered in Ohio are deductible from merchant's Virginia BPOL taxable gross receipts. Receipts attributed to business conducted in another state or foreign country in which the taxpayer is liable for an income or an income based tax are deductible from Virginia BPOL taxable gross receipts, if such receipts are also attributable to a definite place of business in Virginia.

3. Same facts as in Example 2 except that sales are made to a customer in Nevada. Nevada imposes no income tax or other tax based upon income. Merchant does not file a return or perform any other actions to pay an income or income-based tax. For gross receipts relating to business conducted in another state or foreign country to be deductible from merchant's Virginia BPOL taxable gross receipts, merchant must be liable for an income or other tax based upon income. To be liable for an income or income-like tax, merchant must file a tax return for an income or income like tax in the state or foreign country. Merchant is not entitled to a deduction as it did not file a return for an income or income-based tax in Nevada.

## **23VAC10-500-90. Other exclusions and deductions from gross receipts.**

Examples of items deemed not to be receipts derived from the licensable business include, but are not limited to, the following:

1. Certain adjustments that may be required by reason of the accounting method or system or otherwise to reflect events subsequent to the sale, such as the return of merchandise for credit or refund. If the local ordinance requires gross receipts to be reported using the same method of accounting as used for federal income tax purposes, and the accrual method is used, sales will often be accrued, reported and taxed before actual payment is received. Adjustments may then be required to prevent the taxation of items accrued but never received. For example:

a. A business may record a customer's exchange of merchandise as a refund and new sale. If so, the refund of the previously taxed sale would be deductible because

there would have been only one sale -- the first sale would have been rescinded when the refund/exchange was made.

b. A business that offers customers a discount for volume purchases, prompt payment, or other reason, may record the sale at full value and deduct the discount at the time of payment. If so, the discount from the previously taxed full sales price would be deductible from gross receipts since the amount was not and never will be received.

c. A business that makes sales on credit may accrue the full sales price and set up a receivable account for the installment payment or revolving charge account agreement. If the business subsequently determines that all or a portion of the receivable is worthless, entitling the business to a bad debt deduction for federal income tax purposes, the portion of the previously taxed sale that is determined to be worthless would be deductible because it was not received. The subsequent collection of a debt deducted from gross receipts as worthless would be includible in gross receipts when received, and considered ancillary to the business activity that created the debt.

d. A business that reports its receipts on the cash method of accounting would include all customer payments on installment contracts and revolving charge accounts when received since none of the receipts would be attributable to previously taxed sales.

2. The borrower's receipt of the proceeds of a loan transaction are not gross receipts arising from the exercise of a licensable privilege in the ordinary course of business even if the business regularly obtains money, goods or services on credit.

3. A business that lends money in the regular course of business may receive interest, points, origination fees, and other fees in connection with the loan transaction, all of which would be gross receipts derived from the licensable business. Customer payments to a lender that represent the return of principal on a loan are not gross receipts arising from the exercise of a licensable privilege in the ordinary course of a money lending business. As described in subdivision 1, the treatment of return of principal on the loans, installment contracts and the accounts receivable of other types of businesses may depend on the nature of the transaction in which the debt was created and the method of accounting used.

4. Patronage dividends, to the extent they represent a reduction in purchase price to a co-operative member.

**23VAC10-500-100. Rates and fees.**

A. The uniform ordinance provisions establish two thresholds; one for license fees and another for license taxes. The following chart gives an overview of the thresholds'

application to the exemption based on gross receipts and the limitation on the license fee based on a locality's population:

<u>Population</u>	<u>Maximum License Fee Amount</u>	<u>Gross Receipts Threshold Amounts</u>
<u>0-24,999</u>	<u>\$30</u>	<u>No dollar threshold amount</u>
<u>25,000-50,000</u>	<u>\$50</u>	<u>\$50,000</u>
<u>50,001+</u>	<u>\$50</u>	<u>\$100,000</u>

B. The thresholds indicate that, except as specifically provided in §58.1-3706 of the Code of Virginia and except for the fee authorized in §58.1-3703 of the Code of Virginia, no local license tax imposed pursuant to the provisions of Chapter 37 (§58.1-3700 et seq.) of Title 58.1 of the Code of Virginia, except those specified in §§58.1-3712, 58.1-3712.1 and 58.1-3713, or any other provision of Title 58.1 of the Code of Virginia or any charter, shall be imposed on any person whose gross receipts from a business, profession or occupation subject to licensure are less than:

1. \$100,000 in any locality with a population greater than 50,000; or
2. \$50,000 in any locality with a population of 25,000 but no more than 50,000.

The license tax = equals \$0 if the threshold is not met. Some localities may be grandfathered with respect to applicable license tax rates once thresholds have been met. See Appendix D.

C. Any business with gross receipts of more than \$100,000, or \$50,000, as applicable, may be subject to the tax at a rate not to exceed the rate set forth for the classifications listed:

1. For contracting, and persons constructing for their own account for sale, 16 cents per \$100 of gross receipts;
2. For retail sales, 20 cents per \$100 of gross receipts;
3. For financial, real estate and professional services, 58 cents per \$100 of gross receipts; and
4. For repair, personal and business services, and all other businesses and occupations not specifically listed or excepted in §58.1-3706 of the Code of Virginia, 36 cents per \$100 of gross receipts.

D. Additionally, §58.1-3703 A of the Code of Virginia provides that no license tax may be assessed on any amount of gross receipts of a business upon which a license fee is charged.

E. It is within the discretion of localities to impose flat license taxes, in addition to or in lieu of the license fee, however, a locality cannot fashion a flat tax that violates the

---

## Regulations

---

threshold or the rate caps set in §58.1-3706 of the Code of Virginia.

F. The tax rates and rate thresholds for license taxes as indicated in §58.1-3706 of the Code of Virginia do not apply to those items regarding taxation on the severance of coal, gas or oil as specified in §§58.1-3712, 58.1-3712.1 and 58.1-3713 of the Code of Virginia, or any other provision in Chapter 37 (§58.1-3700 et seq.) of Title 58.1 of the Code of Virginia where a special taxing provision exists; for example, those taxes assessed upon the following taxpayers: (i) wholesalers, governed by §58.1-3716 of the Code of Virginia; (ii) public service companies, which are governed by §58.1-3731 of the Code of Virginia; (iii) carnivals, circuses and speedways, which are governed by §58.1-3728 of the Code of Virginia; (iv) fortune-tellers, which are governed by §58.1-3726 of the Code of Virginia; (v) massage parlors; (vi) itinerant merchants or peddlers, which are governed by §58.1-3717 of the Code of Virginia; (vii) permanent coliseums, arenas, or auditoriums having a maximum capacity in excess of 10,000 persons and open to the public, which are governed by §58.1-3729 of the Code of Virginia; (viii) savings institutions and credit unions, which are governed by §58.1-3730 of the Code of Virginia; (ix) photographers, which are governed by §58.1-3727 of the Code of Virginia; and (x) direct sellers, which are governed by §58.1-3719.1 of the Code of Virginia.

G. The rate limitations and thresholds set forth in §58.1-3706 of the Code of Virginia regarding license taxes do not apply to the license fee, authorized in §58.1-3703 of the Code of Virginia. The license fee is subject to separate thresholds, as follows: localities with populations of less than 25,000 may assess businesses a license fee not to exceed \$30. Localities with populations of 25,000 or more may assess businesses a license fee not to exceed \$50.00. For purposes of the license fee threshold, population may be based on the most current final population estimates of the Weldon Cooper Center for Public Service of the University of Virginia. A locality may impose a fee for issuing a BPOL license upon all businesses for each licensable privilege in which they engage. Businesses paying a BPOL tax on other than a gross receipts basis or paying a flat BPOL tax are also subject to the license fee.

H. Additionally, §58.1-3703.1 A 1 of the Code of Virginia provides that any locality with a population greater than 50,000 may waive the license requirements provided for in that section for businesses with gross receipts of less than \$100,000.00.

I. Additionally, §58.1-3706 E of the Code of Virginia provides that in any case in which the Department of Mines, Minerals and Energy (DMME) determines that the weekly U.S. Retail Gasoline price (regular grade) for PADD 1C (Petroleum Administration for Defense District - Lower Atlantic Region) has increased by 20% or greater in any one-week period over the immediately preceding one-week period

and does not fall below the increased rate for at least 28 consecutive days immediately following the week of such increase, then, notwithstanding any tax rate on retailers imposed by the local ordinance, the gross receipts taxes on fuel sales of a gas retailer made in the following license year shall not exceed 110% of the gross receipts taxes on fuel sales made by such retailer in the license year of such increase (See 23VAC10-500-100). For license years beginning on or after January 1, 2006, every gas retailer shall maintain separate records for fuel sales and nonfuel sales and shall make such records available upon request by the local tax official. The provisions of this subsection shall not apply to any person or entity (i) not conducting business as a gas retailer in the county, city, or town for the entire license year immediately preceding the license year of such increase or (ii) that was subject to a license fee in the county, city, or town pursuant to §58.1-3703 of the Code of Virginia for the license year immediately preceding the license year of such increase. The DMME shall determine annually if such increase has occurred and remained in effect for such 28-day period. The DMME shall report its findings concerning gasoline price increases pursuant to this subsection no later than January 30 of each year to the Virginia Petroleum, Convenience and Grocery Association; the Virginia Municipal League; and the Virginia Association of Counties.

### **23VAC10-500-110. Multiple businesses.**

A. Multiple businesses conducted by a person at a single location are required to obtain a separate license for each business. If an entity has multiple businesses at one location with each separate business licensed, it would then count each separate licensed business for purposes of the threshold in order to trigger the BPOL tax under §58.1-3706 of the Code of Virginia. For purposes of the license fee imposed under §58.1-3703 of the Code of Virginia, it is within the locality's discretion whether or not to assess multiple fees for the issuance of multiple licenses where one entity exercises several licensable privileges at one location; however, every license issued carries with it a separate rate threshold. Examples:

1. XYZ Co. operates a business at one location in City A at which automobiles are repaired and auto parts are sold. City A requires XYZ to obtain a retail business license and also a repair services license, charging a \$100 fee for each license. XYZ Co. has two thresholds for purposes of establishing gross receipts for the applicability of the BPOL tax, one for the repair business and one for the retail business.

2. Same facts as in Example 1, except that XYZ Co. operates several business locations in City A at which automobiles are repaired and auto parts are sold. XYZ will be required to obtain two licenses for each location in City A and each licensable business will have a separate

threshold for purposes of establishing gross receipts for the applicability of the BPOL tax.

3. Same facts as in Example 1, except that the locality chooses to charge the business only one fee for the issuance of two licenses. As in Example 1, XYZ Co. would have two thresholds for purposes of establishing gross receipts for the applicability of the BPOL tax, one for the repair business and one for the retail business.

B. Each such business must be clearly identifiable as a separate business and not merely activities ancillary to the primary business. An activity for which no separate charge is made is presumed to be ancillary to the activity for which a charge is made, but separately stating charges for different activities does not create a presumption that each such activity is a separate business. Gross receipts attributable to any ancillary activities are taxable as part of the primary licensable business. Gross receipts that are not ancillary to a licensable business must rise to the level of a separate business to be taxable. The following are examples of activities that may be ancillary or de minimis:

1. A merchant (retail or wholesale) offers an extended warranty with the merchandise it sells. The warranty covers parts and labor, and may include replacement of defective merchandise. Although a separate charge is made for the warranty, at the time of sale it is impossible to determine how much of the charge will be used (if any) for labor, parts, or replacement merchandise. The charge for an extended warranty is ancillary to the sale of the merchandise.

2. A retail merchant offers to deliver the merchandise it sells for a fee. The merchant has its own delivery trucks, but also contracts with third parties to make some of the deliveries. The fee charged to the customer varies with distance, but does not depend on whether the merchandise is delivered by the merchant or a third party. Because the delivery service is only offered with respect to merchandise sold by the merchant, the delivery charge is ancillary to the merchandising business.

3. A repair service must occasionally replace small, inexpensive parts. It does not separately charge for the parts. The provision of parts is ancillary to the repair service.

4. A firm offers repair service at numerous offices in several states. At its headquarters the firm employs lawyers and certified public accountants to assist in managing its operations. The firm also employs a real estate professional, engineer and architect to find and develop locations for new offices. None of these employees offer their services to anyone other than the firm, and the firm does not separately charge anyone for the activities of its professional employees. The activities of these employees

are ancillary to the firm's repair business and do not generate gross receipts.

5. A retail merchant offers installment contracts in conjunction with the sale of its merchandise. Each contract provides for the payment of interest and collection costs, including attorneys fees of 20% of any delinquent amount collected by legal action.

a. Interest received pursuant to the installment sales contract is ancillary to the retail sale of the merchandise.

b. If the merchant employs a salaried staff attorney to collect delinquencies under the installment sales contract, any amounts collected would be ancillary to the retail sale of merchandise. (But see 23VAC10-500-90 for the impact of the cash or accrual method of accounting.)

C. Localities may permit, but may not require, a taxpayer to elect any of the following:

1. Multiple businesses conducted at a single location may be taxed under a single license if all are taxable at the same rate:

2. Multiple businesses conducted at a single location may be taxed at the highest rate if the businesses are subject to tax at different rates; or

3. A single business may be issued separate licenses for its primary business and one or more ancillary activities that would be taxed at a different rate if the ancillary activities constitute a separate business.

D. The following are examples of multiple businesses that may be required to obtain multiple licenses:

1. When a merchant conducts both a wholesale and a retail business, the merchant is subject to the retail license tax on the retail portion of the business and subject to the wholesale license tax on the wholesale portion of the business. However, the locality may permit but not require the merchant to pay the license tax as a retailer on both the retail and wholesale portions of the business.

2. Any person engaged in repair service who sells parts as part of the repair service is engaged in a licensable service business. If the person sells parts in addition to the repair service, he is engaged in retail or wholesale sales as to the sales of the repair parts.

3. Any boardinghouse or lodging house that also furnishes or sells food or merchandise for compensation may be engaged in retail sales as to the sale of the food or merchandise.

4. An optometrist who also fills prescriptions for or fits corrective lenses and eyeglass frames in a regular course of dealing is engaged in two licensable businesses. The optometrist is rendering a professional service when examining eyes and is conducting business as a retail

---

# Regulations

---

merchant when filling prescriptions and fitting corrective lenses and eyeglass frames.

5. Any practitioner of a profession who sells goods, wares or merchandise in connection with the practice of the profession may be engaged in making retail sales depending on the nature of the products sold and the service performed.

6. A medical doctor who engages in the sale of drugs or other merchandise as well as the practice of medicine is a merchant as to those sales. However, a medical doctor is not a merchant as to the drugs used in giving an immunization to a patient.

7. A chiropodist who sells shoes in connection with his practice is a retail merchant as to such sales.

8. An attorney practices law in Town A, Virginia, and has receipts from clients for trying cases, providing advice, lobbying, periodically teaching law at Town A Law School, the sale of stock received as a fee for incorporating a business, interest from the bank on his business accounts, and from gambling during a client-sponsored trip. Receipts from clients for trial work, legal advice, lobbying, the value of stock received as a fee in the year received are all taxable as gross receipts. Teaching law, the sale of stock as a fee, interest earned from the business accounts at the bank and gambling winnings are not taxable because the lawyer is not regularly engaged in these activities as a business and these activities are not ancillary to the practice of law. However, if some of the nontaxable activities were conducted on a regular basis as defined in the statute, they might constitute the conduct of business and be subject to separate licensure.

## **23VAC10-500-120. Multiple locations.**

The classification of a business generally depends on the nature of the goods or services offered to the customers of the business for consideration. In the case of a business that conducts different activities at multiple locations, proper classification of the business may require consideration of its activities at locations in addition to the licensed location, i.e., the overall nature of the business. For example:

1. A complex product is manufactured in stages at different locations. It is undisputed that the overall process is manufacturing. However, final assembly and processing occur at a separate location and, viewed in isolation, the activities at this location may not cause sufficient transformation to be considered manufacturing. The location will be considered a "place of manufacture" for purposes of classifying the gross receipts or purchases as arising from sales at wholesale at the place of manufacture.

2. A contractor maintains a staff of architects and engineers and bids on "design-build" contracts. The bids are for a lump sum and do not segregate design costs from building

costs. The entire gross receipts are subject to license tax as a contractor in the locality in which the building is constructed. The design activities are ancillary to the contracting activities and the contractor will not be required to obtain a professional license for the architects and engineers.

## **23VAC10-500-130. Employees and independent contractors.**

A. Employees are generally not engaged in a licensable business separate from that of their employer. Therefore, a license obtained by the employer generally covers the activities of any employees.

B. An independent contractor is engaged in a business separate from that of the person who contracts for the independent contractor's services. Therefore, if one licensable business subcontracts some of its business to an independent contractor, the primary business may not deduct from its taxable gross receipts any payments to an independent contractor even though the independent contractor or subcontractor is also taxable on its gross receipts.

C. The determination as to whether a person is an employee or an independent contractor is based on common law principles and is affected by factors such as control, who furnishes materials, and other factors.

D. Localities are entitled to rely upon the classification of a person as an employee or independent contractor for federal payroll tax purposes unless the taxpayer demonstrates that the classification for federal payroll tax purposes is erroneous or inapplicable.

## **23VAC10-500-140. NAICS Codes.**

The federal government publishes a manual of North American Industry Classification System (NAICS) codes. A locality may use the NAICS codes in the course of classifying a business for BPOL tax purposes; however, the NAICS code of a business does not control, or even create a presumption, as to the correct classification for BPOL purposes for the following reasons:

1. The NAICS codes group manufacturers and processors together, while processors are generally excluded when using the term manufacturer for BPOL tax purposes.

2. Only one NAICS code is assigned to an enterprise or establishment, while a separate BPOL license may be required for each identifiable business.

3. A classification, exemption, or deduction under state law or local ordinance may require consideration of factors not relevant to NAICS code selection.

**23VAC10-500-150. Situs of gross receipts.**

A. Except as otherwise provided by law, situs refers to the locality in which a person subject to local license taxation for any business, profession, trade, occupation or calling has a definite place of business. If the person has a definite place of business in any other locality, then the other locality may impose a license tax on him, provided such other locality is otherwise authorized to impose a local license tax upon his business.

B. If a local license tax imposed by any locality is measured by volume, the volume on which the tax may be computed will be the volume attributable to all definite places of business of the business, profession, trade, occupation or calling in such locality. See 23VAC10-500-10 for the definition of the term "volume." All volume attributable to any definite places of business of the business, profession, trade, occupation or calling in any other locality will be deductible from the base in computing any local license tax measured by volume imposed on the taxpayer by the locality in which the first-mentioned definite place is located. This may not be construed as prohibiting any locality from requiring a separate license for each definite place of business located in such locality. (§58.1-3708 of the Code of Virginia.)

C. When a BPOL tax is measured by gross receipts, the gross receipts included in the taxable measure are only those gross receipts attributed to the exercise of a privilege subject to licensure at a definite place of business within Virginia. Where activities are conducted outside of a definite place of business, such as during a visit to a customer location, gross receipts are attributed to the definite place of business from which such activities are initiated, directed, or controlled. The situs of gross receipts for different classifications of business are attributed to one or more definite places of business or offices as detailed in 23VAC10-500-160 through 23VAC10-500-200.

**23VAC10-500-160. Situs of gross receipts for a contractor.**

A. Generally, under §58.1-3703.1 A 3 a (1) of the Code of Virginia, the gross receipts of a contractor are attributed to the definite place of business where its services are performed. If a contractor performs services in a locality in which it does not maintain a definite place of business, then gross receipts from such services are attributed to the definite place of business where its services are initiated, controlled or directed, unless the contractor is subject to §58.1-3715 of the Code of Virginia. Prior to July 1, 1999, the provisions of §58.1-3715 of the Code of Virginia did not apply to contractors with no definite place of business in Virginia.

B. A contractor is subject to §58.1-3715 of the Code of Virginia when it derives gross receipts in excess of \$25,000 in one year from a Virginia locality in which it does not maintain a definite place of business. This locality may require the contractor to pay a license fee or tax. If the

contractor maintains a definite place of business in a Virginia locality, the contractor may deduct the amount of business done in the locality in which it does not maintain a definite place of business from the gross revenue reported to the locality where its definite place of business is located. If gross receipts derived from the locality in which the contractor does not maintain a definite place of business do not exceed \$25,000, then those receipts are attributable to the locality in which the contractor's definite place of business is located.

