



# Virginia Register of Regulations

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

## ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

## FAST-TRACK RULEMAKING PROCESS

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

## EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 12 months in duration; however, may be extended for six months under certain circumstances as provided for in § 2.2-4011 D. Emergency regulations are published as soon as possible in the *Register*. During the time the emergency status is in effect, the agency may proceed with the adoption of permanent regulations through the usual procedures. To begin promulgating the replacement regulation, the agency must (i) file the Notice of Intended Regulatory Action with the Registrar within 60 days of the effective date of the emergency regulation and (ii) file the proposed regulation with the Registrar within 180 days of the effective date of the emergency regulation. If the agency chooses not to adopt the regulations, the emergency status ends when the prescribed time limit expires.

## STATEMENT

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

## CITATION TO THE VIRGINIA REGISTER

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

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

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

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

# PUBLICATION SCHEDULE AND DEADLINES

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

## July 2009 through April 2010

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
<b>INDEX 3 Volume 25</b>		<b>July 2009</b>
25:23	July 1, 2009	July 20, 2009
25:24	July 15, 2009	August 3, 2009
25:25	July 29, 2009	August 17, 2009
25:26	August 12, 2009	August 31, 2009
<b>FINAL INDEX Volume 25</b>		<b>October 2009</b>
26:1	August 26, 2009	September 14, 2009
26:2	September 9, 2009	September 28, 2009
26:3	September 23, 2009	October 12, 2009
26:4	October 7, 2009	October 26, 2009
26:5	October 21, 2009	November 9, 2009
26:6	November 4, 2009	November 23, 2009
26:7	November 17, 2009 (Tuesday)	December 7, 2009
<b>INDEX 1 Volume 26</b>		<b>January 2010</b>
26:8	December 2, 2009	December 21, 2009
26:9	December 15, 2009 (Tuesday)	January 4, 2010
26:10	December 29, 2009 (Tuesday)	January 18, 2010
26:11	January 13, 2010	February 1, 2010
26:12	January 27, 2010	February 15, 2010
26:13	February 10, 2010	March 1, 2010
26:14	February 24, 2010	March 15, 2010
<b>INDEX 2 Volume 26</b>		<b>April 2010</b>
26:15	March 10, 2010	March 29, 2010
26:16	March 24, 2010	April 12, 2010
26:17	April 7, 2010	April 26, 2010

\*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 2009 VAC Supplement includes final regulations published through *Virginia Register* Volume 25, Issue 12, dated February 16, 2009, and fast-track regulations published through *Virginia Register* Volume 25, Issue 11, dated February 2, 2009). 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 5-100-10 through 2VAC5-100-40	Repealed	25:16 V.A.R. 2831	5/13/09
2 VAC 5-320-10	Erratum	25:13 V.A.R. 2565	--
2 VAC 5-325-10	Erratum	25:13 V.A.R. 2565	--
2 VAC 5-330-30	Erratum	25:13 V.A.R. 2565	--
2 VAC 5-330-30	Amended	25:15 V.A.R. 2710	3/9/09
2 VAC 5-340-140	Erratum	25:13 V.A.R. 2565	--
2 VAC 5-340-170	Erratum	25:13 V.A.R. 2565	--
2 VAC 5-350-20	Erratum	25:13 V.A.R. 2565	--
2 VAC 5-370-10	Erratum	25:13 V.A.R. 2566	--
2 VAC 5-380-10	Erratum	25:13 V.A.R. 2566	--
2 VAC 5-390-20	Erratum	25:13 V.A.R. 2566	--
2 VAC 5-390-80	Erratum	25:13 V.A.R. 2566	--
2 VAC 5-400-10	Erratum	25:13 V.A.R. 2566	--
2 VAC 5-440-20	Erratum	25:13 V.A.R. 2566	--
<b>Title 4. Conservation and Natural Resources</b>			
4 VAC 20-260-30 emer	Amended	25:21 V.A.R. 3783	6/1/09-6/30/09
4 VAC 20-270-10 emer	Amended	25:14 V.A.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30 emer	Amended	25:14 V.A.R. 2591	2/26/09-3/28/09
4 VAC 20-270-30	Amended	25:16 V.A.R. 2831	3/26/09
4 VAC 20-270-40 emer	Amended	25:14 V.A.R. 2592	2/26/09-3/28/09
4 VAC 20-270-40	Amended	25:16 V.A.R. 2832	3/26/09
4 VAC 20-270-40	Amended	25:21 V.A.R. 3783	6/1/09
4 VAC 20-270-50	Amended	25:21 V.A.R. 3784	6/1/09
4 VAC 20-270-55 emer	Amended	25:14 V.A.R. 2592	2/26/09-3/28/09
4 VAC 20-270-55	Amended	25:16 V.A.R. 2832	3/26/09
4 VAC 20-270-58	Amended	25:21 V.A.R. 3784	6/1/09
4 VAC 20-270-60 emer	Amended	25:14 V.A.R. 2592	2/26/09-3/28/09
4 VAC 20-320-70	Amended	25:21 V.A.R. 3784	6/1/09
4 VAC 20-395-10	Amended	25:19 V.A.R. 3289	6/30/09
4 VAC 20-395-20	Amended	25:19 V.A.R. 3289	6/30/09
4 VAC 20-395-30	Amended	25:19 V.A.R. 3290	6/30/09
4 VAC 20-395-40	Amended	25:19 V.A.R. 3290	6/30/09
4 VAC 20-450-30	Amended	25:21 V.A.R. 3785	6/1/09
4 VAC 20-490-20	Amended	25:14 V.A.R. 2593	3/1/09
4 VAC 20-490-30	Amended	25:14 V.A.R. 2595	3/1/09
4 VAC 20-490-40	Amended	25:14 V.A.R. 2595	3/1/09
4 VAC 20-490-41	Amended	25:14 V.A.R. 2595	3/1/09
4 VAC 20-530-10 emer	Amended	25:14 V.A.R. 2596	2/26/09-3/28/09

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 20-530-20 emer	Amended	25:14 V.A.R. 2596	2/26/09-3/28/09
4 VAC 20-530-31 emer	Amended	25:14 V.A.R. 2597	2/26/09-3/28/09
4 VAC 20-530-31	Amended	25:16 V.A.R. 2833	3/26/09
4 VAC 20-530-40 emer	Amended	25:14 V.A.R. 2597	2/26/09-3/28/09
4 VAC 20-560-40 emer	Amended	25:19 V.A.R. 3292	5/1/09-5/30/09
4 VAC 20-620-70	Amended	25:14 V.A.R. 2597	3/1/09
4 VAC 20-650-10	Amended	25:21 V.A.R. 3785	6/1/09
4 VAC 20-650-20	Amended	25:21 V.A.R. 3786	6/1/09
4 VAC 20-650-30	Amended	25:21 V.A.R. 3787	6/1/09
4 VAC 20-670-20	Amended	25:21 V.A.R. 3788	6/1/09
4 VAC 20-670-25	Amended	25:21 V.A.R. 3788	6/1/09
4 VAC 20-670-30	Amended	25:21 V.A.R. 3788	6/1/09
4 VAC 20-670-40	Amended	25:21 V.A.R. 3789	6/1/09
4 VAC 20-700-20	Amended	25:14 V.A.R. 2598	3/1/09
4 VAC 20-880-30	Amended	25:21 V.A.R. 3789	6/1/09
4 VAC 20-950-30	Amended	25:16 V.A.R. 2833	4/1/09
4 VAC 20-1040-25	Amended	25:21 V.A.R. 3789	6/1/09
4 VAC 20-1090-30	Amended	25:21 V.A.R. 3790	6/1/09
4 VAC 20-1120-31	Added	25:21 V.A.R. 3792	7/1/09
4 VAC 20-1120-32	Added	25:21 V.A.R. 3792	7/1/09
4 VAC 20-1140-20	Amended	25:21 V.A.R. 3793	6/1/09
4 VAC 20-1200-10	Added	25:16 V.A.R. 2834	4/1/09
4 VAC 20-1200-20	Added	25:16 V.A.R. 2834	4/1/09
4 VAC 20-1200-30	Added	25:16 V.A.R. 2834	4/1/09
4 VAC 20-1210-10 emer	Added	25:16 V.A.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-10	Added	25:19 V.A.R. 3293	4/30/09
4 VAC 20-1210-20 emer	Added	25:16 V.A.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-20	Added	25:19 V.A.R. 3293	4/30/09
4 VAC 20-1210-30 emer	Added	25:16 V.A.R. 2835	3/26/09-4/24/09
4 VAC 20-1210-30	Added	25:19 V.A.R. 3293	4/30/09
4 VAC 25-31 (Forms)	Amended	25:16 V.A.R. 2835	--
4 VAC 25-40-25	Amended	25:20 V.A.R. 3478	7/8/09
4 VAC 25-40-90	Amended	25:20 V.A.R. 3478	7/8/09
4 VAC 25-40-120	Amended	25:20 V.A.R. 3478	7/8/09
4 VAC 25-40-130	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-190	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-260	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-350	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-365	Added	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-410	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-720	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-780	Amended	25:20 V.A.R. 3479	7/8/09
4 VAC 25-40-800	Amended	25:20 V.A.R. 3480	7/8/09
4 VAC 25-40-810	Amended	25:20 V.A.R. 3481	7/8/09
4 VAC 25-40-880	Amended	25:20 V.A.R. 3481	7/8/09
4 VAC 25-40-890	Amended	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-893	Added	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-925	Added	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-1095	Added	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-1600	Amended	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-2790	Amended	25:20 V.A.R. 3482	7/8/09

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
4 VAC 25-40-2800	Amended	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-2980	Amended	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-3050	Repealed	25:20 V.A.R. 3482	7/8/09
4 VAC 25-40-3060	Repealed	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3070	Repealed	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3080	Repealed	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3090	Repealed	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3110	Repealed	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3120	Repealed	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3800	Amended	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3830	Amended	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3840	Amended	25:20 V.A.R. 3483	7/8/09
4 VAC 25-40-3990	Amended	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4060	Amended	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4061	Added	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4062	Added	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4063	Added	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4064	Added	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4065	Added	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4066	Added	25:20 V.A.R. 3484	7/8/09
4 VAC 25-40-4240	Amended	25:20 V.A.R. 3485	7/8/09
4 VAC 25-40-4260	Amended	25:20 V.A.R. 3485	7/8/09
4 VAC 25-40-4400	Amended	25:20 V.A.R. 3485	7/8/09
4 VAC 25-130 (Forms)	Amended	25:16 V.A.R. 2836	--
4 VAC 50-60-10	Amended	25:16 V.A.R. 2838	7/1/09
4 VAC 50-60-1100 through 4VAC50-60-1140	Amended	25:16 V.A.R. 2849-2851	7/1/09
4 VAC 50-60-1150	Amended	25:16 V.A.R. 2851	5/13/09
4 VAC 50-60-1160 through 4 VAC 50-60-1180	Amended	25:16 V.A.R. 2853-2868	7/1/09
4 VAC 50-60-1182	Added	25:16 V.A.R. 2869	7/1/09
4 VAC 50-60-1184	Added	25:16 V.A.R. 2869	7/1/09
4 VAC 50-60-1186	Added	25:16 V.A.R. 2870	7/1/09
4 VAC 50-60-1188	Added	25:16 V.A.R. 2871	7/1/09
4 VAC 50-60-1190	Amended	25:16 V.A.R. 2871	7/1/09
<b>Title 5. Corporations</b>			
5 VAC 5-20-10	Amended	25:14 V.A.R. 2601	3/11/09
5 VAC 5-20-20	Amended	25:14 V.A.R. 2601	3/11/09
5 VAC 5-20-80	Amended	25:14 V.A.R. 2602	3/11/09
5 VAC 5-20-90	Amended	25:14 V.A.R. 2602	3/11/09
5 VAC 5-20-100	Amended	25:14 V.A.R. 2602	3/11/09
5 VAC 5-20-120 through 5 VAC 5-20-150	Amended	25:14 V.A.R. 2603-2604	3/11/09
5 VAC 5-20-170	Amended	25:14 V.A.R. 2604	3/11/09
5 VAC 5-20-180	Amended	25:14 V.A.R. 2605	3/11/09
5 VAC 5-20-240 through 5 VAC 5-20-280	Amended	25:14 V.A.R. 2605-2608	3/11/09
<b>Title 6. Criminal Justice and Corrections</b>			
6 VAC 20-20-25	Amended	25:22 V.A.R. 4027	1/1/10
6 VAC 20-50-21	Amended	25:22 V.A.R. 4029	1/1/10
<b>Title 8. Education</b>			
8 VAC 20-80-10 through 8 VAC 20-80-190	Repealed	25:21 V.A.R. 3849	7/7/09
8 VAC 20-81-10 through 8 VAC 20-81-340	Added	25:21 V.A.R. 3849	7/7/09
8 VAC 20-131-5	Amended	25:21 V.A.R. 3850	7/31/09
8 VAC 20-131-30	Amended	25:21 V.A.R. 3851	7/31/09

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
8 VAC 20-131-50	Amended	25:21 V.A.R. 3852	7/31/09
8 VAC 20-131-60	Amended	25:21 V.A.R. 3857	7/31/09
8 VAC 20-131-80	Amended	25:21 V.A.R. 3859	7/31/09
8 VAC 20-131-100	Amended	25:21 V.A.R. 3859	7/31/09
8 VAC 20-131-140	Amended	25:21 V.A.R. 3860	7/31/09
8 VAC 20-131-210	Amended	25:21 V.A.R. 3860	7/31/09
8 VAC 20-131-270	Amended	25:21 V.A.R. 3861	7/31/09
8 VAC 20-131-280	Amended	25:21 V.A.R. 3862	7/31/09
8 VAC 20-131-290	Amended	25:21 V.A.R. 3863	7/31/09
8 VAC 20-131-300	Amended	25:21 V.A.R. 3864	7/31/09
8 VAC 20-131-310	Amended	25:21 V.A.R. 3866	7/31/09
8 VAC 20-131-325	Amended	25:21 V.A.R. 3867	7/31/09
8 VAC 20-131-360	Amended	25:21 V.A.R. 3867	7/31/09
8 VAC 20-521-60	Amended	25:19 V.A.R. 3295	7/15/09
8 VAC 20-650-30	Amended	25:19 V.A.R. 3297	7/15/09
<b>Title 9. Environment</b>			
9 VAC 5-10-20	Amended	25:12 V.A.R. 2059	4/2/09
9 VAC 5-20-21	Amended	25:19 V.A.R. 3298	6/24/09
9 VAC 5-30-15	Amended	25:19 V.A.R. 3302	6/24/09
9 VAC 5-30-80	Amended	25:19 V.A.R. 3302	6/24/09
9 VAC 5-80-1170	Amended	25:19 V.A.R. 3302	6/24/09
9 VAC 5-80-1615	Amended	25:20 V.A.R. 3492	7/23/09
9 VAC 5-80-1625	Amended	25:20 V.A.R. 3503	7/23/09
9 VAC 5-80-1695	Amended	25:20 V.A.R. 3504	7/23/09
9 VAC 5-80-1915	Added	25:20 V.A.R. 3505	7/23/09
9 VAC 5-80-1925	Amended	25:20 V.A.R. 3506	7/23/09
9 VAC 5-80-1935	Amended	25:20 V.A.R. 3507	7/23/09
9 VAC 5-80-1945	Amended	25:20 V.A.R. 3507	7/23/09
9 VAC 5-80-1955	Amended	25:20 V.A.R. 3508	7/23/09
9 VAC 5-80-1965	Amended	25:20 V.A.R. 3508	7/23/09
9 VAC 5-80-2010	Amended	25:20 V.A.R. 3508	7/23/09
9 VAC 5-80-2020	Amended	25:20 V.A.R. 3518	7/23/09
9 VAC 5-80-2140	Amended	25:20 V.A.R. 3518	7/23/09
9 VAC 5-80-2195	Added	25:20 V.A.R. 3519	7/23/09
9 VAC 5-80-2200	Amended	25:20 V.A.R. 3520	7/23/09
9 VAC 5-80-2210	Amended	25:20 V.A.R. 3520	7/23/09
9 VAC 5-80-2220	Amended	25:20 V.A.R. 3521	7/23/09
9 VAC 5-80-2230	Amended	25:20 V.A.R. 3522	7/23/09
9 VAC 5-80-2240	Amended	25:20 V.A.R. 3522	7/23/09
9 VAC 20-80 (Forms)	Amended	25:18 V.A.R. 3149	--
9 VAC 25-32-480	Erratum	25:15 V.A.R. 2804	--
9 VAC 25-151-10	Amended	25:19 V.A.R. 3306	6/24/09
9 VAC 25-151-40 through 9 VAC 25-151-290	Amended	25:19 V.A.R. 3308-3379	6/24/09
9 VAC 25-151-310 through 9 VAC 25-151-370	Amended	25:19 V.A.R. 3379-3385	6/24/09
9 VAC 25-190-10	Amended	25:19 V.A.R. 3385	6/24/09
9 VAC 25-190-20	Amended	25:19 V.A.R. 3386	6/24/09
9 VAC 25-190-50	Amended	25:19 V.A.R. 3386	6/24/09
9 VAC 25-190-60	Amended	25:19 V.A.R. 3387	6/24/09
9 VAC 25-190-65	Added	25:19 V.A.R. 3388	6/24/09
9 VAC 25-190-70	Amended	25:19 V.A.R. 3389	6/24/09
9 VAC 25-580 (Forms)	Amended	25:18 V.A.R. 3154	--