**C. For example:**

1. A painter is located and properly licensed in County B in Virginia. The painter is contracted to paint a large warehouse located in Town A in Virginia. The painter will receive gross receipts in excess of \$25,000 for this job. The painter is subject to a license tax in Town A pursuant to §58.1-3715 of the Code of Virginia. The gross receipts taxable in Town A are deductible from the gross receipts that the painter reports to County B.

2. A plumber residing in City A performs plumbing work in City A, County B and Town C. The gross receipts attributable to County B and Town C are each less than \$25,000 a year. The plumber keeps all tools and parts in his truck but maintains his records and business phone line in his house. The situs of gross receipts would be City A because the location of his phone line and records means that he controls his business from this locality.

3. DEF, Inc., a company engaged in the business of contracting, has its principal office in City A (population 115,000), and provides contracting services in City A as well as County B (population 235,000) and Town C (population 15,000). DEF's gross receipts in City A in a year equal \$125,000 and its gross receipts in County B equal \$15,000 in that same year. DEF's gross receipts from Town C equal \$35,000 in that same year, also. All of these localities require a license of, and also assess a BPOL tax on, contractors. DEF pays a license fee of \$100 per year in City A and also pays a license fee of \$30 per year in Town C. Here, DEF would report gross receipts of \$175,000 to City A. However, since Town C could assess a BPOL tax on the \$35,000 in gross receipts DEF generated in its locale, and if in fact it did levy such a tax upon DEF, then DEF would receive a deduction from the gross receipts it reports to City A for its BPOL tax in the amount of the business done in Town C. However, DEF would not receive a deduction in the calculation of its City A BPOL tax for any license fee paid to Town C. For the reasons stated in subsection A, since DEF's gross receipts from County B do not exceed \$25,000, those receipts are attributable to City A, where DEF's principal office is located. Accordingly, DEF's gross receipts would be attributed as follows: \$140,000 to City A and \$35,000 to Town C.

---

# Regulations

---

## **23VAC10-500-170. Situs of gross receipts for a retailer.**

The gross receipts of a retailer are attributed to the definite place of business where sales solicitation activities occur. If sales solicitation activities are not performed in any one locality, then they are attributed to the definite place of business from which the sales solicitation activities are initiated, directed or controlled. Unless a wholesaler is subject to a license tax measured by purchases (23VAC10-500-180), its gross receipts are also attributed to the definite place of business where sales solicitation activities occur, or, if sales solicitation activities are not performed in any one locality, then they are attributed to the definite place of business from which the sales solicitation activities are initiated, directed or controlled. For example:

1. A national retailer who sells clothing through a catalog has a sales office in County A where its sales staff receives telephone purchase orders and relays the orders to its warehouse is located in Pennsylvania. Retailer's sales office is a definite place of business since sales solicitations are directed there. Gross receipts are sourced to County A.

2. A national retailer's corporate headquarters are located in City B, Virginia. The retailer has stores throughout Virginia and the entire southeast. Each store maintains its own sales staff; however all accounting and operations management are performed at the corporate headquarters. Sales solicitation occurs at each store; therefore, the gross receipts from each store are sited to the localities in Virginia where each store is located.

3. A wholesaler, whose BPOL tax is based upon gross receipts, has a warehouse in County A. Solicitations for the sale of goods stored at the warehouse are made from City B. The situs of these gross receipts is City B.

4. A retailer sells goods over the Internet to customers who place their orders from home computers. The store, server, web page and customers are all in different localities in Virginia. The gross receipts of a retailer are attributed to the definite place of business where the sales solicitation activities occur. If sales solicitation activities are not performed in any one locality, then gross receipts are attributed to the definite place of business from which the sales solicitations are initiated, directed or controlled. The Internet page is not a definite place of business. Orders are filled at the retailer's store, and thus, under these facts, the sales solicitations are controlled at the store.

5. Corp. A maintains a "back-shop" processing office in County B, Virginia, where document specialists process requests for purchase proposals submitted to the office from sales representatives located throughout Virginia, including some in County B. An out-of-state office of Corp. A determines whether to submit a bid on the proposal, handles all aspects of the contract negotiation

process, and has all authority to bind Corp. A by accepting proposals. The "back-shop" processing office in County B, Virginia has no authority to bind Corp. A and cannot accept any proposals. Gross receipts of a retailer, or a wholesaler that is taxed based upon gross receipts, are attributed to the definite place of business where sales solicitation occurs. If sales solicitation activities are not performed in any one locality, then they are attributed to the definite place of business from which the sales solicitation activities are initiated, directed or controlled. Sales solicitation relates to selling a particular product to a particular person. Generally, it does not include activities prior or subsequent to such activities. Whether sales solicitation takes place at one place or more is often a facts and circumstances test. In situations where multiple locations are involved, one such factor is which location had the authority to bind the seller in the transaction. In this example, the sales solicitation activity is under the full and sole control of Corp. A's out-of-state location; therefore, under these facts, gross receipts would not be attributed to County B, Virginia.

## **23VAC10-500-180. Situs of purchases for wholesaler subject to tax based on purchases.**

A. The gross receipts of a wholesaler or distribution house subject to the tax based on purchases are attributed to the definite place of business from where the goods are physically delivered to customers or at the shipping point to customers. Examples:

1. A wholesaler has its sales office in Town B and maintains a warehouse in County C from which it ships goods by truck to customers in Virginia. Wholesaler is subject to license tax measured by purchases. Wholesaler's warehouse is a definite place of business subject to taxation in County C.

2. A wholesaler has facilities in North Carolina and has a distribution center in A Town A, Virginia, which assesses a BPOL tax on wholesalers based upon purchases. Merchandise shipped from the wholesaler in Town A is subject to the license tax measured by purchases and the situs of the wholesaler's purchases, of goods shipped from Town A is Town A because it is the shipping point from the distribution center.

3. A wholesaler, whose BPOL tax is measured based upon purchases, has a warehouse in County A from where it delivers goods to customers. The situs of its purchases is County A.

4. Company A manufactures equipment for industrial, governmental and commercial use at its plant outside Virginia. It has an office in City B, Virginia, where sales solicitations take place. Company A's sales office is taxable as a wholesale merchant based on purchases. The purchases of a wholesaler subject to the tax on purchases

are attributed to the definite place of business where the goods are physically delivered to customers or at the shipping point to customers. Company A has no taxable purchases in City B since the goods are not delivered or shipped from the sales office in that locality.

5. Company A sells petroleum products at retail in its own retail stores. It also sells petroleum products at wholesale to retail dealers at City A in Virginia. Company A exchanges a shipload of petroleum products for a shipload of oil with Company A. The exchange occurs outside of Virginia. The exchange is not taxable. The sale is not a retail sale nor attributable to the exercise of the privilege of selling at retail at Company A's retail stores. There is no purchase at any place of business in Virginia that is subject to a wholesale merchant's tax in Virginia because delivery occurred outside Virginia.

B. "Purchases" means all goods, wares and merchandise received for sale at each definite place of business of a wholesale merchant. The term shall also include the cost of manufacture of all goods, wares and merchandise manufactured by any wholesale merchant and sold or offered for sale. A wholesale merchant may elect to report the gross receipts from the sale of manufactured goods, wares and merchandise if it cannot determine the cost of manufacture or chooses not to disclose the cost of manufacture.

C. Some localities are grandfathered to assess a BPOL tax upon wholesalers based upon gross receipts. Any wholesaler who is subject to a BPOL tax in two or more localities with different bases or measures may apply to the Tax Commissioner for the proper measure of purchases and gross receipts subject to tax in each locality.

### **23VAC10-500-190. Situs of a business renting tangible personal property.**

The gross receipts of a business renting tangible personal property are attributed to the definite place of business where the property is rented, or if there is no definite rental place, then to the locality where the rental of the property is managed. For example:

A car rental agency located in County B, stores its cars in a lot in Town C. The car rental contract is signed in the main office in County B and then an employee drives the customer out to the lot to pick up the car. The situs of gross receipts is County B since that is the locality where the rental took place. A business located in City A rents home electronics. Orders are placed by phone to the main warehouse in City A where the goods are then transported by truck to customers' homes in various localities. The rental contract is filled out by a customer at her home and given to the driver at which time the goods are released. Situs of gross receipts is City A. Although the place of rental is in a number of localities, the rental is managed in City A.

### **23VAC10-500-200. Situs of a business performing services.**

The gross receipts from the performance of services are attributed to the definite place of business where the services are performed, or if not performed at any definite place, then they are attributed to the definite place of business where the services are directed or controlled. Examples:

1. A law firm has an office in City A where all management decisions are made. Attorneys travel to all surrounding city and county court houses to perform legal services. The proper situs would be City A since management decisions are made from this location.

2. A real estate management company is headquartered in County B. Properties managed by the company are located in other Virginia localities as well as other states. Each rental property has an onsite office where rental, repair and management decisions may be made. Since each definite place of business is at the onsite rental office, gross receipts would be sourced to the localities where the rental offices are located. Further, if a locality in which any onsite office is located does not assess a BPOL tax, the gross receipts from such office would not be attributed back to County B where the company's headquarters are located.

3. Same facts as in Example 2, except that there are no onsite management offices. All rental, repair and management decisions are directed and controlled at the company headquarters. Gross receipts will be sourced to County B since it is the definite place of business where the rental activity is directed and controlled.

4. An individual works as a marketing consultant. This individual travels constantly throughout various cities and counties in the Commonwealth. She has no office, but keeps a cellular phone and her business records in her car. Her home is located in County C. Consulting income will be sourced to County C. Although she runs her business out of her car, a person's residence is deemed to be a definite place of business if there is no definite place of business maintained elsewhere. (§58.1-3703.1 of the Code of Virginia.)

5. Company XYZ has one truck that operates out of City A in southwest Virginia. Company XYZ picks up and delivers wares, loads and other goods for customers to and from locations in and outside of Virginia. Company XYZ has a telephone, desk, files and operating log books at its office in City A and controls, directs and conducts business out of this location. It has no other locations outside of this office in City A. Company XYZ has one truck which operates out of City A, with maintenance on the truck being performed at this location. Company XYZ is a service provider. Gross receipts from business services are attributed to the definite place of business where services

---

## Regulations

---

are performed, or if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled. (§58.1-3703.1 A 3 a (4) of the Code of Virginia.) Here, services are performed across a broad geographic range. Since services are not performed at any definite place of business, gross receipts are attributed to Company XYZ's office in City A where the services are directed or controlled.

6. Acme Pest Co., a pest control and extermination business, has its principal offices in City C, Virginia. Most of Acme's customers are located in City C; however, Acme has some customers in localities that surround City C. Acme provides its service by making on-site visits and performing inspections and pest control spraying and eradication at its customers' residences or places of business. Acme has ongoing contracts with some of its customers under which it makes bi-annual visits to their residences or places of business. Other service visits are made on an intermittent, as-ordered basis. Acme leaves no equipment at its regular customers' locations, with the exception of the placement of an occasional mouse trap. Gross receipts from business services are attributed to the definite place of business where services are performed, or if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled. (§58.1-3703.1 A 3 a (4) of the Code of Virginia.) A definite place of business means an office or location at which occurs a regular and continuous course of dealing. (§58.1-3700.1 of the Code of Virginia.) Service is performed by Acme at each location on a regular but noncontinuous basis. Acme does not maintain a permanent presence at its customers' locations. Thus, Acme does not have a definite place of business at those locations, and its gross receipts from each place where service is rendered are attributed to City C where Acme has its principal office.

7. ABC CPA's LLP, a CPA firm, has its principal offices in City C, Virginia. Although most of ABC's customers are located in City C, it has some customers in localities that surround City C. ABC provides some of its service by making onsite visits and performing inspections, audits, consulting, tax and business advice at its customers places of business. ABC also has engagements with some of its customers under which it makes bi-annual visits to their places of business. Other services are also performed at ABC's principal offices on an ongoing as well as an intermittent, as ordered, basis. ABC has no equipment at its regular customers' locations. Gross receipts from business services are attributed to the definite place of business where services are performed, or if not performed at any definite place of business, then to the definite place of business from which the services are directed or controlled. (§58.1-3703.1 A 3 a (4) of the Code of Virginia.) A definite place of business means an office or location at

which occurs a regular and continuous course of dealing. (§58.1-3700.1 of the Code of Virginia.) Where a professional service provider performs services at other locations away from an established or principal office where its phone and mailing address is located and does not maintain a continuous presence for more than 30 consecutive days at these other locations, the location of its definite place of business remains its established or principal office. In this example, service is performed by ABC at each customer location on a regular but noncontinuous basis. Thus, ABC does not have a definite place of business at those customer locations, and its gross receipts from each place where service is rendered are attributed to City C where ABC has its principal office.

8. Corp. A is a financial services corporation headquartered in Town B, Virginia. Corp. A maintains a loan servicing office in State C and a portfolio maintenance office in State D. Receipts attributable to loan servicing activities and portfolio maintenance are not taxable in Town B.

### **23VAC10-500-210. Apportionment; in general.**

A. If the taxpayer has more than one definite place of business and it is not possible or practical to determine at which definite place of business gross receipts should be taxed, gross receipts must be divided between the definite places of businesses by payroll. Some activity must occur or be controlled from a definite place of business for gross receipts to be taxed by the locality of the definite place of business. If an entity's definite place of business is in a locality that does not tax gross receipts, a different locality may not tax these gross receipts simply because the first locality does not have a license tax.

#### **B. Examples:**

1. A large electronics retailer has its main sales office in City A and maintains a satellite office with its own management in the distant County B. Sales staff from City A make the initial sales contact in County B and process all sales related paperwork. Sales staff in County B make all personal and follow-up sales contacts in County B. The definite place of business is in both City A and County B since each sales office is equally responsible for sales solicitations. If it were not possible or practical to determine which definite place of business gross receipts should be attributed to, gross receipts must be apportioned between the definite places of business on the basis of the payroll of the sales staff at each respective place of business.

2. A group medical practice has offices in County A and City B. County A does not tax gross receipts. Patient visits and recordkeeping functions occur in County A, but physicians see patients in the City B offices on a regular basis. City B may tax the gross receipts generated from services performed at offices located within its boundaries.

However, City B may not tax the practice's gross receipts generated from County A simply because the county does not have a license tax.

**23VAC10-500-220. Apportionment; agreement to apportion among localities.**

A. Local assessors may enter into agreements with each other regarding the manner in which gross receipts shall be apportioned among definite places of business. The sum of the gross receipts apportioned by the agreement shall not exceed the total gross receipts attributable to all definite places of business affected by the agreement. Upon notification from a taxpayer that a method attributing gross receipts is inconsistent with the method of one or more other localities in which the taxpayer is licensed, and that the difference has, or is likely to, result in taxes on more than 100% of its gross receipts from all locations in which the taxpayer is licensed, the assessor shall make a good faith effort to reach an apportionment agreement with the other localities involved. If an agreement cannot be reached, either the assessor or taxpayer may seek an advisory opinion from the Department of Taxation pursuant to §58.1-3701 of the Code of Virginia. Notice of the request must be given to the other party.

B. Notwithstanding the provisions of §58.1-3993 of the Code of Virginia, when a taxpayer has demonstrated to a court that two or more political subdivisions of Virginia have assessed taxes on gross receipts that may create a double assessment within the meaning of §58.1-3986 of the Code of Virginia, the court may enter such orders pending resolution of the litigation as may be necessary to ensure that the taxpayer is not required to pay multiple assessments even though it is not then known which assessment is correct and which is erroneous.

**23VAC10-500-230. Contractors; maximum rate.**

The maximum rate for local license taxes imposed upon a person engaged in contracting and persons constructing for their own account for sale is 16 cents per \$100 of gross receipts. In lieu of the tax, a license fee may be charged by the locality. The amount of the fee depends upon the locality's population. See 23VAC10-500-100.

**23VAC10-500-240. Contractors; classification.**

A. A person shall be classified as a contractor if he accepts contracts to perform, or regularly performs, or engages others to perform, any of the work described in subsection B of §58.1 3714 of the Code of Virginia on buildings, structures or real estate owned by him when the buildings, structures or real estate are sold upon completion of such work; or, if he regularly performs, or engages others to perform, any of the work described in subsection B of §58.1 3714 of the Code of Virginia on buildings, structures or real estate owned by others.

B. Contractors include persons who subdivide and improve real estate, and speculative builders who build houses or other buildings with the intention to offer the subdivided lots or completed buildings for sale. A person who would otherwise be classified as a contractor shall not lose such classification because real estate is temporarily leased until it can be sold, or leased with an option to purchase instead of sold, unless the leasing activity constitutes a separate licensable business. Any gross receipts from such leases shall be considered ancillary to the business of contracting.

C. The mere subdivision of land into lots, without more, is not contracting. However, a person who installs water or sewer systems, roads, or engages in any other activity described in subsection B of §58.1 3714 of the Code of Virginia on his own land with the intent to offer the land for sale is a contractor regardless of whether the land is subdivided.

D. A person shall not be deemed to be engaged in the business of contracting solely because he acts as his own prime contractor to build or improve a building which he intends to occupy as his residence, office or other place of business, or actually so occupied within a reasonable time prior to the sale of the premises.

**23VAC10-500-250. Contractors; list of occupations.**

Contracting generally includes, but is not limited to, persons engaged in the following occupations, businesses or trades:

1. Air conditioning
2. Brick contracting and other masonry
3. Building
4. Cementing
5. Dredging
6. Electrical contracting
7. Elevator installation
8. Erecting signs that are assessed as realty
9. Floor scraping or finishing
10. Foundations
11. House moving
12. Paint and paper decorating
13. Plastering
14. Plumbing, heating, steam fitting
15. Refrigeration
16. Road, street, bridge, tunnel, sidewalk or curb and gutter construction
17. Roofing and tinning

---

# Regulations

---

- 18. Sewer drilling and well digging
- 19. Sign painting
- 20. Structural metal work
- 21. Tile, glass, flooring and floor covering installation
- 22. Wrecking, moving or excavating.

## **23VAC10-500-260. Installation by merchant.**

A. An installation by a merchant is not considered contracting where he delivers and installs an appliance or other merchandise he sells when the installation uses existing openings and connections. If, however, the installation requires making openings in a wall, running ductwork, wires or plumbing, or any other work described in subsection D of §58.1-3714 of the Code of Virginia, then the installation work may be deemed contracting. This factor may turn upon the difficulty involved in making way for the goods to be installed. Other factors that may be considered in making the determination of whether or not a merchant's installation of goods constitutes contracting are as follows: (i) whether the installation is merely ancillary to the retail sales of a merchant, as opposed to constituting a substantial portion of what is sold in the transaction; (ii) does the merchant hold himself out as able to perform contractor's activities; and (iii) does the merchant install his own merchandise only, or does he also install the goods of others. Ultimately, however, the determination of whether or not a merchant's installation of goods constitutes contracting for purposes of the BPOL tax will depend upon the facts and circumstances in each case.

B. A merchant engaged in the business of selling and erecting, or erecting, tombstones is not a contractor solely because he places or erects the tombstone on a gravesite, but is engaged in either retail or wholesale sales.

C. While a person engaged in the business of wrecking or demolishing a building is a contractor, the subsequent sale of the materials after they have been separated, cleaned, graded, etc., may be classified as either retail or wholesale sales. However, bulk sales of such material from the demolition site may be classified as ancillary to the demolition contract.

D. A person who merely sells a prefabricated building or structure is not a contractor, but if the person or a subcontractor for that person erects the building or structure, then the seller is a contractor.

E. If a merchant sells floor coverings (whether the covering be carpet, linoleum, tile or other covering) and installs the floor covering as part of or incidental to the sale, the transaction is not contracting but a retail or wholesale sale. The fact that the purchaser is a general contractor or other institutional, commercial or industrial entity, coupled with the quantity sold and other terms, may affect the classification of the sale as a wholesale rather than retail sale. A person other than a merchant who enters into a contract to install floor

coverings would be classified as a contractor, whether the contract is for installation only or sale and installation.

F. The mere hauling of sand, gravel and dirt excavated by another is not contracting but is a business service.

G. Soliciting business for a contractor is not contracting but is a business service.

## **23VAC10-500-270. Retail sales; maximum rate.**

The maximum rate for local license taxes imposed on a person engaged in retail sales is 20 cents per \$100 of gross receipts. In lieu of a tax, a license fee may be charged by the locality. The amount of the fee depends upon the locality's population. (23VAC10-500-100.)

## **23VAC10-500-280. Retail sales; retail and wholesale distinguished.**

The sales price alone is not determinative of whether the sale is at retail or wholesale. The fact that a person sells goods, wares or merchandise at wholesale prices, at cost, or at less than cost does not prevent the person from being classified as a retail merchant if the sales fall within the definition of a retail sale. (23VAC10-500-350.)

## **23VAC10-500-290. Retail sales; banks.**

A. Banks are generally exempt from local license tax, but §58.1-1202 of the Code of Virginia specifically authorizes localities to subject banks to local license tax on the sale of blank checks, repossessed automobiles, and any other tangible personal property sold by banks in connection with promotions or otherwise. In connection with the sale of blank checks:

1. A bank is not engaged in retail sales if the customer places an order for the checks directly with the printer and authorizes the bank to collect for the printer by charging his account, and the bank is not obligated to pay for the checks except insofar as it honors the customer's authorization.

2. A bank is engaged in retail sales if the customer places his order with the bank, and the bank contracts with the printer and is liable to the printer, whether or not the bank actually collects from the customer.

B. Section 58.1-1202 of the Code of Virginia does not authorize the imposition of a BPOL tax on banks. It merely indicates that banks are not exempt as to the sale of tangible personal property. A BPOL tax can be imposed on such sales by a bank when authorized by §58.1-3703 of the Code of Virginia. In other words, such sales must be a separate business. If they are ancillary to the banking business, and classified as financial services, they would be exempt from the BPOL tax.

**23VAC10-500-300. Retail sales; solicitation.**

A person is not subject to a local license tax if his business in this state is limited solely to the solicitation of orders by catalogs mailed from outside this state to mail order buyers in this state and who fills orders from outside this state. However, if the catalogs are distributed by a Virginia resident by mail or in person or if the person engaged in the mail order business has a definite place of business in this state at which mail orders are received or filled, the mail order business may be treated the same as any other retail or wholesale business for purposes of local license taxes.

**23VAC10-500-310. Retail sales through a commission merchant.**

Any person who sells goods at retail through a commission merchant, as defined in §58.1-3733 of the Code of Virginia, may be held liable for a local license tax as to such sales even though the commission merchant may also be taxable with respect to a commission on such sales.

**23VAC10-500-320. Nonmercantile businesses.**

A job printer is a manufacturer and is engaged in either retail or wholesale sales as to the sales of the items printed. The term "job printer" does not lend itself to rigid definition.

**23VAC10-500-330. Motor vehicle dealers.**

Any locality imposing a license tax on motor vehicle dealers may, by ordinance, require any dealer who separately states the amount of local license tax applicable to a sale and collects it from the customer to treat such taxes collected as held in trust for the locality and require that all such sums collected be paid over to the locality quarterly during the license year. Gross receipts on which the tax has been separately stated, collected and paid over shall be excluded from other taxable gross receipts when the annual license is obtained. During the three-year period following overassessments on the part of the motor vehicle dealers, the locality will refund the amounts due to the purchasers who produce verification that the overpayments were made.

**23VAC10-500-340. Wholesale sales; maximum rate.**

In general, the maximum rate for local license taxes imposed on a person engaged in wholesale selling is five cents per \$100 of purchases of goods for sale. In lieu of a tax, a license fee also be charged by the locality. The amount of the fee depends upon the locality's population. (23VAC10-500-100.) Some localities are grand fathered to assess a BPOL tax on wholesalers based upon gross receipts.

**23VAC10-500-350. The licensable privilege of wholesale selling.**

A. Whether or not a sale of tangible personal property is properly classified as wholesale selling depends on the facts and circumstances of the particular transaction under

consideration. Wholesale trade is generally recognized as the selling at such prices and in such quantities to others who will then resell such goods either to ultimate consumers or further down the normal distribution chain. Wholesale trade may also include sales to industrial, commercial, or governmental users where goods sold will be used by the buyer in its productive processes.

B. Although no single factor such as price, purpose, or place of sale may always distinguish between wholesale and other types of sales, the following inquiries may be helpful:

1. Is the sale to an individual consumer for the consumer's own personal use? This type of transaction is never considered a wholesale sale for BPOL purposes regardless of whether the taxpayer sells the item at a purported "wholesale price" or sells the item from a business facility that appears to be a wholesale establishment.
2. Is the sale to another merchant for resale? Transactions in which the taxpayer is selling new "in the box" items to a merchant for retail or distribution to other retailers or wholesalers are wholesale sales for BPOL purposes. Sales of used goods for resale may be wholesale depending upon the facts and circumstances of the transaction.

C. Taxpayers engaged in the business of selling goods to a government, institutional, business, or industrial entity for consumption, use or incorporation in an assembly, manufacturing or processing operation are typically subject to the BPOL tax on wholesalers. "Wholesale price" can be an important factor in classifying this type of sales activity, especially when the transaction in question involves goods that are simultaneously offered to individual consumers at a higher price. Examples of these wholesale activities include:

1. Bulk quantity sales of goods for maintenance of facilities or equipment;
2. Sales of materials or components for incorporation into a product; or
3. The supplying of machinery, fixtures or furnishings.

D. Factors that help distinguish between wholesale and retail selling:

1. Retail:
  - a. Personal use by individual consumers; or
  - b. Retail price offered to consumers.
2. Wholesale:
  - a. Sale for resale;
  - b. Volume;
  - c. Sale to government, institutional, or industrial entity for input into productive process; or
  - d. Sales by the original manufacturer.

---

# Regulations

---

## **23VAC10-500-360. Wholesale activities ancillary to manufacturing.**

A. In bringing their goods to market most manufacturers engage in a wholesale function. So long as this function is ancillary to the manufacturing function, i.e., it does not rise to the level of becoming a separate business activity, the manufacturer is not licensable as a wholesaler or subject to the wholesaler BPOL tax. The following wholesale functions are ancillary to a manufacturer's privilege of manufacturing and selling goods at wholesale at the place of manufacture and not subject to BPOL tax:

1. All facilities of manufacturer at same location. In this case, the wholesale function and the related sales personnel are located at the place of manufacture. The wholesale function is ancillary to the principal business of manufacturing and thus not licensable or taxable as a wholesale operation for BPOL purposes.

2. Manufactured goods distributed from place of manufacture - sales function performed in several separate jurisdictions. Even though in this case sales activity is taking place in other jurisdictions, the activity does not rise to the level of a separate wholesale business because the goods to be sold remain at the place of manufacture. All sales activity is directed towards delivery of the goods from the place of manufacture to the customer and thus within the statutory exemption for manufacturing.

3. All facilities of manufacturer at same location except completed goods warehoused in separate jurisdiction. The result in this example is the same as in the previous two. Assuming the warehouse is a storage facility that conducts no other business functions, its existence in another jurisdiction does not provide this other jurisdiction with grounds to levy a license tax on the facility. Mere storage of completed goods is ancillary to manufacturing regardless of where the storage takes place.

### B. Examples of wholesale activities:

1. Company C manufactures parts for automobiles outside Virginia. Some of its production is sold directly to governmental, institutional, business, and industrial entities, and some of its production is sold through a store in City D, Virginia. Customers of that store include individuals purchasing at established retail prices, businesses purchasing at the same prices, and other businesses purchasing on a fleet basis at a discount. Sales by Company C directly to government, institutional, business, and industrial entities from the factory are wholesale sales provided that the purpose of the customer in buying such goods is to resell them in one form or another or to use them for business needs as supplies or equipment. Sales made at Company C's store in City D are wholesale to the extent made to businesses on a fleet basis

at discount. Its sales made to other businesses not on a fleet and discounted basis are retail sales.

2. Corp. A, from its facility in City C, manufactures widgets that are installed in commercial, industrial, and governmental customer locations. Components are not for sale separately, nor can customers purchase unmade widgets. There is no tax. The company is a manufacturer selling at wholesale at the place of manufacture.

## **23VAC10-500-370. Financial, real estate and professional services; maximum rate.**

The maximum rate for local license taxes imposed on a person engaged in a financial, real estate or professional service is 58 cents per \$100 of gross receipts. In lieu of a tax, a locality may charge a license fee. The amount of the fee depends upon the locality's population. (23VAC10-500-100.)

## **23VAC10-500-380. Financial services; definitions.**

Any person rendering a service for compensation in the form of a credit agency, an investment company, a broker or dealer in securities and commodities, or a security or commodity exchange is providing a financial service, unless such service is specifically provided for under another section of the BPOL Regulations (23VAC10-500-10 et seq.). For purposes of this classification, the term:

1. "Broker" means an agent of a buyer or a seller who buys or sells stocks, bonds, commodities, or services, usually on a commission basis.

2. "Commodity" means staples such as wool, cotton, etc. that are traded on a commodity exchange and on which there is trading in futures.

3. "Dealer" means any person engaged in the business of buying and selling securities for his own account, but does not include a bank, or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

4. "Security" shall have the same meaning as in the Securities Act (§13.1-501 et seq. of the Code of Virginia) or in similar laws of the United States regulating the sale of securities.

## **23VAC10-500-390. Financial services; list of occupations.**

A. Those engaged in rendering financial services include, but are not limited to, the following:

1. Buying installment receivables

2. Chattel mortgage financing

3. Consumer financing

4. Credit card services

5. Factors

- 6. Financing accounts receivable
- 7. Industrial loan companies
- 8. Installment financing
- 9. Inventory financing
- 10. Loan or mortgage brokers
- 11. Loan or mortgage companies
- 12. Safety deposit box companies
- 13. Security and commodity brokers and services
- 14. Stockbroker
- 15. Working capital financing.

B. Some localities may be grand fathered for purposes of the BPOL tax to apply a rate higher than that specified by state statute to stockbrokers.

**23VAC10-500-400. Financial services; buying for another.**

Any person other than a national bank or bank or trust company organized under the laws of this state, or a duly licensed or practicing attorney-at-law, that engages in the business of buying or selling for others on commission or for other compensation, shares in any corporation, bonds, notes or other evidences of debt is a stockbroker. The fact that orders are taken subject to approval by a main office does not relieve the broker from local license taxation.

**23VAC10-500-410. Financial services; banks.**

Although they render financial services:

- 1. Banks and trust companies subject to the Virginia bank franchise tax are exempt from local license tax by §58.1-1202 of the Code of Virginia except as to sales of tangible personal property;
- 2. Savings institutions (including those whose name includes "savings bank") and state chartered credit unions are limited to a local license tax of \$50 by §58.1-3730 of the Code of Virginia; and
- 3. Federal credit unions are exempt under the Federal Credit Union Act, 12 USC §1768.

**23VAC10-500-420. Real estate services.**

Any person rendering a service for compensation as lessor, buyer, seller, agent or broker is providing a real estate service, unless the service is specifically provided for under another section of the BPOL Regulations (23VAC10-500).

**23VAC10-500-430. Real estate services; list of occupations.**

Those rendering real estate services include, but are not limited to, the following:

- 1. Appraisers of real estate
- 2. Escrow agents, real estate
- 3. Fiduciaries, real estate
- 4. Lessors of real property
- 5. Real estate agents, brokers and managers
- 6. Real estate selling agents
- 7. Rental agents for real estate

**23VAC10-500-440. Professional services; generally.**

The BPOL tax applies to the rendering of professional services for a fee and does not apply to professional classifications, per se. For example, lawyers or accountants employed by a corporation and compensated in wages as employees are not subject to the BPOL tax as professionals.

**23VAC10-500-450. Professional services; list of occupations.**

A. The BPOL statute requires the Department of Taxation to list those occupations that may be classified as "professionals" by the localities. The BPOL statute limits the term "professional" to those occupations or vocations in which a professed knowledge of some department of science or learning, gained by a prolonged course of specialized instruction and study, is used in its practical application to the affairs of others, either advising, guiding, or teaching others, and serving their interests or welfare in the practice of an art or a science founded upon it. The statute also states that the word "profession" implies attainments in professional knowledge as distinguished from mere skill, and the application of knowledge to uses for others rather than for personal profit. The following is an all encompassing list. Unless otherwise specifically excluded, all professional titles listed include the specialties and subspecialties included within that title in the U.S. Department of Labor's Dictionary of Occupational titles. For instance, "dentist" includes orthodontist, periodontist, oral pathologist, endodontist, oral surgeon, and prosthodontist. Further, the term "engineer" includes, petroleum engineer, mechanical engineer, chemical engineer, civil engineer, industrial engineer, electrical engineer, nuclear engineer, and agricultural engineer. A "professional" means a person rendering services as:

- 1. Architects
- 2. Attorneys-at-law
- 3. Certified public accountants
- 4. Dentists
- 5. Engineers
- 6. Land surveyors
- 7. Surgeons

---

# Regulations

---

## 8. Veterinarians

9. Practitioners of the healing arts (the arts and sciences dealing with the prevention, diagnosis, treatment and cure or alleviation of human physical or mental ailments, conditions, diseases, pain or infirmities), including pharmacists and occupational and physical therapists, chiropractors, dieticians, and such occupations as listed in this section, and no others.

B. In addition, the following occupational titles would fall within the definition of "professional":

### 1. Anatomists

### 2. Archeologists

### 3. Biologists

### 4. Botanists

### 5. Chemists

### 6. Economists

### 7. Geologists

### 8. Historians

### 9. Mathematicians

### 10. Metallurgists

### 11. Meteorologists

### 12. Morticians

### 13. Physicists

### 14. Zoologists.

## **23VAC10-500-460. Professional services; consulting.**

The terms "consultants" and "consulting" imply that the person possesses education, experience, and expertise in the subject matter of the service offered. However, whether a consultant renders a professional service also depends on the nature of the service offered. While consulting involves the rendering of an expert opinion, as opposed to the mere conveyance of data or the giving of general advice, the activity of consulting will not fall into the definition of "professional services" unless some professional service is rendered with the consulting advice and the rendering of such professional service is listed on the list contained in 23VAC10-500-450. For example:

1. An inexperienced lawyer offering legal services to the public is classified as a professional because qualifying as a lawyer requires a prolonged course of specialized instruction and study, and legal services are generally considered professional services.

2. A "professional exterminator" is classified as personal and other services because he is offering an exterminating service even though he may be very experienced, expert

and knowledgeable in the subject. On the other hand, a biologist or sanitarian who does not provide extermination services but advises as to procedures (among which may be extermination services), equipment, and other measures to avoid contamination by viruses, bacteria, chemicals, insects, rodents, and the like may be considered a professional.

3. Services that are not considered professional services may be offered in connection with professional services and be considered ancillary. For example, tax preparation services generally are not professional services, while rendering advice concerning the tax consequences of completed or contemplated transactions would be a professional service. Professionals who specialize in tax matters may prepare returns as well as render advice, and the tax preparation service would be ancillary to the professional service.

4. The term "management consulting" does not convey enough information about the service offered to determine the proper classification. Services that assist the business in the conduct of its day-to-day operations would generally not be considered professional. For example, payroll services, marketing surveys, and cash management are all services that would not properly be classified as professional services.

## **23VAC10-500-470. Professional services; services for compensation.**

A. Certification as a professional by itself is not sufficient to establish liability for local license taxation because many individuals may maintain their professional certification even though they are not practicing their profession. The business may not be classified as professional unless it is offering professional services to the public for compensation.

B. Gross receipts for purposes of local license taxation as a professional include only those gross receipts obtained from the practice of that profession as a business (including any ancillary receipts), whether the practice be on a full- or part-time basis, and without regard to the legal form of the business entity.

## **23VAC10-500-480. Repair, personal, business and other services; other businesses.**

Other services not clearly identified as financial, real estate or professional are classified as "repair, personal, business and other services" under 23VAC10-500-490 to 23VAC10-500-510.

## **23VAC10-500-490. Repair, personal, business and other services; maximum rate.**

The maximum rate for local license taxes imposed upon a person engaged in providing for compensation any repair, personal, business or other services not specifically otherwise classified in the BPOL Regulations (23VAC10-500) or

exempted from local license tax is 36 cents per \$100 of gross receipts. In lieu of a tax, a locality may impose a license fee upon the service. The amount of the fee charged is limited by the locality's population. (23VAC10-500-100.)

**23VAC10-500-500. Repair, personal, business and other services; list of occupations.**

Definitions of repair service, personal service, and business service have been omitted since this classification applies to all services not classified as financial, real estate or professional. Those rendering a repair, personal or business service or other service as provided for in 23VAC10-500-480 include, but are not limited to, the following:

1. Advertising agencies
2. Airports
3. Ambulance services
4. Amusements and recreation services
5. Animal hospitals, grooming services, kennels or stables (except for the services of a veterinarian)
6. Auctioneers and common criers
7. Automobile driving schools
8. Barber shops, beauty parlors, and hairdressing establishments, schools & services
9. Bid or building reporting services
10. Billiard or pool establishments or parlors
11. Boat landings
12. Bondsmen
13. Booking agents or concert managers
14. Bowling alleys
15. Brokers and commission merchants other than real estate or financial brokers
16. Business and governmental research and consulting services
17. Chartered clubs
18. Child care attendants or schools
19. Collection agents or agencies
20. Commercial photography, art and graphics
21. Copying over the counter (including copies made by the customer on the business' equipment)
22. Court reporting and public stenographers
23. Dance studios and schools
24. Data processing, computer and systems development services
25. Developing or enlarging photographs
26. Detective agencies and protective services
27. Drafting services
28. Employment agencies
29. Engraving outside of the manufacturing process
30. Erecting, installing, removing or storing awnings
31. Extermination services (unless the services involve performing functions defined as contracting under §58.1-3714 D of the Code of Virginia)
32. Farriers or blacksmiths
33. Foresters
34. Freight traffic bureaus
35. Fumigating or disinfecting
36. Funeral services and crematories
37. Golf courses, driving ranges and miniature golf courses
38. Hauling of sand, gravel or dirt (excavated by others)
39. Homes for adults (licensed by Department of Social Services)
40. Hospitals (other than the performance of medical services falling within the definition of professional services)
41. Hotels, motels, tourist courts, boarding and rooming houses and transient trailers
42. Parks and campsites
43. House cleaning services
44. Information bureaus
45. Instructors, tutors, schools and studios of music, ceramics, art, sewing, sports and the like
46. Interior decorating
47. Janitorial services
48. Laundry cleaning and garment services including laundries, dry cleaners, linen supply, diaper service, coin operated laundries and carpet and upholstery cleaning
49. Mailing, messenger and correspondent services
50. Movie theaters and drive-in theaters
51. Nickel plating, chromizing and electroplating
52. Nurses and physician registries

---

# Regulations

---

53. Nursing and personal care facilities including nursing homes, convalescent homes, homes for the retarded, old age homes and rest homes

54. Packing, crating, shipping, hauling or moving goods or chattels for others

55. Parcel delivery services

56. Parking lots, public garages and valet parking

57. Pawnbrokers

58. Personnel services, labor agents and employment bureaus

59. Piano tuning

60. Picture framing and gilding

61. Porter services

62. Press clipping services

63. Professional sports (i.e., commercial rather than amateur)

64. Promotional agents or agencies

65. Public relations services

66. Realty multiple listing services

67. Renting or leasing any items of tangible personal property

68. Research and development laboratories

69. Secretarial services

70. Septic tank cleaning

71. Shoe repair, shoe shine and hat repair shops

72. Sign painting (unless the painting services involve performing functions defined as contracting under subsection D of §58.1-3714 of the Code of Virginia)

73. Storage -- all types

74. Swimming pool maintenance and management

75. Tabulation services

76. Tax preparers (other than professionals described in 23VAC10-500-450)

77. Taxicab companies

78. Taxidermists

79. Telephone answering services

80. Temporary employee services

81. Testing laboratories

82. Theaters

83. Theatrical performers, bands and orchestras

84. Towing services

85. Transportation services including buses and taxis

86. Travel agencies

87. Tree surgeons, trimmers and removal services

88. Trucking companies, intrastate

89. Wake up services

90. Washing, cleaning or polishing automobiles

## **23VAC10-500-510. Commission merchants.**

A commission merchant as defined in §58.1-3733 of the Code of Virginia is deemed to be providing a service to the manufacturer or merchant for whom he sells. The commission merchant's commission income may be subject to a license tax of up to 36 cents per \$100 of gross receipts under this classification.

## **23VAC10-500-520. Manufacturing.**

A. Manufacturers are not listed as a classification for which §58.1-3706 of the Code of Virginia specifies the maximum tax rate. The taxation of wholesalers, however, is affected by whether the business is also classified as a manufacturer, and whether activities at a definite place of business from which sales are made are considered to be part of the manufacturing process. Questions also arise as to whether a business is a manufacturer or properly classified as another type of business.