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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
9 VAC 25-720-50	Amended	25:20 V.A.R. 3523	7/8/09
9 VAC 25-720-60	Erratum	25:19 V.A.R. 3464	--
9 VAC 25-720-60	Amended	25:20 V.A.R. 3531	7/8/09
9 VAC 25-720-90	Amended	25:20 V.A.R. 3544	7/8/09
9 VAC 25-720-110	Amended	25:20 V.A.R. 3546	7/8/09
9 VAC 25-720-120	Amended	25:12 V.A.R. 2247	4/2/09
<b>Title 10. Finance and Financial Institutions</b>			
10 VAC 5-200-60	Amended	25:14 V.A.R. 2609	3/1/09
10 VAC 5-200-110	Amended	25:14 V.A.R. 2609	3/1/09
10 VAC 5-200-130	Added	25:14 V.A.R. 2613	3/1/09
<b>Title 11. Gaming</b>			
11 VAC 10-20-330	Amended	25:18 V.A.R. 3162	6/1/09
11 VAC 10-50-30	Amended	25:17 V.A.R. 3005	5/27/09
11 VAC 10-70-20	Amended	25:15 V.A.R. 2712	4/15/09
11 VAC 10-70-90	Amended	25:15 V.A.R. 2712	4/15/09
11 VAC 10-110-90	Amended	25:19 V.A.R. 3407	6/1/09
11 VAC 10-120-80	Amended	25:17 V.A.R. 3006	5/27/09
11 VAC 10-180-10	Amended	25:17 V.A.R. 3007	5/27/09
11 VAC 10-180-35	Amended	25:17 V.A.R. 3007	5/27/09
11 VAC 10-180-70	Amended	25:17 V.A.R. 3008	5/27/09
11 VAC 10-180-80	Amended	25:17 V.A.R. 3009	5/27/09
11 VAC 10-180-110	Amended	25:17 V.A.R. 3010	5/27/09
<b>Title 12. Health</b>			
12 VAC 5-195-20	Amended	25:22 V.A.R. 4063	7/6/09
12 VAC 5-195-30	Amended	25:22 V.A.R. 4063	7/6/09
12 VAC 5-195-70	Amended	25:22 V.A.R. 4064	7/6/09
12 VAC 5-195-140	Amended	25:22 V.A.R. 4065	7/6/09
12 VAC 5-195-180	Amended	25:22 V.A.R. 4065	7/6/09
12 VAC 5-195-190	Amended	25:22 V.A.R. 4066	7/6/09
12 VAC 5-195-280 through 12 VAC 5-195-340	Amended	25:22 V.A.R. 4067-4071	7/6/09
12 VAC 5-195-360	Amended	25:22 V.A.R. 4071	7/6/09
12 VAC 5-195-370	Amended	25:22 V.A.R. 4072	7/6/09
12 VAC 5-195-380	Repealed	25:22 V.A.R. 4072	7/6/09
12 VAC 5-195-390	Amended	25:22 V.A.R. 4072	7/6/09
12 VAC 5-195-400	Amended	25:22 V.A.R. 4073	7/6/09
12 VAC 5-195-410	Amended	25:22 V.A.R. 4073	7/6/09
12 VAC 5-195-420	Amended	25:22 V.A.R. 4073	7/6/09
12 VAC 5-195-450	Amended	25:22 V.A.R. 4073	7/6/09
12 VAC 5-195-460	Amended	25:22 V.A.R. 4073	7/6/09
12 VAC 5-195-480 through 12 VAC 5-195-550	Amended	25:22 V.A.R. 4074-4076	7/6/09
12 VAC 5-195-580	Amended	25:22 V.A.R. 4076	7/6/09
12 VAC 5-195-590	Amended	25:22 V.A.R. 4077	7/6/09
12 VAC 5-195-600	Amended	25:22 V.A.R. 4079	7/6/09
12 VAC 5-195-610	Amended	25:22 V.A.R. 4081	7/6/09
12 VAC 5-195-630	Amended	25:22 V.A.R. 4081	7/6/09
12 VAC 5-195-640	Amended	25:22 V.A.R. 4081	7/6/09
12 VAC 5-195-660	Amended	25:22 V.A.R. 4082	7/6/09
12 VAC 5-195-670	Amended	25:22 V.A.R. 4083	7/6/09
12 VAC 5-230-540	Amended	25:13 V.A.R. 2316	4/1/09
12 VAC 5-230-550	Amended	25:13 V.A.R. 2317	4/1/09
12 VAC 5-230-560	Amended	25:13 V.A.R. 2317	4/1/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 5-481-451	Amended	25:21 V.A.R. 3888	8/6/09
12 VAC 30-10-150	Amended	25:14 V.A.R. 2614	4/15/09
12 VAC 30-10-560	Amended	25:21 V.A.R. 3898	7/23/09
12 VAC 30-10-930	Amended	25:14 V.A.R. 2615	4/15/09
12 VAC 30-20-90	Amended	25:14 V.A.R. 2615	4/15/09
12 VAC 30-20-140	Repealed	25:21 V.A.R. 3899	7/23/09
12 VAC 30-20-141	Added	25:21 V.A.R. 3900	7/23/09
12 VAC 30-20-210	Amended	25:20 V.A.R. 3571	7/23/09
12 VAC 30-20-500	Amended	25:14 V.A.R. 2618	4/15/09
12 VAC 30-20-520	Amended	25:14 V.A.R. 2618	4/15/09
12 VAC 30-30-10	Amended	25:20 V.A.R. 3577	7/9/09
12 VAC 30-30-20	Amended	25:21 V.A.R. 3902	7/23/09
12 VAC 30-40-10	Erratum	25:19 V.A.R. 3464	--
12 VAC 30-40-10	Amended	25:20 V.A.R. 3574	7/23/09
12 VAC 30-40-105	Added	25:21 V.A.R. 3904	7/23/09
12 VAC 30-40-280	Amended	25:21 V.A.R. 3904	7/23/09
12 VAC 30-40-290	Amended	25:21 V.A.R. 3905	7/23/09
12 VAC 30-50-10	Amended	25:14 V.A.R. 2618	4/15/09
12 VAC 30-50-226 emer	Amended	25:22 V.A.R. 4085	7/1/09-6/30/10
12 VAC 30-50-420 emer	Amended	25:22 V.A.R. 4089	7/1/09-6/30/10
12 VAC 30-50-430 emer	Amended	25:22 V.A.R. 4091	7/1/09-6/30/10
12 VAC 30-60-200	Added	25:21 V.A.R. 3907	7/23/09
12 VAC 30-60-500	Added	25:20 V.A.R. 3586	7/9/09
12 VAC 30-80-30	Amended	25:21 V.A.R. 3909	7/23/09
12 VAC 30-80-40	Amended	25:19 V.A.R. 3408	7/1/09
12 VAC 30-80-95	Amended	25:12 V.A.R. 2251	4/2/09
12 VAC 30-110-40	Amended	25:14 V.A.R. 2619	4/15/09
12 VAC 30-110-370	Amended	25:14 V.A.R. 2619	4/15/09
12 VAC 30-110-380	Repealed	25:14 V.A.R. 2619	4/15/09
12 VAC 30-110-670	Amended	25:14 V.A.R. 2620	4/15/09
12 VAC 30-110-680	Amended	25:14 V.A.R. 2620	4/15/09
12 VAC 30-110-700	Amended	25:14 V.A.R. 2620	4/15/09
12 VAC 30-110-720	Amended	25:14 V.A.R. 2620	4/15/09
12 VAC 30-110-741	Amended	25:14 V.A.R. 2623	4/15/09
12 VAC 30-110-980	Amended	25:14 V.A.R. 2623	4/15/09
12 VAC 30-110-990	Repealed	25:14 V.A.R. 2623	4/15/09
12 VAC 30-110-1000	Repealed	25:14 V.A.R. 2623	4/15/09
12 VAC 30-110-1040	Amended	25:14 V.A.R. 2623	4/15/09
12 VAC 30-110-1500	Added	25:21 V.A.R. 3912	7/23/09
12 VAC 30-120-70	Amended	25:20 V.A.R. 3599	7/9/09
12 VAC 30-120-90	Amended	25:20 V.A.R. 3600	7/9/09
12 VAC 30-120-140	Amended	25:14 V.A.R. 2624	4/15/09
12 VAC 30-120-140	Amended	25:20 V.A.R. 3602	7/9/09
12 VAC 30-120-211	Amended	25:20 V.A.R. 3605	7/9/09
12 VAC 30-120-213	Amended	25:20 V.A.R. 3608	7/9/09
12 VAC 30-120-225	Amended	25:20 V.A.R. 3609	7/9/09
12 VAC 30-120-229	Amended	25:20 V.A.R. 3612	7/9/09
12 VAC 30-120-237	Amended	25:20 V.A.R. 3613	7/9/09
12 VAC 30-120-247	Amended	25:20 V.A.R. 3614	7/9/09
12 VAC 30-120-700	Amended	25:20 V.A.R. 3616	7/9/09
12 VAC 30-120-710	Amended	25:20 V.A.R. 3619	7/9/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
12 VAC 30-120-754	Amended	25:20 V.A.R. 3620	7/9/09
12 VAC 30-120-758	Amended	25:20 V.A.R. 3621	7/9/09
12 VAC 30-120-762	Amended	25:20 V.A.R. 3622	7/9/09
12 VAC 30-120-770	Amended	25:20 V.A.R. 3623	7/9/09
12 VAC 30-120-900	Amended	25:20 V.A.R. 3625	7/9/09
12 VAC 30-120-910	Amended	25:19 V.A.R. 3410	7/1/09
12 VAC 30-120-910	Amended	25:20 V.A.R. 3627	7/9/09
12 VAC 30-120-920	Amended	25:20 V.A.R. 3628	7/9/09
12 VAC 30-120-970	Amended	25:20 V.A.R. 3630	7/9/09
12 VAC 30-120-1500	Amended	25:20 V.A.R. 3632	7/9/09
12 VAC 30-120-1550	Amended	25:20 V.A.R. 3634	7/9/09
12 VAC 30-120-2000	Added	25:20 V.A.R. 3636	7/9/09
12 VAC 30-120-2010	Added	25:20 V.A.R. 3637	7/9/09
12 VAC 30-130-260	Amended	25:14 V.A.R. 2626	4/15/09
12 VAC 30-130-270	Amended	25:14 V.A.R. 2626	4/15/09
12 VAC 30-130-290	Amended	25:14 V.A.R. 2627	4/15/09
12 VAC 30-130-370	Repealed	25:14 V.A.R. 2628	4/15/09
12 VAC 30-130-380	Amended	25:14 V.A.R. 2628	4/15/09
12 VAC 30-130-410	Repealed	25:14 V.A.R. 2628	4/15/09
12 VAC 30-130-540	Amended	25:14 V.A.R. 2629	4/15/09
12 VAC 30-130-750	Amended	25:20 V.A.R. 3576	7/23/09
12 VAC 30-130-780	Repealed	25:20 V.A.R. 3576	7/23/09
12 VAC 30-130-790	Amended	25:20 V.A.R. 3576	7/23/09
12 VAC 30-130-800	Amended	25:14 V.A.R. 2630	4/15/09
12 VAC 30-130-820	Amended	25:14 V.A.R. 2632	4/15/09
12 VAC 30-130-890	Amended	25:14 V.A.R. 2633	4/15/09
12 VAC 30-130-910	Amended	25:14 V.A.R. 2634	4/15/09
12 VAC 30-141-60	Amended	25:14 V.A.R. 2635	4/15/09
12 VAC 30-141-120	Amended	25:14 V.A.R. 2635	4/15/09
12 VAC 30-141-660	Amended	25:16 V.A.R. 2969	5/13/09
12 VAC 30-141-720	Amended	25:14 V.A.R. 2635	4/15/09
12 VAC 30-141-740	Amended	25:19 V.A.R. 3411	7/1/09
12 VAC 30-141-760	Amended	25:14 V.A.R. 2635	4/15/09
12 VAC 30-150-40	Amended	25:14 V.A.R. 2636	4/15/09
12 VAC 35-45-10 through 12 VAC 35-45-210	Repealed	25:21 V.A.R. 3912	8/6/09
12 VAC 35-46-10 through 12 VAC 35-46-1140	Added	25:21 V.A.R. 3914-3950	8/6/09
<b>Title 13. Housing</b>			
13 VAC 5-63-220	Amended	25:17 V.A.R. 3013	6/1/09
13 VAC 5-100-10	Amended	25:13 V.A.R. 2363	2/12/09
13 VAC 5-100-20	Amended	25:13 V.A.R. 2364	2/12/09
13 VAC 10-40-20	Amended	25:21 V.A.R. 3951	6/5/09
13 VAC 10-40-40	Amended	25:21 V.A.R. 3954	6/5/09
13 VAC 10-40-50	Amended	25:21 V.A.R. 3954	6/5/09
13 VAC 10-40-120	Amended	25:21 V.A.R. 3956	6/5/09
13 VAC 10-40-130	Amended	25:21 V.A.R. 3957	6/5/09
13 VAC 10-40-140	Amended	25:21 V.A.R. 3960	6/5/09
13 VAC 10-40-160	Amended	25:21 V.A.R. 3961	6/5/09
13 VAC 10-40-170	Amended	25:21 V.A.R. 3961	6/5/09
13 VAC 10-40-220	Amended	25:21 V.A.R. 3961	6/5/09
<b>Title 14. Insurance</b>			
14 VAC 5-43-10	Added	25:19 V.A.R. 3413	5/15/09

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
14 VAC 5-43-20	Added	25:19 VA.R. 3413	5/15/09
14 VAC 5-43-30	Added	25:19 VA.R. 3414	5/15/09
14 VAC 5-170-20	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-30	Amended	25:18 VA.R. 3186	5/21/09
14 VAC 5-170-50	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-60	Amended	25:18 VA.R. 3188	5/21/09
14 VAC 5-170-70	Amended	25:18 VA.R. 3190	5/21/09
14 VAC 5-170-75	Added	25:18 VA.R. 3194	5/21/09
14 VAC 5-170-80	Amended	25:18 VA.R. 3196	5/21/09
14 VAC 5-170-85	Added	25:18 VA.R. 3197	5/21/09
14 VAC 5-170-150	Amended	25:18 VA.R. 3199	5/21/09
14 VAC 5-170-215	Added	25:18 VA.R. 3237	5/21/09
<b>Title 16. Labor and Employment</b>			
16 VAC 15-21-30	Amended	25:20 VA.R. 3639	7/24/09
16 VAC 25-90-1910.9	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.95	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.134	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.156	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.303	Amended	25:20 VA.R. 3640	7/15/09
16 VAC 25-90-1910.304	Amended	25:20 VA.R. 3640	7/15/09
16 VAC 25-90-1910.1001	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1003	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1017	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1018	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1025	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1026	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1027	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1028	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1029	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1030	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1043	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1044	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1045	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1047	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1048	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1050	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1051	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1910.1052	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1915.1001	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-90-1915.1026	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-100-1915.9	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-120-1917.5	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-120-1917.71	Amended	25:20 VA.R. 3641	7/15/09
16 VAC 25-130-1918.5	Added	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-130-1918.85	Amended	25:20 VA.R. 3641	7/15/09
16 VAC 25-175	Errata	25:22 VA.R. 4172	--
16 VAC 25-175-1926.60	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.62	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.761	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1101	Amended	25:20 VA.R. 3639-3640	7/15/09
16 VAC 25-175-1926.1126	Amended	25:20 VA.R. 3639-3640	7/15/09

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

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SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
16 VAC 25-175-1926.1127	Amended	25:20 V.A.R. 3639-3640	7/15/09
16 VAC 25-175-1926.20	Added	25:20 V.A.R. 3639-3640	7/15/09
<b>Title 18. Professional and Occupational Licensing</b>			
18 VAC 5-21-30 emer	Amended	25:20 V.A.R. 3643	5/14/09-5/13/10
18 VAC 10-20-683	Erratum	25:15 V.A.R. 2804	--
18 VAC 30-20-160	Amended	25:20 V.A.R. 3656	7/8/09
18 VAC 30-20-185	Added	25:20 V.A.R. 3656	7/8/09
18 VAC 48-20-10 through 18 VAC 48-20-800	Added	25:20 V.A.R. 3657-3678	7/9/09
18 VAC 48-60-13	Added	25:15 V.A.R. 2769	5/15/09
18 VAC 48-60-17	Added	25:15 V.A.R. 2769	5/15/09
18 VAC 48-60-20	Amended	25:15 V.A.R. 2770	5/15/09
18 VAC 48-60-60	Amended	25:15 V.A.R. 2770	5/15/09
18 VAC 60-20-16	Amended	25:17 V.A.R. 3015	7/1/09
18 VAC 60-20-190	Amended	25:16 V.A.R. 2970	5/13/09
18 VAC 65-20-10	Amended	25:20 V.A.R. 3679	7/8/09
18 VAC 65-20-60	Amended	25:17 V.A.R. 3016	7/1/09
18 VAC 65-20-60	Amended	25:20 V.A.R. 3679	7/8/09
18 VAC 65-20-435	Amended	25:20 V.A.R. 3679	7/8/09
18 VAC 65-20-436	Added	25:20 V.A.R. 3680	7/8/09
18 VAC 65-30-180	Amended	25:17 V.A.R. 3016	7/1/09
18 VAC 76-20-60	Amended	25:16 V.A.R. 2971	5/13/09
18 VAC 76-20-70	Amended	25:16 V.A.R. 2971	5/13/09
18 VAC 76-40-20	Amended	25:18 V.A.R. 3239	7/1/09
18 VAC 90-20-35	Amended	25:17 V.A.R. 3017	7/1/09
18 VAC 90-20-36	Amended	25:21 V.A.R. 3973	7/22/09
18 VAC 90-20-200	Amended	25:22 V.A.R. 4101	12/31/09
18 VAC 90-25-15	Amended	25:17 V.A.R. 3017	7/1/09
18 VAC 90-30-100	Amended	25:17 V.A.R. 3017	7/1/09
18 VAC 90-50-20	Amended	25:17 V.A.R. 3017	7/1/09
18 VAC 90-60-20	Amended	25:17 V.A.R. 3018	7/1/09
18 VAC 90-60-90	Amended	25:16 V.A.R. 2972	5/13/09
18 VAC 90-60-91	Added	25:16 V.A.R. 2972	5/13/09
18 VAC 90-60-92	Added	25:16 V.A.R. 2973	5/13/09
18 VAC 95-20-10	Amended	25:19 V.A.R. 3418	6/24/09
18 VAC 95-20-70	Amended	25:19 V.A.R. 3420	7/1/09
18 VAC 95-20-70	Errata	25:22 V.A.R. 4172	--
18 VAC 95-20-175	Amended	25:19 V.A.R. 3419	6/24/09
18 VAC 95-20-390	Amended	25:19 V.A.R. 3419	6/24/09
18 VAC 95-30-10	Amended	25:19 V.A.R. 3420	6/24/09
18 VAC 95-30-30	Amended	25:19 V.A.R. 3420	7/1/09
18 VAC 95-30-30	Errata	25:22 V.A.R. 4172	--
18 VAC 105-20-60	Amended	25:18 V.A.R. 3240	7/1/09
18 VAC 110-20-10 emer	Amended	25:17 V.A.R. 3018	4/10/09-4/9/10
18 VAC 110-20-21	Added	25:17 V.A.R. 3025	7/1/09
18 VAC 110-20-400 emer	Amended	25:17 V.A.R. 3021	4/10/09-4/9/10
18 VAC 110-20-740 emer	Added	25:17 V.A.R. 3021	4/10/09-4/9/10
18 VAC 110-20-750 emer	Added	25:17 V.A.R. 3021	4/10/09-4/9/10
18 VAC 110-20-760 emer	Added	25:17 V.A.R. 3021	4/10/09-4/9/10
18 VAC 110-20-770 emer	Added	25:17 V.A.R. 3022	4/10/09-4/9/10
18 VAC 110-20-780 emer	Added	25:17 V.A.R. 3022	4/10/09-4/9/10
18 VAC 110-20-790 emer	Added	25:17 V.A.R. 3022	4/10/09-4/9/10

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
18 VAC 110-20-800 emer	Added	25:17 V.A.R. 3022	4/10/09-4/9/10
18 VAC 112-20-25	Amended	25:17 V.A.R. 3025	7/1/09
18 VAC 112-20-81	Added	25:18 V.A.R. 3240	6/10/09
18 VAC 112-20-90	Amended	25:18 V.A.R. 3241	6/10/09
18 VAC 112-20-130	Amended	25:18 V.A.R. 3241	6/10/09
18 VAC 112-20-131	Amended	25:18 V.A.R. 3241	6/10/09
18 VAC 112-20-150	Amended	25:18 V.A.R. 3242	6/10/09
18 VAC 115-20-45	Amended	25:20 V.A.R. 3704	7/23/09
18 VAC 115-20-100	Amended	25:22 V.A.R. 4103	8/5/09
18 VAC 115-20-130	Amended	25:20 V.A.R. 3704	7/23/09
18 VAC 115-30-110	Amended	25:22 V.A.R. 4103	8/5/09
18 VAC 115-40-38	Amended	25:22 V.A.R. 4103	8/5/09
18 VAC 115-50-40	Amended	25:20 V.A.R. 3706	7/23/09
18 VAC 115-50-90	Amended	25:22 V.A.R. 4103	8/5/09
18 VAC 115-50-110	Amended	25:20 V.A.R. 3706	7/23/09
18 VAC 115-60-50	Amended	25:20 V.A.R. 3708	7/23/09
18 VAC 115-60-110	Amended	25:22 V.A.R. 4104	8/5/09
18 VAC 115-60-130	Amended	25:20 V.A.R. 3709	7/23/09
18 VAC 120-40-15	Amended	25:15 V.A.R. 2774	5/14/09
18 VAC 120-40-85	Added	25:15 V.A.R. 2774	5/14/09
18 VAC 120-40-240	Amended	25:15 V.A.R. 2774	5/14/09
18 VAC 120-40-411.1	Amended	25:15 V.A.R. 2775	5/14/09
18 VAC 125-20-120	Amended	25:17 V.A.R. 3026	7/1/09
18 VAC 125-30-50	Amended	25:20 V.A.R. 3711	7/8/09
18 VAC 125-30-80	Amended	25:17 V.A.R. 3026	7/1/09
18 VAC 125-30-80	Amended	25:20 V.A.R. 3712	7/8/09
18 VAC 130-20-30	Erratum	25:15 V.A.R. 2804	--
18 VAC 140-20-100	Amended	25:18 V.A.R. 3247	7/1/09
18 VAC 160-20-10	Amended	25:19 V.A.R. 3421	7/1/09
18 VAC 160-20-74	Amended	25:19 V.A.R. 3424	7/1/09
18 VAC 160-20-76	Amended	25:19 V.A.R. 3424	7/1/09
18 VAC 160-20-80	Amended	25:19 V.A.R. 3425	7/1/09
18 VAC 160-20-82	Added	25:19 V.A.R. 3425	7/1/09
18 VAC 160-20-84	Added	25:19 V.A.R. 3426	7/1/09
18 VAC 160-20-90	Amended	25:19 V.A.R. 3427	7/1/09
18 VAC 160-20-94	Added	25:19 V.A.R. 3429	7/1/09
18 VAC 160-20-96	Added	25:19 V.A.R. 3430	7/1/09
18 VAC 160-20-97	Added	25:19 V.A.R. 3431	7/1/09
18 VAC 160-20-98	Added	25:19 V.A.R. 3432	7/1/09
18 VAC 160-20-102	Amended	25:19 V.A.R. 3433	7/1/09
18 VAC 160-20-104	Amended	25:19 V.A.R. 3433	7/1/09
18 VAC 160-20-106	Amended	25:19 V.A.R. 3433	7/1/09
18 VAC 160-20-109	Amended	25:19 V.A.R. 3434	7/1/09
18 VAC 160-20-140	Amended	25:19 V.A.R. 3435	7/1/09
18 VAC 160-20-145	Added	25:19 V.A.R. 3435	7/1/09
18 VAC 160-20-150	Amended	25:19 V.A.R. 3436	7/1/09
<b>Title 19. Public Safety</b>			
19 VAC 30-200-10	Added	25:12 V.A.R. 2272	4/2/09
<b>Title 20. Public Utilities and Telecommunications</b>			
20 VAC 5-314-10 through 20 VAC 5-314-170	Added	25:20 V.A.R. 3716-3758	5/21/09
<b>Title 21. Securities and Retail Franchising</b>			

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
21 VAC 5-10-40	Amended	25:22 V.A.R. 4106	7/1/09
21 VAC 5-20-60	Amended	25:22 V.A.R. 4106	7/1/09
21 VAC 5-20-70	Amended	25:22 V.A.R. 4107	7/1/09
21 VAC 5-20-90	Amended	25:22 V.A.R. 4108	7/1/09
21 VAC 5-20-130	Amended	25:22 V.A.R. 4108	7/1/09
21 VAC 5-20-135	Added	25:22 V.A.R. 4108	7/1/09
21 VAC 5-20-150	Amended	25:22 V.A.R. 4109	7/1/09
21 VAC 5-20-160	Amended	25:22 V.A.R. 4109	7/1/09
21 VAC 5-30-80	Amended	25:22 V.A.R. 4109	7/1/09
21 VAC 5-40-30	Amended	25:22 V.A.R. 4110	7/1/09
21 VAC 5-45-20	Amended	25:22 V.A.R. 4111	7/1/09
21 VAC 5-80-10	Amended	25:22 V.A.R. 4112	7/1/09
21 VAC 5-80-70	Amended	25:22 V.A.R. 4112	7/1/09
21 VAC 5-80-110	Amended	25:22 V.A.R. 4113	7/1/09
21 VAC 5-80-130	Amended	25:22 V.A.R. 4113	7/1/09
21 VAC 5-80-140	Repealed	25:22 V.A.R. 4114	7/1/09
21 VAC 5-80-145	Added	25:22 V.A.R. 4115	7/1/09
21 VAC 5-80-160	Amended	25:22 V.A.R. 4119	7/1/09
21 VAC 5-110-10	Amended	25:22 V.A.R. 4124	7/1/09
21 VAC 5-110-40	Amended	25:22 V.A.R. 4125	7/1/09
21 VAC 5-110-50	Amended	25:22 V.A.R. 4125	7/1/09
21 VAC 5-110-55	Amended	25:22 V.A.R. 4126	7/1/09
21 VAC 5-110-65	Amended	25:22 V.A.R. 4127	7/1/09
21 VAC 5-110-75	Amended	25:22 V.A.R. 4128	7/1/09
21 VAC 5-110-80	Amended	25:22 V.A.R. 4129	7/1/09
21 VAC 5-110-95	Amended	25:22 V.A.R. 4130	7/1/09
<b>Title 22. Social Services</b>			
22 VAC 30-40-10 through 22 VAC 30-40-150	Amended	25:21 V.A.R. 3973-3984	7/22/09
22 VAC 30-40-160	Added	25:21 V.A.R. 3984	7/22/09
22 VAC 40-35-5	Repealed	25:19 V.A.R. 3438	7/1/09
22 VAC 40-35-10	Amended	25:19 V.A.R. 3438	7/1/09
22 VAC 40-35-20	Amended	25:19 V.A.R. 3440	7/1/09
22 VAC 40-35-40 through 22 VAC 40-35-120	Amended	25:19 V.A.R. 3441-3446	7/1/09
22 VAC 40-35-125	Repealed	25:19 V.A.R. 3446	7/1/09
22 VAC 40-35-126	Repealed	25:19 V.A.R. 3446	7/1/09
22 VAC 40-35-127	Repealed	25:19 V.A.R. 3447	7/1/09
22 VAC 40-35-128	Repealed	25:19 V.A.R. 3447	7/1/09
22 VAC 40-35-130	Amended	25:19 V.A.R. 3447	7/1/09
22 VAC 40-72-10	Amended	25:19 V.A.R. 3448	8/1/09
22 VAC 40-72-160	Amended	25:19 V.A.R. 3453	8/1/09
22 VAC 40-72-210	Amended	25:19 V.A.R. 3453	8/1/09
22 VAC 40-72-660	Amended	25:19 V.A.R. 3454	8/1/09
22 VAC 40-72-670	Amended	25:19 V.A.R. 3455	8/1/09
22 VAC 40-170-10 through 22 VAC 40-170-230	Repealed	25:19 V.A.R. 3456	7/1/09
22 VAC 40-670-10	Amended	25:21 V.A.R. 3988	8/6/09
22 VAC 40-670-20	Amended	25:21 V.A.R. 3988	8/6/09
22 VAC 40-675-10	Amended	25:21 V.A.R. 3990	8/6/09
22 VAC 40-675-60 through 22 VAC 40-675-100	Amended	25:21 V.A.R. 3990-3991	8/6/09
<b>Title 23. Taxation</b>			
23 VAC 10-210-310	Amended	25:22 V.A.R. 4155	9/19/09
<b>Title 24. Transportation and Motor Vehicles</b>			

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

SECTION NUMBER	ACTION	CITE	EFFECTIVE DATE
24 VAC 30-92-10 through 24 VAC 30-92-150	Added	25:15 V.A.R. 2777-2801	3/9/09
24 VAC 30-280-20 through 24 VAC 30-280-70	Repealed	25:19 V.A.R. 3456	7/1/09
24 VAC 30-281-10	Added	25:19 V.A.R. 3457	7/1/09
24 VAC 30-300-10	Repealed	25:19 V.A.R. 3457	4/29/09
24 VAC 30-301-10	Added	25:19 V.A.R. 3458	4/29/09
24 VAC 30-301-20	Added	25:19 V.A.R. 3458	4/29/09

# PETITIONS FOR RULEMAKING

## TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

### BOARD OF MEDICINE

#### Agency Decision

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Ana Colon.