B. The Code of Virginia does not define the term "manufacturer" for purposes of the local business license tax. The courts, however, have developed a liberally applied test involving three essential elements in determining when a person is a manufacturer:

1. The original material;

2. A process whereby the original material is changed; and

3. A resulting product which, by reason of being subjected to processing, is different from the original material.

(See the Virginia Supreme Court's discussion in County of Chesterfield v. BBC Brown Boveri, 238 Va. 64 (1989) of the term "manufacturer" for purposes of the BPOL law.)

C. "Manufacturer" means one engaged in activity that transforms materials into an article or product of substantially different character. A business engaged in manufacturing does not lose its status as a manufacturer merely because it conducts some nonmanufacturing activities. When one is engaged in both manufacturing and nonmanufacturing activities, it can still be classified as a manufacturer if its manufacturing activity constitutes a substantial portion of its overall activities. The test to determine whether a multipurpose business qualifies as a manufacturer for tax purposes is one of substantiality. The test of substantiality has

no rigid definition; however, the business as a whole must be considered. In order for the manufacturing component of a multipurpose business to be deemed substantial, it must not be de minimis, merely trivial, or only incidental to its principal business.

1. Gross receipts that are ancillary to a manufacturer's sales at wholesale at the place of manufacture are also exempt even though the receipts may be attributable to activities at another location, e.g., interest on an installment sale or charge account may be received at a location other than the place of manufacture and sale at wholesale.

2. Mere manipulation or rearrangement of the original materials is not sufficient; there must be a substantial, well-signified transformation in form, usability, quality and adaptability rendering the original material more valuable for use than it was before. Merely processing, blending, grading, etc. material is not manufacturing.

3. Not every person engaged in some manufacturing is classified as a manufacturer. The manufacturing component of the business must be a substantial (i.e., not incidental or inconsequential) portion of the business. The factors that may be considered in determining whether the manufacturing component of a multi purpose business makes a substantial contribution to the entire business include, but are not limited to, any one or more of the following:

a. The manufacturing component's financial receipts or proportion of total corporate income;

b. The percentage that manufacturing equipment, inventory, etc. comprises of the total capital investment;

c. The number of employees working in the manufacturing component as compared with the total number of employees; or

d. The ratio of manufacturing activities to the entire business. For example, if a developer of very complex custom software produces only a few copies of disks, the assembly of purchased components may or may not constitute manufacturing. However, if such production constitutes a majority of the business' activities, the business may be considered a manufacturer.

4. Routine assembly generally is not manufacturing. For example, if components are sold separately and assembly is offered as an option to the purchaser, the assembly is a service (which may or may not be ancillary to the sale of the component, or de minimis). When evaluating the facts and circumstances to determine if a business is engaged in manufacturing, factors that suggest that assembly is not a separate service but part of a manufacturing process include, but are not limited to, any one or more of the following:

a. The assembly process is complex and uses numerous parts.

b. After assembly, the components cannot be recognized without previous knowledge.

c. The components are not readily usable for any purpose other than incorporation into the finished product.

5. Engineering, design, research and development, and computer software development typically are not manufacturing. However, the actual production of tangible products based on engineering, design, research and development can be manufacturing. For example:

a. While the development of computer software is not manufacturing, the production of boxes containing the software on disks and related instruction manuals may be manufacturing.

b. While the design of computer hardware components is not manufacturing, the production of such components may be manufacturing.

c. While the design and engineering of specialized tools, dies, and machinery is not manufacturing, the production of even a single tool, die or machine may be manufacturing.

6. Manufacturing examples:

a. An entity accepts delivery of used and burnt up turbine powered generators that can no longer properly function. The entity removes parts from the generators and replaces them with new parts that it makes to precise specifications from raw copper. The entity also rewinds the generators with new copper wiring. After repair, the generators operate much like a new machine. For the reasons stated in this section, this activity constitutes manufacturing.

b. An entity purchases livestock outside of the state of Virginia, brings that stock into Virginia, and slaughters and trims the stock here, and also smokes and salts the meat for sale in Virginia. Under these facts, this activity constitutes manufacturing.

c. An entity receives from various vendors electro magnetic tape, some in raw form and some in programmed format, and integrates the data thereon with other magnetic tape received from other vendors that will result in a customized home video game cartridge or diskette. Based upon these facts and for the reasons stated in this section, this activity does not constitute manufacturing.

d. Same as subdivision 6 c, except the entity designs small plastic, box like cartridges and, after integrating the various original data types into combined data on a previously blank magnetic tape medium, it electronically

---

# Regulations

---

engrafts the new, combined data onto magnetic plate like tape diskettes inside of the cartridges and ships the resulting cartridges for wholesale from its production facility in Virginia. For the reasons stated in this section, this activity as outlined in these set of facts constitutes manufacturing.

e. An entity engages in typesetting, duplicating, editing or graphic design processes. These activities by themselves are neither printing nor manufacturing. However, when an entity engages in more than one or a combination of these processes to produce a product that is substantially transformed from the original material, it may qualify as a manufacturer. If the entity sells the new product at wholesale from the place of manufacture, the business may benefit from the exemption contained within §58.1-3703 C 4 of the Code of Virginia.

## **23VAC10-500-530. Due dates.**

A. If not previously licensed, a person must apply for a license prior to beginning business. If licensed the previous year, a person must apply for a license prior to the application due date adopted by the locality. Applications are on forms prescribed by the local tax officials.

B. For reasonable cause, the local official may allow an extension for the filing of the application and such extension may be conditioned on the timely payment of an estimate of the tax due. Taxes paid based upon an estimate will be subject to correction, with interest and penalties, if the estimate is unreasonable.

C. For taxes based on gross receipts, the locality has the option of requiring payment of the tax on or before the locality's fixed due date for filing license applications or a later date, or 30 or more days after the person begins business.

D. Every locality must adopt a March 1 due date for applications or a later application date that is on or before May 1st of the license year no later than the 2007 license year.

## **23VAC10-500-540. Interest and penalties.**

The provisions of §58.1-3703.1 of the Code of Virginia relating to interest and penalties apply to assessments made on and after January 1, 1997, even if for an earlier license year. Interest is charged on all late payments regardless of reason. A locality may impose a 10% penalty on an entity that fails to file a license application or return on time or on an entity that makes late payments. The 10% penalty and interest for late payment apply to license fees as well as the license tax.

## **23VAC10-500-550. Interest.**

A. For assessments made on or after January 1, 1997, if a payment of tax is late, interest will be charged on the late

payment from the due date until the date paid without regard to fault or other reason.

B. For tax years prior to January 1, 1997, localities may charge interest upon delinquent taxes pursuant to §58.1-3916 of the Code of Virginia.

C. If an assessment of additional or omitted tax is found to be erroneous, the interest and penalty charged and collected on the amount of such assessment must be refunded with interest on the refund from the date of payment or the due date, whichever is later. Interest on any refund must be paid at the same rate charged under §58.1-3916 of the Code of Virginia.

D. Taxes paid by first-year taxpayers based upon estimates will be subject to correction with interest and penalties if estimates prove to be unreasonable. Unless otherwise provided by a locality, estimates of the tax due will be deemed unreasonable if they are less than 80% of the actual taxes ultimately due.

E. If a refund is made within than 30 days from the date of the payment that created the refund, or the due date of the tax, whichever is later, interest will not be paid.

F. If a late payment is made within than 30 days from the due date of the tax, whichever is later, interest on the payment will not be due.

## **23VAC10-500-560. Penalties.**

A. Upon a failure to file or a failure to pay a tax due, a penalty of 10% may be imposed. If both the application and payment are late, only one penalty may be imposed, unless the local official determines the taxpayer has a history of noncompliance, then both penalties may be assessed. Where an assessment of additional tax is made, but the application or the return, or both were made in good faith by the taxpayer and there is no fraud, recklessness or intentional disregard of the law on the part of the taxpayer, there will be no penalty on the additional tax.

B. A 10% late penalty may be imposed on any assessed tax that is not paid within 30 days. If the failure to file or pay is not the fault of the taxpayer, the penalty will not be imposed, or if imposed, shall be abated. Lack of fault must be demonstrated by the taxpayer showing that he acted responsibly and that the failure was due to events beyond his control. "Acted responsibly" means that the taxpayer exercised the reasonable care that a prudent person would exercise under the circumstances, and that the taxpayer took significant steps to avoid or mitigate the failure. Examples of such steps include requesting appropriate extensions (where applicable), attempting to prevent a foreseeable impediment, acting to remove an impediment once it occurred, and promptly rectifying a failure once the impediment was removed or the failure discovered. "Events beyond the taxpayer's control" include, but are not limited to,

unavailability of records due to fire or other casualty; unavoidable absence (e.g., due to death or serious illness) of the person with sole responsibility for tax compliance; or the taxpayer's reasonable reliance in good faith upon erroneous written information from the assessing official who was aware of the relevant facts relating to the taxpayer's business when he provided the erroneous information.

**23VAC10-500-570. Waiver or abatement of late filing or late payment penalties.**

If a taxpayer is penalized for failing either to file for a license or to pay the tax on the appropriate due date, the assessing official must waive or abate the penalty if the taxpayer was not at fault and the failure was due to events beyond the taxpayer's control. Interest, as opposed to a penalty, cannot be waived. To demonstrate lack of fault for waiver of penalty, a taxpayer must have exercised the same amount of care as a reasonably prudent person and must have actively tried to avoid the failure. For example:

1. Taxpayer opened small dry-cleaning business in County A. County A has a population of 25,000. Taxpayer failed to apply for a license because taxpayer thought, in good faith, that his gross receipts would not exceed \$50,000. Taxpayer's gross receipts were \$100,000. Taxpayer would be liable for the license tax plus a penalty because taxpayer failed to file an application for a license.

2. A retailer fails to file an application on time when its computer system suffers significant damage due to floods. The retailer never informs tax assessor of its problem. Although the failure to file was initially not the fault of the retailer, retailer will be liable for the penalty since it failed to act reasonably in notifying the locality within a short period of time and did not attempt to correct the failure and to obtain an extension.

3. Same facts as Example C, except that the retailer did not contact the tax assessor for 10 months after its computer system is repaired and its store reopened. Although its failure to file was through no fault of its own, the retailer will be responsible for the penalty since it failed to rectify the failure within an amount of time that was reasonable under the circumstances indicated once the impediment was removed.

4. Local official erroneously sends old tax forms with outdated information to taxpayer. Taxpayer, who in good faith uses the old tax forms, underpays his tax. Since the underpayment was due to an event beyond the taxpayer's control and it was not reckless, fraudulent or the result of an intentional disregard of the law, there will be no penalty on the understatement.

**23VAC10-500-580. Assessments; limitations and extensions.**

A. Section 58.1-3903 of the Code of Virginia provides that, in general, an assessing official may only assess omitted local

taxes for the current tax year and the three preceding tax years. Notwithstanding §58.1-3903 of the Code of Virginia, the assessing official may assess the local license tax omitted because of fraud or failure to apply for a license for the current license year and the six preceding license years. The provision permitting an assessment of license tax for up to six preceding years in certain circumstances may not be construed to permit the assessment of tax for a license year beginning before January 1, 1997. (§§ 58.1-3703.1 A 4 b and 58.1-3703.1 B 2 of the Code of Virginia.)

B. However, where before the expiration of time established for the assessment of any license tax, both the assessing official and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The assessing officer and the taxpayer can agree to extend the period assessing the original tax, assessing additional tax or omitted tax, or for revising an assessment as part of making a refund. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The provisions of § 58.1-3703.1 A 4 a of the Code of Virginia relating to agreements extending the period for assessing tax are effective for agreements entered into on and after July 1, 1996.

C. Assessments shall be deemed made by an assessing official when a written notice of assessment is delivered to the taxpayer by the assessing official or an employee of the assessing official, or mailed to the taxpayer at his last known address. Self-assessments shall be deemed made when a return is filed, or if no return is required, when the tax is paid. A return filed or tax paid before the last day prescribed by ordinance for the filing or payment thereof shall be deemed to be filed or paid on the last day specified for the filing of a return or the payment of tax, as the case may be. An assessment includes a return filed on behalf of the taxpayer by the local assessing officer.

**23VAC10-500-590. Limitations on collection.**

Section 58.1-3940 of the Code of Virginia provides that, in general, collection of local taxes may only be enforced for five years following December 31 of the year for which such taxes were assessed. In addition, §58.1-3703.1 A 4 c of the Code of Virginia provides that the period for collecting any local license tax will not expire prior to the period specified in §58.1-3940 of the Code of Virginia, two years after the date of assessment if the period for assessment has been extended pursuant to §58.1-3703.1 A 4 c of the Code of Virginia, two years after the final determination of an appeal for which collection has been stayed pursuant to §58.1-3703.1 A 5 b or d of the Code of Virginia, or two years after the final decision in a court application pursuant to §58.1-3984 of the Code of Virginia or similar law for which collection has been stayed, whichever is later.

---

# Regulations

---

## **23VAC10-500-600. Recordkeeping and audits.**

A. Every person who is assessable with a local license tax must keep sufficient records to enable the assessor to verify the correctness of taxes paid for the license years assessable and to enable the assessor to ascertain what is the correct amount of tax that was assessable for each of those years. All such records, books of accounts and other information must be open to inspection and examination by the assessor in order to allow the assessor to establish whether a particular receipt is directly attributable to the taxable privilege exercised within a jurisdiction. The assessor must provide the taxpayer with the option to conduct the audit at the taxpayer's place of business if the records are maintained there. If maintained outside the assessor's jurisdiction, copies of the appropriate books and records must be sent to the assessor's office upon demand.

B. A taxpayer must keep its records for the current license year and the preceding three license years where it regularly files BPOL tax returns; however, a locality may review a taxpayer's records for the current license year and the six preceding license years when there has been a failure on the part of the taxpayer to file BPOL tax returns or obtain a BPOL license, or where there has been fraud on the taxpayer's part relating to BPOL taxes. For each license year under audit or for which the taxpayer must keep records, base year records provide the measure for license tax on gross receipts. (§§58.1-3703.1 A 4 b and B 2 of the Code of Virginia.) For example:

1. Company A regularly pays BPOL taxes and is audited in 1997 for license years 1994, 1995 and 1996 by the locality in which it operates. In order for a full review covering all relevant tax years to take place, Company A must have its records for the current year and for license years 1994 through 1996.

2. Same facts as in the first example, except Company A has not applied for a BPOL license nor filed BPOL tax returns since 1989. Section 58.1-3703.1 A 4 b of the Code of Virginia allows a locality to assess the BPOL tax for the current license year and the previous six license years where there is fraud or the taxpayer fails to apply for a BPOL license. However, in cases of fraud or a failure to apply for a BPOL license, 58.1-3703.1 B 2 of the Code of Virginia limits the application of §58.1-3703.1 A 4 b of the Code of Virginia to BPOL assessments for license years beginning on and after January 1, 1997. The ability to assess a BPOL tax for the current license year and the previous six license years under §58.1-3703.1 A 4 b of the Code of Virginia is in addition to the statutory authority to assess a BPOL tax for three preceding years under §58.1-3903 of the Code of Virginia. Therefore, under §58.1-3903 of the Code of Virginia, Company A can be assessed a license tax for 1997, 1996, 1995, and 1994.

## **23VAC10-500-610. Consistent reporting and coordinated enforcement.**

The local official administering the license tax may consult with federal, state and local government officials to verify that any relevant certifications, determinations or classifications made by such other government official or the taxpayer for other tax or regulatory purposes are consistent with the classification claimed by the taxpayer for local license tax purposes or to coordinate enforcement of various tax and regulatory provisions. No presumption will be established by the action or inaction of another government official unless the applicable law, regulation, or policy administered by the other government official is substantially similar to the definition, law, ordinance or other provision applicable for BPOL purposes. Certifications, determinations, or classifications made by a government official or the taxpayer for other tax or regulatory purposes are evidence of the correctness of a classification of a taxpayer, but are not conclusive evidence. For example:

1. The local tax official may consult with federal and state tax officials concerning whether a person who claims not to be engaged in business for local license tax purposes properly filed a Schedule C with his federal and state income tax returns.

2. The local tax official may verify whether federal forms W-2, 1099 or similar forms have been filed with respect to persons or income for which classification as an employee or independent contractor is an issue.

3. The local tax official may verify whether a person has obtained or is required to obtain a state or local regulatory license such as a contractor's license, professional license, zoning approval, building permit, etc. The existence or absence of such other regulatory action generally will not establish a presumption with respect to BPOL tax issues because different definitions, purposes, and policies are involved.

## **23VAC10-500-620. Locality tax year.**

Every locality imposing the BPOL tax or fee is required to have adopted a calendar year tax year by January 1, 1997.

## **23VAC10-500-630. Taxpayer's request for a written ruling.**

A taxpayer or authorized representative of a taxpayer may request a written ruling from the local assessing officer regarding the application of a local license tax to a specific set of facts. Any person requesting such a ruling must provide all the relevant facts for the situation and may present a rationale for the basis of an interpretation of the law most favorable to the taxpayer. Any misrepresentation or change in the applicable law or the factual situation as presented in the ruling request will invalidate any such ruling issued. A written ruling issued by the local assessing officer may be

revoked or amended prospectively if: (i) there is a change in the law, a court decision, or the BPOL Regulations (23VAC10-500) issued by the Department of Taxation upon which the ruling was based or (ii) the assessor notifies the taxpayer of a change in the policy or interpretation upon which the ruling was based. However, any person who acts on a written ruling that later becomes invalid shall be deemed to have acted in good faith during the period in which such ruling was in effect.

**23VAC10-500-632. Tax Commissioner’s advisory and interpretative powers.**

A. The Tax Commissioner has the authority to issue advisory written opinions that interpret the BPOL statutes and the BPOL Regulations (23VAC10-500). The Tax Commissioner is not required to interpret any local ordinances.

B. Examples of the issues that the Commissioner may render advisory opinions upon include:

1. Interpretation of changes made to the BPOL statutes.
2. Questions, the answers of which depend upon both state law and the laws of a locality.
3. Situations where two jurisdictions are attempting to tax the same gross receipts.
4. Classifications of businesses under the BPOL enabling legislation.
5. Whether a business qualifies as a manufacturer under existing court decisions.
6. Whether a business qualifies for deductions, exclusions, or reduced rates of tax contained within the BPOL-enabling legislation.
7. Situs rules contained within the BPOL-enabling legislation.
8. Whether changes made to a local statute conform with required changes under recent Virginia law.

C. Suggested examples of advisory opinions that the Commissioner may decline to make include:

1. Interpretations of wording contained within individual local BPOL ordinances.
2. Interpretations of the validity of an individual locality’s appeals process.

**23VAC10-500-633. Requesting an advisory opinion from the Tax Commissioner Exhibit.**

The following format is suggested for requesting a written advisory opinion from the Tax Commissioner.

**REQUEST FOR BPOL ADVISORY OPINION**

Name of requesting party:

Organization:

Address:

Telephone:

FAX:

E-mail:

Locality or localities involved:

Date request made:

In the space below, please fully describe the facts on which you seek an opinion and sign Section C. Please attach copies of pertinent documentation to this form as necessary.

<Insert Facts>

Before the Department of Taxation can respond to this request, this form must be signed. If the requesting party is a locality, this form must be signed by the Commissioner of the Revenue, Director of Finance, or other person authorized to sign on behalf of such persons. If the requesting party is a Business, this form must be signed by an authorized representative of the Business.

I understand that the department may contact (my local tax official or, if an opinion is being requested by a locality, the Business) for purposes of answering my question(s).

Signature

Title:

**23VAC10-500-640. Administrative appeals; introduction.**

The 1996 amendments to Chapter 37 (§58.1-3700 et seq.) of Title 58.1 of the Code of Virginia created a review process designed to encourage resolution of local license tax issues through an appeals process that includes review by the local assessing officer and appeal to the Tax Commissioner. Through this process, a taxpayer who disagrees with an audit assessment may apply to the local assessing officer for review. If the taxpayer is dissatisfied with the results of the local review, the taxpayer may appeal the local decision to the Tax Commissioner who will make a determination of the issues raised by the taxpayer. Additionally, the 1996 amendments provided taxpayers an opportunity for greater certainty in the administration of the BPOL tax through the use of written rulings. In this process, taxpayers may request a written ruling from their local assessing officer regarding the application of a local license tax to their unique

# Regulations

circumstances. In most cases, the taxpayer may rely on the positions set forth in those rulings. The 2002 amendments to §58.1-3703.1 of the Code of Virginia made by Chapter 364 of the 2002 Acts of Assembly altered the requirements for a local license tax issue to be eligible for the administrative review process. Effective for all appeals filed on or after July 1, 2002, the administrative review process is available for any assessment resulting from an "appealable event." The term "appealable event" is defined in 23VAC10-500-10. In addition, the 2005 amendments to §58.1-3703.1 of the Code of Virginia made by Chapter 927 of the 2005 Acts of

Assembly altered the BPOL administrative appeals process applicable to appeals filed with commissioners of the revenue or other assessing officers, appeals filed with the Tax Commissioner, and applications for judicial review filed in circuit courts on or after July 1, 2005.