Nature of Petitioner's Request: Amend 18VAC85-20-235, which requires an applicant to pass Parts 1, 2, and 3 of the United States Medical Licensing Examination® (USMLE) within 10 years or to hold board certification.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board affirmed its decision that 10 years was an adequate time period for completion of all parts of the United States Medical Licensing Examination® (USMLE) and noted that allowance of more time would be contrary to national trends towards greater evidence of competency.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

V.A.R. Doc. No. R09-25; Filed June 25, 2009, 3:34 p.m.

#### Initial Agency Notice

Title of Regulation: **18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic.**

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

Name of Petitioner: Dag A. Gollop.

Nature of Petitioner's Request: Amend 18VAC85-20-140 of the regulation that requires an applicant to pass Parts 1, 2 and 3 of the United States Medical Licensing Examination® (USMLE) within 10 years or to hold board certification.

Agency Decision: Request denied.

Statement of Reasons for Decision: The board affirmed its decision that 10 years was an adequate time period for completion of all parts of the United States Medical Licensing Examination® (USMLE) and noted that allowance of more time would be contrary to national trends towards greater evidence of competency.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300,

Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

V.A.R. Doc. No. R09-13; Filed June 25, 2009, 3:34 p.m.

#### Agency Decision

Title of Regulation: **18VAC85-50. Regulations Governing the Practice of Physician Assistants.**

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

Name of Petitioner: Ernestine Wagner.

Nature of Petitioner's Request: Amend regulations for physician assistants to remove the requirement for a supervising physician to see a patient at every fourth visit or on the second visit if not significantly improved.

Agency Decision: Request denied.

Statement of Reasons for Decision: Based on a request for withdrawal of the request from the petitioner and from the Virginia Academy of Physician Assistants, the board voted to deny the petition.

Agency Contact: William L. Harp, M.D., Executive Director, Board of Medicine, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4621, FAX (804) 527-4426, or email william.harp@dhp.virginia.gov.

V.A.R. Doc. No. R09-26; Filed June 25, 2009, 3:34 p.m.

# NOTICES OF INTENDED REGULATORY ACTION

## TITLE 8. EDUCATION

### STATE COUNCIL OF HIGHER EDUCATION FOR VIRGINIA

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Council of Higher Education for Virginia intends to consider amending the following regulations: **8VAC40-31, Regulations Governing Certification of Certain Institutions to Confer Degrees, Diplomas and Certificates.** The purpose of the proposed action is to revise and enhance the regulations governing certified postsecondary institutions operating in Virginia.

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

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

Public Comments: Public comments may be submitted until 5 p.m. on August 19, 2009.

Agency Contact: Linda H. Woodley, Director, Private and Out-of-State Postsecondary Education, State Council of Higher Education for Virginia, 101 N. 14th Street, 9th Floor, James Monroe Building, Richmond, VA 23219, telephone (804) 371-2938, FAX (804) 225-2604, or email lindawoodley@schev.edu.

VA.R. Doc. No. R09-1980; Filed June 29, 2009, 9:47 a.m.

Public Comments: Public comments may be submitted until 5 p.m. on August 19, 2009.

Agency Contact: Alan E. Pollock, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4002, FAX (804) 698-4116, or email alan.pollock@deq.virginia.gov.

VA.R. Doc. No. R09-1981; Filed June 30, 2009, 1:05 p.m.

## TITLE 12. HEALTH

### DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending the following regulations: **12VAC30-70, Methods and Standards for Establishing Payment Rates; Inpatient Hospital Care, and 12VAC30-80, Methods and Standards for Establishing Payment Rates; Other Types of Care.** The purpose of the proposed action is to reduce Medicaid costs associated with long stay hospitals and rehabilitation agencies as required by Items 306 BB and 306 XX of the 2009 Acts of Assembly.

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

Statutory Authority: § 32.1-325 of the Code of Virginia; Items 306 BB and 306 XX of Chapter 781 of the 2009 Acts of Assembly.

Public Comments: Public comments may be submitted until 5 p.m. on August 19, 2009.

Agency Contact: Carla Russell, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (805) 786-1680, or email carla.russell@dmas.virginia.gov.

VA.R. Doc. No. R09-1968; Filed July 2, 2009, 11:11 a.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending the following regulations: **9VAC25-720, Water Quality Management Planning Regulation.** The purpose of the proposed action is to identify unused nutrient waste load allocations assigned to dischargers within the Shenandoah-Potomac River Basin. These allocations may then be transferred to offset additional allocations assigned to certain other dischargers who the State Water Control Board determines did not receive an equitable share of the total basin allocation, thereby maintaining the basin point source allocation cap and protecting water quality.

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

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

# 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

### MARINE RESOURCES COMMISSION Final Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the Marine Resources Commission is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 12 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

**Title of Regulation:** 4VAC20-260. Pertaining to Designation of Seed Areas and Clean Cull Areas (amending 4VAC20-260-30).

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

**Effective Date:** July 1, 2009.

**Agency Contact:** Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607, telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

**Summary:**

*The amendment establishes that oysters raised in caged aquaculture by licensed aquaculture facilities on the seaside of Eastern Shore seed areas shall be exempt from the requirement to be at least three inches in shell length.*

#### 4VAC20-260-30. Minimum cull size.

In order to encourage a continued supply of marketable oysters, minimum size limits are hereby established. Undersized oysters or shells shall be returned immediately to their natural beds, rocks, or shoals where taken. When small oysters are adhering so closely to the shell of the marketable oyster as to render removal impossible without destroying the young oyster, then it shall not be necessary to remove it. Allowances for undersized oysters and shells incidentally retained during culling are found in 4VAC20-260-40.

1. Oysters taken from clean cull areas shall not have shells less than three inches in length.
2. In the James River seed areas, there shall be no size limit on oysters harvested for replanting as seed oysters and seed oysters shall not be marketed for direct consumption.

3. In the James River seed areas, the shells of oysters harvested for direct consumption shall not be less than three inches in length.

4. On the seaside of the Eastern Shore seed area, the shells of oysters marketed for direct consumption shall not be less than three inches in length. The provisions of this subdivision shall not apply to oysters raised in aquaculture cages by licensed aquaculture facilities.

5. In the Rappahannock River, the shells of oysters harvested for direct consumption, from the areas known as Russ' Rock and Carter's Rock, shall not be less than 2-1/2 inches in length.

VA.R. Doc. No. R09-2027; Filed June 25, 2009, 10:05 a.m.

## TITLE 9. ENVIRONMENT

### STATE WATER CONTROL BOARD

#### Final Regulation

**Title of Regulation:** 9VAC25-260. Water Quality Standards (adding 9VAC25-260-275).

**Statutory Authority:** § 62.1-44.15 of the Code of Virginia; 33 USC § 1251 et seq.; 40 CFR Part 131.

**Effective Date:** August 20, 2009.

**Agency Contact:** Elleanore M. Daub, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4111, FAX (804) 698-4116, or email emdaub@deq.virginia.gov.

**Summary:**

*The amendments add a new section, 9VAC25-260-275, that is initiated when applications for new or expanded VPDES discharges to Eastern Shore waters are not denied pursuant to 9VAC25-260-270. If these discharges result in shellfish condemnations, then the applicant must analyze whether wastewater management alternatives other than a discharge would be feasible, produce less of an environmental impact, and not result in significant social and economic impacts to beneficial uses and to the locality and its citizens. If the analysis demonstrates that an alternative meets these criteria, then that alternative must be pursued for approval prior to the board taking action on the discharge alternative. In addition, the Guide for the*

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*Control of Molluscan Shellfish is updated to the 2007 edition.*

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

## **9VAC25-260-275. Protection of Eastern Shore tidal waters for clams and oysters.**

A. This section applies to applications for individual Virginia Pollutant Discharge Elimination System (VPDES) permits authorizing new or expanded discharges to or otherwise affecting Eastern Shore tidal waters, which include all tidal rivers and creeks on the Eastern Shore (Accomack and Northampton counties) including the tidal waters within the barrier islands on the eastern seaside of the Eastern Shore (does not include Atlantic Ocean waters) and all tidal rivers and creeks on the western bayside and including the Chesapeake Bay to a point one mile offshore from any point of land on the Eastern Shore.

B. When such application proposes a new or expanded discharge that would not be denied pursuant to 9VAC25-260-270 but would result in shellfish water condemnation, then the application shall be amended to contain an analysis of wastewater management alternatives to the proposed discharge. An application shall be deemed incomplete until this analysis is provided to the department.

C. For purposes of this part, condemnation shall mean a reclassification of shellfish waters by the state Department of Health to prohibited or restricted (as defined by the U.S. Food and Drug Administration, National Shellfish Sanitation Program, Guide for the Control of Molluscan Shellfish, [ 2005 2007 ], Section II, Model Ordinance, Definitions, and Chapter 4, Classification of Shellfish Growing Areas) thereby signifying that shellfish from such waters are unfit for market.

D. The alternatives analysis shall first identify and describe the technical feasibility of each wastewater management alternative to the proposed new or expanded discharge. If the analysis demonstrates that any of the identified alternatives are technically feasible, then the analysis shall further describe the environmental, social and economic impacts and opportunities to mitigate any adverse impacts for those alternatives.

E. If the alternatives analysis demonstrates that the proposed new or expanded discharge is the only technically feasible alternative or produces the least environmental impact of all the technically feasible alternatives, the application will be processed in accordance with 9VAC25-31 (VPDES Permit Regulation). If the analysis demonstrates that a technically feasible alternative produces less of an environmental impact than that associated with the proposed new or expanded discharge but results in significant adverse social and economic impacts to beneficial uses and to the locality and its

citizens, the application shall be processed in accordance with 9VAC25-31. If the analysis demonstrates that a technically feasible alternative produces less of an environmental impact than that associated with the proposed new or expanded discharge and does not result in significant adverse social and economic impacts to beneficial uses and to the locality and its citizens, then processing of the VPDES application shall be suspended while the applicant makes a good faith effort to obtain approval from the appropriate regulatory authorities for the alternative. Processing of the application shall be resumed only if the alternative form of wastewater management is disapproved by the appropriate regulatory authorities.

## DOCUMENTS INCORPORATED BY REFERENCE (9VAC25-260)

Chesapeake Bay Program Analytical Segmentation Scheme -- Revisions, Decisions and Rationales 1983-2003, EPA CBP/TRS 268/04, October 2004.

Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-002, April 2003 and 2004 Addendum, October 2004.

Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability, EPA 903-R-03-004, October 2003 and 2004 Addendum, October 2004.

Guide for the Control of Molluscan Shellfish, [ 2005 2007 ] (Section II. Model Ordinance [ , Definitions, ] and Chapter 4 [ , ] Classification of Shellfish Growing Areas), U.S. Food and Drug Administration, National Shellfish Sanitation Program.

V.A.R. Doc. No. R08-783; Filed June 30, 2009, 2:22 p.m.

## Notice of Change in Public Hearing Date and Time

Title of Regulation: **9VAC25-630. Virginia Pollution Abatement General Permit Regulation for Poultry Waste Management** (amending 9VAC25-630-10, 9VAC25-630-20, 9VAC25-630-30, 9VAC25-630-40, 9VAC25-630-50, 9VAC25-630-60; adding 9VAC25-630-70, 9VAC25-630-80).

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

Notice of Public Hearing Date and Time Change: The State Water Control Board announced public hearings and a public comment period on proposed amendments to 9 VAC 25-630 in the Virginia Register of Regulations in Volume 25, Issue 21, page 3867. There has been a change in the date and time of the public hearing in Onley, Virginia. The public hearing is now scheduled for 7:30 p.m. on August 4, 2009, at Nandua High School, Auditorium, 26350 Lankford Highway in Onley, VA. An informational briefing will be held one hour prior to the public hearing.

Agency Contact: Betsy Bowles, Department of Environmental Quality, Office of Land Application Programs, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@deq.virginia.gov).

VA.R. Doc. No. R08-1062; Filed July 1, 2009, 2:53 p.m.

## TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

### STATE CORPORATION COMMISSION Final 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:** 10VAC5-160. Rules Governing Mortgage Lenders and Brokers (amending 10VAC5-160-10; repealing 10VAC5-160-70, 10VAC5-160-80).

**Statutory Authority:** §§ 6.1-421 and 12.1-13 of the Code of Virginia.

**Effective Date:** July 1, 2009.

**Agency Contact:** Susan Hancock, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9657, FAX (804) 371-9240, or email [susan.hancock@scc.virginia.gov](mailto:susan.hancock@scc.virginia.gov).

#### **Summary:**

*The amendments repeal regulations requiring initial and continuing education of certain employees of licensees under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia and eliminate a prohibition of employment by such licensees of certain individuals having criminal convictions, both in accordance with Chapter 452 of the 2009 Acts of Assembly. There are no changes from the proposed version of the regulation.*

AT RICHMOND, JUNE 30, 2009

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2009-00085

In re: Proposed Amendments to Rules  
Governing Mortgage Lenders and Brokers

#### ORDER ADOPTING AMENDED REGULATIONS

By Order entered in this case on May 5, 2009, the State Corporation Commission ("Commission") directed that notice be given of its proposal, acting pursuant to § 6.1-421 of the Code of Virginia, to amend its Rules Governing Mortgage Lenders and Brokers based upon certain provisions of Chapter 452 enacted in the 2009 session of the Virginia General Assembly. Notice of the proposed amendments was published in the Virginia Register of Regulations on May 25, 2009, posted on the Commission's website, and sent by the Commissioner of Financial Institutions to all licensed mortgage lenders and brokers and other interested persons. Licensees and other interested persons were afforded the opportunity to file written comments or request a hearing on or before June 15, 2009.

The Commission received one comment from a licensee which was responded to appropriately by the Commission's Staff. The Commission did not receive any request for a hearing.

NOW THE COMMISSION, having considered the record and the proposed amendments, concludes that the amendments should be adopted as proposed.

#### THEREFORE IT IS ORDERED THAT:

(1) The proposed amended regulations, which are attached hereto and made a part hereof, are adopted effective July 1, 2009.

(2) This Order and the attached regulations shall be posted on the Commission's website at <http://www.scc.virginia.gov/case>.

(3) The Commission's Division of Information Resources shall send a copy of this Order, including a copy of the attached regulations, to the Virginia Registrar of Regulations for publication in the Virginia Register of Regulations.

(4) This case is dismissed from the Commission's docket of active cases.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to the Commissioner of Financial Institutions, who shall forthwith mail a copy of this Order and the attached regulations to all licensed mortgage lenders and brokers and such other interested persons as he may designate.

#### **10VAC5-160-10. Definitions.**

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

"Advertisement" means a commercial message in any medium that promotes, directly or indirectly, a mortgage loan. The term includes a communication sent to a consumer as

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part of a solicitation of business, but excludes messages on promotional items such as pens, pencils, notepads, hats, calendars, etc., as well as rate sheets or other information distributed or made available solely to other businesses.

"Affiliate" for purposes of subdivision 3 of § 6.1-411 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a company that also owns a bank, savings institution, or credit union.

"Commission" and "commissioner" shall have the meanings ascribed to them in § 6.1-409 of the Code of Virginia.

"Commitment" means a written offer to make a mortgage loan signed by a person authorized to sign such offers on behalf of a mortgage lender.

"Commitment agreement" means a commitment accepted by an applicant for a mortgage loan, as evidenced by the applicant's signature thereon.

"Commitment fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for binding the mortgage lender to make a mortgage loan in accordance with the terms of a commitment or as a requirement for acceptance by the applicant of a commitment, but the term does not include fees paid to third persons or interest.

~~"Covered employee" means an employee involved in originating, marketing, underwriting, closing, or performing compliance or quality control functions in connection with Virginia mortgage loan transactions.~~

~~"Customer" means an individual seeking a mortgage loan from, or with the assistance of, a licensee.~~

"Dwelling" means one- to four-family residential property located in the Commonwealth.

"Fees paid to third persons" means the bona fide fees or charges paid by the applicant for a mortgage loan to third persons other than the mortgage lender or mortgage broker, or paid by the applicant to, or retained by, the mortgage lender or mortgage broker for transmittal to such third persons in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges.

"Licensee" means a person licensed under Chapter 16 (§ 6.1-408 et seq.) of Title 6.1 of the Code of Virginia.

"Lock-in agreement" means a written agreement between a mortgage lender, or a mortgage broker acting on behalf of a mortgage lender, and an applicant for a mortgage loan that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement. A lock-in

agreement can be entered into before mortgage loan approval, subject to the mortgage loan being approved and closed, or after such approval. A commitment agreement that establishes and sets an interest rate and the points to be charged in connection with a mortgage loan that is closed within the time period specified in the agreement is also a lock-in agreement. The interest rate that is established and set by the agreement may be either a fixed rate or an adjustable rate.

"Lock-in fee" means any fee or charge accepted by a mortgage lender, or by a mortgage broker for transmittal to a mortgage lender, as consideration for making a lock-in agreement, but the term does not include fees paid to third persons or interest.

"Mortgage lender," "mortgage broker," and "mortgage loan" shall have the meanings ascribed to them in § 6.1-409 of the Code of Virginia.

"Personal, family or household purposes" for purposes of § 6.1-409 of the Code of Virginia means that the individual obtaining the loan intends to use the proceeds to build or purchase a dwelling that will be occupied by such individual or another individual as their temporary or permanent residence. The term includes a loan used to build or purchase a dwelling that will be (i) improved or rehabilitated by or on behalf of the purchaser for subsequent sale to one or more other individuals who will reside in the dwelling on a temporary or permanent basis, or (ii) leased by the purchaser to one or more other individuals who will reside in the dwelling on a temporary or permanent basis.

~~"Personal identifying or financial information" means the name, social security number, driver license number, home address, telephone number, date of birth, place of birth, race or ethnic origin of a customer together with any information about the customer's account numbers, assets, liabilities, sources of income or credit worthiness.~~

"Points" means any fee or charge retained or received by a mortgage lender or mortgage broker stated or calculated as a percentage or fraction of the principal amount of the loan, other than or in addition to fees paid to third persons or interest.

"Reasonable period of time" means that period of time, determined by a mortgage lender in good faith on the basis of its most recent relevant experience and other facts and circumstances known to it, within which the mortgage loan will be closed.

"Senior officer" for purposes of §§ 6.1-414, 6.1-415, 6.1-416 and 6.1-416.1 of the Code of Virginia means an individual who has significant management responsibility within an organization or otherwise has the authority to influence or control the conduct of the organization's affairs, including but not limited to its compliance with applicable laws and regulations.

"Subsidiary" for purposes of subdivision 3 of § 6.1-411 of the Code of Virginia means an entity of which 25% or more of the voting shares or ownership interest is held, directly or indirectly, by a bank, savings institution, or credit union.

## **10VAC5-160-70. Employee criminal record investigations; exemption. (Repealed.)**

A. A licensee shall not, on or after July 1, 2008, hire any individual for a position of employment who may have access to personal identifying or financial information relating to any customer, without first obtaining a criminal history record from the Central Criminal Records Exchange that shows that the prospective employee has not been convicted in any court of any felony, or any misdemeanor involving fraud, misrepresentation or deceit, under the laws of any state or the United States. If the criminal history record reveals that an individual has been convicted as described, a licensee shall not hire the individual without obtaining prior approval from the commission, as specified in subsection C of this section. A licensee shall be subject to a separate penalty under § 6.1-428 of the Code of Virginia for each individual hired without obtaining the criminal history record required by this section.

B. Licensees shall make criminal history records obtained under subsection A of this section and employment history information available for review by commission staff.