The text added to the end of the section notes the statutory changes made by Chapter 364 of the 2002 Acts of Assembly and Chapter 927 of the 2005 Acts of Assembly.

## **23VAC10-500-650. Overview of the administrative review process.**

The following charts present an overview of the administrative review process and are intended to give general guidance to the local assessing officer and taxpayers. Local assessing officers and taxpayers should read the BPOL Regulations (23VAC10-500) to obtain complete information.

### 1. Administrative review of BPOL assessments – Taxpayer

<u>Critical Date</u>	<u>Function</u>	<u>Effect</u>	<u>Interest</u>	<u>Collection Activity</u>
<u>Within one year of the last day of the tax year for which such assessment is made or within one year from the date of the appealable event, whichever is later</u>	<u>Application for Review filed with the local assessing officer</u>	<u>Local assessing officer makes a final written determination</u>	<u>Accrues</u>	<u>Stops when a complete Application for Review or a Notice of Intent to Appeal is filed<sup>a</sup></u>
<u>Within 90 days of the date of the final written determination</u>	<u>Appeal to the Tax Commissioner<sup>b</sup></u>	<u>Tax Commissioner will make a determination of the appeal</u>	<u>Accrues</u>	<u>Stops when an Appeal to the Tax Commissioner or a Notice of Intent to Appeal is filed<sup>c</sup></u>

<sup>a</sup> Taxpayers intending to appeal an assessment should immediately provide a written Notice of Intent to Appeal to the local assessing officer to stop collection activity. The local assessing officer must promptly notify the local officer responsible for collection activity that collection activities should be suspended. See 23VAC10-500-801 for a suggested form "Notice of Intent to Appeal to Local Assessing Officer." In order to prevent the commencement or resumption of collection activities, the taxpayer must file a complete application for review within 30 days of filing the notice of intent to appeal.

<sup>b</sup> If the appeal is incomplete, taxpayer is given 30 days to complete it.

<sup>c</sup> Taxpayers intending to appeal a local assessing officer's determination should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner to stop collection activity. The local assessing officer must promptly notify the treasurer or other local official officer responsible for collection activity that collection activities should be suspended. See 23VAC10-500-802 for a suggested form "Notice of Intent to Appeal to Tax Commissioner." In order to prevent the commencement or resumption of collection activities, the taxpayer must file a complete application for review within 30 days of filing the notice of intent to appeal.

As the chart above indicates, the taxpayer must first file an Application for Review with the local assessing officer before an appeal can be made to the Tax Commissioner. The taxpayer must file the Application for Review within one year of the last day of the tax year for which such assessment is made or within one year from the date of the appealable event, whichever is later. Upon the timely filing of an Application for Review, the local assessing officer will make a final written determination on the taxpayer's application. The taxpayer then has 90 days from the date of the local assessing officer's final written determination to appeal that determination to the Tax Commissioner.

2. Administrative review of BPOL assessments; local assessing officer.

Critical Date	Function	Effect	Interest	Collection Activity
<u>Within a reasonable time of receipt of taxpayer's Application for Review</u>	<u>Make a final written determination</u>	<u>Taxpayer has 90 days from date of final written determination to file an Appeal to the Tax Commissioner</u>	<u>Accrues</u>	<u>May begin or resume after final written determination is made</u>
<u>Within 30 days of notice that appeal has been made to the Tax Commissioner</u>	<u>Make a request to address new issues or make a written reply to taxpayer's appeal<sup>a</sup></u>	<u>Allows local assessing officer to respond to new issues or to the appeal, in general</u>	<u>Accrues</u>	<u>Stops until Tax Commissioner issues a final written determination<sup>b</sup></u>

<sup>a</sup>If a request to address new issues is made, the appeal will return to the local assessing officer and the local appeals process re-starts. The local assessing officer must make a new final determination which can be appealed to the Tax Commissioner.

<sup>b</sup>Collection activity may begin or resume if the taxpayer does not file a complete application for review within 30 days of filing the notice of intent to appeal.

As the chart above indicates, the local assessing officer must issue a final written determination within a reasonable time of the taxpayer's timely filing of an Application for Review. A taxpayer whose application for correction has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner. The Tax Commissioner shall not consider an appeal filed in this manner if he finds that the absence of final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.

After issuing a final written determination, the local assessing officer should notify the local officer responsible for collection activity that collection activity may be commenced or resumed. Such collection efforts must be suspended, however, upon the taxpayer's filing of a Notice of Intent to Appeal the final determination or upon the filing of an Appeal to the Tax Commissioner. The Tax Commissioner will provide written notice to the local assessing officer when the taxpayer has filed a timely Appeal to the Tax Commissioner. The local assessing officer will then have 30 days to file a reply with additional information or to file a written request to address issues first raised on Appeal to the Tax Commissioner. If the local assessing officer files a written request to address new issues, the appeal must return to the local assessing officer and the local appeals process starts anew. Once an appeal is returned to the local assessing officer, the local assessing officer must issue a new final written determination which can be appealed to the Tax Commissioner.

**23VAC10-500-660. Applicability of the BPOL Regulations (23VAC10-500).**

The BPOL Regulations (23VAC10-500) apply to local license taxes only. The existence, utilization, or attempt to utilize the administrative review process provided in the BPOL Regulations (23VAC10-500) does not affect the taxpayer's right to pursue any other administrative and judicial remedies authorized by law. The filing of an action in circuit court does not prohibit an administrative review under Chapter 37 (§58.1-3700 et seq.) of Title 58.1 of the Code of Virginia.

**23VAC10-500-661. Notice of right to appeal.**

Every assessment made by a commissioner of the revenue or other assessing official pursuant to an appealable event shall include or be accompanied by a written explanation of the taxpayer's right to file an administrative appeal and the specific procedures to be followed in the jurisdiction, the

name and address to which the appeal should be directed, an explanation of the required content of the appeal, and the deadline for filing the appeal.

**23VAC10-500-670. Filing requirements.**

A. For any limitation of time in making an Appeal to the Tax Commissioner, Application for Review, reply, or any other information or material mentioned in the BPOL Regulations (23VAC10-500), should the last day of such limitation period fall on a Saturday, Sunday, or holiday observed by the Commonwealth of Virginia, the Appeal, Application, reply, or other information or material may be filed on the next business day. For any limitation of time appearing in the BPOL Regulations (23VAC10-500), the limitation shall begin to run on the day next following the event which triggers the time limitation.

B. A document is "filed" as of the date it is postmarked for first class delivery via United States mail or when it is

---

# Regulations

---

received if any other method of delivery, including facsimile transmissions, is utilized.

## **23VAC10-500-680. Suspension and commencement or resumption of collection activity.**

A. Collection activity with respect to the amount in dispute is suspended upon:

1. The local assessing officer's receipt of a notice of intent to appeal the assessment to the local assessing officer or a timely and complete Application for Review.
2. The local assessing officer's receipt of a Notice of Intent to Appeal.
3. The local assessing officer's receipt of notice of the filing of an Appeal to the Tax Commissioner.

B. The local assessing officer must notify the local officer responsible for collection activity when collection activity must be suspended.

C. Collection activity may commence or resume upon:

1. The local assessing officer's determination that an assessment subject to an Application for Review or an Appeal to the Tax Commissioner is jeopardized by delay.
2. The local assessing officer's determination that the Application for Review or Appeal to the Tax Commissioner is frivolous.
3. Failure by the taxpayer to file a timely and complete application for review after the taxpayer has initially filed a notice of intent to appeal to the local assessing officer.
4. The local assessing officer's determination that the taxpayer has not responded to a request by the local assessing officer or the Tax Commissioner for relevant information after a reasonable time.
5. The local assessing officer's issuance of a Final Local Determination.
6. The local assessing officer's receipt of written notice from the Tax Commissioner that the taxpayer has failed to file a timely Appeal to the Tax Commissioner after the taxpayer has initially filed a Notice of Intent to Appeal.
7. Failure by the taxpayer to file an appeal with the Tax Commissioner and file a copy of the appeal with the local assessing officer within 30 days of filing a notice of intent to appeal to the Tax Commissioner.
8. The local assessing officer's receipt of a final written determination issued by the Tax Commissioner in cases where the local license tax has not been totally abated.
9. The local assessing officer's receipt of a copy of a taxpayer's request to withdraw an Appeal to the Tax Commissioner.

D. The local assessing officer must notify the local officer responsible for collection activity when collection activity may commence or resume.

## **23VAC10-500-681. Notice of intent to appeal to local assessing officer exhibit.**

The following format is suggested for a Notice of Intent to Appeal to Local Assessing Officer:

<Date>

<Name of Local Assessing Officer>

(Organization)

(Address)

(City, State ZIP)

Re: Code of Virginia §58.1-3703.1, Appeal of Local BPOL Tax

<Taxpayer's name>

<Date of assessment>

Dear <Salutation>:

This is to notify you that <the taxpayer> intends to apply to you for correction of the above-referenced assessment.

Sincerely,

<Taxpayer or its representative>

## **23VAC10-500-682. Notice of intent to appeal to Tax Commissioner exhibit.**

The following format is suggested for a Notice of Intent to Appeal to the Tax Commissioner:

<Date>

Tax Commissioner

Appeals and Rulings

Virginia Department of Taxation

Post Office Box 27203

Richmond, Virginia 23261-7203

Re: §58.1-3703.1, Appeal of Local BPOL Tax

<Taxpayer's name>

<Locality>

<Date of Final Local Determination>

Dear <Salutation>:

This is to notify you that <the taxpayer> intends to apply to you for correction of the above referenced final determination. By a copy of this letter, I am notifying the local assessing officer of this intent.

Sincerely,

<Taxpayer or its representative>

c: <Name of Local Assessing Officer>

**23VAC10-500-690. Interest during appeal.**

Assessments subject to an Application for Review or Appeal to the Tax Commissioner will continue to accumulate interest until paid or abated. Taxpayers are encouraged to pay the undisputed portion of any assessment to avoid accrual of interest on that undisputed portion while an Application for Review or Appeal to the Tax Commissioner is pending. Any such payment will not be deemed a waiver of the taxpayer's remedies described in the BPOL Regulations (23VAC10-500).

**23VAC10-500-700. Application for review to local assessing officer.**

A. A taxpayer may file an Application for Review with the local assessing officer within one year of the last day of the tax year for which such assessment is made or within one year from the date of the appealable event, whichever is later.

B. The Application for Review must be filed in good faith. The Application for Review must not be frivolous or otherwise filed for purposes of avoiding or delaying collection of the local license tax.

C. Upon receipt of the complete Application for Review, the local assessing officer shall acknowledge in a writing to the taxpayer, receipt of the Application for Review.

D. The application should contain the following:

1. Name and address of taxpayer and taxpayer identification number.

2. If applicant is different from the taxpayer, name and address of the applicant and a power of attorney or letter of representation.

3. Copy of Notice of Assessment.

4. The tax period covered by the assessment.

5. The amount in dispute.

6. A statement explaining why the taxpayer believes the assessment is erroneous. The statement should also include facts, issues and authority which the taxpayer believes supports his position.

7. Statement of relief the taxpayer requests.

**23VAC10-500-710. Final local determination.**

A. Provided the application is filed in good faith and not merely for purposes of delay, the local assessing officer shall conduct a full review of the facts, assertions, and authorities submitted by the taxpayer.

B. During this process the local assessing officer may hold conferences with the taxpayer, conduct further inquiries, or perform additional audits as required to reach a fair conclusion on the issues presented by the taxpayer.

C. Within a reasonable time of receipt of the Application for Review, the local assessing officer shall issue a signed and dated Final Local Determination setting forth the facts and arguments in support of his position.

D. Each final written determination shall contain the following notice:

You may appeal this Final Local Determination to the Tax Commissioner as follows:

• If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at the following address:

Appeals and Rulings  
Virginia Department of Taxation  
Post Office Box 27203  
Richmond, Virginia 23261-7203

• Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or an Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin. Collection activity may begin or resume if you do not file a complete application for review within 30 days of filing the notice

---

# Regulations

---

of intent to appeal. A form for preparing a notice of intent to appeal are located in 23VAC10-500-802.

The BPOL Regulations (23VAC10-500) and the applicable Code of Virginia sections for preparing an Appeal to the Tax Commissioner are available at the General Assembly's website.

## **23VAC10-500-711. Final local determination exhibit.**

The following format is suggested for a Final Local Determination:

### FINAL LOCAL DETERMINATION

(DATE)

(Name)

(Organization)

(Address)

(City, State ZIP)

Re: Code of Virginia §58.1-3703.1 A Determination:

Business, Professional and Occupational License (BPOL) Tax

(Taxpayer's name)

Dear (Salutation):

Enclosed please find a final assessment for the base year(s) <list base years>.

After considering your Application for Review made on <date>, a final determination on your application has been reached. We have based our determination upon the following grounds and relevant facts:

Facts

You (or your client) have challenged:

(Specify the facts and issues presented in the Application for Review)

Determination

Based upon the facts we discovered during the audit and applicable local statutes, state statutes, and case law, we have determined:

(Final determination)

(Notification of taxpayer's rights)

You may appeal this Final Local Determination to the Tax Commissioner as follows:

1. If you wish to appeal, you must act within 90 days from the date of this Final Local Determination by filing an Appeal to the Tax Commissioner at:

Appeals and Rulings

Virginia Department of Taxation

Post Office Box 27203

Richmond, Virginia 23261-7203

2. Collection activity may commence or resume at any time after the date of this Final Local Determination and will not be suspended until a Notice of Intent to Appeal or Appeal to the Tax Commissioner is timely filed and the local assessing officer receives a copy. If you intend to appeal, you should immediately provide a written Notice of Intent to Appeal to the local assessing officer and to the Tax Commissioner so that collection activities are not reinstated or do not begin. Collection activity may begin or resume if you do not file a complete application for review within 30 days of filing the notice of intent to appeal.

3. The BPOL Regulations (23VAC10-500) and the applicable Code of Virginia sections for preparing an Appeal to the Tax Commissioner are available at the office of the local assessing officer and at the General Assembly's website.

Sincerely,

(name of local assessing officer)

(date)

## **23VAC10-500-712. Procedure in event of nondecision.**

The local assessing officer must issue a final written determination within a reasonable time of the taxpayer's timely filing of an Application for Review. A taxpayer whose application for correction has been pending for more than one year without the issuance of a final determination may, upon not less than 30 days' written notice to the assessor, elect to treat the application as denied and appeal the assessment to the Tax Commissioner. The Tax Commissioner shall not

consider an appeal filed in this manner if he finds that the absence of final determination on the part of the assessor was caused by the willful failure or refusal of the taxpayer to provide information requested and reasonably needed by the assessor to make his determination.

**23VAC10-500-715. Appeal to the Tax Commissioner; time limitations.**

A. The taxpayer has 90 days from the date of the local assessing officer's Final Local Determination to file an Appeal to the Tax Commissioner. The address is:

Appeals and Rulings

Virginia Department of Taxation

Post Office Box 27203

Richmond, Virginia 23261-7203

B. The Tax Commissioner may permit an extension of this period for good cause shown.

C. The Tax Commissioner shall issue a determination to the taxpayer within 90 days of receipt of the taxpayer's application, unless the taxpayer and the local assessing officer are notified that a longer period will be required.

**23VAC10-500-720. Appeal to the Tax Commissioner; procedures.**

A. Any person assessed with a local license tax as a result of a determination, upon an administrative appeal to the local assessing officer, that is adverse to the position asserted by the taxpayer in such appeal may appeal such assessment to the Tax Commissioner within 90 days of the date of the determination by the local assessing officer. The appeal shall be in such form as the Tax Commissioner may prescribe and the taxpayer shall serve a copy of the appeal upon the local assessing officer.

B. The appeal should contain the following:

1. Complete application for review as submitted to the local assessing officer.
2. Local assessing officer's final local determination.
3. A statement explaining why the taxpayer believes the local assessing officer is in error. The statement should include analysis of how the local assessing officer misinterpreted or misapplied facts or legal authority and also include facts, issues and legal authority that the taxpayer believes the local assessing officer failed to take into consideration.

**23VAC10-500-730. Appeal to the Tax Commissioner; notice of intent to appeal filed but appeal to the Tax Commissioner not timely filed.**

If a notice of intent has been filed with the Tax Commissioner, the Tax Commissioner shall give written

notice to the local assessing officer and to the taxpayer of the taxpayer's failure to file an Appeal to the Tax Commissioner within the time provided for in the BPOL Regulations (23VAC10-500-10 et seq.).

**23VAC10-500-740. Administrative appeal to the Tax Commissioner; incomplete appeals.**

A. If the Tax Commissioner receives an appeal that is incomplete, the taxpayer will be given notice stating the information is incomplete. The local assessing officer will be provided a copy of this notice. The taxpayer will be allowed 30 days from the date of such notice to provide the information or 90 days from the date of the local assessing officer's Final Local Determination, whichever is longer.

B. Additional time to produce the missing items will be granted in compelling circumstances but only if the taxpayer makes such an extension request in writing within the time allowed under subsection A. A copy of the request for additional time shall be mailed to the local assessing officer.

C. If the taxpayer fails to provide missing item(s) within the time allotted, the Tax Commissioner may proceed to decide the appeal based on available information making such inferences from the failure or refusal to provide requested information as may be appropriate under the circumstances. If sufficient information is unavailable to permit an adequate analysis, the appeal will be dismissed.

**23VAC10-500-750. Administrative appeal to the Tax Commissioner; receipt of a complete appeal.**

The Tax Commissioner shall send a notice of receipt of an appeal to the local assessing officer and to the taxpayer.

**23VAC10-500-760. Administrative appeal to the Tax Commissioner; local assessing officer's reply; new issues in taxpayer's appeal.**

The local assessing officer has 30 days from the date of the notice of receipt of an appeal to:

1. File a written reply to the Tax Commissioner with additional information.
2. File a written request to address new issues raised by the taxpayer. If a written request to address new issues is filed, the appeal shall return to the local assessing officer to address new issues. Whenever an appeal is returned to the local assessing officer because the local assessing officer has made a written request to address new issues, the local appeals process has started again. At this point, the local assessing officer must make a new determination that can then be appealed to the Tax Commissioner as described in 23VAC10-500-720.
3. The Tax Commissioner may request that the local assessing officer make a new Final Local Determination on any issues raised for the first time on appeal. The local

---

# Regulations

---

assessing officer, however, is not required to make a new Final Local Determination but rather can provide relevant information to the Tax Commissioner who will then make a final written determination. If the local assessing officer issues a new Final Local Determination, that determination can then be appealed to the Tax Commissioner as described in 23VAC10-500-720.

## **23VAC10-500-770. Administrative appeal to the Tax Commissioner; Tax Commissioner's final determination.**

A. In determining an appeal, the Tax Commissioner shall presume the local assessing officer's Final Local Determination is correct.

B. The Tax Commissioner shall permit the local assessing officer to participate in the proceedings.

C. The Tax Commissioner shall issue a written final determination on the taxpayer's appeal within 90 days of receipt of the taxpayer's application. The taxpayer and local assessing officer will be notified if a longer period is required.

D. The Tax Commissioner may make requests for relevant information during the appeal process. This request can include meetings and inspections of facilities. Should the taxpayer fail to respond, within a reasonable time, to a request for reasonably available information, the Tax Commissioner may make a written final determination stating that the local assessing officer's Final Local Determination is correct.

E. All written and oral information relevant to the determination of the taxpayer's appeal shall be provided by the Tax Commissioner to the taxpayer and local assessing officer within a reasonable time of receipt. All such communications and information shall be made a permanent part of the taxpayer's case file.

F. Written communications sent by the taxpayer or local assessing officer to the Tax Commissioner must also be mailed or delivered to the other party by the submitting party. Such communications shall include a signed and dated certificate that copies were provided, as required by the BPOL Regulations (23VAC10-500), showing the date of mailing or delivery and the name and address of the addressee.