C. If a licensee wishes to hire an individual notwithstanding the prohibition in subsection A of this section, the licensee shall file a petition seeking an exemption in accordance with 5VAC5 20-100 C of the commission's Rules of Practice and Procedure. The petition shall be accompanied by a copy of the individual's criminal history record, which shall be kept under seal in the Office of the Clerk.

D. When deciding whether or not to grant a petition filed in accordance with subsection C of this section, the commission shall consider the following factors:

1. The number and classification of offenses committed by the individual;
2. The potential and actual penalties imposed for the offenses committed;
3. The dates of the offenses or convictions;
4. The extent to which the nature of the offenses committed relate to the prospective employee's job duties; and
5. Such other factors and evidence as the commission deems pertinent.

E. The petitioning licensee shall bear the burden of proof that an exemption from the employment prohibition under subsection A of this section should be granted.

## **10VAC5-160-80. Required employee training; exemption; penalty. (Repealed.)**

A. Licensees shall be responsible for providing initial education, and continuing education on at least an annual basis, for all their covered employees with respect to all laws and regulations applicable to the licensees' business. Applicable laws and regulations include, but are not limited to, the Real Estate Settlement Procedures Act (12 USC § 2601 et seq.), Truth in Lending Act (15 USC § 1601 et seq.), Equal Credit Opportunity Act (15 USC § 1691 et seq.) and Fair Credit Reporting Act (15 USC § 1681 et seq.), federal and Virginia privacy protection laws, federal and Virginia laws relating to mortgage fraud, the Virginia Mortgage Lender and Broker Act (§ 6.1-408 et seq. of the Code of Virginia) and all other Virginia laws applicable to the licensees' business, and all regulations adopted under the foregoing laws.

B. Initial education shall consist of at least 12 hours relating to applicable federal laws and regulations, at least four hours relating to applicable Virginia laws and regulations, and additionally at least two hours relating to mortgage fraud prevention, including penalties for participating in mortgage fraud. Initial education shall be provided to individuals who are covered employees as of July 1, 2008, on or before May 1, 2009, and to individuals who become covered employees after July 1, 2008, within 90 days of their hire date. Continuing education shall be conducted on an annual basis and shall consist of at least four hours related to applicable federal laws and regulations, at least two hours related to applicable Virginia laws and regulations, and additionally at least one hour relating to mortgage fraud prevention, including penalties for participating in mortgage fraud.

C. A licensee that hires a covered employee who has received the initial education required under subsection B of this section while previously employed by another licensee shall not be required to provide the covered employee with initial education if the receipt of such education is adequately documented. Required annual education, if completed and so documented, likewise shall be credited with respect to the covered employee.

D. If prior to July 1, 2008, a covered employee has successfully obtained a mortgage certificate, designation or accreditation, the licensee may seek from the Commissioner of Financial Institutions an exemption, in whole or in part, from the initial education requirements for such covered employee. An exemption request shall be made in writing and shall include documentation of the certification, designation or accreditation and a description, including the name and number of hours for each course taken to fulfill the requirements of the certification, designation or accreditation.

E. Licensees shall maintain a training manual and documentation available for commission staff's review demonstrating successful completion of the education

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~~required under this section, including names of education providers, names and descriptions of educational courses, and dates of attendance and numbers of hours completed by each covered employee, and shall provide any additional information relating to such education that the commissioner may require. Mere training in the sale or marketing of mortgage loans shall not count towards required education. Education relating to applicable federal laws and regulations, as identified in subsection A of this section, received pursuant to like educational requirements imposed by other states may be used to fulfill educational requirements imposed under this section relating to applicable federal laws and regulations.~~

~~F. A licensee shall be subject to a separate penalty under § 6.1-428 of the Code of Virginia for each covered employee not provided with the education required by this section.~~

VA.R. Doc. No. R09-1880; Filed June 30, 2009, 4:33 p.m.

## TITLE 11. GAMING

### CHARITABLE GAMING BOARD

**REGISTRAR'S NOTICE:** The Charitable Gaming Board is claiming an exemption 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 Charitable Gaming Board will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

#### Final Regulation

**Title of Regulation:** 11VAC15-22. Charitable Gaming Rules and Regulations (amending 11VAC15-22-10, 11VAC15-22-20, 11VAC15-22-30, 11VAC15-22-110).

**Statutory Authority:** §§ 2.2-2456, 18.2-340.15, and 18.2-340.19 of the Code of Virginia.

**Effective Date:** August 19, 2009.

**Agency Contact:** Betty Bowman, Division Director, Department of Agriculture and Consumer Services, Division of Charitable Gaming, 101 N. 14th St., 17th Floor, James Monroe Building, Richmond, VA 23219, telephone (804) 786-3015, FAX (804) 786-1079, or email betty.bowman@dcg.virginia.gov.

#### Summary:

*This action implements the provisions of (i) Chapters 387 and 689 of the 2008 Acts of Assembly that abolished the Department of Charitable Gaming and placed regulation of charitable gaming under the Department of Agriculture and Consumer Services, and (ii) Chapter 121 of the 2009 Acts of Assembly by raising the permit exemption threshold*

*from \$25,000 to \$40,000 for all organizations authorized to conduct charitable gaming.*

#### Part I Definitions

##### 11VAC15-22-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below, when used in this chapter, shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Virginia Charitable Gaming Board.

"Board of directors" means the board of directors, managing committee or other supervisory body of a qualified organization.

"Calendar day" means the period of 24 consecutive hours commencing at 12:01 a.m. and concluding at midnight.

"Calendar week" means the period of seven consecutive calendar days commencing at 12:01 a.m. on Sunday and ending at midnight the following Saturday.

"Cash" means United States currency or coinage.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open" or "Bonanza Bingo."

"Conduct" means the actions associated with the provision of a gaming operation during and immediately before or after the permitted activity, which may include, but not be limited to (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; and (iv) any other services provided by volunteer workers.

"DCG number" means a unique identification number issued by the department.

"Daubing" means covering a square containing a number called with indelible ink or otherwise concealing the number on a card or an electronic facsimile of a card.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs or seal cards with the same serial number.

"Decision bingo" means a bingo game where the cost to a player to play is dependent on the number of balls called and the prize payout is in direct relationship to the number of participants and the number of balls called, but shall not exceed statutory prize limits for a regular bingo game.

"Department" means the Virginia Department of Charitable Gaming Agriculture and Consumer Services, Division of Charitable Gaming.

"Director" means the Director of the Virginia Department of Charitable Gaming.

"Discount" means any reduction in cost of admission or game packs or any other purchases through use of coupons, free packs or other similar methods.

"Disinterested player" means a player who is unbiased.

"Disposable paper card" means a nonreusable, paper bingo card manufactured with preprinted numbers.

"Door prize" means any prize awarded by the random drawing or random selection of a name or number based solely on attendance at a gaming session.

"Electronic bingo device" means an electronic device that uses proprietary software or hardware, or in conjunction with commonly available software and computers, displays facsimiles of bingo cards and allows a player to daub such cards.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a piece of paper, cardboard or similar material that bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tab or seal cards.

"Free space number," "perm number," "center number," "card number" or "face number" means the number generally printed in the center space of a bingo card that identifies the unique pattern of numbers printed on that card.

"Game program" means a written list of all games to be played including, but not limited to, the sales price of all bingo paper and electronic bingo devices, pack configuration, prize amounts to be paid during a session for each game, and an indication whether prize amounts are fixed or are based on attendance.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law or stepchild.

"Interested persons" means the president, an officer or bingo manager of any qualified organization which is exempt or is a permit applicant or holds a permit to conduct charitable gaming or the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"IRS" means the United States Internal Revenue Service.

"Lucky Seven" means a bingo game as authorized in § 18.2-340.33 (9a) (b) of the Code of Virginia.

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization, compiling, submitting and maintaining required records and financial reports, and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person who assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person who modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but not be limited to (i) the direct on-site supervision of the conduct of charitable gaming; (ii) coordination of volunteers; and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This may include specials and jackpots, but shall not include any winner-take-all, Lucky Seven or raffle.

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set, each instant bingo, pull-tab, or seal card in a deal, each electronic bingo device, or each door prize ticket.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo hard cards. A 9000 series, for example, has 9000 unique faces.

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"Session" means a period of time during which one or more bingo games are conducted that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

"Treasure chest" means a raffle including a locked treasure chest containing a prize that a participant, selected through some other authorized charitable game, is afforded the chance to select from a series of keys a predetermined key that will open the locked treasure chest to win a prize.

"Use of proceeds" means the use of funds derived by an organization from its charitable gaming activities which are disbursed for those lawful religious, charitable, community or educational purposes. This includes expenses relating to the acquisition, construction, maintenance or repair of any interest in the real property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes.

"WINGO" is a variation of a traditional bingo game that uses visual devices rather than a verbal caller and is played by hearing impaired persons.

## Part II Permits

### **11VAC15-22-20. Eligibility for permit to conduct charitable gaming; when valid; permit requirements.**

A. The conduct of charitable gaming is a privilege that may be granted or denied by the department. Except as provided in § 18.2-340.23 of the Code of Virginia, every eligible organization and volunteer fire department and rescue squad with anticipated gross gaming receipts that exceed \$25,000 \$40,000 in any 12-month period shall obtain a permit from the department prior to the commencement of charitable gaming activities. To be eligible for a permit an organization must meet all of the requirements of § 18.2-340.24 of the Code of Virginia.

B. Pursuant to § 18.2-340.24 B of the Code of Virginia, the department shall review a tax exempt request submitted to the IRS for a tax exempt status determination and may issue an interim certification of tax-exempt status solely for the purpose of charitable gaming, conditioned upon a determination by the IRS. A nonrefundable fee of \$500 payable to the Treasurer of Virginia shall be charged for this review.

C. A permit shall be valid only for activities, locations, days, dates and times as listed on the permit.

D. In accordance with § 18.2-340.19 A 1 of the Code of Virginia, as a condition of receiving a permit, a minimum of 10% of charitable gaming gross receipts shall be used for (i) those lawful religious, charitable, community or educational purposes for which the organization is specifically chartered or organized or (ii) those expenses relating to the acquisition, construction, maintenance or repair of any interest in real

property involved in the operation of the organization and used for lawful religious, charitable, community or educational purposes:

E. If an organization fails to meet the minimum use of proceeds requirement, its permit may be suspended or revoked. However, the department shall not suspend or revoke the permit of any organization solely because of its failure to meet the required percentage without having first provided the organization with an opportunity to implement a corrective action plan. In such a case, the organization shall be afforded the opportunity to enter into a consent order with the department specifying the proposed corrective action and the timeframe to accomplish the plan.

F. An organization may request a temporary reduction in the predetermined percentage specified in subsection D of this section from the department. In reviewing such a request, the department shall consider such factors appropriate to and consistent with the purpose of charitable gaming, which may include, but not be limited to (i) the organization's overall financial condition; (ii) the length of time the organization has been involved in charitable gaming; (iii) the extent of the deficiency; and (iv) the progress that the organization has made in attaining the minimum percentage in accordance with a corrective action plan pursuant to subsection E of this section.

G. An organization whose permit is revoked for failure to comply with provisions set forth in subsection D of this section shall be eligible to reapply for a permit at the end of one year from the date of revocation. The department, at its discretion, may issue the permit if it is satisfied that the organization has made substantial changes to its management, operations or both.

### **11VAC15-22-30. Permit application process.**

A. Organizations anticipating gross gaming receipts that exceed \$25,000 \$40,000 shall complete a department-prescribed application to request issuance or renewal of an annual permit to conduct charitable gaming. The application shall be accompanied by a nonrefundable fee payable to the Treasurer of Virginia in the amount of \$200. Volunteer fire departments or rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia shall be exempt from the payment of applications fees.

B. The department may initiate action against any organization exempt from permit requirements when it reasonably believes the organization is not in compliance with the provisions of charitable gaming laws or applicable regulations, or both, of the board.

C. Permit holders requiring a special permit pursuant to § 18.2-340.27 E of the Code of Virginia shall convey their request on a form prescribed by the department. There shall be a \$50 fee for special permits. Volunteer fire departments or

rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia shall be exempt from the payment of applications fees.

D. Permits shall be valid for a period of one year from the date of issuance or for a period specified on the permit. The department may issue permits for periods of less than one year.

E. Permits shall be granted only after a background investigation of an organization or interested persons, or both, to ensure public safety and welfare as required by § 18.2-340.25 of the Code of Virginia. Investigations shall consider the nature, the age and severity and the potential harm to public safety and welfare of any criminal offenses. The investigation may include, but shall not be limited to, the following:

1. A search of Virginia criminal history records for the chief executive officer and chief financial officer of the organization. Information and authorization to conduct these records checks shall be provided in the permit application. In addition, the department shall require that the organization provides assurances that all other members involved in the management, operation, or conduct of charitable gaming meet the requirements of subdivision 13 of § 18.2-340.33 of the Code of Virginia. Applications may be denied if:

a. Any person participating in the management of any charitable gaming has ever been:

(1) Convicted of a felony; or

(2) Convicted of any misdemeanor involving fraud, theft, or financial crimes within the preceding five years.

b. Any person participating in the conduct of charitable gaming has been:

(1) Convicted of any felony in the preceding 10 years, or

(2) Convicted of any misdemeanor involving fraud, theft or financial crimes within the preceding five years.

2. An inquiry as to whether the organization has been granted tax-exempt status pursuant to § 501 (c) by the Internal Revenue Service and is in compliance with IRS annual filing requirements;

3. An inquiry as to whether the organization has entered into any contract with, or has otherwise employed for compensation, any persons for the purpose of organizing or managing, operating or conducting any charitable gaming activity;

4. Inquiries into the finances and activities of an organization and the sources and uses of funds; and

5. Inquiries into the level of community or financial support to the organization and the level of community

involvement in the membership and management of the organization.

F. The permit application for an organization that has not previously held a permit shall include:

1. A list of members participating in the management or operation of charitable gaming. For any organization that is not composed of members, a person who is not a bona fide member may volunteer in the conduct of a charitable game as long as that person is directly supervised by a bona fide official member of the organization;

2. A copy of the articles of incorporation, bylaws, charter, constitution or other appropriate organizing document;

3. A copy of the determination letter issued by the IRS under § 501(c) of the Internal Revenue Code, if appropriate, or a letter from the national office of an organization indicating the applicant organization is in good standing and is currently covered by a group exemption ruling. A letter of good standing is not required if the applicable national or state office has furnished the department with a listing of member organizations in good standing in the Commonwealth as of January 1 of each year and has agreed to promptly provide the department any changes to the listing as they occur;

4. A copy of the organization's most recent annual financial statement and balance sheet, or most recent Form 990 that has been filed with the IRS;

5. A copy of the written lease or proposed written lease agreement and all other agreements if the organization rents or intends to rent a facility where bingo is or will be conducted. Information on the lease shall include name, address, phone number of the landlord, square footage and maximum occupancy of the building and the rental amount per session; and

6. An authorization by an officer or other appropriate official of an organization to permit the department to determine whether the organization has been investigated or examined by the Internal Revenue Service in connection with charitable gaming activities during the previous three years.

G. Copies of minutes of meetings of an organization and any contracts with landlords or suppliers to which the organization is, or may be a party, may be requested by the department prior to rendering a permitting decision.

H. Organizations applying to renew a permit previously issued by the department shall submit articles of incorporation, bylaws, charter, constitution or other organizing document and IRS determination letter only if there are any amendments or changes to these documents that are directly related to the management, operation or conduct of charitable gaming.

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I. Organizations may request permits to conduct joint bingo games as provided in § 18.2-340.29 of the Code of Virginia:

1. In the case of a joint game, all the organizations shall file a permit application.

2. The nonrefundable permit fee for joint games shall be a total of \$200. Volunteer fire departments or rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia shall be exempt from the payment of applications fees.

3. A single permit shall be issued in the names of all the organizations conducting a joint game. All restrictions and prohibitions applying to single organizations shall apply to qualified organizations jointly conducting bingo games pursuant to § 18.2-340.29 of the Code of Virginia.

4. No charitable gaming shall be conducted prior to the issuance of a joint permit.

5. Applications for joint games shall include an explanation of the division of manpower, costs and proceeds for the joint game.

J. An organization wishing to change dates, times or locations of its charitable gaming shall request a change in the permit. Change requests shall be made in writing on a form prescribed by the department at least 30 days in advance of the proposed effective date.

K. Changes in dates, times or locations due to inclement weather, disasters, or other circumstances outside the organization's control may be made without a change in the permit. The organization shall request such a change on a form prescribed by the department as soon as the necessity for the change is known.

L. A nonrefundable fee of \$50, payable to the Treasurer of Virginia, shall be submitted with a request for a permit change. The fee shall not be charged for changes as described in subsection K of this section. Volunteer fire departments or rescue squads or auxiliary units thereof that have been recognized in accordance with § 15.2-955 of the Code of Virginia shall be exempt from the fee for a permit change.

M. An organization may sell raffle tickets for a drawing to be held outside of the Commonwealth of Virginia in the United States provided:

1. The raffle is conducted by the organization in conjunction with a meeting outside the Commonwealth of Virginia or with another organization which is licensed to conduct raffles outside the Commonwealth of Virginia;

2. The raffle is conducted in accordance with these regulations and the laws and regulations of the state where the drawing is to be held; and

3. The portion of the proceeds derived from the sale of raffle tickets in the Commonwealth is reported to the department.

N. Any permitted organization that ceases to conduct charitable gaming shall immediately notify the department in writing, return its permit to the department, and provide the department a report as to the disposition of all unused gaming supplies.

## Part VI Fact-Finding Conferences and Hearings

### **11VAC15-22-110. Procedural rules for the conduct of fact-finding conferences and hearings.**

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit to conduct charitable gaming shall be denied, suspended or revoked except upon notice stating the proposed basis for such action and the time and place for a fact-finding conference, as set forth in § 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew a suspension or a revocation of a permit, the department shall notify, by certified mail or by hand delivery, the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department that may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a permit, interested persons shall be notified by certified mail or hand delivery of the proposed action and of the opportunity for a hearing on the proposed action. If an organization desires to request a hearing, it shall notify the department within 14

days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to, or subsequent to, an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the organization is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

#### D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or basis for the recommendations. Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The ~~director's~~ commissioner's designee may represent the department in an informal conference or at a hearing.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

#### FORMS (11VAC15-22)

Annual Financial Report for Fiscal October 1 – September 30, DCG Form 101, rev. 9/24/04. Annual Financial Report, Form 101 (rev. 01/09).

2004 Exempt Organization Resolution, DCG Form 101-E, rev. 9/24/04.

Quarterly Financial Report, DCG Form 102, rev. 1/1/04 (rev. 01/09).

Quarterly Supplemental, DCG Form 102 A, rev. 1/1/04.

Bingo Session Reconciliation Summary, DCG Form 103, rev. 7/1/04 (rev. 07/08).

Bingo Admission Sales, DCG Form 104 A, rev. 7/1/04. Admission Sales Reconciliation Form – Paper, Form 104-A (rev. 07/08).

Floor Sales Reconciliation Form - Paper, DCG Form 104-B, rev. 7/1/04 (rev. 07/08).

Decision Bingo Reconciliation Form, DCG Form 104-C, rev. 7/1/03 (rev. 07/08).

Raffle or Treasure Chest Sales (Bingo), DCG Form 104-D, rev. 7/1/03. Raffle/Treasure Chest Sales Reconciliation Form – Bingo Session, Form 104-D (rev. 07/08).

Instant Bingo/Seal Card Cards/Pull-Tabs Reconciliation Form, DCG Form 105, rev. 9/1/04 (rev. 07/08).

Instant Bingo/Seal Card Cards/Pull-Tabs Reconciliation Continuation Sheet Form, DCG Form 105-A, rev. 9/1/04 (rev. 07/08).

Storeroom Issue Sheet Session, DCG Form 106, rev. 7/1/03. Storeroom Inventory Issue Form – Paper, Form 106-A (rev. 07/08).

Storeroom Inventory Issue Form – Instant Bingo/Seal Cards/Pull-Tabs, Form 106-B (rev. 07/08).

List of Volunteer Workers, DCG Form 107, rev. 7/1/03 (rev. 07/08).

Prize Payout Receipts, DCG Form 108, rev. 7/1/03. Prize Receipt, Form 108 (rev. 07/08).

Storeroom Inventory Form - Paper, DCG Form 109-A, rev. 7/1/03 (rev. 07/08).

Storeroom Inventory Instants, DCG Form 109 B, rev. 7/1/03. Storeroom Inventory – Instant Bingo/Seal Cards/Pull-Tabs, Form 109-B (rev. 07/08).

Raffle Sales (Non-Bingo), DCG Form 110, rev. 7/1/03 (rev. 07/08).

Request for Extension for Filing the Annual Financial Report, DCG Form 117, rev. 9/24/04.

Bingo/Raffle Application – New Applicants Only, DCG Form 201(a), rev. 7/1/03. Charitable Gaming Permit Application – New Applicants Only, Form 201-N (rev. 07/08).

Bingo/Raffle Application – Renewal Applicants Only, DCG Form 201, rev. 8/8/03. Charitable Gaming Permit Application – Renewal Applicants Only, Form 201-R (rev. 07/08).

Bingo/Raffle Renewal Application – Fraternal Order of Elks, DCG Form 201 (Elks), rev. 7/1/03.

Exempt Organization – Notification New, DCG Form 202, rev. 7/1/03.

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Exempt Organization Notification Renewal, DCG Form 202(a), rev. 3/1/05.

Tax Information Disclosure Authorization, rev. 11/30/04 (rev. 07/08).

Permit Amendment, rev. 8/1/03 (rev. 07/08).

Gaming Personnel Information Update, rev. 7/1/03 (rev. 07/08).

Report of Game Termination, rev. 8/8/03 (rev. 07/08).

Charitable Gaming Bingo Caller Certificate of Registration Application, Form 401 (rev. 07/08).

Charitable Gaming Bingo Manager Certificate of Registration Application, Form 402 (rev. 07/08).

V.A.R. Doc. No. R09-2007; Filed July 1, 2009, 9:59 a.m.

## Final Regulation

Title of Regulation: 11VAC15-31. Supplier Regulations (amending 11VAC15-31-10, 11VAC15-31-20, 11VAC15-31-50).

Statutory Authority: §§ 2.2-2456, 18.2-340.15, 18.2-340.19, and 18.2-340.34 of the Code of Virginia.

Effective Date: August 19, 2009.

Agency Contact: Betty Bowman, Division Director, Department of Agriculture and Consumer Services, Division of Charitable Gaming, 101 N. 14th St., 17th Floor, James Monroe Building, Richmond, VA 23219, telephone (804) 786-3015, FAX (804) 786-1079, or email betty.bowman@dcg.virginia.gov.

### Summary:

*This action implements the provisions of (i) Chapters 387 and 689 of the 2008 Acts of Assembly that abolished the Department of Charitable Gaming and placed regulation of charitable gaming under the Department of Agriculture and Consumer Services, and (ii) Chapter 121 of the 2009 Acts of Assembly by raising the permit exemption threshold from \$25,000 to \$40,000 for all organizations authorized to conduct charitable gaming.*

### 11VAC15-31-10. Definitions.

In addition to the definitions contained in § 18.2-340.16 of the Code of Virginia, the words and terms below when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Agent" means any person authorized by a supplier to act for or in place of such supplier.

"Board" means the Virginia Charitable Gaming Board.

"Cash" means United States currency or coinage.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Concealed face bingo card" means a nonreusable bingo card constructed to conceal the card face. This type of card is commonly referred to under trade names such as "Tear-open" or "Bonanza Bingo."

"Conduct" means the actions associated with the provisions of a gaming operation during and immediately before or after the permitted activity, which may include, but is not limited to (i) selling bingo cards or packs, electronic devices, instant bingo or pull-tab cards, or raffle tickets; (ii) calling bingo games; (iii) distributing prizes; and (iv) any other services provided by volunteer workers.

"DCG number" means a unique identification number issued by the department.

"Deal" means each separate package or series of packages consisting of one game of instant bingo, pull-tabs, or seal cards with the same serial number.

"Department" means the Virginia Department of Charitable Gaming Agriculture and Consumer Services, Division of Charitable Gaming.

"Designator" means an object used in the number selection process, such as a ping-pong ball, upon which bingo letters and numbers are imprinted.

"Director" means the Director of the Virginia Department of Charitable Gaming.

"Disposable paper card" means a nonreusable paper bingo card manufactured with preprinted numbers.

"Electronic bingo device" means an electronic device that uses proprietary software or hardware, or is used in conjunction with commonly available software and computers, to display facsimiles of bingo cards and allows a player to daub such cards.

"Equipment and video systems" includes equipment which facilitates the conduct of charitable gaming such as ball blowers, flashboards, electronic verifiers and replacement parts for such equipment.

"Fiscal year" or "annual reporting period" means the 12-month period beginning January 1 and ending December 31 of any given year.

"Flare" means a piece of paper, cardboard or similar material which bears printed information relating to the name of the manufacturer or logo, name of the game, card count, cost per play, serial number, the number of prizes to be awarded and the specific prize amounts in a deal of instant bingo, pull-tabs, or seal cards.

"Immediate family" means one's spouse, parent, child, sibling, grandchild, grandparent, mother or father-in-law or stepchild.

"Interested persons" means the owner, director, officer or partner of an entity engaged in supplying charitable gaming supplies to organizations.

"Management" means the provision of oversight of a gaming operation, which may include, but is not limited to, the responsibilities of applying for and maintaining a permit or authorization; compiling, submitting and maintaining required records and financial reports; and ensuring that all aspects of the operation are in compliance with all applicable statutes and regulations.

"Manufacturer" means a person or entity that assembles from raw materials or subparts a completed piece of bingo or other charitable gaming equipment or supplies. "Manufacturer" also means a person or entity that modifies, converts, adds or removes parts to or from bingo or other charitable gaming equipment or supplies to further their promotion or sale for the conduct of charitable gaming.

"Operation" means the activities associated with production of a charitable gaming activity, which may include, but is not limited to (i) the direct on-site supervision of the conduct of charitable gaming, (ii) coordination of volunteers, and (iii) all responsibilities of charitable gaming designated by the organization's management.

"Owner" means any individual with financial interest of 10% or more in a supplier.

"Pack" means sheets of bingo paper or electronic facsimiles assembled in the order of games to be played. This may include specials and jackpots but shall not include any winner-take-all, Lucky Seven or raffle.

"Prize" means cash, merchandise, certificate or other item of value awarded to a winning player.

"Progressive seal card" means a seal card game in which a prize is carried forward to the next deal if not won when a deal is completed.

"Remuneration" means payment in cash or the provision of anything of value for goods provided or services rendered.

"Seal card" means a board or placard used in conjunction with a deal of the same serial number which contains one or more concealed areas that, when removed or opened, reveal a predesignated winning number, letter or symbol located on that board or placard.

"Selection device" means a manually or mechanically operated device to randomly select bingo numbers.

"Serial number" means a unique number printed by the manufacturer on each bingo card in a set, each instant bingo, pull-tabs or seal card in a deal, each electronic bingo device or each door prize ticket.

"Series number" means the number of unique card faces contained in a set of disposable bingo paper cards or bingo

hard cards. A 9000 series, for example, has 9000 unique faces.

"Session" means a period of time during which one or more bingo games are conducted that begins with the selection of the first ball for the first game and ends with the selection of the last ball for the last game.

**11VAC15-31-20. Suppliers of charitable gaming supplies: application, qualifications, suspension, revocation or refusal to renew permit, maintenance, and production of records.**

A. Prior to providing any charitable gaming supplies, a supplier shall submit an application on a form prescribed by the department and receive a permit. A \$1,000 application fee payable to the Treasurer of Virginia is required. In addition, a supplier must be authorized to conduct business in the Commonwealth of Virginia, which may include, but not be limited to, registration with the State Corporation Commission, the Department of Taxation, and the Virginia Employment Commission. The actual cost of background investigations for a permit may be billed by the department to an applicant. The department shall act on an application within 90 days of the date of the application.

B. The department may refuse to issue a permit or may suspend or revoke a permit if an officer, director, employee, agent or owner:

1. Is operating without a valid license, permit or certificate as a supplier or manufacturer in any state in the United States;

2. Fails or refuses to recall a product as directed by the department;

3. Conducts business with unauthorized entities or is not authorized to conduct business in the Commonwealth of Virginia;

4. Has been convicted of or pleaded nolo contendere to any crime as specified by § 18.2-340.34 B of the Code of Virginia; has had any license, permit certificate or other authority related to activities defined as charitable gaming in the Commonwealth suspended or revoked in the Commonwealth or in any other jurisdiction; has failed to file or has been delinquent in excess of one year in the filing of any tax returns or the payment of any taxes due the Commonwealth; or has failed to establish a registered office or registered agent in the Commonwealth if so required by § 13.1-634 or 13.1-763 of the Code of Virginia. As this provision relates to employees or agents, it shall only apply to individuals involved in sales to or solicitations of customers in the Commonwealth of Virginia;

5. Fails to notify the department within 20 days of the occurrence, knowledge, or receipt of the filing of any administrative or legal action relating to charitable gaming

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or the distribution of charitable gaming supplies involving or concerning the supplier, any officers or directors, employees, agent, or owner during the term of its permit;

6. Fails to provide to the department upon request a current Letter for Company Registration on file with the U.S. Department of Justice—Gambling Devices Registration Unit, if required in accordance with The Gambling Devices Act of 1962, 15 USC §§ 1171-1178, for any device that it sells, distributes, services or maintains in the Commonwealth of Virginia; or

7. Has been engaged in conduct that would compromise the department's objective of maintaining the highest level of integrity in charitable gaming.

C. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies for use by anyone in the Commonwealth of Virginia other than to an organization with a permit from the department or another permitted supplier. However, a supplier may:

1. Sell charitable gaming supplies to an organization that expects to gross ~~\$25,000~~ \$40,000 or less in any 12-month period, providing that the amount of such purchase would not be reasonably expected to produce more than ~~\$25,000~~ \$40,000 in gross sales. For each such organization, the supplier shall maintain the name, address and telephone number. The supplier shall also obtain a written and signed statement from an officer or game manager of such organization confirming that gross receipts are expected to be ~~\$25,000~~ \$40,000 or less. Such statement shall be dated and kept on file for three years from the end of a fiscal year.

2. Sell bingo cards and paper to persons or entities other than qualified organizations provided such supplies shall not be sold or otherwise provided for use in charitable gaming activities regulated by the department or in unlawful gambling activities. For each such sale, the supplier shall maintain the name, address and telephone number of the purchaser. The supplier shall also obtain a written statement from the purchaser verifying that such supplies will not be used in charitable gaming or any unlawful gambling activity. Such statement shall be dated and kept on file for three years from the end of a fiscal year. Payment for such sales in excess of \$50 shall be accepted in the form of a check.

3. Sell pull-tabs and seal cards to organizations for use only upon the premises owned or exclusively leased by the organization and at such times as the portion of the premises in which the pull-tabs or seal cards are sold is open only to members and their guests as authorized by § 18.2-340.26:1 of the Code of Virginia. Each such sale shall be accounted for separately and the accompanying invoice shall be clearly marked: "For Use in Social Quarters Only."

All such sales shall be documented pursuant to subsection H of this section and reported to the department pursuant to subsection J of this section. This provision shall not apply to the sale to landlords of equipment and video systems as defined in this chapter. Equipment and video systems shall not include dispensing devices and electronic bingo devices.

D. A supplier shall not sell, offer to sell or otherwise provide charitable gaming supplies to any individual or organization in the Commonwealth of Virginia unless the charitable gaming supplies are purchased or obtained from a manufacturer or another permitted supplier. Suppliers may take back for credit and resell supplies received from an organization with a permit that has ceased charitable gaming or is returning supplies not needed.

E. No supplier, supplier's agent, or employee may be involved in the management, operation or conduct of charitable gaming in the Commonwealth of Virginia. No member of a supplier's immediate family or person residing in the same household as a supplier may be involved in the management, operation or conduct of charitable gaming of any customer of the supplier in the Commonwealth of Virginia. No supplier, supplier's agent or employee may participate in any charitable gaming of any customer of the supplier in the Commonwealth of Virginia. For the purposes of this regulation, servicing of electronic devices shall not be considered conduct or participation.

F. The department shall conduct a background investigation prior to the issuance of a permit to any supplier. The investigation may include, but shall not be limited to, the following:

1. A search of the Virginia Central Criminal Records Exchange (CCRE) on all officers, directors and owners; and
2. Verification of current compliance with Commonwealth of Virginia state tax laws.

If the officers, directors or owners are domiciled outside of the Commonwealth of Virginia, or have resided in the Commonwealth of Virginia for fewer than five years, a criminal history search conducted by the appropriate authority in any state in which they have resided during the previous five years shall be provided by the applicant.

G. Appropriate information and authorizations shall be provided to the department to verify information cited in subsection F of this section.

H. Suppliers shall document each sale or rental of charitable gaming supplies to an organization in the Commonwealth of Virginia on an invoice which reflects the following:

1. Name, address, and DCG number of the organization;
2. Date of sale or rental and location where bingo supplies are shipped if different from the billing address;

3. Name, form number and serial number of each deal of instant bingo, pull-tabs, seal cards or bundles, and the number of cards in each deal;
4. Quantity of deals sold, the cost per deal, the selling price per card, the cash take-in per deal and the cash payout per deal;
5. Serial number of the top sheet in each pack of disposable bingo paper, the number of sheets in each pack or pad, the cut and color and the number of packs or pads sold;
6. Serial number for each series of uncollected bingo paper and the number of sheets sold;
7. Detailed information concerning the type, quantity and individual price of any other charitable gaming supplies or related items including, but not limited to, concealed face bingo cards, hard cards, markers or daubers and refills, or any other merchandise. For concealed face bingo cards, the number of sets, price per set and the serial number of each set shall be included; and
8. Any type of equipment, device or product manufactured for or intended to be used in the conduct of charitable games including, but not limited to, designators, designator receptacles, number display boards, selection devices, dispensing machines and verification devices.

I. Suppliers shall ensure that two copies of the detailed invoice are provided to the customer for each sale of charitable gaming supplies.

J. Each supplier shall provide a report to the department by March 1 of each year on sales of charitable gaming supplies for the fiscal year ending December 31 of the previous year to each organization in the Commonwealth of Virginia. This report shall be provided to the department on computer disk or other department-approved media. The report shall include the name and address of each organization and the following information for each sale or transaction:

1. Bingo paper sales including purchase price, description of paper to include number of sheets in pack and number of faces on sheet, quantity of single sheets or packs shipped;
2. Deals of instant bingo, pull-tabs, seal cards, or any other raffle sales including purchase price, deal name, deal form number, number of tickets in deal, ticket price, cash take-in per deal, cash payout per deal, and number of deals;
3. Electronic bingo device sales including purchase or rental price and number of units; and
4. Sales of miscellaneous items such as daubers, markers, and other merchandise including purchase price, description of product, and number of units.

K. The department shall set manufacturing and testing criteria for all electronic bingo devices and other equipment

used in the conduct of charitable gaming. An electronic bingo device shall not be sold, leased or otherwise furnished to any person in the Commonwealth of Virginia for use in the conduct of charitable gaming until an identical sample device containing identical proprietary software has been approved by a testing facility that has been formally recognized by the department as a testing facility that upholds the standards of integrity established by the department. The testing facility must certify that the device conforms, at a minimum, to the restrictions and conditions set forth in these regulations. Once the testing facility reports the test results to the department, the department will either approve or disapprove the submission and inform the manufacturer of the results within 10 business days. If any such equipment does not meet the department's criteria, it shall be recalled and shall not be distributed in the Commonwealth of Virginia. The cost of testing shall be borne by the manufacturer of such equipment.

L. Department employees shall have the right to inspect all electronic and mechanical equipment used in the conduct of charitable gaming.

M. Suppliers, their agents and employees, members of the supplier's immediate family or persons residing in their household shall not make any loan directly or indirectly to any organization or officer, director, game manager or entity involved in the management, operation or conduct of charitable gaming of a supplier's customer located in the Commonwealth of Virginia.

N. No supplier, supplier's agent or employee shall directly or indirectly provide a rebate, discount or refund to any person other than an organization which purchases supplies or leases or purchases equipment from the supplier. All such transactions shall be recorded on the supplier's account books.

O. A supplier shall not rent, sell or otherwise provide electronic bingo devices unless he possesses a valid permit in the Commonwealth of Virginia.

P. A written agreement specifying the terms of lease or rental shall be required for any electronic bingo devices provided to an organization.

## **11VAC15-31-50. Procedural rules for the conduct of fact-finding conferences and hearings.**

A. Fact-finding conference; notification, appearance, conduct.

1. Unless automatic revocation or immediate suspension is required by law, no permit to sell charitable gaming supplies shall be denied, suspended or revoked except upon notice stating the basis for such proposed action and the time and place for a fact-finding conference, as set forth in § 2.2-4019 of the Administrative Process Act.

2. If a basis exists for a refusal to renew, suspend or revoke a permit, the department shall notify, by certified mail or

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by hand delivery, the interested persons at the address of record maintained by the department.

3. Notification shall include the basis for the proposed action and afford interested persons the opportunity to present written and oral information to the department which may have a bearing on the proposed action at a fact-finding conference. If there is no withdrawal, a fact-finding conference shall be scheduled at the earliest mutually agreeable date, but no later than 60 days from the date of the notification. Organizations or suppliers who wish to waive their right to a conference shall notify the department at least 14 days before the scheduled conference.

4. If, after consideration of evidence presented during an informal fact-finding conference, a basis for action still exists, the interested persons shall be notified in writing within 60 days of the fact-finding conference, via certified or hand-delivered mail, of the decision and the right to a formal hearing. Parties to the conference may agree to extend the report deadline if more time is needed to consider relevant evidence.

## B. Hearing; notification, appearance, conduct.

1. If, after a fact-finding conference, a sufficient basis still exists to deny, suspend or revoke a permit, interested persons shall be notified by certified or hand-delivered mail of the proposed action and of the opportunity for a hearing on the proposed action. If a supplier desires to request a hearing, it shall notify the department within 14 days of receipt of a report on the conference. Parties may enter into a consent agreement to settle the issues at any time prior to or subsequent to an informal fact-finding conference.

2. If an interested party or representative fails to appear at a hearing, the hearing officer may proceed in his absence and make a recommendation.

3. Oral and written arguments may be submitted to and limited by the hearing officer. Oral arguments shall be recorded in an appropriate manner.

C. Hearing location. Hearings before a hearing officer shall be held, insofar as practicable, in the county or city in which the supplier is located. If the parties agree, hearing officers may conduct hearings at locations convenient to the greatest number of persons or by telephone conference, video conference or similar technology, in order to expedite the hearing process.

## D. Hearing decisions.

1. Recommendations of the hearing officer shall be a part of the record and shall include a written statement of the hearing officer's findings of fact and recommendations as well as the reasons or bases for the recommendations.

Recommendations shall be based upon all the material issues of fact, law or discretion presented on the record.

2. The department shall review the recommendation of the hearing officer and render a decision on the recommendation within 30 days of receipt. The decision shall cite the appropriate rule, relief or denial thereof as to each issue.

E. Agency representation. The ~~director's~~ commissioner's designee may represent the department in an informal conference or at a hearing.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS (11VAC15-31)

Charitable Gaming Supplier Registration Certificate Permit Application, DCG Form 301, rev. 7/03 (rev. 07/08).

Annual Supplier Sales and Transaction Report, DCG Form 302, rev. 10/04 (rev. 07/08).

Certification of Non-Permit Holder, DCG Form 303, rev. 1/05 (rev. 07/08).

VA.R. Doc. No. R09-2008; Filed July 1, 2009, 9:55 a.m.



# TITLE 12. HEALTH

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Emergency Regulation

Titles of Regulations: 12VAC30-70. Methods and Standards for Establishing Payment Rates - Inpatient Hospital Services (amending 12VAC30-70-50).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-20, 12VAC30-80-200).

Statutory Authority: § 32.1-325 of the Code of Virginia; Items 306 BB and 306 XX of Chapter 781 of the 2009 Acts of Assembly.

Effective Dates: July 2, 2009, through July 1, 2010.

Agency Contact: Carla Russell, Provider Reimbursement Division, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 225-4586, FAX (805) 786-1680, or email carla.russell@dmas.virginia.gov.

## Preamble:

The Administrative Process Act states that an agency may adopt regulations in an emergency situation: (i) upon consultation with the Attorney General after the agency has submitted a request stating in writing the nature of the emergency, and at the sole discretion of the Governor; (ii) a situation in which Virginia statutory law, the Virginia appropriation act, or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment, and the regulation is not exempt under the provisions of subdivision A 4 of § 2.2-4006; or (iii) in a situation in which an agency has an existing emergency regulation, additional emergency regulations may be issued as needed to address the subject matter of the initial emergency regulation provided the amending action does not extend the effective date of the original action. This suggested emergency regulation meets the 280-day standard as discussed below.

These changes were mandated by Items 306 BB and 306 XX of Chapter 781 of the 2009 Acts of Assembly. The need for this regulatory action arises out of the requirement that DMAS fulfill these legislative mandates.

**Outpatient Rehabilitation Agency Reimbursement.** Currently, the Virginia Administrative Code contains a cost-based methodology for computing reimbursement for outpatient rehabilitation services that is subject to a ceiling (12VAC30-80-200). For rehabilitation services, Medicare and most commercial insurers use a fee schedule. As a result, outpatient rehabilitation agencies bill differently and submit a cost report only for Medicaid. Implementation of a fee schedule methodology will align the DMAS reimbursement methodology for outpatient rehabilitation services more closely to the Medicare methodology and other reimbursement methodologies used by commercial insurers, including Medicaid's enrolled Managed Care Organizations (MCOs). Providers will no longer have to submit cost reports and DMAS will no longer have to settle the cost reports. Discontinuing both of these activities will result in administrative savings to both rehab providers and the Commonwealth. This action will also change Comprehensive Outpatient Rehabilitation Facilities (CORFs) from a cost-based methodology to the new fee schedule methodology; CORFs are being removed from the list of providers who are reimbursed on a cost basis in 12VAC30-80-20.

This new methodology shall implement a prospective statewide fee schedule methodology for outpatient rehabilitation agencies based on CPT codes. Rehabilitation services furnished by community services boards and state agencies will continue to be reimbursed on a cost basis. The fee schedule will be developed to achieve savings totaling \$185,900 general fund dollars as

required in Chapter 781, Item 306 XX of the 2009 Appropriation Act.

**Note:** DMAS has been in the process of implementing the Outpatient Rehabilitation Agency Reimbursement changes through a nonemergency regulatory process initiated in 2008. DMAS published a NOIRA (TH 2690/4671) on September 24, 2008 (VA.R. 25:3) and has a proposed regulation (TH 2690/4933) currently in the regulatory process addressing this element of this Emergency/NOIRA package. Because the 2009 budget required DMAS to implement the Outpatient Rehabilitation Agency Reimbursement changes prior to its originally scheduled implementation date, the agency included Outpatient Rehabilitation Agency Reimbursement in this Emergency/NOIRA package. The agency will rely upon the previously initiated full regulatory process to make final the changes regarding Outpatient Rehabilitation Agency Reimbursement, and will move the Long-Stay Hospital Reimbursement portion of this package forward in a separate proposed and final regulation process.

**Long-Stay Hospital Reimbursement.** Long-stay hospitals currently are reimbursed based on the methodology in effect for all hospitals prior to the implementation of the prospective reimbursement methodology based on diagnosis-related-groups effective July 1, 1996. Several aspects of the methodology are no longer appropriate, but have never been changed since there are only a few hospitals (two currently) being reimbursed using this methodology. The changes to the old methodology include the reduction of the "incentive plan," the elimination of an additional 2.0% annually added to the "escalator," and modification of the Disproportionate Share Hospital (DSH) utilization threshold percentage.

The incentive plan currently pays a hospital up to 25% of the difference between the ceiling and its cost per day. As a result of the incentive plan, hospitals can be reimbursed more than their costs. The regulatory change reduces the maximum incentive plan to up to 10.5% of the difference between the ceiling and its cost per day. The escalator, which is currently inflation plus 2.0%, is used to increase the ceilings and the operating cost per day. The regulation will change the escalator to just inflation. Currently, DSH is calculated by multiplying the difference between the Medicaid utilization percentage and the Medicaid utilization threshold of 8.0% times the prospective cost per day. The regulation will increase the utilization threshold from 8.0% to 10.5%. The regulatory changes are projected to save \$1.98 million in FY10.