G. The taxpayer or local assessing officer may request a meeting to discuss the issues presented by the appeal.

H. The Tax Commissioner's final determination shall provide citations to sources of information which provide significant guidance, input, or serve as a basis for the final determination. The final determination may include an order correcting an assessment pursuant to §58.1-1822 of the Code of Virginia.

## **23VAC10-500-780. Administrative appeal to the Tax Commissioner; withdrawal of appeal.**

The taxpayer may withdraw his appeal to the Tax Commissioner by making such a request in writing any time prior to the issuance of the Tax Commissioner's final determination. A copy of the request to withdraw the appeal shall be mailed to the local assessing officer. Withdrawal of the appeal shall not preclude the Tax Commissioner from issuing for informational purposes an advisory opinion of issues presented by that appeal.

## **23VAC10-500-785. Administrative appeal to the Tax Commissioner; implementation of determination of Tax Commissioner.**

Promptly upon receipt of the Tax Commissioner's final determination, the local assessing officer shall calculate the amount of tax owed by, or refund due to, the taxpayer consistent with the Tax Commissioner's determination and provide that information to the taxpayer and to the local officer responsible for collection activity, as follows:

1. If the determination sets forth a specific amount of tax due, the local assessing officer shall certify this amount to the local officer responsible for collection activity, who shall issue a bill to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination.

2. If the determination sets forth a specific amount of refund due, the local assessing officer shall certify this amount to the local officer responsible for collection activity, who shall issue a payment to the taxpayer for such amount due, together with interest accrued, within 30 days of the date of the determination.

3. If the determination does not set forth a specific amount of tax due, or otherwise requires the local assessing officer to undertake a new or revised assessment that will result in the determination of a tax due that has not previously been paid in full, the local assessing officer shall promptly commence the steps necessary to issue a new or revised assessment. The new or revised assessment shall be provided to the taxpayer within 60 days of the date of the Tax Commissioner's determination, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the Tax Commissioner's determination, whichever is later. The local assessing officer shall certify the new assessment to the local officer responsible for collection activity, who shall issue a bill to the taxpayer for the amount due, together with interest accrued, within 30 days of the date of the new assessment.

4. If the determination does not set forth a specific amount of refund due, or otherwise requires the local assessing officer issue a new or revised assessment that will result in the determination of a refund of taxes previously paid, the

local assessing officer shall promptly commence the steps necessary to issue a new or revised assessment, and provide the same to the taxpayer within 60 days of the date of the Tax Commissioner's determination, or within 60 days after receipt from the taxpayer of any additional information requested or reasonably required under the Tax Commissioner's determination, whichever is later. The local assessing officer shall certify the new assessment to the local officer responsible for collection activity, who shall issue a refund to the taxpayer for the amount of tax due together with interest accrued, within 30 days of the date of the new assessment.

**23VAC10-500-790. Administrative appeal to the Tax Commissioner; confidentiality of determinations and advisory opinions.**

Tax Commissioner determinations and advisory opinions made available to the public shall eliminate any reference to the identities of the taxpayer and the local assessing officer.

**23VAC10-500-800. Appeal to the circuit court; Generally.**

A. Following an order made by the Tax Commissioner, the taxpayer or the local assessing officer may file an appeal to the circuit court pursuant to §58.1-3984 of the Code of Virginia. The burden shall be on the appealing party to show that the ruling of the Tax Commissioner is erroneous.

B. Neither the Tax Commissioner nor the Department of Taxation shall be made a party to the appeal merely because the Tax Commissioner has issued a final determination.

**23VAC10-500-811. Appeal to the circuit court; suspension of payment of disputed amount of refund.**

A. Payment of any refund determined to be due pursuant to the Tax Commissioner's determination shall be suspended if the locality serves upon the taxpayer a notice of intent to file an appeal to the circuit court of the determination and pays the amount of the refund not in dispute, including tax and accrued interest, within 60 days of the date of the determination. Payment of such refund shall remain suspended while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that the locality's appeal to the circuit court is frivolous.

B. No suspension of refund activity shall be permitted if the locality's appeal to the circuit court fails to identify with particularity the amount in dispute.

C. The requirement that the obligation to make a refund be suspended shall cease unless an appeal to the circuit court is filed and served on the taxpayer within 30 days of the service of the notice of intent to file such application.

**23VAC10-500-820. Appeal to the circuit court; suspension of collection activity.**

A. On receipt of a notice of intent to file an appeal to the circuit court of an order or final determination of the Tax Commissioner and upon payment of the amount of the tax that is not in dispute together with any penalty and interest then due with respect to such undisputed portion of the tax, the local officer responsible for collection activity must further suspend collection activity while the court retains jurisdiction unless the court, upon appropriate motion after notice and an opportunity to be heard, determines that (i) the taxpayer's application for judicial review is frivolous; (ii) collection would be jeopardized by delay; or (iii) suspension of collection would cause substantial economic hardship to the locality. For purposes of determining whether substantial economic hardship to the locality would arise from a suspension of collection activity, the court shall consider the cumulative effect of then-pending appeals filed within the locality by different taxpayers that allege common claims or theories of relief.

B. Upon a determination that the appeal is frivolous, that collection may be jeopardized by delay, or that suspension of collection would result in substantial economic hardship to the locality, the court may require the taxpayer to pay the amount in dispute or a portion thereof, or to provide surety for payment of the amount in dispute in a form acceptable to the court.

C. No suspension of collection activity shall be required if the appeal to the circuit court fails to identify with particularity the amount in dispute.

D. Collection activity will continue to be suspended unless an appeal to the circuit court is filed and a copy served on the local assessing officer within 30 days of filing a notice of intent to file an appeal to the circuit court.

E. Suspension of collection activity shall not be applicable to any appeal that is initiated by the direct filing of an appeal to the circuit court pursuant to §58.1-3984 of the Code of Virginia without prior exhaustion of the right to appeal the assessment administratively to the local assessing officer and the Tax Commissioner pursuant to §58.1-3703.1 of the Code of Virginia.

VA.R. Doc. No. R08-872; Filed July 1, 2008, 11:23 a.m.



---

# Regulations

---

## TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

### DEPARTMENT OF TRANSPORTATION

#### Final Regulation

**REGISTRAR'S NOTICE:** Subsection G of §15.2-2222.1 of the Code of Virginia and Chapter 792 of the 2007 Acts of Assembly provide that, until July 1, 2008, the Department of Transportation is not subject to the requirements of the Administrative Process Act when promulgating regulations pursuant to §15.2-2222.1.

**Title of Regulation:** 24VAC30-155. **Traffic Impact Analysis Regulations (amending 24VAC30-155-10, 24VAC30-155-40, 24VAC30-155-50, 24VAC30-155-60, 24VAC30-155-70, 24VAC30-155-80).**

**Statutory Authority:** §15.2-2222.1 of the Code of Virginia.

**Effective Date:** July 1, 2008.

**Agency Contact:** Robert W. Hofrichter, Assistant Director for Land Use, Department of Transportation, 1401 East Broad St., Richmond, VA 23219, telephone (804)662-9612, FAX (804)662-9405, or email robert.hofrichter@vdot.virginia.gov.

#### Background:

*Chapter 527 of the 2006 Acts of Assembly added §15.2-2222.1 to the Code of Virginia. The chapter established procedures by which localities submit proposals that will affect the state-controlled transportation network to the Virginia Department of Transportation (VDOT) for review and comment. The chapter also directed VDOT to promulgate regulations to carry out the provisions of the statute. The intent of the statute is to improve the manner in which land use and transportation planning decisions are coordinated and executed throughout the Commonwealth by establishing standardized methodologies (definitions, analytical methods, etc.) and procedures for analyzing transportation impacts.*

*The final regulation, Traffic Impact Analysis Regulations (24 VAC 30-155), which was exempt from the requirements of the Administrative Process Act (APA) through July 1, 2007, set forth procedures and requirements governing VDOT's review of and submission of comments regarding comprehensive plans and amendments to comprehensive plans, rezoning proposals, and subdivision plats, site plans and plans of development and the accompanying traffic impact statements. The regulation also identified when such comprehensive plans and amendments to comprehensive plans, rezoning proposals, and subdivision plats, site plans and plans of development must be submitted, and the documents and information that must be submitted to VDOT to facilitate the required review and VDOT's provision of comments. The regulation further*

*establishes the scope and nature of the review and a schedule of fees to be paid upon submission of a proposal to VDOT for review.*

*The 2007 General Assembly enacted Chapter 792, which made additional changes to §15.2-2222.1. These included a provision concerning how localities may proceed if VDOT provides no comments, a provision allowing phased implementation of the regulation, and an extension of the APA exemption until July 1, 2008. The final regulation was published in Volume 23, Issue 18 of The Virginia Register on May 14, 2007. VDOT has made changes to the regulation based on public comments.*

#### Summary:

*In addition to revisions to improve the utility and effectiveness of the regulations, changes were made to improve clarity and comprehension. Significant revisions include the following: definitions were revised to provide additional or more relevant information to users; the table in 24 VAC 30-155-60 concerning site generated peak hour trip requirements for the description of geographic scope/limits of the study area was revised; a new provision concerning minimum requirements for Traffic Impact Statements for a development proposal that only meets the low volume submission criterion in 24 VAC 30-155-40 was added to 24 VAC 30-155-60; requirements for pedestrian accommodations in 24 VAC 30-115-60 were revised; in 24 VAC 30-155-70, a provision was added concerning VDOT's intention to provide localities and applicants, as applicable, with preliminary recommendations regarding compliance with other VDOT regulations; in 24 VAC 30-155-80, provisions concerning the conditions under which fees are charged were revised; and in 24 VAC 30-155-80, a new fee of \$250 was added for VDOT reviews under the "low volume" criterion only.*

#### **24VAC30-155-10. Definitions.**

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

"Connectivity index" means the number of ~~street~~ links divided by the number of nodes.

"Link" means (i) a segment of ~~street that is between intersections or between an intersection and terminus, such as a cul-de-sac or other dead end. A roadway, alley, or rear lane that is between two nodes~~ or (ii) a stub out consisting of a ~~short street segment that is intended to serve future development that shall only provide service to parcels within the current development shall only constitute a link for the purposes of this chapter if, based upon the adjacent zoning, terrain, and land uses, there is a reasonable expectation that the stub out will provide a connection to future development or connection to an existing stub out.~~

"Locality" means any local government, pursuant to §15.2-2223 of the Code of Virginia, that must prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction.

"Node" means an intersection of ~~two~~ three or more ~~streets~~ links or the terminus of a ~~street link~~, such as the end of a cul-de-sac or dead end. The terminus of a stub out ~~and the intersection of a street with only a stub out do~~ shall not constitute nodes a node for the purposes of this chapter. The intersection of a street with only a stub out and the intersection of a street with only a connection with an existing stub out shall not constitute a node for the purposes of this chapter unless such stub out provides service to lots within the development.

"Pedestrian facility coverage" means the ratio of: (length of pedestrian facilities, such as sidewalks, foot paths, and multiuse trails, along both sides of a roadway) divided by (length of roadway multiplied by two).

"Redevelopment site" means any existing use that generates traffic and is intended to be developed as a different or more dense land use.

"Service level" means a measure of the quality, level or comfort of a service calculated using methodologies approved by VDOT.

"State-controlled highway" means a highway in Virginia that is part of the interstate, primary, or secondary systems of state highways and that is maintained by the state under the direction and supervision of the Commonwealth Transportation Commissioner. Highways for which localities receive maintenance payments pursuant to §§33.1-23.5:1 and 33.1-41.1 of the Code of Virginia and highways maintained by VDOT in accordance with §§ 33.1-31, 33.1-32, 33.1-33, and 33.1-68 of the Code of Virginia are not considered state-controlled highways for the purposes of determining whether a specific land development proposal package must be submitted to meet the requirements of this regulation.

"Stub out" means a transportation facility (i) whose right-of-way terminates at a parcel abutting the development, (ii) that consists of a short segment that is intended to serve current and future development by providing continuity and connectivity of the public street network, (iii) that based on the spacing between the stub out and other streets or stub outs, and the current terrain there is a reasonable expectation that connection with a future street is possible, and (iv) that is constructed to at least the end of the radius of the intersection with the adjoining street and the right-of-way is graded and dedicated to the property line.

"Traffic impact statement" means the document showing how a proposed development will relate to existing and future transportation facilities.

"VDOT" means the Virginia Department of Transportation, the Commonwealth Transportation Commissioner, or a designee.

**24VAC30-155-40. Rezoning.**

A. Proposal submittal. The locality shall submit a package to VDOT within 10 business days of receipt of a complete application for a rezoning proposal if the proposal substantially affects transportation on state-controlled highways. All trip generation calculations used for the purposes of determining if a proposal meets the criteria shall be based upon the rates or equations published in the Institute of Transportation Engineers Trip Generation (see 24VAC30-155-100), and shall not be reduced through internal capture rates. For redevelopment sites, trips currently generated by existing development that will be removed may be deducted from the total site trips that are generated by the proposed land use.

1. For the purposes of this section, a residential rezoning proposal shall substantially affect transportation on state-controlled highways if it meets or exceeds one or more of the following trip generation criteria:

a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 100 vehicle trips per peak hour of the generator at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination; or

b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 100 vehicle trips per peak hour of the generator and whose nearest property line is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway; or

c. The proposal generates more than 200 daily vehicle trips on a state-controlled highway and ~~more than~~ doubles, once the site generated trips are distributed to the receiving highway, the proposal's vehicle trips on a highway exceeds the daily traffic volume ~~the such~~ highway presently carries. For the purposes of determining whether a proposal must be submitted to VDOT, the traffic carried on the state-controlled highway shall be assumed to be the most recently published amount measured in the last traffic count conducted by VDOT or the locality on that highway. In cases where the site has access to multiple highways, each receiving highway shall be evaluated individually for the purposes of this determination.

---

## Regulations

---

2. For the purposes of this section, all other rezoning proposals shall substantially affect transportation on state-controlled highways if they meet or exceed one or more of the following trip generation criteria:

a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination; or

b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day and whose nearest property line is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway.

B. Required proposal elements. The package submitted by the locality to VDOT shall contain sufficient information and data so that VDOT may determine the location of the rezoning, its size, its impact on state-controlled highways, and methodology and assumptions used in the analysis of the impact. Submittal of an incomplete package shall be considered deficient in meeting the submission requirements of §15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted. A package submitted to VDOT shall contain the following items:

1. A cover sheet containing:

- a. Contact information for locality and developer (or owner) if applicable;
- b. Rezoning location, highways adjacent to site, and parcel number or numbers;
- c. Proposal summary with development name, size, and proposed zoning; and
- d. A statement regarding the proposal's compliance with the comprehensive plan.

2. A traffic impact statement prepared in accordance with 24VAC30-155-60.

3. A concept plan of the proposed development.

C. Review process. After formal submission of a rezoning proposal for review, VDOT may, pursuant to §15.2-2222.1 of the Code of Virginia, request a meeting with the locality and rezoning applicant to discuss potential modifications to the

proposal to address any concerns or deficiencies. The request must be made within 45 days of receipt by VDOT of the proposal. VDOT must provide written comments to the locality within 45 days of ~~the~~ VDOT's receipt of ~~VDOT's~~ the proposal if no meeting is scheduled or has been requested or within 120 days of the receipt of the proposal otherwise. VDOT shall conduct its review and provide official comments to the locality for inclusion in the official public record. VDOT shall also make such comments available to the public. Nothing in this section shall prohibit a locality from acting on a rezoning proposal if VDOT's comments on the submission have not been received within the timelines in this section.

### **24VAC30-155-50. Subdivision plat, site plan, plan of development.**

A. Proposal submittal. The locality ~~must~~ shall submit a package to VDOT within 10 business days of receipt of a complete development proposal if the proposal substantially affects transportation on state-controlled highways. All trip generation calculations used for the purposes of determining if a proposal meets these requirements shall be based upon the rates or equations published in the Institute of Transportation Engineers Trip Generation (see 24VAC30-155-100), and shall not be reduced through internal capture rates. For redevelopment sites, trips currently generated by existing development that will be removed may be deducted from the total site trips that are generated by the proposed land use.

1. For the purposes of this section, a residential development proposal shall substantially affect transportation on state-controlled highways if it meets or exceeds one or more of the following trip generation criteria:

a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 100 vehicle trips per peak hour of the generator at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination; or

b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 100 vehicle trips per peak hour of the generator and has an entrance that is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway; or

c. The proposal generates more than 200 daily vehicle trips on a state-controlled highway and ~~more than~~

doubles, once the site-generated trips are distributed to the receiving highway, the proposal's vehicle trips on such highway exceeds the daily traffic volume the highway presently carries. For the purposes of determining whether a proposal must be submitted to VDOT, the traffic carried on the state-controlled highway shall be assumed to be the most recently published amount measured in the last traffic count conducted by VDOT or the locality on that highway. In cases where the site has access to multiple highways, each receiving highway shall be evaluated individually for the purposes of this determination.

2. For the purposes of this section, all other development proposals shall substantially affect transportation on state-controlled highways if they meet or exceed one or more of the following trip generation criteria:

- a. Within a jurisdiction in which VDOT has maintenance responsibility for the secondary highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day at the site's connection to a state-controlled highway. For a site that does not have an entrance onto a state-controlled highway, the site's connection is assumed to be wherever the road network that the site connects with attaches to a state-controlled highway. In cases where the site has multiple entrances to highways, volumes on all entrances shall be combined for the purposes of this determination; or
- b. Within a jurisdiction in which VDOT does not have maintenance responsibility for the local highway system, if the proposal generates more than 250 vehicle trips per peak hour of the generator or 2,500 vehicle trips per day and has an entrance that is within 3,000 feet, measured along public roads or streets, of a connection to a state-controlled highway.

B. Required proposal elements.

1. The package submitted by the locality to VDOT shall contain sufficient information and data so that VDOT may determine the location of the development, its size, its impact on state-controlled highways, and methodology and assumptions used in the analysis of the impact. Submittal of an incomplete package shall be considered deficient in meeting the submission requirements of §15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted. A package submitted to VDOT shall contain the following items.

- a. A cover sheet containing:
  - (1) Contact information for locality and developer (or owner);

(2) Development location, highways connected to, and parcel number or numbers; and

(3) Proposal summary with development name and size in acres.

b. A supplemental traffic analysis, as defined in 24VAC30-155-50 C.

c. A concept plan of the proposed development.

C. Supplemental traffic analysis. For the purposes of this subsection, a supplemental traffic analysis will be defined as follows:

1. In cases where a rezoning traffic impact statement has been submitted to VDOT in accordance with 24VAC30-155-40, if all assumptions made in the traffic impact statement prepared for the rezoning remain valid and if the submission of the subdivision plat, site plan, or plan of development to the locality occurs within two years of the locality's approval of the rezoning proposal, the supplemental traffic analysis shall be a letter that provides VDOT with the following information:

- a. A statement that the impacts analyzed in the development's rezoning traffic impact statement have not materially changed nor have the adverse impacts on state-controlled highways increased.
- b. The date of the VDOT letter providing the locality comments on the rezoning.

2. In cases where a rezoning traffic impact statement has been submitted to VDOT in accordance with 24VAC30-155-40, if all assumptions made in the traffic impact statement prepared for the rezoning have not materially changed, the adverse impacts of the proposal on state-controlled highways have not increased and if the submission of the subdivision plat, site plan, or plan of development to the locality occurs more than two years of the locality's approval of the rezoning, the supplemental traffic analysis shall be a letter that provides VDOT with the following information:

- a. A statement that the impacts analyzed in the development's rezoning traffic impact statement have not materially changed nor have the adverse impacts on state-controlled highways increased;
- b. The date of the VDOT letter providing the locality comments on the rezoning;
- c. Documentation supporting the statement that the development's rezoning traffic impact statement is still valid; and
- d. A copy of the original traffic impact statement.

---

# Regulations

---

After review of such letter, VDOT may require submission in accordance with subdivision 4 of this subsection.

3. In cases where the rezoning traffic impact statement has not been submitted to VDOT in accordance with 24VAC30-155-40, the supplemental traffic analysis shall contain the information required for rezoning traffic impact statements with 100 to 499 peak hour trips. If the subdivision plat, site plan, or plan of development will generate less than 100 peak hour trips then the lowest required elements for the rezoning traffic impact statement shall be used.