## **12VAC30-70-50. Hospital reimbursement system.**

The reimbursement system for hospitals includes the following components:

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A. Hospitals were grouped by classes according to number of beds and urban versus rural. (Three groupings for rural - 0 to 100 beds, 101 to 170 beds, and over 170 beds; four groupings for urban - 0 to 100, 101 to 400, 401 to 600, and over 600 beds.) Groupings are similar to those used by the Health Care Financing Administration (HCFA) in determining routine cost limitations.

B. Prospective reimbursement ceilings on allowable operating costs were established as of July 1, 1982, for each grouping. Hospitals with a fiscal year end after June 30, 1982, were subject to the new reimbursement ceilings.

The calculation of the initial group ceilings as of July 1, 1982, was based on available, allowable cost data for hospitals in calendar year 1981. Individual hospital operating costs were advanced by a reimbursement escalator from the hospital's year end to July 1, 1982. After this advancement, the operating costs were standardized using SMSA wage indices, and a median was determined for each group. These medians were readjusted by the wage index to set an actual cost ceiling for each SMSA. Therefore, each hospital grouping has a series of ceilings representing one of each SMSA area. The wage index is based on those used by HCFA in computing its Market Basket Index for routine cost limitations.

Effective July 1, 1986, and until June 30, 1988, providers subject to the prospective payment system of reimbursement had their prospective operating cost rate and prospective operating cost ceiling computed using a new methodology. This method uses an allowance for inflation based on the percent of change in the quarterly average of the Medical Care Index of the Chase Econometrics - Standard Forecast determined in the quarter in which the provider's new fiscal year began.

The prospective operating cost rate is based on the provider's allowable cost from the most recent filed cost report, plus the inflation percentage add-on.

The prospective operating cost ceiling is determined by using the base that was in effect for the provider's fiscal year that began between July 1, 1985, and June 1, 1986. The allowance for inflation percent of change for the quarter in which the provider's new fiscal year began is added to this base to determine the new operating cost ceiling. This new ceiling was effective for all providers on July 1, 1986. For subsequent cost reporting periods beginning on or after July 1, 1986, the last prospective operating rate ceiling determined under this new methodology will become the base for computing the next prospective year ceiling.

Effective on and after July 1, 1988, and until June 30, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Data Resources, Incorporated Health Care Cost HCFA-Type Hospital Market

Basket determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1988, for all such hospitals shall be adjusted to reflect this change.

Effective on or after July 1, 1989, for providers subject to the prospective payment system, the allowance for inflation shall be based on the percent of change in the moving average of the Health Care Cost HCFA-Type Hospital Market Basket, adjusted for Virginia, as developed by Data Resources, Incorporated, determined in the quarter in which the provider's new fiscal year begins. Such providers shall have their prospective operating cost rate and prospective operating cost ceiling established in accordance with the methodology which became effective July 1, 1986. Rates and ceilings in effect July 1, 1989, for all such hospitals shall be adjusted to reflect this change.

Effective on and after July 1, 1992, for providers subject to the prospective payment system, the allowance for inflation, as described above, which became effective on July 1, 1989, shall be converted to an escalation factor by adding two percentage points, (200 basis points) to the then current allowance for inflation. Effective July 1, 2009, the additional two percentage points shall no longer be included in the escalation factor. The escalation factor shall be applied in accordance with the inpatient hospital reimbursement methodology in effect on June 30, 1992. On July 1, 1992, the conversion to the new escalation factor shall be accomplished by a transition methodology which, for non-June 30 year end hospitals, applies the escalation factor to escalate their payment rates for the months between July 1, 1992, and their next fiscal year ending on or before May 31, 1993.

The new method will still require comparison of the prospective operating cost rate to the prospective operating ceiling. The provider is allowed the lower of the two amounts subject to the lower of cost or charges principles.

C. Subsequent to June 30, 1992, the group ceilings shall not be recalculated on allowable costs, but shall be updated by the escalator factor.

D. Prospective rates for each hospital shall be based upon the hospital's allowable costs plus the escalator factor, or the appropriate ceilings, or charges; whichever is lower. Except to eliminate costs that are found to be unallowable, no retrospective adjustment shall be made to prospective rates.

Depreciation, capital interest, and education costs approved pursuant to PRM-15 (§ 400), shall be considered as pass throughs and not part of the calculation.

E. An incentive plan should be established whereby a hospital will be paid on a sliding scale, percentage for percentage, up to 25% 10.5% of the difference between

allowable operating costs and the appropriate per diem group ceiling when the operating costs are below the ceilings. The incentive should be calculated based on the annual cost report.

~~The table below presents three examples under the new plan:~~

Group Ceiling	Hospital's Allowable Cost Per Day	\$	Difference % or Ceiling	\$	Sliding Scale Incentive % of Difference
\$230.00	\$230.00	-0-	-0%	-0-	-0%
230.00	207.00	23.00	10%	2.30	10%
230.00	172.00	57.50	25%	14.38	25%
230.00	143.00	76.00	33%	19.00	25%

F. There will be special consideration for exception to the median operating cost limits in those instances where extensive neonatal care is provided.

G. Disproportionate share hospitals defined.

The following criteria shall be met before a hospital is determined to be eligible for a disproportionate share payment adjustment.

1. Criteria.

a. A Medicaid inpatient utilization rate in excess of 8% 10.5% for hospitals receiving Medicaid payments in the Commonwealth, or a low-income patient utilization rate exceeding 25% (as defined in the Omnibus Budget Reconciliation Act of 1987 and as amended by the Medicare Catastrophic Coverage Act of 1988); and

b. At least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals entitled to such services under a State Medicaid plan. In the case of a hospital located in a rural area (that is, an area outside of a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget), the term "obstetrician" includes any physician with staff privileges at the hospital to perform nonemergency obstetric procedures.

c. Subdivision 1 b of this subsection does not apply to a hospital:

(1) At which the inpatients are predominantly individuals under 18 years of age; or

(2) Which does not offer nonemergency obstetric services as of December 21, 1987.

2. Payment adjustment.

a. Hospitals which have a disproportionately higher level of Medicaid patients shall be allowed a disproportionate share payment adjustment based on the type of hospital and on the individual hospital's Medicaid utilization. There shall be two types of hospitals: (i) Type One,

consisting of state-owned teaching hospitals, and (ii) Type Two, consisting of all other hospitals. The Medicaid utilization shall be determined by dividing the number of utilization Medicaid inpatient days by the total number of inpatient days. Each hospital with a Medicaid utilization of over 8.0% 10.5% shall receive a disproportionate share payment adjustment.

b. For Type One hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0% 10.5%, times 11, times (ii) the lower of the prospective operating cost rate or ceiling. For Type Two hospitals, the disproportionate share payment adjustment shall be equal to the product of (i) the hospital's Medicaid utilization in excess of 8.0% 10.5% times (ii) the lower of the prospective operating cost rate or ceiling.

c. No payments made under subdivision 1 or 2 of this subsection shall exceed any applicable limitations upon such payments established by federal law or regulations.

H. Outlier adjustments.

1. DMAS shall pay to all enrolled hospitals an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under one year of age.

2. DMAS shall pay to disproportionate share hospitals (as defined in paragraph G above) an outlier adjustment in payment amounts for medically necessary inpatient hospital services provided on or after July 1, 1991, involving exceptionally high costs for individuals under six years of age.

3. The outlier adjustment calculation.

a. Each eligible hospital which desires to be considered for the adjustment shall submit a log which contains the information necessary to compute the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. This log shall contain all Medicaid claims for such individuals, including, but not limited to: (i) the patient's name and Medicaid identification number; (ii) dates of service; (iii) the remittance date paid; (iv) the number of covered days; and (v) total charges for the length of stay. Each hospital shall then calculate the per diem operating cost (which excludes capital and education) of treating such patients by multiplying the charge for each patient by the Medicaid operating cost-to-charge ratio determined from its annual cost report.

b. Each eligible hospital shall calculate the mean of its Medicaid per diem operating cost of treating individuals identified in subdivision H 1 or 2 above. Any hospital which qualifies for the extensive neonatal care provision

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(as governed by paragraph F, above) shall calculate a separate mean for the cost of providing extensive neonatal care to individuals identified in subdivision H 1 or 2 above.

c. Each eligible hospital shall calculate its threshold for payment of the adjustment, at a level equal to two and one-half standard deviations above the mean or means calculated in subdivision H 3 (ii) above.

d. DMAS shall pay as an outlier adjustment to each eligible hospital all per diem operating costs which exceed the applicable threshold or thresholds for that hospital.

4. Pursuant to 12VAC30-50-100, there is no limit on length of time for medically necessary stays for individuals under six years of age. This section provides that consistent with 42 CFR 441.57, payment of medical assistance services shall be made on behalf of individuals under 21 years of age, who are Medicaid eligible, for medically necessary stays in acute care facilities in excess of 21 days per admission when such services are rendered for the purpose of diagnosis and treatment of health conditions identified through a physical examination. Medical documentation justifying admission and the continued length of stay must be attached to or written on the invoice for review by medical staff to determine medical necessity. Medically unjustified days in such admissions will be denied.

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

A. Payments for services listed below shall be on the basis of reasonable cost following the standards and principles applicable to the Title XVIII Program with the exception provided for in subdivision D 2 d. The upper limit for reimbursement shall be no higher than payments for Medicare patients on a facility by facility basis in accordance with 42 CFR 447.321 and 42 CFR 447.325. In no instance, however, shall charges for beneficiaries of the program be in excess of charges for private patients receiving services from the provider. The professional component for emergency room physicians shall continue to be uncovered as a component of the payment to the facility.

B. Reasonable costs will be determined from the filing of a uniform cost report by participating providers. The cost reports are due not later than 90 days after the provider's fiscal year end. If a complete cost report is not received within 90 days after the end of the provider's fiscal year, the Program shall take action in accordance with its policies to assure that an overpayment is not being made. The cost report will be judged complete when DMAS has all of the following:

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

2. The provider's trial balance showing adjusting journal entries;
3. The provider's financial statements including, but not limited to, a balance sheet, a statement of income and expenses, a statement of retained earnings (or fund balance), and a statement of changes in financial position;
4. Schedules that reconcile financial statements and trial balance to expenses claimed in the cost report;
5. Depreciation schedule or summary;
6. Home office cost report, if applicable; and
7. Such other analytical information or supporting documents requested by DMAS when the cost reporting forms are sent to the provider.

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

D. The services that are cost reimbursed are:

1. Inpatient hospital services to persons over 65 years of age in tuberculosis and mental disease hospitals.
2. Outpatient hospital services excluding laboratory.

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

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

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (*set seq.*) of Title 32.1 of the Code of Virginia.

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

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

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

(1) With the exception of laboratory services, DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all services, including those

obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines were nonemergency care.

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

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

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

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

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

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

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

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

(4) Payment shall be determined based on ICD-9-CM diagnosis codes and necessary supporting documentation.

(5) DMAS shall review on an ongoing basis the effectiveness of this program in achieving its objectives and for its effect on recipients, physicians, and hospitals. Program components may be revised subject to achieving program intent, the accuracy and effectiveness of the ICD-9-CM code designations, and the impact on recipients and providers.

c. Limitation to 80% of allowable cost. Effective for services on and after July 1, 2003, reimbursement of Type Two hospitals for outpatient services shall be at 80% of allowable cost, with cost to be determined as provided in subsections A, B, and C of this section. For hospitals with fiscal years that do not begin on July 1, 2003, outpatient costs, both operating and capital, for the fiscal year in progress on that date shall be apportioned between the time period before and the time period after

that date, based on the number of calendar months in the cost reporting period, falling before and after that date. Operating costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Capital costs apportioned before that date shall be settled according to the principles in effect before that date, and those after at 80% of allowable cost. Operating and capital costs of Type One hospitals shall continue to be reimbursed at 94.2% and 90% of cost respectively.

d. Outpatient reimbursement methodology prior to July 1, 2003. DMAS shall continue to reimburse for outpatient hospital services, with the exception of direct graduate medical education for interns and residents, at 100% of reasonable costs less a 10% reduction for allowable capital costs and a 5.8% reduction for allowable operating costs. This methodology shall continue to be in effect after July 1, 2003, for Type One hospitals.

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

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

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

3. Rehabilitation agencies operated by community services boards. For reimbursement methodology applicable to other rehabilitation agencies, see 12VAC30-80-200. Reimbursement for physical therapy, occupational therapy, and speech-language therapy services shall not be provided for any sums that the rehabilitation provider collects, or is entitled to collect, from the NF or any other available source, and provided further, that this amendment shall in no way diminish any obligation of the NF to DMAS to provide its residents such services, as set forth in any applicable provider agreement.

#### 4. Comprehensive outpatient rehabilitation facilities.

#### 5. 4. Rehabilitation hospital outpatient services.

### **12VAC30-80-200. Prospective reimbursement for rehabilitation agencies.**

A. Effective for dates of service on and after July 1, 2003 2009, rehabilitation agencies, including comprehensive outpatient rehabilitation facilities and excluding those operated by community services boards and state agencies, shall be reimbursed a prospective rate equal to the lesser of

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the agency's cost per visit for each type of rehabilitation service (physical therapy, occupational therapy, and speech therapy) or a statewide ceiling established for each type of service. The prospective ceiling for each type of service shall be equal to 112% of the median cost per visit, for such services, of rehabilitation agencies. The median shall be calculated using a base year to be determined by the department fee schedule amount or billed charges per procedure. The agency shall develop a statewide fee schedule based on CPT codes to reimburse providers what the agency estimates they would have been paid in FY 2010 minus \$371,800. Effective July 1, 2003, the median calculated and the resulting ceiling shall be applicable to all services beginning on and after July 1, 2003, and all services in provider fiscal years beginning in SFY2004.

B. In each provider fiscal year, each provider's prospective rate shall be determined based on the cost report from the previous year and the ceiling, calculated by DMAS, that is applicable to the state fiscal year in which the provider fiscal year begins.

C. For providers with B. Payments for the fiscal years year ending or that do not begin on July 1, 2003, services for the fiscal year in progress on that date June 30, 2009, shall be apportioned between the time period before and the time period after that date based on the number of calendar months before and after that date. Costs apportioned before that date shall be settled based on allowable costs, and those after shall be settled based on the prospective methodology the previous prospective rate methodology and the ceilings in effect for that fiscal year as of June 30, 2009.

C. Rehabilitation services furnished by community service boards or state agencies shall be reimbursed costs based on annual cost reporting methodology and procedures.

D. Beginning with state fiscal years beginning on and after July 1, 2004 2009, rates the ceiling and the provider specific cost per visit shall be adjusted for inflation, from the previous year to the prospective year, using the nursing facility inflation factor published for Virginia by DRI, applicable to the calendar year in progress at the start of the state fiscal year using the Virginia-specific nursing home input price index contracted for by the agency. The agency shall use the percent moving average for the quarter ending at the midpoint of the rate year from the most recently available index prior to the beginning of the rate year.

V.A.R. Doc. No. R09-1968; Filed July 2, 2009, 11:11 a.m.

## DEPARTMENT OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

### Final Regulation

Title of Regulation: 12VAC35-190. Regulations Establishing Procedures for Voluntarily Admitting Persons Who Are Mentally Retarded to State Mental Retardation Facilities (amending 12VAC35-190-10, 12VAC35-190-21, 12VAC35-190-30, 12VAC35-190-41, 12VAC35-190-51).

Statutory Authority: § 37.2-203 and 37.2-806 of the Code of Virginia.

Effective Date: August 19, 2009.

Agency Contact: Dawn Traver, Office of Developmental Services, Department of Behavioral Health and Developmental Services, P.O. Box 1797, 1220 Bank Street, Richmond, VA 23218-1797, telephone (757) 253-4316, FAX (757) 253-5440, or email dawn.traver@co.dmhmrss.virginia.gov.

#### Summary:

This action revises the statutory references to reflect the recent recodification of Title 37.1 to Title 37.2 of the Code of Virginia. Changes are made to definitions of "authorized representative," "case management community services board," "mental retardation" and several other terms for clarity and consistency with the Code of Virginia and other regulations of the board. The application process and requirements are revised to require that the diagnosis of mental retardation be made by a "licensed professional," which is defined in the regulations. The required timeframe for a decision on a request for admission is reduced from 30 to 10 working days from the date of receipt of the completed application package.

Since publication of the proposed regulation some language and terminology is revised for clarity, consistency with the board's other regulations. For example, "case management community services board" is replaced with "community services board." The term "intellectual disability" is inserted in parenthesis after "mental retardation" to be consistent with recent changes to the other regulations of the board. The name Department of Mental Health, Mental Retardation and Substance Abuse Services is replaced with the new name, Department of Behavioral Health and Developmental Services consistent with legislation passed in the 2009 Session of the General Assembly. None of these revisions substantively change the process or the requirements for admissions to state training centers.

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

## CHAPTER 190 REGULATIONS ESTABLISHING PROCEDURES FOR VOLUNTARILY ADMITTING PERSONS WHO ARE MENTALLY RETARDED VOLUNTARY ADMISSIONS TO STATE MENTAL RETARDATION FACILITIES TRAINING CENTERS

### 12VAC35-190-10. Definitions.

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

"Admission" means [placement acceptance] of an individual in a residential facility for individuals with mental retardation as defined in this chapter so that the facility becomes the individual's primary locus of care, treatment, and training center.

"Authorized representative" means a person permitted by law or regulation to authorize the disclosure of information [and or] consent to treatment and services, including medical treatment, or the participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

[ "Case management community services board" (CSB) [ "or "CSB" means ] a citizens board [the public body established pursuant to] § 37.1-195 [ § 37.2-501 of the Code of Virginia that serves the area in which an adult resides or in which a minor's parent, or guardian ] or legally authorized representative [ resides. ] The case management CSB is responsible for case management, liaison with the facility when an individual is admitted to a state training center, and predischarge planning. If an individual, or the parents, guardian or legally authorized representative on behalf of an individual, chooses to reside in a different locality after the individual's discharge from the facility, the community services board serving that locality becomes the case management CSB and works with the original case management CSB, the individual receiving services and the state facility to effect a smooth transition and discharge. [ For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia. ]

"Commissioner" means the Commissioner of the Department of [ Mental Health, Mental Retardation and Substance Abuse Behavioral Health and Developmental ] Services.

[ "Community services board" or "CSB" means the public body established pursuant to § 37.2-501 of the Code of Virginia. For the purpose of these regulations, CSB also includes a behavioral health authority established pursuant to § 37.2-602 of the Code of Virginia. ]

"Discharge plan" or "predischarge plan" means a written plan prepared by the [ case management ] CSB [ providing

case management ] in consultation with the state facility training center pursuant to § 37.1-197.1 [ §§ 37.2-505 and 37.2-837 ] of the Code of Virginia. This plan is prepared when the individual is admitted to the facility training center and documents the [ planning for ] services [ after to be provided upon ] discharge.

"Facility" means a state training center for individuals with mental retardation under the supervision and management of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

"Guardian" means:

For Minors -- An adult who is either appointed by the court as a legal guardian of said a minor or exercises the rights and responsibilities of legal custody by delegation from a biological or adoptive parent, upon provisional adoption or otherwise by operation of law.

For Adults -- a person appointed by the court who is responsible for the personal affairs of an incapacitated adult under the order of appointment. The responsibilities may include making decisions regarding the individual's support, care, health, safety, habilitation, education and therapeutic treatment. Refer to definition of "incapacitated person" at § 37.1-134.6 § 37.2-1000 of the Code of Virginia.

"Legally authorized representative" means a person permitted by law or regulations to give informed consent for disclosure of information and give informed consent to treatment, including medical treatment and participation in human research on behalf of an individual who lacks the mental capacity to make these decisions.

"Licensed professional" means a licensed psychologist, licensed professional counselor, or other individual who holds a valid professional license and has appropriate training in intellectual testing.

"Mental retardation" [ ("intellectual disability") ] means substantial subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, a disability originating before the age of 18 years, characterized concurrently by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean; and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

[ "Training center" means a facility operated by the Department of Behavioral Health and Developmental Services for the treatment, training, or habilitation of persons with mental retardation (intellectual disability). ]

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## 12VAC35-190-21. Application for admission process.

A. Requests for admission to a facility training center shall be processed through the [ case management ] CSB. A parent, guardian, or legally authorized representative seeking admission to a facility training center for an individual with mental retardation [ intellectual disability ] shall apply first to the CSB that serves the area where the applicant individual, or if a minor, his parent, or guardian, or legally authorized representative is currently residing.

B. If the [ case management ] CSB determines that the services for the individual are not available in the community or the individual chooses to obtain services in the state facility training center, the CSB shall forward a prescreening preadmission screening report, pursuant to § 37.1-65.1 B & § 37.2-806 B of the Code of Virginia, to the facility training center serving individuals with mental retardation [ intellectual disability ] from that geographic section of the state in which the applicant individual or, if a minor, his parent, or guardian, or legally authorized representative is currently residing.

C. The prescreening preadmission screening report shall include at a minimum:

1. An application for services;
2. A medical history indicating the presence of any current medical problems as well as the presence of any known communicable disease. In all cases, the application shall include any currently prescribed medications as well as any known medication allergies;
3. A social history and current status housing or living arrangements; and
4. A psychological evaluation that has been performed in the past three years unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; reflects the individual's current functioning.

D. The preadmission screening report shall also include the following, as appropriate:

5. 1. A current individualized education plan for school-aged applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; individuals.

6. 2. A vocational assessment for adult applicants unless the facility director or designee determines that sufficient information as to the applicant's abilities and needs is included in other reports received; and adults.

7. 3. A completed discharge plan outlining the services to be provided upon discharge and anticipated date of discharge.

[ 4. A statement from the individual, family member, or authorized representative requesting services in the training center. ]

## 12VAC35-190-30. Determination of suitability Criteria for admission.

A. Within 30 working days from the receipt of the completed prescreening report, the director of the facility, or his designee, shall notify the case management CSB in writing of the determination on the admission request.

B. Determination of suitability A. Upon the receipt of a completed preadmission screening report, the director of the training center or designee shall determine eligibility for admission by the director shall be based upon the following criteria and shall be so stated in his written decision:

1. The individual has a primary diagnosis of mental retardation [ intellectual disability ];
2. The diagnosis of mental retardation has been made by an interdisciplinary team of qualified mental retardation professionals upon review of the completed prescreening report a licensed professional; and
3. The facility training center has available space, training, treatment, and habilitation services appropriate and service capacity to meet the needs of the individual.

B. If the director finds that admission is not appropriate, he shall state the reasons in a written decision and may recommend an alternative location for needed services.

C. If the director finds that the applicant is not suitable for admission to the facility, he shall state the reasons for his decision and may recommend alternative locations for needed services. Within 10 working days from the receipt of the completed preadmission screening report, the director of the training center or designee shall provide the written decision on the admission request to the [ case management ] CSB.

## 12VAC35-190-41. Requests for reconsideration of the director's determination.

In the event that (i) the [ case management ] CSB making the request for admission, or (ii) a person seeking admission to a facility, the parent, guardian, or authorized representative applying on behalf of an individual disagrees with the determination of the director, the CSB, or person seeking admission, or both [ they either party ] may request a reconsideration of the determination by submitting a request in writing to the commissioner within 10 working days of receiving such determination. Upon receipt of a request for reconsideration, the commissioner shall notify the facility training center director and the facility training center director shall forward the prescreening preadmission screening report package and related information to the commissioner within 48 hours. The commissioner shall also provide an opportunity for the person individual requesting reconsideration to submit

for review any additional information or reasons why the admission should be approved. The commissioner shall render a written decision on the request for reconsideration within 30 calendar days of the receipt of the request and notify all involved parties. The commissioner's decision shall be binding.

## **12VAC35-190-51. Procedure for admission Judicial certification.**

Upon receipt of written notification from the facility training center director that an individual is suitable eligible for admission, the [ case management ] CSB will shall inform the individual or and the individual's parent, guardian, or legally authorized representative of this decision and assist the parent, guardian, or legally authorized representative in initiating a judicial proceeding pursuant to § 37.1-65.1 § 37.2-806 of the Code of Virginia. When the judge has certified that the individual is eligible for admission to a facility training center in accordance with subsection C3 of § 37.1-65.1 § 37.2-806 F of the Code of Virginia, a date for admission to the facility will training center shall be established.

V.A.R. Doc. No. R07-261; Filed July 1, 2009, 10:28 a.m.

*American Recovery and Reinvestment Act of 2009 (i) includes funds to be allocated to the authority from the U.S. Department of Housing and Urban Development under a program called the tax credit assistance program to facilitate the production of developments awarded low-income housing tax credits in federal fiscal years 2007, 2008 and 2009 and (ii) permits the authority to monetize credits by exchanging eligible credits for cash grants, which can be used by the authority to finance the construction or acquisition and rehabilitation of qualified low-income buildings.*

## **13VAC10-180-120. Application for Tax Credit Assistance Funds and Credit Exchange Funds.**

*The American Recovery and Reinvestment Act of 2009 (Recovery Act), PL 111-5 (i) includes funds to be allocated to housing credit agencies from HUD under a program called the tax credit assistance program (TCAP) to facilitate the production of developments awarded low-income housing tax credits in fiscal years 2007, 2008, and 2009, and (ii) permits the authority to monetize credits by exchanging eligible credits for cash grants, which can be used by the authority to finance the construction or acquisition and rehabilitation of qualified low-income buildings.*

Application for TCAP funds and credit exchange funds shall be filed with the authority on such form or forms as the executive director may from time to time prescribe or approve, together with such documents and additional information as may be requested by the authority in order to comply with the Recovery Act, the IRC, and this chapter and to make an award of TCAP funds or credit exchange funds in accordance with this chapter. The executive director may establish criteria and assumptions to be used by the applicant in the calculation of the amounts of tax credits, TCAP funds, and credit exchange funds in the application; and any such criteria and assumptions may be indicated on the application form or instructions made available by the authority to applicants. Each applicant for TCAP funds and credit exchange funds shall commit in the application to comply with all federal requirements applicable to such funds.

The executive director may divide the amount of TCAP funds into separate pools and each separate pool may be further divided into separate tiers. The division of such pools and tiers may be based upon one or more of the following factors: geographical areas of the state; types or characteristics of housing, construction, financing, owners, occupants, or source of credits; or any other factors deemed appropriate to best meet the housing needs of the Commonwealth. Proposed developments to be financed by certain tax-exempt bonds and eligible to receive credits pursuant to 13VAC10-180-100 that apply for TCAP funds will be scored and ranked pursuant to the requirements of 13VAC10-180-60 with all other applications applying for TCAP funds and credits. Such developments may be placed

## **TITLE 13. HOUSING**

### **VIRGINIA HOUSING DEVELOPMENT AUTHORITY**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The Virginia Housing Development Authority is exempt from the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) pursuant to § 2.2-4002 A 4; however, under the provisions of § 2.2-4031, it is required to publish all proposed and final regulations.

#### **Title of Regulation: 13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (adding 13VAC10-180-120).**

Statutory Authority: § 36-55.30:3 of the Code of Virginia.

Effective Date: July 1, 2009.

Agency Contact: J. Judson McKellar, Jr., General Counsel, Virginia Housing Development Authority, 601 S. Belvidere Street, Richmond, VA 23220, telephone (804) 343-5540, FAX (804) 783-6701, or email judson.mckellar@vhda.com.

#### Summary:

*The amendments to the authority's rules and regulations for the allocation of low-income housing tax credits adds a new section to the regulations that governs the award of funds made available to the authority pursuant to the American Recovery and Investment Act of 2009, PL-155, to low-income housing tax credit developments. The*

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in pools with other applicants for TCAP funds or may be put in their own separate pool as the executive director deems appropriate.

For each application that may receive an award of tax credits and either TCAP funds or credit exchange funds or both, the executive director shall determine the amount, as of the date of the deadline for submission of applications for such funds, to be necessary for the financial feasibility of the development and its viability as a qualified low-income development throughout the credit period under the IRC. The executive director may substitute TCAP funds for some or all of the credit exchange funds in the application or credit exchange funds for some or all of the TCAP funds requested in the application in such amounts as determined by the executive director to maximize the number of developments or units that are expected to benefit from the equity provided by tax credit investors. Any TCAP funds and credit exchange funds awarded to a proposed development shall be in the form of a grant or, if requested by the borrower, a loan. Such grant or loan shall (i) be subordinate to all other unrelated third-party financing for the construction or acquisition and rehabilitation of the development; (ii) be secured by a deed of trust for the full amount of the grant or loan during the compliance period; and (iii) provided no conditions exist that would result in default under the deed of trust, be forgiven by the authority in part each year on a pro rata basis based upon the length of the extended use period.

Any tax credit developments that have received a reservation of tax credits pursuant to 13VAC10-180-60 in calendar years 2007 and 2008 may request the authority to exchange their tax credit allocation for credit exchange funds in an amount not to exceed the lesser of (i) \$.85 per \$1.00 of credit exchanged or (ii) the tax credit equity amount shown in their allocation application.

The executive director may place conditions and limitations on the availability and use of the grant or loan deemed necessary to comply with the provisions of the Recovery Act and the IRC. The executive director may also prescribe such deadlines for accomplishing certain milestones established by the executive director in the acquisition, construction or rehabilitation of the developments deemed necessary or desirable to ensure full use of TCAP funds and credit exchange funds within the timeframes established by the Recovery Act.

VA.R. Doc. No. R09-1920; Filed July 1, 2009, 9:57 a.m.

## TITLE 14. INSURANCE

### STATE CORPORATION COMMISSION

#### Proposed Regulation

**REGISTRAR'S NOTICE:** The State Corporation Commission is exempt from the Administrative Process Act in accordance with § 2.2-4002 A 2 of the Code of Virginia, which exempts courts, any agency of the Supreme Court, and any agency that by the Constitution is expressly granted any of the powers of a court of record.

**Title of Regulation:** 14VAC5-260. Rules Governing Insurance Holding Companies (amending 14VAC5-260-40, 14VAC5-260-60, 14VAC5-260-70, 14VAC5-260-90).

**Statutory Authority:** §§ 12.1-13 and 38.2-223 of the Code of Virginia.

**Public Hearing Information:** A public hearing will be held upon request.

**Public Comments:** Public comments may be submitted until 5 p.m. on August 14, 2009.

**Agency Contact:** Raquel C. Pino-Moreno, Principal Insurance Analyst, Bureau of Insurance, State Corporation Commission, 1300 East Main Street, P.O. Box 1157, Richmond, VA 23218, telephone (804) 371-9499, FAX (804) 371-9511, or email raquel.pino-moreno@scc.virginia.gov.

#### Summary:

*The purpose of the proposed revisions to the rules and forms is to amend the language regarding declaration of dividends and disclaimer of affiliation. Additionally, a reference to electronic filing and clarification that dividends and distributions are to be paid out of earned surplus unless the commission approves otherwise, has been added. These proposed revisions are necessary as a result of the passage of Senate Bill 1352 (Chapter 717 of the 2009 Acts of Assembly), which amended § 38.2-1329 of the Code of Virginia.*

AT RICHMOND, JUNE 25, 2009

COMMONWEALTH OF VIRGINIA

At the relation of the

STATE CORPORATION COMMISSION

CASE NO. INS-2009-00146

**Ex Parte:** In the matter of  
Adopting Revisions to the Rules  
Governing Insurance Holding  
Companies

## ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 38.2-223 of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of Title 38.2 of the Code of Virginia.

The rules and regulations issued by the Commission pursuant to § 38.2-223 of the Code of Virginia are set forth in Title 14 of the Virginia Administrative Code. A copy may also be found at the Commission's website: <http://www.scc.virginia.gov/case>.

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed revisions to rules set forth in Chapter 260 of Title 14 of the Virginia Administrative Code entitled "Rules Governing Insurance Holding Companies" ("Rules") which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90.

The proposed revisions to the Rules are necessary due to the passage of Senate Bill 1352 during the 2009 General Assembly session, which amends § 38.2-1329 of the Code of Virginia, effective July 1, 2009.

The Commission is of the opinion that the proposed revisions submitted by the Bureau and set out in the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90 should be considered for adoption with a proposed effective date of September 30, 2009.

### IT IS THEREFORE ORDERED THAT:

(1) The proposed revisions to "Rules Governing Insurance Holding Companies" which amend the Rules at 14 VAC 5-260-40, 14 VAC 5-260-60, 14 VAC 5-260-70, and 14 VAC 5-260-90, be attached hereto and made a part hereof.

(2) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposed revisions to the Rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations and shall make available this Order and the attached proposed revisions to the Rules on the Commission's website, <http://www.scc.virginia.gov/case>.

(3) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose the adoption of the proposed revised Rules shall file such comments or hearing request on or before August 14, 2009, in writing, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, and shall refer to Case No. INS-2009-00146. Interested persons desiring to submit comments electronically may do so by following the instructions

available at the Commission's website: <http://www.scc.virginia.gov/case>.

(4) If no written request for a hearing on the proposed revised Rules is filed on or before August 14, 2009, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposed revisions to the Rules, may adopt the revised Rules as submitted by the Bureau.

(5) AN ATTESTED COPY hereof, together with a copy of the proposed revised Rules, shall be sent by the Clerk of the Commission to the Bureau of Insurance in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposed adoption of the revised Rules by mailing a copy of this Order, together with the proposed revised Rules, to all licensed insurers, burial societies, fraternal benefit societies, health maintenance organizations, and certain interested parties designated by the Bureau.

(6) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (5) above.

### **14VAC5-260-40. Acquisition of control; approval of applications.**

A. A person filing an application or statement pursuant to § 38.2-1323 A, or any related provision of §§ 38.2-1324 through 38.2-1328, of the Act shall furnish the required information designated on Form A of this chapter.

1. Where applicable and required by Form A, Form E shall also be filed.

2. Whenever an application includes information in the format required by Form E, the commission may require an opinion of an economist as to the competitive impact of the proposed acquisition.

B. When the person being acquired controls a domestic insurer, the person shall, for purposes of completing a Form A application, be deemed to be a "domestic insurer."

1. The name of the domestic subsidiary insurer should be indicated on the cover page as follows:

"ABC Insurance Company, a subsidiary of XYZ Holding Company"; and

2. References to "the insurer" contained in Form A shall refer to both the domestic subsidiary insurer and the person being acquired.

C. The applicant shall promptly advise the commission of any changes in the information so furnished on Form A, or any attachments thereto, arising subsequent to the date upon which the information was furnished, but prior to the commission's disposition of the application and consummation of the acquisition of control.

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1. Within two business days after the person filing the application learns of the change, an amendment setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commission. The filing shall be made with the clerk of the commission. Except where the applicant is also the insurer, the applicant shall show on each such filing that a copy has also been sent to the insurer.

2. A failure to file complete and accurate information as required by this chapter is grounds for a denial by the commission pursuant to § 38.2-1326.

3. As used in this section and for purposes of all Form A filings, "material change" includes any change in the identity of executive officers or any party to a merger or a liquidating transaction.

D. Where "control" is derived from a management agreement, including any other agreement between a domestic insurer and another person other than a contract for goods or nonmanagement services, any termination of the agreement or any substitution of persons under the agreement shall be deemed a change of control requiring notice and application to the commission pursuant to § 38.2-1323 of the Act.

E. A person seeking to merge with or acquire a domestic insurer may apply to the commission for an order exempting the person from the provisions of §§ 38.2-1323 through 38.2-1327 if the merger or acquisition meets the standards for exemption provided in § 38.2-1328.

1. The application shall be in writing and shall be filed with the clerk of the commission. Filing instructions are the same as for a Form A filing. See Section III of the Form A Instructions for information regarding number of copies ~~and~~, signature requirements and electronic filing. The applicant shall identify the parties to the merger or acquisition and shall state (i) the purpose of the merger or acquisition, (ii) the method of merger or acquisition, and (iii) why the person believes the exemption criteria of § 38.2-1328 will be met.

2. Within 30 days after the application for exemption is filed with the clerk of the commission, the commission shall enter an order granting the exemption or giving notice of a hearing to determine the merits of the application.

F. Any hearing held to consider an application filed pursuant to the provisions of this section and § 38.2-1323 of the Act shall be held pursuant to § 38.2-1326 and shall begin, unless waived by the insurer, within 40 days of the date the application is filed with the commission. An application shall be deemed filed upon receipt by the commission of all material required by this section or § 38.2-1324 of the Act.

## **14VAC5-260-60. Annual registration of insurers; registration statement filings and amendments.**

A. An insurer required to file a registration statement pursuant to § 38.2-1329 of the Act shall furnish the required information in the format designated on Form B ~~of this chapter~~.

1. The initial registration statement shall be filed with the commission within 15 days after the insurer becomes subject to registration under § 38.2-1329 of the Act.

2. Annually thereafter by April 30 of each year, for the previous calendar year, the registrant shall file a completely restated up-to-date registration statement in the format designated on Form B, with amendments consolidated therein. Each registration statement shall contain a summary outlining all items in the current registration statement representing changes from the prior registration statement. The summary shall be prepared in the format designated on Form C, as specified in the instructions of that form, which is a part of this chapter.

B. An insurer shall file a copy of its most current registration statement and the Form C filing, also known as a Summary of Registration Filing, in each state in which the insurer is authorized to do business, if requested by the insurance commissioner of that state.

### C. Amendments to Form B.

1. An amendment to Form B shall be filed under the following conditions:

a. Within 15 days after the end of any month in which there is a material change to the information provided in the annual registration statement;

b. Within 15 days after the end of any month in which the registrant or insurer learns there is a change in control of the registrant, in which case all of Form B and Form C shall be made current;

c. Within 15 days after the end of any month in which the registrant or insurer learns there is a material change in information given in Item 5 of Form B;

d. Within 30 days after the investment in any one corporation, if the total investment in that corporation, by the insurance holding company system, exceeds 10% of that corporation's voting securities;

e. Within 15 days after the end of any month in which there is a material change in any portion of the information given in Item 6 of Form B;

f. Within 15 days after the end of any month in which there is a change of the chief executive officer, president, or more than 1/3 of the directors reported in Item 4 of Form B;

g. Within five business days following the declaration of any dividend or other distribution to an insurer's shareholder, ~~and at least 30 days prior to payment thereof;~~ and

h. Within 120 days after the end of each fiscal year of the ultimate controlling person of the insurance holding company system.

2. Amendments shall be filed in the Form B format. Subject to the provisions of subdivision A 2 of this section, only those items which are being amended need be reported. Each amendment shall include at the top of the cover page "Amendment No. (insert number) to Registrant Statement, brought current from (insert year)" and shall indicate as its "Date," the date of the change and not the date of the original filings. Filings made in the format of Forms A, D, E, or F may be deemed amendments filed in the Form B format when accompanied by certification under oath or affirmation that the transaction reported on Form A, D, E, or F has been consummated. If the commission's approval of the transaction is required by the Act, the certification shall state also that consummation was pursuant to terms and agreements approved by the commission.

3. As used in this section, "material transaction" has the meaning set forth in § 38.2-1322 of the Act except that, unless the commission by rule, order or regulation prescribes otherwise, no sale, purchase, exchange, loan, or extension of credit or investment shall be considered "material" unless it involves at least 0.5% of an insurer's admitted assets or 5.0% of the insurer's surplus to policyholders, as of the immediately preceding December 31. Any sale or other transaction which is one of a series of transactions occurring within a 12-month period that are sufficiently similar in nature as to be reasonably construed as a single transaction and that in the aggregate exceed the minimum limits herein provided shall be deemed a material transaction.

#### D. Exemptions and alternative and consolidated registrations.

1. Any insurer which is authorized to do business in this Commonwealth may file a registration statement on behalf of any affiliated insurer or insurers which are required to register under § 38.2-1329 of the Act. A registration statement may include information not required by the Act regarding any insurer in the insurance holding company system even if the insurer is not authorized to do business in this Commonwealth. In lieu of filing a registration statement on Form B, the authorized insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile, provided:

a. The statement or report contains substantially similar information required to be furnished on Form B; and

b. The filing insurer is the principal insurance company in the insurance holding company system.

2. The question of whether the filing insurer is the principal insurance company in the insurance holding company system is a question of fact and an insurer filing a registration statement or report in lieu of Form B on behalf of an affiliated insurer, shall set forth a brief statement of facts which will substantiate the filing insurer's claim that it, in fact, is the principal insurer in the insurance holding company system.

3. With the prior approval of the commission, an insurer not licensed to transact the business of insurance in this Commonwealth may follow any of the procedures which could be done by an authorized insurer under subdivision 1 of this subsection.

4. Any insurer may take advantage of the provisions of § 38.2-1329 G or § 38.2-1329 H of the Act without obtaining the prior approval of the commission. The commission, however, reserves the right to require individual filings if it deems the filings necessary in the interest of clarity, ease of administration or the public good.

5. The state of entry of an alien insurer shall be deemed to be its state of domicile for the purpose of this chapter.

6. Any foreign insurer subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile that are substantially similar to those contained in § 38.2-1329 of the Act, shall be exempted and excepted from registration in this Commonwealth pursuant to this section and § 38.2-1329 A of the Act; however, if requested by the commission, the insurer shall furnish to the commission a copy of the registration statement or other information filed with its state of domicile. The information shall be filed with the commission within 15 days after the commission makes its request.

7. Any insurer not otherwise exempt or excepted from § 38.2-1329 of the Code of Virginia may apply for an exemption from the requirements of ~~this section~~ § 38.2-1329 of the Code of Virginia by submitting a statement to the commission setting forth its reasons for being exempt.

#### 14VAC5-260-70. Disclaimers and termination of registration.

A. A disclaimer of affiliation or a request for termination of registration claiming that a person does not, or will not upon the taking of some proposed action, control any other person (hereinafter referred to as the "subject") shall contain the following information:

1. The number of authorized, issued and outstanding voting securities of the subject;

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2. With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly; and also information as to all transactions in any securities of the subject which were effected during the past six months by such persons;
  3. All material relationships and bases for affiliation, including a description of all contracts and agreements, between the subject and the person whose control is denied and all affiliates of such person; and
  4. A statement explaining why such person should not be considered to control the subject.
- B. A request for termination of registration under § 38.2-1329 of the Act for lack of affiliation shall be deemed to have been granted unless the commission, within 30 days after receipt of the request and any additional information required by the commission, notifies the registrant otherwise. Thereafter, the subject shall be relieved of any registering or reporting requirements under § 38.2-1329 of the Act that may arise out of the subject's relationship with the person, unless and until the commission disallows the disclaimer.
1. The commission shall disallow the disclaimer only after giving all interested parties notice and opportunity to be heard.
  2. Any disallowance shall be supported by specific findings of fact.
- 14VAC5-260-90. Dividends and other distributions.**
- A. Each registered insurer shall report to the commission as required under § 38.2-1329 of the Act, all dividends and other distributions to shareholders within five business days following declaration and at least 30 days prior to payment. An insurer shall not pay a dividend or other distribution until 30 days after the commission has received written notice of the declaration thereof and has not within such period disapproved such payment. The commission may approve the payment of such dividend or other distribution prior to the 30 days. Such dividends and other distributions are to be paid out of earned surplus unless the commission has provided prior written approval for such dividends or other distributions to be paid from another source. Except as provided in subsection B of this section, the report shall be filed in the format prescribed by Form F and shall include at least the following:
1. A statement stating whether the dividend or distribution is extraordinary. If the dividend or distribution is extraordinary, the insurer also shall state the date of approval, if any, obtained pursuant to § 38.2-1330.1 A of the Act, or the earliest date on which approval may be deemed;
  2. Earned surplus as of the immediately preceding December 31;
  3. The amount of the proposed dividend;
  4. The date of declaration, date of record and date established for payment of the dividend;
  5. A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;
  6. The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;
  7. A brief statement as to the effect of the proposed dividend upon the insurer's surplus and the reasonableness of surplus in relation to the insurer's outstanding liabilities and the adequacy of surplus relative to the insurer's financial needs; and
  8. A statement identifying any and all revaluations of assets.
- B. If payment of an extraordinary dividend or distribution has been approved prior to its declaration, the insurer may comply with the requirements of § 38.2-1329 E of the Act by filing written confirmation under oath or affirmation that the extraordinary dividend or distribution, as approved by the commission, has been declared. Confirmation shall be filed within five business days following declaration.
- C. An insurer may obtain prior approval of an extraordinary dividend or distribution, as required by § 38.2-1330.1 A of the Act, by filing a request for approval with the commission. The request for approval shall be filed in the format prescribed by Form F and shall include at least the following:
1. All the information required in subsection A of this section;
  2. Statements of financial condition and earnings for the period intervening from the last annual statement filed with the commission and the end of the month preceding the month in which the request for dividend approval is submitted; and, if the date of payment or distribution is more than 60 days removed from the date of the most current financial statement submitted by the insurer, the insurer shall include also a pro forma statement as of the day after the distribution or payment of the dividend showing its effect and other known and reasonably projected adjustments to the financial condition and earnings of the insurer; and

3. A copy of the calculations determining that the proposed dividend is extraordinary. The work paper shall include the following information:

- a. The amounts, dates and form of payment of all dividends or distributions (including regular dividends but excluding distributions of the insurer's own securities) paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought, and commencing on the day after the same day of the same month in the last preceding year;
- b. Surplus as regards to policyholders (total capital and surplus) as of the immediately preceding December 31;
- c. If the insurer is a life insurer, the net gain from operations for the 12-month period ending the immediately preceding December 31; and
- d. If the insurer is not a life insurer, the net income less realized capital gains for the 12-month period ending the immediately preceding December 31, but shall not include pro rata distributions of any class of the insurer's own securities.