4. In cases where a rezoning traffic impact statement has been submitted to VDOT in accordance with 24VAC30-155-40 and the conditions analyzed in such traffic impact statement have materially changed such that the adverse impacts of the proposal on state-controlled highways have increased or if required pursuant to subdivision 2 of this subsection, the supplemental traffic analysis shall contain those elements required for rezoning traffic impact statements with 100 to 499 peak hour trips, as determined by VDOT. If the subdivision plat, site plan, or plan of development will generate less than 100 peak hour trips then the lowest required elements for the rezoning traffic impact statement shall be used.

5. In cases where rezoning occurred after January 1, 2002, but prior to the implementation of this regulation, VDOT, at its discretion, may evaluate traffic impact statements or studies performed as part of the rezoning action. If, in the opinion of VDOT staff with the concurrence of the locality, the traffic impact analysis work that was performed encompasses the major elements of work required by this regulation and the underlying assumptions of the study remain valid the previously prepared study may be deemed to meet the requirements of this regulation. VDOT staff may also, upon request of the submitter, allow a previously prepared study to be updated to incorporate additional areas of analysis or revisions to assumptions to enhance the accuracy of the study and may deem such updated study to encompass the major elements of work required by this regulation.

D. Review process. After formal submission of a subdivision plat, site plan, or plan of development to VDOT for review, VDOT may, pursuant to §15.2-2222.1 of the Code of Virginia, request a meeting with the locality to discuss potential modifications to the proposal to address any concerns or deficiencies. The request must be made within 30 days of receipt by VDOT of the proposal. The submission of the proposal to VDOT shall toll all times for local review set out in Chapter 22 (§15.2-2200 et seq.) of Title 15.2 of the Code of Virginia until the locality has received VDOT's final comments. VDOT must provide written comments to the locality within 30 days of VDOT's receipt of the proposal if

no meeting is scheduled or within 90 days of the receipt of the proposal otherwise. VDOT will conduct its review and provide official comments to the locality for inclusion in the official public record. VDOT shall also make such comments available to the public. Nothing in this section shall prohibit a locality from acting on a subdivision plat, site plan, or plan of development if VDOT's comments on the submission have not been received within the timelines in this section.

## **24VAC30-155-60. Traffic impact statement.**

A. A Traffic ~~Impact Statement~~ impact statement (TIS) assesses the impact of a proposed development on the transportation system and recommends improvements to lessen or negate those impacts. It shall (i) identify any traffic issues associated with access from the site to the existing transportation network, (ii) outline solutions to potential problems, (iii) address the sufficiency of the future transportation network, and (iv) present improvements to be incorporated into the proposed development.

If a TIS is required, data collection shall be by the locality, developer, or owner, as determined by the locality and the locality shall prepare or have the developer or owner prepare the TIS. If the locality prepares the TIS it shall provide a copy of the complete TIS to the applicant when one is provided to VDOT. The completed TIS shall be submitted to VDOT.

The data and analysis contained in the TIS shall be organized and presented in a manner acceptable to VDOT and consistent with this regulation. Submittal of an incomplete TIS or one prepared using unapproved methodology or assumptions shall be considered deficient in meeting the submission requirements of §15.2-2222.1 of the Code of Virginia and shall be returned to the locality and the applicant, if applicable, identifying the deficiencies noted by VDOT.

### B. Scope of work meeting.

1. For proposals that generate less than 1,000 vehicle trips per peak hour of the generator representatives of the locality, the applicant, or the locality and the applicant may request a scope of work meeting with VDOT to discuss the required elements of a TIS for any project and VDOT shall reply to such request within 30 days of its receipt of such a request and provide a date, time and location for such a scope of work meeting to both the locality and the applicant, if applicable.

2. For proposals that generate 1,000 or more vehicle trips per peak hour of the generator representatives of the locality and applicant, if applicable, shall hold a scope of work meeting with VDOT to discuss the required elements of a TIS. Once a locality or applicant has contacted VDOT regarding the scheduling of a scope of work meeting, VDOT shall reply to both the locality and the applicant, if applicable, and provide a date, time and location for such a meeting.

At a scope of work meeting pursuant to this section, the locality, the applicant and VDOT shall review the elements, methodology and assumptions to be used in the preparation of the TIS, and identify any other related local requirements adopted pursuant to law. The results of the initial scoping meeting may be adjusted in accordance with sound professional judgment and the requirements of this regulation if agreed upon by VDOT, the locality, and applicant, if applicable.

C. Required elements. The required elements and scope of a TIS are dependent upon the scale and potential impact of the specific development proposal being addressed by the TIS as determined by VDOT in its sole discretion.

1. At a minimum, the TIS shall include the elements shown in the table below. The site generated peak hour trips in the table below shall be based upon the gross vehicle trip generation of the site less internal capture and shall take into account bicycle, pedestrian, and transit reductions. When the type of development proposed would indicate significant potential for walking, bike or transit trips either on- or off-site, the TIS shall estimate multimodal trips. All distances in the table below shall be measured along roads or streets.

Item	Site Generated Peak Hour Trips			
	Less than 100	100 to 499	500 to 999	1,000 or more
Background information				
List of all nonexistent transportation improvements assumed in the analysis	Required	Required	Required	Required
Map of site location, description of the parcel, general terrain features, and location within the jurisdiction and region.	Required	Required	Required	Required
Description of geographic scope/ limits of study area.	Within 1,000 ft of site	Within 2,000 feet of site and any roadway on which <del>40%</del> 50 or more of the new <u>peak hour</u> vehicle trips generated by the proposal are distributed – not to exceed <del>two miles</del> <u>one mile</u>	Within 2,000 feet of site and any roadway on which 10% or more of the new vehicle trips generated by the proposal are distributed – not to exceed two miles	To be determined by VDOT in consultation with the locality
Plan at an engineering scale of the existing and proposed site uses.	Required	Required	Required	Required
Description and map or diagram of nearby uses, including parcel zoning.	Required	Required	Required	Required
Description and map or diagram of existing roadways.	Required	Required	Required	Required

# Regulations

Description and map or diagram of programmed improvements to roadways, intersections, and other transportation facilities within the study area.	Required	Required	Required	Required
Analysis of Existing Conditions				
Collected daily and peak hour of the generator traffic volumes, tabulated and presented on diagrams with counts provided in an appendix.	Only diagrams required	Required	Required	Required
Analyses for intersections and roadways identified by VDOT. Delay and Level of Service (LOS) are tabulated and LOS is presented on diagrams for each lane group.	Only diagrams required	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments, tabulated and presented on diagrams, if facilities or routes exist	At frontage, only diagrams required	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality
Speed Study	If requested by VDOT	If requested by VDOT	If requested by VDOT	If requested by VDOT
Crash history near site	If requested by VDOT	If requested by VDOT	If requested by VDOT	If requested by VDOT
Sight distance	If requested by VDOT	If requested by VDOT	If requested by VDOT	If requested by VDOT
Analysis of Future Conditions without Development				

Description of and justification for the method and assumptions used to forecast future traffic volumes.	Optional	Required	Required	Required
Analyses for intersections and roadways as identified by VDOT. Delay and Level of Service (LOS) are tabulated and LOS is presented on diagrams for each lane group.	Optional	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments tabulated and presented on diagrams, if facilities or routes exist or are planned.	At frontage, only diagrams required	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality at the scope of work meeting
Trip Generation				
Site trip generation, with tabulated data, broken out by analysis year for multi-phase developments, and including justification for deviations from ITE rates, if appropriate.	Required	Required	Required	Required
Description and justification of internal capture reductions for mixed use developments and pass-by trip reductions, if appropriate, including table of calculations used.	Required	Required	Required	Required
Site Traffic Distribution and Assignment				

# Regulations

Description of methodology used to distribute trips, with supporting data.	Required	Required	Required	Required
Description of the direction of approach for site generated traffic and diagrams showing the traffic assignment to the road network serving the site for the appropriate time periods.	Required	Required	Required	Required
Analysis of Future Conditions With Development				
Forecast daily and peak hour of the generator traffic volumes on the highway network in the study area, site entrances and internal roadways, tabulated and presented on diagrams.	Current traffic + site generated traffic	Future background + site generated traffic, at each expected phase and at build - out or six years after start, whichever is later	Future background + site generated traffic, at each expected phase, at build - out, and six years after build - out, which may be extended or reduced by VDOT in consultation with the locality	At a minimum the future background + site generated traffic, at each expected phase, at build - out, and six years after build - out; may be extended by VDOT in consultation with the locality
Analyses for intersections and roadways identified by VDOT. Delay and Level of Service (LOS) are tabulated and LOS presented on diagrams for each lane group.	Only diagrams required	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments tabulated and presented on diagrams, if facilities or routes exist or are planned.	At frontage, only diagrams required	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality

Recommended Improvements				
Description and diagram of the location, nature, and extent of proposed improvements, with preliminary cost estimates as available from VDOT.	Required	Required	Required	Required
Description of methodology used to calculate the effects of travel demand management (TDM) measures, if proposed, with supporting data.	Required if TDM proposed	Required if TDM proposed	Required if TDM proposed	Required if TDM proposed
Analyses for all proposed and modified intersections in the study area under the forecast and site traffic. Delay, and Level of Service (LOS) are tabulated and LOS presented on diagrams for each lane group. For intersections expected to be signalized, MUTCD Signal Warrant analysis or ITE Manual for Traffic Signal Design, as determined by VDOT, presented in tabular form.	Only diagrams required	Required	Required	Required
When the type of development proposed would indicate significant potential for walking, bike or transit trips either on - or off - site, analyses of pedestrian and bicycle facilities, and bus route or routes and segment or segments tabulated and presented on diagrams, if facilities or routes exist or are planned.	At frontage, only diagrams required	Within 2,000 feet of site	Within 2,000 feet of site	To be determined by VDOT in consultation with the locality

# Regulations

Conclusions				
Clear, concise description of the study findings.	Required	Required	Required	Required

Notwithstanding the geographic scope noted above, the geographic scope of the study noted above may be reduced or enlarged based upon layout of the local transportation network, the geographical size of the development, and the traffic volume on the existing network, as determined by VDOT in consultation with the locality and the applicant, if applicable. Typically, analysis will be conducted for any roadway on which the additional trips generated by the proposal have a materially detrimental impact on traffic conditions. The analysis presented in the TIS need not include all roadway and roadway segments located within the geographic scope of the study as determined by VDOT.

2. A TIS for a development proposal that only meets the low volume road submission criterion (24VAC30-155-40 A 1 c and 24VAC30-155-50 A 1 c) shall, at a minimum, consist of the following elements, unless otherwise directed by VDOT.

a. All elements contained in the background information portion of the above table, except the geographic scope/limits of study area is limited to the highway fronting the proposed development and the closest intersection, in each direction if applicable, of that highway with a highway that has an average daily traffic volume higher than the fronting highway.

b. A roadway safety inventory study of the roadway segment or segments between the site entrance to the nearest intersections with the higher traffic volume highways, to include such elements as, but not limited to, speed limit, existing warning signs, pavement and shoulder type, pavement and shoulder width, intersection sight distances, and safe horizontal curve speeds.

c. Daily and peak hour traffic volumes presented on diagrams, with counts provided in an appendix, for the fronting highway at the site, at the highway's intersections with the higher volume highway, and for the higher volume highways at their intersection with the fronting highway.

d. All relevant elements contained in the trip generation portion of the above table.

e. Projected daily and peak hour of the generator traffic volumes assuming build-out of the proposal, presented on diagrams for the receiving highway at the site, at the highway's intersection with the higher volume highways, and for the higher volume highways at their intersections with the receiving highway.

f. Delay and level of service analysis for the intersections of the receiving highway with the higher volume highways.

g. A comparison of the existing geometrics of the fronting highway under proposed build-out traffic conditions with the geometric standards, based upon functional classification and volume, contained in the Road Design Manual (see 24VAC30-155-100).

D. Methodology and standard assumptions. A TIS shall be prepared based upon methodology and assumptions noted below or as may be agreed upon by VDOT based upon the results of a scope of work meeting held by VDOT pursuant to this section.

1. Data collection. Preparers shall collect traffic data in accordance with the identified study area. The count data shall include at a minimum, weekday 24-hour counts, and directional turning movement counts during AM and PM peak times of the day. The 24-hour counts shall include vehicle classification counts. With approval of VDOT, data collected by the transportation professional preparer within the last 24 months may be used, likewise for data from the VDOT count program.

The preparer shall monitor traffic operations during data collection to ensure extraneous events such as vehicle crashes or special event traffic do not affect integrity of count data. Preparers collecting data for utilization in traffic impact studies shall normally avoid data collection during the following instances:

- a. Holidays or times of the year when the traffic patterns are deemed to be unrepresentative of typical conditions, unless required by VDOT or the locality, or both.
- b. Summer months if school or schools in proximity.
- c. Fridays and weekends unless required by VDOT or the locality, or both.
- d. Other times of the year contingent upon existing adjacent land use activities.
- e. During times of inclement weather.

2. Trip generation. Estimates of trip generation by a proposed development shall be prepared using the Institute of Transportation Engineers Trip Generation (see 24VAC30-155-100), unless VDOT agrees to allow the use of alternate trip generation rates based upon alternate published guides or local trip generation studies. Rezoning proposals shall assume the highest vehicle trip generating use allowable under the proposed zoning classification. In

determining which trip generation process (equation or rate) may be used, the preparer shall follow the guidance presented in the Trip Generation Handbook – an ITE Proposed Recommended Practice (see 24VAC30-155-100), which is summarized here. Regression equations to calculate trips as a result of development shall be utilized, provided the following is true:

- a. Independent variable falls within range of data; and
- b. Either the data plot has at least 20 points; or
- c.  $R^2$  greater than 0.75, equation falls within data cluster in plot and standard deviation greater than 110% of weighted average rate.

If the above criteria are not met, then the preparer can use average trip rates, provided at least one of the following applies:

- d. At least three data points exist;
- e. Standard deviation less than 110% of weighted average rate;
- f.  $R^2$  less than 0.75 or no regression equation provided; or
- g. Weighted average rate falls within data cluster in plot.

### 3. Internal capture and pass-by trips.

a. Internal capture rates consider site trips "captured" within a multiuse development, recognizing that trips from one land use can access another land use within a site development without having to access the adjacent street system. Multiuse developments include a combination of residential and nonresidential uses or a combination of nonresidential uses only. Internal capture allows reduction of site trips from adjacent intersections and roadways. Unless otherwise approved by VDOT, the following internal capture rates should be used if appropriate:

- (1) Residential with a mix of nonresidential components - use the smaller of 15% of residential or 15% nonresidential trips generated.
- (2) Residential with office use - use the smaller of 5.0% of residential or 5.0% of office trips generated.
- (3) Residential with retail use - for AM peak hour, use the smaller of 5.0% residential or 5.0% retail trips generated; for PM peak hour, use the smaller of 10% residential or 10% retail trips generated; for 24-hour traffic, use the smaller of 15% residential or 15% retail trips generated.
- (4) Hotel/motel with office use - use 15% of hotel/motel trips, unless the overall volume of the office traffic is more than the overall volume of hotel/motel traffic use in which case use the smaller of 10% of the hotel/motel traffic or the office traffic.

(5) Multiuse development with more than five million square feet of office and retail - internal capture rate should be determined in consultation with and approval of VDOT.

### (6) Some combination of the above, if approved by VDOT.

b. Pass-by trip reductions consider site trips drawn from the existing traffic stream on an adjacent street, recognizing that trips drawn to a site would otherwise already traverse the adjacent street regardless of existence of the site. Pass-by trip reductions allow a percentage reduction in the forecast of trips otherwise added to the adjacent street from the proposed development. The reduction applies only to volumes on adjacent streets, not to ingress or egress volumes at entrances serving the proposed site. Unless otherwise approved by VDOT, the following pass-by trip reductions may be used:

- (1) Shopping center - 25% of trips generated may be considered pass-by.
- (2) Convenience stores, service stations, fast food restaurants, and similar land uses - 40% of trip generated may be considered pass-by.

4. Trip distribution. In the absence of more detailed information, trip distribution shall be in accordance with logical regional travel patterns as suggested by existing highway directional split and intersection movements or population and destination site distribution. If more detailed information is available from trip origin/destination studies, marketing studies, or regional planning models, this may be used to distribute trips upon approval of VDOT.

5. Planning horizon. In general, the analysis years shall be related to (i) the opening date of the proposed development, (ii) build-out of major phases of a multiyear development, (iii) long-range transportation plans, and (iv) other significant transportation network changes. The preparer should establish the planning horizon in consultation with and subject to the acceptance of VDOT.

6. Background traffic growth. Unless directed by VDOT, geometric growth (or compound growth), based upon historical growth rates, shall generally be used for determining future background traffic levels where extensive traffic-count history is available and capacity constraint is not appropriate. This growth rate replicates "natural growth" and is typical for projecting urban growth.

7. Future conditions. For the purpose of the TIS, future conditions shall include background traffic and additional vehicle trips anticipated to be generated by approved but not yet constructed or improved projects.

---

## Regulations

---

8. Level of service calculation. Level of service (LOS) analysis for highways shall utilize the techniques described in the Highway Capacity Manual (see 24VAC30-155-100). Neither the intersection capacity utilization method nor the percentile delay method may be used in the traffic impact calculations of delay and level of service. Preparers shall consult with VDOT on which traffic analysis software package is to be used to conduct the LOS calculations. The results shall be tabulated and displayed graphically, with levels of service provided for each lane group for each peak period. All data used in the calculations must be provided along with the results of the capacity analysis. Any assumptions made that deviate from the programmed defaults must be documented and an explanation provided as to why there was a deviation. Electronic files used for the analysis shall be provided to VDOT as a digital submission (e.g., .hcs, .sy6, .inp, .trf files), along with the printed report. If intersections analyzed are in close proximity to each other so that queuing may be a factor, VDOT may require the inclusion of an analysis with a micro simulation model. Unless actual on-ground conditions dictate otherwise, preparers should use the following defaults when utilizing the Highway Capacity Software (HCS) or other approved programs when evaluating roadway components:

- a. Terrain – choose the appropriate terrain type. Most of the state will be level or rolling, but some areas may qualify for consideration as mountainous.
- b. Twelve-foot wide lanes.
- c. No parking or bus activity unless field conditions include such parking or bus activity or unless the locality has provided VDOT with a written statement of intent for the services to be provided.
- d. Peak hour factor by approach – calculate from collected traffic counts (requires at least a peak hour count in 15-minute increments).
- e. Heavy vehicle factor – calculate from collected traffic (classification) counts or obtain from VDOT count publications.
- f. Area type – noncenter of business district.

The TIS shall identify any existing or proposed bicycle and pedestrian accommodation that would be affected by the proposal. For the purposes of this subsection, a bicycle accommodation is defined as on-street bike lanes, paved shoulders of roadways that are not part of the designated traveled way for vehicles, intersection treatments, or exclusive and shared off-street bicycle paths.

For the purposes of this subsection, a pedestrian accommodation is defined as sidewalks, intersection treatments and exclusive or shared off-street trails or paths. If significant potential for bicycle or pedestrian trips exists,

the TIS shall include current and future service level analyses at build-out for existing or proposed bicycle and pedestrian accommodations. When the proposal requires or includes improvements or modifications to the roadway, bicycle or pedestrian accommodations, the TIS shall analyze the impacts of such improvements and modifications on bicycle and pedestrian accommodations and service levels, and provide recommendations for mitigation of adverse impacts.

The TIS shall provide  $\frac{1}{2}$  analysis for all bus service with routes that have, or will have a station or stop within 2,000 feet of the proposal. The TIS shall evaluate and discuss potential for increased demand for bus use due to the proposal, addressing whether such increases will demand longer dwell time at stops or more buses on a route. The quality of service analysis for bus service shall be determined in accordance with the Transit Capacity and Quality of Service Manual (see 24VAC30-155-100). The TIS shall provide both route and segment quality of service. The TIS shall provide recommendations for mitigation of adverse impacts where adverse impacts are expected to the quality of service to bus service. If an analysis of pedestrian quality or level of service is required for calculation of the bus quality of service, the preparer shall use a methodology approved by VDOT.

9. Trip reduction, and pedestrian and bicycle accommodations. When a proposal meets the criteria listed below, the preparer of the TIS may reduce the number of vehicle trips generated by the proposal in the TIS analysis in accordance with this subsection. Notwithstanding the percentages below, the total number of reductions used by a preparer in accordance with this subsection shall never exceed 500 vehicle trips per peak hour of the generator unless otherwise approved by VDOT.

a. Pedestrian accommodations. For the purposes of this subsection, a pedestrian accommodation is defined as a sidewalk, pedestrian path, or multiuse trail. Where a pedestrian service level of A exists, vehicle trips per peak hour of the generator may be reduced by 4.0% for those portions of the development within a 2,000-foot radius of the connections between the proposed development and the adjoining network. Where a pedestrian service level of B exists, vehicle trips per peak hour of the generator may be reduced by 3.0%; where a pedestrian service level of C exists, vehicle trips per peak hour of the generator may be reduced by 1.5% for the portion of the development noted above. These reductions may only be taken if:

- (1) Pedestrian facility coverage in a 2,000-foot radius of the ~~proposal~~ connections to the proposed development is on or along at least 80% of the road network;
- (2) The connectivity index within the 2,000-foot radius is equal to or higher than 1.4; and

(3) There are at least two of the 10 major land use classifications, as defined in ITE Trip Generation (see 24VAC30-155-100), within the 2,000-foot radius.

b. Bicycle accommodations. For the purposes of this subsection, a bicycle accommodation is defined as a street with a design speed of 25 MPH or less that carries 400 vehicles per day or less, on-street bike lanes, a pedestrian accommodation, paved shoulders of roadways that are not part of the designated traveled way for vehicles and are at least two feet wide, or exclusive and shared off-street bicycle paths. Where a bicycle service level of A exists, vehicle trips per day may be reduced by 3.0%. Where a bicycle service level of B exists, vehicle trips per day may be reduced by 2.0%. Where a bicycle service level of C exists, vehicle trips per day may be reduced by 1.0%. These reductions may only be taken if:

(1) Bicycle accommodations within a 2,000-foot radius of the ~~proposal~~ connections to the proposed development exist on or along at least 80% of the road network;

(2) The connectivity index within the 2,000-foot radius is equal to or higher than 1.4; and

(3) There are at least two of the 10 major land use classifications as defined in ITE Trip Generation (see 24VAC30-155-100), within the 2,000-foot radius.

10. Modal split and trip reduction. All vehicle trip reductions used in the TIS pursuant to this subsection are subject to the approval of VDOT.

a. If a proposal is located within 1/2 mile along roadways, pedestrian or bicycle accommodations of a transit station, excluding bus stops and stations, reasonable vehicle trip reductions of vehicle trips generated by the proposal may be made with approval of VDOT. The preparer shall submit documentation to justify any such vehicle trip reductions used with the TIS. When a proposal is located more than 1/2 mile but less than two miles from a transit stop, excluding bus stops and stations, with parking accommodations transit modal split vehicle trip reductions may be utilized. The analysis of capacity of the parking accommodations shall be included in the TIS when such trip reductions are used.

b. If a proposal is located within 1/4 mile along roadways, pedestrian or bicycle accommodations of a bus stop or station where the segment and route service levels are C or higher, reasonable vehicle trip reductions of vehicle trips generated by the proposal may be made with the approval of VDOT. The preparer shall submit documentation to justify any such vehicle trip reductions used with the TIS.

c. Transit and bus modal split data from similar developments within the geographic scope of the TIS or one mile of the proposal, whichever is greater, shall be

collected if the TIS vehicle trip reductions are used pursuant to this subsection and similar developments exist within the geographic scope of the TIS or one mile of the proposal, whichever is greater.

11. Signal warrant analysis. Traffic signal warrant analysis shall be performed in accordance with the procedures set out in the Manual on Uniform Traffic Control Devices (see 24VAC30-155-100) or ITE Manual of Traffic Signal Design as determined by VDOT.

12. Recommended improvements. Recommendations made in the TIS for improvements to transportation facilities shall be in accordance with the geometric standards contained within the Road Design Manual (see 24VAC30-155-100).

### 24VAC30-155-70. Departmental analysis.

After concluding its review of a proposed comprehensive plan or transportation plan or plan amendment, rezoning, or site or subdivision plan, VDOT shall provide the locality and applicant, if applicable, with a written report detailing its analysis and when appropriate recommending transportation improvements to mitigate any potential adverse impacts on state-controlled highways. VDOT shall provide recommendations for facilitating other modes of transportation including but not limited to transit, bus, bicycle and pedestrian facilities or accommodations where such facilities or accommodations are planned or exist, or where such facilities have a significant potential for use. In addition, VDOT shall provide the locality and the applicant, if applicable, with preliminary recommendations regarding compliance with other VDOT regulations.

### 24VAC30-155-80. Fees.

A. Locality initiated proposals. No fee shall be charged for review of any comprehensive plan, comprehensive plan amendment, rezoning proposal, subdivision plat, site plan, or plan of development initiated by a locality or other public agency.

B. Proposals containing supplemental traffic analysis as described in subdivisions C 1 and 2 of 24VAC30-155-50. No fee shall be charged for the review of a subdivision plat, site plan, or plan of development submission that properly includes a supplemental traffic analysis submitted under subdivisions C 1 and 2 of 24VAC30-155-50.

~~B.~~ C. All other proposals. Any package submitted to a locality by an applicant that will be subject to VDOT review pursuant to this chapter shall include any required payment in a form payable directly to VDOT.

1. For initial or second review of all comprehensive plans, comprehensive plan amendments, and transportation plans submitted to VDOT for review, not initiated on behalf of the locality, there shall be a fee of \$1,000 charged to the

---

# Regulations

---

applicant. This fee shall be paid upon submission of a plan to VDOT for review.

2. For initial or second review of rezoning proposals, subdivision plats, site plans, or plans of development accompanied by a traffic impact statement or supplemental traffic analysis, not initiated on behalf of the locality, there shall be a single fee for both reviews determined by the number of adjusted vehicle trips generated per peak hour of the generator, as follows:

Low volume road criterion only - \$250

~~Up to~~ Less than 100 vehicles per peak hour - \$500

~~Over~~ 100 or more vehicles per peak hour - \$1,000

The fee shall be paid upon submission of a package to VDOT for review.

3. For a third or subsequent submission pursuant to subdivisions 1 or 2 of this subsection, that is requested by VDOT on the basis of the failure of the applicant to address deficiencies previously identified by VDOT, the applicant shall be required to pay an additional fee as though the third or subsequent submission were an initial submission and requiring the fees identified above. An applicant or locality may appeal to the district administrator a determination by VDOT that a submitted package failed to address deficiencies previously identified by VDOT.

VA.R. Doc. No. R08-1392; Filed June 30, 2008, 9:18 a.m.

---

# GOVERNOR

---

## EXECUTIVE ORDER NUMBER 70 (2008)

### **CONTINUING CERTAIN EXECUTIVE ORDERS**

Pursuant to the authority granted to me as Governor, including but not limited to Article V of the Constitution of Virginia and Section 2.2 of the Code of Virginia, I hereby continue the following executive orders I have previously issued until June 30, 2009;

- Executive Order 15, creating Virginia's Interagency Gang Workgroup, issued on June 2, 2006;
- Executive Order 18, creating the Virginia Citizen Soldier Support Council, issued on June 5, 2006;
- Executive Order 40, Continuing the P-16 Education Council, issued on October 13, 2006;
- Executive Order 52, creating the Public Safety Memorial Commission, issued on June 13, 2007;

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2009, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 20th day of June 2008.

/s/ Timothy M. Kaine  
Governor

## EXECUTIVE ORDER NUMBER 71 (2008)

### **AUTHORIZING THE ARMY NATIONAL GUARD TO REMOVE THE STRANDED HELICOPTER AT ROANOKE MEMORIAL HOSPITAL FROM THE HELOPAD**

I hereby authorize the Army National Guard to initiate the removal of the stranded helicopter from the helopad at the Roanoke Memorial Hospital. The helicopter became stranded due to mechanical failures and is unable to be removed except with the direct intervention of the Army National Guard and their access to equipment to remove the helicopter to a safe location where it can be repaired.

This Executive Order shall be effective June 27, 2008 and shall remain in full force and effect until June 30, 2009 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 27th Day of June 2008.

/s/ Timothy M. Kaine  
Governor

## EXECUTIVE ORDER NUMBER 72 (2008)

### **AUTHORITY AND RESPONSIBILITY UNDER THE FEDERAL SAFE, ACCOUNTABLE, FLEXIBLE, EFFICIENT TRANSPORTATION ACT: A LEGACY FOR USERS (SAFETEA-LU) AND SUBSEQUENT FEDERAL REAUTHORIZATION LEGISLATION**

By virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to Section 2.2-104 of the Code of Virginia, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby affirm and delegate to the Secretary of Transportation the powers and duties set out below as necessary for the Commonwealth to fulfill the requirements of the SAFETEA-LU and subsequent federal reauthorization legislation.

The following are the duties set out to the Secretary of Transportation:

1. Approve metropolitan transportation improvement programs.
2. Develop requests to the federal Secretary of Transportation to designate additional areas as transportation management areas.
3. Provide reasonable opportunities for comments on the State Transportation Improvement Program to citizens, affected public agencies, representatives of transportation agency employees, freight shippers, private providers of transportation, providers of freight transportation services, representatives of users of public transit, and other interested parties.
4. Establish and update agreements with local governments as needed including the designation and redesignation of metropolitan planning organizations and the determination of metropolitan area boundaries.
5. Be responsible for the coordination of transportation planning in multi-state metropolitan areas.
6. Designate recipients of Federal Transit Administration grants and transfer funds in accordance with the provisions of 49 USC 5307, 49 USC 5310, 49 USC 5311, 49 USC 5316, and 49 USC 5317.
7. Submit annual certifications to the Federal Transit Administration regarding intercity bus service needs in accordance with the provisions of 49 USC 5311(f).

This executive order rescinds Executive Order Number Fifty-seven (1999), Authority and Responsibility under the Federal Transportation Equity Act for the 21st Century, issued by Governor James Gilmore on October 1, 1999.

---

# Governor

---

This Executive Order shall be effective upon its signing and shall remain in full force and effect until amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of July 2008.

/s/ Timothy M. Kaine  
Governor

## EXECUTIVE ORDER NUMBER 73 (2008)

### **THE GOVERNOR'S COMMISSION ON IMMIGRATION**

The foreign-born population in Virginia has been growing significantly over the past two decades. Between 1990 and 2000 there was an 83% increase in the foreign-born population living in Virginia. As of 2005, the Commonwealth's foreign-born population reached 677,400 people accounting for 8.95% of Virginia's total population. Additionally, Virginia ranks eleventh in the nation for the size of their foreign-born population.

When examining the issue of illegal immigration it is important that we enforce the laws of the nation and the Commonwealth, while also addressing the fiscal and public safety consequences. It is equally important to recognize the many positive benefits of legal immigration to the Commonwealth's economy, culture, and quality of life. Additionally, some of Virginia's largest industries, such as agriculture, are dependent on immigrant workers. It must be ensured that legislative actions do not punish law-abiding business owners or hurt their ability to grow and create jobs.

It is challenging to maintain a manageable system of allowing legal immigration without undue delays, and to avoid overbroad solutions that stigmatize entire communities and hurt Virginia's economy. That the federal government has failed in their duty to adequately address illegal immigration is certain. No one disputes that policies governing United States citizenship are best handled by the federal government.

Mindful of the importance of gaining a better understanding of how this growing population is affecting the Commonwealth, and by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §2.2-134 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby authorize the creation of the Governor's Commission on Immigration.

The Commission shall be classified as an advisory commission within the meaning of §2.2-2100 in the executive branch of state government.

The Commission shall study the costs and benefits that immigration is having on the Commonwealth. Areas of study shall include, but not be limited to the impact immigration has on the economy, public benefits, education, public safety,

employment, health care, and law enforcement. All findings shall be reported to the Governor and the General Assembly.

Additionally, the Commission shall examine the effect federal immigration laws have on the Commonwealth, and address the Virginia Congressional Delegation on what issues have been identified that need to be addressed that are federally preempted. Furthermore, public hearings in various regions of the Commonwealth will be held to solicit input from Virginia's citizens on the impact immigration is having in their communities. Finally, the Commission shall examine the tax contributions of the immigrant population on both the state and federal levels.

The Commission shall consist of 20 members who meet the following criteria: five members of the House of Delegates; three members of the Senate of Virginia; two citizen representatives with business, education, health care or law enforcement experience; a naturalized citizen who is a resident of the Commonwealth; a resident of the Commonwealth who holds a permanent resident visa issued by the United States Department of State; a representative of a faith-based organization providing services to immigrants; a small business owner; a representative of a local school division with a significant enrollment of students in English as a Second Language programs; a health care provider; a representative of a local law enforcement agency; a person with knowledge and expertise in immigration law; a current or former member of a federal law-enforcement agency with jurisdiction over terrorism or homeland security issues; and a representative of a local social services agency or health department. Members of the Commission shall serve at the pleasure of the Governor. The Commission will be overseen by the Secretary of Health and Human Resources.

This Executive Order shall be effective upon its signing and shall remain in force and effect until June 30, 2009, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 1st day of July 2008.

/s/ Timothy M. Kaine  
Governor

## EXECUTIVE ORDER NUMBER 74 (2008)

### **CONTINUING CERTAIN DECLARATIONS OF STATE OF EMERGENCY**

Pursuant to the authority granted to me as Governor, including but not limited to Article V of the Constitution of Virginia and Section 2.2 of the Code of Virginia, I hereby continue the following executive orders I have previously issued until June 30, 2009;

- Executive Order 54 – Declaration of State of Emergency to Assist Rockbridge County and Town

of Goshen due to a Critical Water Shortage, issued on June 20, 2007;

- Executive Order 57 – Declaration of State of Emergency Arising from Drought and for Fire or the Potential Thereof Throughout Virginia, issued on October 19, 2007;
- Executive Order 64 – Declaration of State of Emergency Arising from Heavy Winds and Severe Storms Throughout Virginia, issued on March 5, 2008

This Executive Order shall be effective upon its signing and shall remain in full force and effect until June 30, 2009, unless sooner amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 3rd day of July 2008.

/s/ Timothy M. Kaine  
Governor

---

# GENERAL NOTICES/ERRATA

---

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Consent Order - City of Winchester

An enforcement action has been proposed for the City of Winchester – Percy D. Miller WTP for alleged violations in Frederick County. A proposed consent order describes a settlement to resolve alleged unauthorized discharges to an unnamed tributary of North Fork Shenandoah River. A description of the proposed action is available at the DEQ office named below or online at [www.deq.virginia.gov](http://www.deq.virginia.gov). Steven W. Hetrick will accept comments by email, [swhetrick@deq.virginia.gov](mailto:swhetrick@deq.virginia.gov), FAX (540) 574-7833 or postal mail, Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801 from July 21, 2008, to August 20, 2008.

### Total Maximum Daily Load - Pocomoke Sound/Pocomoke River, Accomack County

The Virginia Department of Environmental Quality will host a public meeting on a water quality study for Pocomoke Sound/Pocomoke River, located in Accomack County, on Wednesday, July 23, 2008.

The meeting will start at 4 p.m. in the Arcadia Middle School cafeteria, 29485 Horsey Road, Oak Hall. The purpose of the meeting is to provide information and discuss the study with interested local community members and local government.

Pocomoke Sound (VAT-C09E-10) was identified in Virginia's 1998 303(d) TMDL Priority List and Report as impaired for not supporting the shellfishing use. The impairment is based on the shellfish harvesting condemnation of Growing Area 75 imposed by the Virginia Department of Health-Division of Shellfish Sanitation.

Section 303(d) of the Clean Water Act and §62.1-44.19:7 C of the Code of Virginia, require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's 303(d) TMDL Priority List and Report and subsequent water quality assessment reports.

During the study, DEQ will develop a total maximum daily load for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL amount. The Virginia Departments of Environmental Quality, Conservation and Recreation, and Health are working to identify the sources of pollution in the watersheds of these streams.

The public comment period on materials presented at this meeting will extend from July 23, 2008, to August 22, 2008. For additional information or to submit comments, contact Jennifer Howell, Virginia Department of Environmental Quality, Tidewater Regional Office, 5636 Southern Blvd.,

Virginia Beach VA 23462, telephone (757) 518-2111 or email [jshowell@deq.virginia.gov](mailto:jshowell@deq.virginia.gov).

\* Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

### Total Maximum Daily Load - Staunton River

Announcement of a water quality study to develop a total maximum daily load (TMDL) for a PCB in fish tissue impairment in the Roanoke (Staunton) River Watershed.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) announces a public meeting for the Staunton River TMDL study.

Public meeting: Tuesday, July 29, 2008, 7 p.m. – 9:30 p.m., Altavista YMCA, 718 7th Street, Altavista, VA 24517.

Meeting description: The purpose of this meeting is to provide information about the project, and discuss the study with community members.

Description of study: DEQ is working to identify sources of PCBs in fish tissue in an 84-mile segment of the Staunton River. The impaired stream segment is located in Campbell, Charlotte, Pittsylvania and Halifax Counties.

Stream Name	Locality	Impairment	Length (miles)	Upstream Limit	Downstream Limit
Roanoke (Staunton) River	Campbell, Charlotte, Pittsylvania, Halifax Co.	PCBs in fish tissue	84	Leesville Dam	Pipeline crossing approximately 5.4 miles downstream of the Route 360 Bridge

During the study, DEQ will develop a total maximum daily load, or a TMDL, for the impaired stream segment. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount. The draft TMDL Report for Neabsco Creek will be available for review and public comment at the meeting.

How to comment: The public comment period on the materials presented at the meeting, including the draft report, will extend from July 29, 2008, to August 29, 2008. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Amanda Gray, Virginia Department of Environmental Quality, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6227, or email [abgray@deq.virginia.gov](mailto:abgray@deq.virginia.gov).

## BOARD OF MEDICINE

### Notice of Periodic Review of Regulations

The Virginia Board Medicine conducting a periodic review of its current regulations governing doctors of medicine, osteopathic medicine, podiatry and chiropractic and is requesting comment on the following current regulations:

18VAC85-20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic

The board will consider whether the existing regulations are essential to protect the health, safety and welfare of the public in providing assurance that licensed practitioners are competent to practice. Alternatives to the current regulations or suggestions for clarification of the regulation will also be received and considered.

Comment begins: July 21, 2008, and ends on August 20, 2008.

If any member of the public would like to comment on these regulations, please send comments by the close of the comment period to: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, FAX (804) 527-4434, or email [elaine.yeatts@dhp.virginia.gov](mailto:elaine.yeatts@dhp.virginia.gov).

## STATE WATER CONTROL BOARD

### Bacteria TMDL for James River and Tributaries – Lower Piedmont in Goochland, Fluvanna, Louisa, Powhatan, and Cumberland Counties, Virginia

Notice is hereby given that the State Water Control Board seeks comment on proposed modifications to the bacteria total maximum daily load (TMDL) developed for segments of Byrd Creek, Big Lickinghole Creek, Little Lickinghole Creek, Fine Creek, Beaverdam Creek, and the James River.

A total maximum daily load of *E. coli* was developed to address the bacterial impairments in Goochland, Fluvanna, Louisa, Powhatan, and Cumberland Counties. This TMDL was approved by the Environmental Protection Agency on June 11, 2008. The report is available at: <http://www.deq.virginia.gov/tmdl/apptmdls/jamesrvr/jmsgpr2.pdf>.

The Virginia Department of Environmental Quality (VDEQ) seeks written comments from interested persons on the minor modification of this TMDL. Tables ES.2 (page xxvi) and 5.13 (page 5-34) of the report contain the James River Correctional Center, permit number VA0006149. The report identifies this facility as a municipal minor plant with a design flow of 0.060 mgd and provides a bacteria waste load allocation of 1.04 x 1011 cfu/yr. This facility is a potable water treatment plant rather than a STP and is correctly

classified as an industrial minor. Therefore, DEQ proposes the following changes to the report:

- Remove the potable water treatment facility (VA0006149) and associated wording from the TMDL report;
- Add the WLA of 1.04 X 1011 cfu/yr to the WLA growth factor for Beaverdam Creek in Tables ES.2 and 5.13.

The public comment period for these modifications will end on August 21, 2008. Questions or information requests should be addressed to Margaret Smigo. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Margaret Smigo, Department of Environmental Quality, Piedmont Regional Office, 4969-A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124 or email [mj-smigo@deq.virginia.gov](mailto:mj-smigo@deq.virginia.gov).

## VIRGINIA CODE COMMISSION

### Notice to State Agencies

**Mailing Address:** Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219.

### 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.