4. Statements on each factor set forth in § 38.2-1330 B of the Act must be submitted in support of the request for approval of an extraordinary dividend or distribution, although these factors are not intended to be an exhaustive list. In determining the adequacy and reasonableness of an insurer's surplus no single factor is controlling. The commission, instead, will consider the net effect of all of these factors plus other factors bearing on the financial condition of the insurer. In comparing the surplus maintained by other insurers, the commission will consider the extent to which each of these factors varies from company to company and in determining the quality and liquidity of investments in subsidiaries, the commission will consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

5. In addition, in order to determine the possibility of any financial effect on the insurer, the commission may request the means of funding and the purpose of the extraordinary dividend or distribution.

D. No declaration of an extraordinary dividend or distribution shall confer any rights on shareholders without the prior approval thereof pursuant to § 38.2-1330.1 C of the Act. However, an insurer may declare an extraordinary dividend or distribution which is conditioned upon the commission's approval, and the declaration shall confer no rights upon shareholders until (i) the commission has approved the payment of the dividend or distribution or (ii) the commission has not disapproved the payment within the 30-day period provided by § 38.2-1330.1 A of the Act.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS (14VAC5-260)

Form A, Instructions for Application for Approval of Acquisition of Control of or Merger with a Domestic Insurer Pursuant to § 38.2-1323 of the Code of Virginia (rev. 7/06 9/09).

Form B, Instructions for Insurance Holding Company System Annual Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia (7/06 9/09).

Form C, Instructions for Summary of Registration Statement Pursuant to § 38.2-1329 of the Code of Virginia (rev. 7/06).

Form D, Instructions for Prior Notice and Application for Approval of Certain Transactions Pursuant to § 38.2-1331 of the Code of Virginia (rev. 7/06).

Form E, Instructions for an Acquisition Statement Reporting Competitive Impact Data Pursuant to § 38.2-1323 of the Code of Virginia (rev. 7/06).

Form F, Instructions for Notice of Dividends and Distributions to Shareholders Pursuant to §§ 38.2-1329 E and 38.2-1330.1 of the Code of Virginia (7/06 9/09).

V.A.R. Doc. No. R09-2019; Filed June 26, 2009, 8:52 a.m.

## TITLE 15. JUDICIAL

### VIRGINIA STATE BAR Proposed 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 that 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 15VAC5-80-20, 15VAC5-80-30, 15VAC5-80-40).

**Statutory Authority:** § 6.1-2.25 of the Code of Virginia.

**Public Hearing Information:** No public hearings are scheduled.

**Agency Contact:** Mary Yancey Spencer, Deputy Executive Director, Virginia State Bar, 707 E. Main Street, Richmond,

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VA 23219, telephone (804) 775-0575 or email [spencer@vsb.org](mailto:spencer@vsb.org).

## Summary:

*The amendments delete nonattorney settlement agents from those required to register with the Virginia State Bar. This conforms the regulations to Chapter 256 of the 2009 Acts of Assembly, which shifted the responsibility to register nonattorney settlement agents to the appropriate licensing agencies.*

## **15VAC5-80-20. Definitions.**

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

"Attorney" means a person licensed as an attorney under Chapter 39 (§ 54.1-3900 et seq.) of Title 54.1 of the Code of Virginia and who is an active member of the Virginia State Bar in good standing under the Rules of the Virginia Supreme Court.

"Bar" means the Virginia State Bar.

"Board" means the Virginia Real Estate Board.

"CRESPA" means the Virginia Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia). Unless otherwise defined herein, all terms in these regulations shall have the meanings set forth in CRESPA.

"Disciplinary board" means the Virginia State Bar Disciplinary Board.

"Financial institution" has the meaning set forth in § 6.1-2.1 of the Code of Virginia.

"First dollar coverage" means an insurance policy which obligates the company issuing the policy to pay covered claims in their entirety, up to the policy limits, regardless of the presence of a deductible amount to which the company may be entitled as a reimbursement from the insured.

"SCC" means the Virginia State Corporation Commission.

"These regulations" means 15VAC5-80-10 et seq., Regulations under the Virginia Consumer Real Estate Settlement Protection Act.

## **15VAC5-80-30. Registration; reregistration; required fee.**

Every licensed attorney, title insurance company, title insurance agent or real estate broker, as well as every financial institution authorized to do business in Virginia under any of the provisions of Title 6.1 of the Code of Virginia, or under federal law, and every subsidiary or affiliate of any such financial institution, now providing or offering, or intending to provide or offer, escrow, closing or settlement services as a settlement agent with respect to real estate transactions in Virginia shall register with the Bar on or before September 29, 1997, using the registration form

available from the Bar for that purpose. Settlement agents beginning to provide or offer such services after July 1, 1997, shall register with the Bar prior to doing so. The registration requirement in this paragraph shall not apply to attorney settlement agents unless they provide or offer to provide escrow, settlement, and closing services for real estate subject to CRESPA, i.e., real estate containing not more than four residential dwelling units. Thus, for example, attorneys who handle only commercial real estate transactions are not subject to these regulations.

Every settlement agent shall thereafter reregister after notice on a schedule established by the Bar, providing updated registration information. Every settlement agent shall have a continuing duty to advise the Bar of any change in name, address, or other pertinent registration data that occurs between registrations.

The fee for each registration and reregistration shall be \$35 for an individual attorney settlement agent and \$100 for a settlement agent which is a corporation or other legal entity authorized to register in that capacity. The Bar reserves the right to adjust the fee as necessary within the statutory limit of \$100. The prescribed fee shall accompany each registration or reregistration in the form of a check made payable to the Treasurer of Virginia.

Registration is subject to revocation or suspension if the Bar or other appropriate licensing authority finds the settlement agent out of compliance with CRESPA or regulations issued thereunder.

## **15VAC5-80-40. Unauthorized practice of law guidelines; investigation of complaints.**

The Bar will issue guidelines under CRESPA and in consultation with the SCC and the board to assist settlement agents in avoiding and preventing the unauthorized practice of law in connection with the furnishing of escrow, closing, or settlement services. In conformity with CRESPA, the rules of the Virginia Supreme Court and the Bar's UPL opinions, these guidelines will delineate activities which can and cannot be carried out by registered nonattorney settlement agents in conducting settlements. The guidelines will be revised from time to time as necessary.

A copy of the The guidelines will be available on the Bar's website and provided by the Bar appropriate licensing authority to each registered settlement agent at the time of initial registration and at each reregistration. The guidelines will also be published by the Bar in the Virginia Lawyer Register and furnished to the SCC, the board, and all other state and federal agencies that regulate financial institutions, as well as to members of the general public upon request. The guidelines may be photocopied as necessary.

The Bar will continue to receive and investigate unauthorized practice of law complaints in the real estate

settlement area, as well as in other fields, under its unauthorized practice of law rules and procedures.

If the Bar receives complaints against nonattorney settlement agents that do not allege the unauthorized practice of law, it will refer the complaints to the appropriate licensing authority that has jurisdiction over the subject of the complaint. If the complaint involves an attorney settlement agent's noncompliance with 15VAC5-80-30, the Bar will conduct an informal investigation. If the Bar believes a violation has occurred, it will notify the attorney settlement agent in writing. If the apparent violation is not rectified within 30 days, the Bar will refer the matter to the appropriate licensing authority for further enforcement action investigate the alleged violations pursuant to 15VAC5-80-50 D.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

## FORMS (15VAC5-80)

Settlement Agent Official Registration Form for a Corporation or Other Legal Entity (eff. 4/97).

Settlement Agent Official Registration Form for an Individual Attorney, Broker or Title Agent (eff. 1/98) (rev. 7/09).

Settlement Agent Official Re Registration Reregistration Form for an Individual Attorney, Broker or Title Agent (eff. 2/98) (rev. 7/09).

Virginia Attorney Real Estate Settlement Agent Financial Responsibility Certification (eff. 2/98) (rev. 5/08).

Bond for Attorney Settlement Agents (eff. 5/97) Agent - Principal as Individual (rev. 7/09).

Bond for Attorney Settlement Agent - Principal as Law Firm (rev. 7/09).

Settlement Agent Official Renewal Form for Corporation or Other Entity.

V.A.R. Doc. No. R09-1635; Filed June 30, 2009, 3:43 p.m.

## Withdrawal of Proposed Regulation

**Title of Regulation: 15VAC5-80. Regulations Under the Virginia Consumer Real Estate Settlement Protection Act (amending 15VAC5-80-40, 15VAC5-80-50).**

Statutory Authority: § 6.1-2.25 of the Code of Virginia.

The Virginia State Bar has withdrawn the proposed amendments to 15VAC5-80, Regulations Under the Virginia Consumer Real Estate Protection Act, which were published 25:4 V.A.R. 669-672 October 27, 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.

V.A.R. Doc. No. R09-1636; Filed June 30, 2009, 4:39 p.m.

## TITLE 16. LABOR AND EMPLOYMENT

### SAFETY AND HEALTH CODES BOARD

#### Proposed Regulation

**Title of Regulation: 16VAC25-50. Boiler and Pressure Vessel Regulations (amending 16VAC25-50-150, 16VAC25-50-360, 16VAC25-50-380, 16VAC25-50-430, 16VAC25-50-480).**

Statutory Authority: § 40.1-51.6 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 18, 2009.

Agency Contact: Ed Hilton, Director, Boiler Safety Compliance, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-2389, FAX (804) 371-2324, TTY (804) 785-2376, or email ed.hilton@doli.virginia.gov.

Basis: The Safety and Health Codes Board is authorized by § 40.1-51.6 of the Code of Virginia to "...formulate definitions, rules, regulations and standards which shall be designed for the protection of human life and property from the unsafe or dangerous construction, installation, inspection, operation, maintenance and repair of boilers and pressure vessels in this Commonwealth."

Purpose: The purpose of the proposed regulatory action is to conform to the most current editions of American Society of Engineers (ASME), National Board of Boiler and Vessel Inspectors, American Society of Mechanical Engineers (ASME), and American Petroleum Institute safety and inspection codes, as well as make in-house administrative fee adjustments to cover increased costs of doing business. With respect to employees, the proposed regulation will provide both increased protection of human life (both employee safety and public safety) as well as property from the unsafe or dangerous construction, installation, inspection, operation, and repair of boilers and pressure vessels in the Commonwealth of Virginia. The proposed regulations create no disadvantages to employees.

Substance: The proposal addresses the following amendments:

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1. In 16VAC25-50-150 A, add a fee of \$10 for the reprinting of certificate to cover direct administrative costs, i.e., printing, mailing, and employee's work-related time.
2. In 16VAC25-50-150 D, Inspection Certificate and Inspection Fees, revise fees from "\$800" to "\$1,000" to reflect cost-of-living adjustment.
3. In 16VAC25-50-360 C 5 a, the factors of safety are modified for vessels and a dual standard is established. For vessels built prior to January 1, 1999, the factor of safety remains 4.5. Vessels built on or after this date would have a lower factor of safety of 4.0. This revision is necessary to conform to current International Boiler and Pressure Vessel Code.
4. In 16VAC25-50-380 B 3, factors of safety are modified for vessels and a dual standard is established. For vessels built prior to January 1, 1999, the factor of safety remains 4.0. Vessels built on or after this date have a lower factor of safety of 3.5. This revision is necessary to conform to current International Boiler and Pressure Vessel Code.
5. In 16VAC25-50-430 A, change "1.5" to "1.25" for the maximum allowable working pressure for a hydrostatic pressure test when applied to boilers or pressure vessels. The revision is necessary to conform to current International Boiler and Pressure Vessel Code.
6. Delete last two sentences of 16VAC25-50-480 D, which reads as follows: "A seal weld is a tube-to-tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P-1) tube joints made by qualified welders will not require an inspection nor a Form R-1."
7. Delete the term "welded" from Form R-1, Report of Repairs, to conform to current forms.
8. Incorporation by reference of the most recent edition (2006) of B31.1, ASME Code for Pressure Piping, American National Standards Institute.
9. Incorporation by reference of the most recent edition (2006) of API510 as listed in the National Board Inspection Code.
10. Incorporation by reference of the most recent edition (2006) of CSD-1 and related section on maintenance that includes revised inspector's checklist.
11. Incorporation by reference of the most recent edition (2007) of the National Board Inspection Code (NBIC).
12. Incorporation by reference of the most recent edition (2007) of the International Boiler and Pressure Vessel Code, including sections XII and VIII, Div 2.

**Issues:** The primary advantages and disadvantages to the public associated with this proposed regulatory action are as follows: there will be a \$200 increase in cost to the "R"

Stamp holders in the Commonwealth who request a review of a manufacturer's or repair organization's facility. The \$200 increase, which will occur once in a three-year period (reviews are performed every three years), will increase the total cost of the review from \$800 to \$1,000. The last time the review fee was increased to address the additional costs of doing business was in the 1999 Edition of the Boiler Pressure Vessel Rules and Regulations. A review performed by the National Board would cost \$3,000.

The department does not perform a large number of inspections annually, and generally only when requested by the owner. The increase in fees will affect a number of the approximately 50 "R" Stamp holders in the Commonwealth that have their reviews performed by the department. During calendar year 2006, the department performed 15 such inspections and in calendar year 2007, the department performed 14 such inspections. For the current year, 13 inspections have been performed so far with an additional two anticipated by the end of the year for a total of 15.

While the department presently does not charge for a duplicate Certificate of Inspection, a \$10 fee represents the cost to the department of generating a duplicate certificate. This fee includes printing, mailing, and employee's work-related time. The fees that the department charges are based upon state law, which requires that the Boiler Safety Compliance Program of the Department of Labor and Industry recoup no more than the department's actual costs.

The nonfee related changes are deemed necessary to update the proposed regulations to the current editions of ASME and National Board safety and inspection codes, which are incorporated by reference into the Commonwealth's Boiler and Pressure Vessel Rules and Regulations.

The department anticipates no additional fiscal impact beyond the cost to promulgate the revisions to the regulation. All revenue from boiler fees is deposited directly into the state general fund. None of the funding stays with the department.

There are no disadvantages to the public or to the Commonwealth.

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

**Summary of the Proposed Amendments to Regulation.** The Safety and Health Codes Board (Board) proposes to: 1) update the current regulation for consistency with national and international standards, 2) add a fee of \$10.00 for the reprinting of inspection certificates, and 3) increase the boiler inspection fee from \$800 to \$1000.

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

**Estimated Economic Impact.** As a result of a periodic review published November 12, 2007, the Board is proposing to amend the current regulation to update certain provisions,

establish a new fee, and increase the inspection fee. The proposed regulation would incorporate the current standards established in recent editions of national and international codes. The Board states that an increase in fees is necessary because costs have increased. The Board is required to match fees to actual costs of operation. Travel expenses have driven up the cost of inspections and fees have not been increased since 1999. The Board proposes to increase the inspection fee from \$800 to \$1000 to reflect a cost of living adjustment. Since the Consumer Price Index has increased by 29 percent over the last ten years,<sup>1</sup> the proposed 25 percent increase in the fee is reasonable.

While the Department of Labor and Industry (Department) presently does not charge for a duplicate Certificate of Inspection, a \$10.00 fee represents the cost to the Department of generating a duplicate certificate. This fee includes printing, mailing and employee's work-related time. The fees that the Department charges are based upon state law which requires that the Boiler Safety Compliance Program of the Department recoup no more than the Department's actual costs.

**Businesses and Entities Affected.** The proposed amendments affect the approximately 50 "R" Stamp (boiler) holders in the Commonwealth that have their reviews performed by the Department.

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

**Projected Impact on Employment.** The proposals do not significantly affect employment.

**Effects on the Use and Value of Private Property.** The use of value of private property will not be significantly affected.

**Small Businesses: Costs and Other Effects.** The proposed increases very moderately increase costs for "R" Stamp holders.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** The proposed amendments do not significantly adversely affect small businesses.

**Real Estate Development Costs.** The proposed amendments are unlikely to significantly affect real estate development costs.

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to

implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> CPI-U in January 1999: 164.3; CPI-U in January 2009: 211.143

**Agency's Response to Economic Impact Analysis:** The Department of Labor and Industry has no additional comment in response to the economic impact analysis of the Virginia Department of Planning and Budget.

**Summary:**

*The proposed amendments (i) update the current regulation for consistency with national and international standards; (ii) add a fee of \$10 for the reprinting of inspection certificates; and (iii) increase the boiler inspection fee from \$800 to \$1,000.*

**16VAC25-50-150. Inspection certificate and inspection fees.**

A. Upon the inspection and determination that a boiler or pressure vessel is suitable and conforms to this chapter, the owner or user shall remit the payment for an inspection certificate in one of the following forms and amounts for each item required to be inspected under the Act.

1. Payment of \$20 may be sent from the owner or user to the chief inspector by check, credit card or money order. Payment of inspection certificate fees should be made payable to the Treasurer of Virginia; or

2. Payment may be presented to a special inspector, where the inspector is authorized to collect and forward such fees on the department's behalf. The commissioner may authorize special inspectors to collect and forward to the chief inspector \$16 for each inspection certificate. Pursuant to § 40.1-51.10:1 of the Code of Virginia, special inspectors may charge owners or users a fee not exceeding \$4.00 for collecting and forwarding inspection certificate fees.

An inspection certificate will not be issued to the owner or user until payment is received by either the department or, if previously authorized, by a special inspector. A fee of \$10 will be charged for each reprint of an inspection certificate.

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B. The chief inspector may extend an inspection certificate for up to three additional months beyond a two month grace period following the expiration of a certificate. Such extension is subject to a satisfactory external inspection of the boiler or pressure vessel and receipt of a fee of \$20 for each month of extension.

C. When the chief inspector determines that no contract fee inspectors are available to inspect a regulated uninsured boiler or pressure vessel in a timely manner, a commonwealth inspector may be directed to conduct a certification inspection. Contract fee inspection service shall be determined unavailable where (i) at least two contract fee inspectors contacted will not agree to provide inspection services to the owner or user within at least 21 days from the request and (ii) the owner's or user's inspection certificate will expire within that same period.

The following rates per inspected object, in addition to inspection certificate fees, shall apply for certification inspections conducted by a commonwealth inspector:

1. Power boilers and high pressure, high temperature water boilers	\$135
2. Heating boilers	\$70
3. Pressure vessels	\$50

D. The review of a manufacturer's or repair organization's facility for the purpose of national accreditation will be performed by the chief inspector or his qualified designee for an additional fee of \$800 \$1,000 per review or survey.

E. The owner or user who causes a boiler or pressure vessel to be operated without a valid certificate shall be subject to the penalty as provided for in § 40.1-51.12 of the Act.

F. Inspection certificates are not required for unfired pressure vessels inspected by an authorized owner-user inspection agency. However, the agency shall keep on file in its office in the establishment where the equipment is located a true record or copy of the report of the latest of each inspection signed by the inspector who made the inspection.

## Part III Existing Installations

### 16VAC25-50-360. Power and high-pressure, high-temperature water boilers.

#### A. Age limit of existing boilers.

1. The age limit of any boiler of nonstandard construction, installed before July 1, 1974, other than one having a riveted, longitudinal lap joint, shall be 30 years; however, any boiler passing a thorough internal and external inspection, and not displaying any leakage or distress under a hydrostatic pressure test of 1-1/2 times the allowable working pressure held for at least 30 minutes, may be continued in operation without reduction in

working pressure. The age limit of any boiler having riveted, longitudinal, lap joints and operating at a pressure in excess of 50 psig shall be 20 years. This type of boiler, when removed from an existing setting, shall not be reinstalled for a pressure in excess of 15 psig. A reasonable time for replacement, not to exceed one year, may be given at the discretion of the chief inspector.

2. The shell or drum of a boiler in which a typical lap seam crack is discovered along a longitudinal riveted joint for either butt or lap joints shall be permanently removed from service.

3. The age limit of boilers of standard construction, installed before July 1, 1974, shall be determined from the results of a thorough internal and external inspection by an authorized inspector and the application of an appropriate pressure test. Hydrostatic test pressure shall be 1-1/2 times the allowable working pressure and maintained for 30 minutes. The boiler may be continued in service at the same working pressure provided there is no evidence of leakage or distress under these test conditions.

4. The minimum temperature of the water used for the hydrostatic test of low-pressure boilers and pressure vessels shall be 60°F. The minimum temperature of the water used for the hydrostatic test of power boilers shall be 70°F or ambient whichever is greater.

B. The maximum allowable working pressure for standard boilers shall be determined in accordance with the applicable provisions of the edition of the ASME Code under which they were constructed and stamped.

C. 1. The maximum allowable working pressure on the shell of a nonstandard boiler shall be determined by the strength of the weakest section of the structure, computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint or tube ligaments, the inside diameter of the weakest course and the factor of safety allowed by this chapter.

$$\frac{\text{TStE}}{\text{RFS}} = \frac{\text{Maximum allowable working}}{\text{pressure, psi}}$$

where:

TS = ultimate tensile strength of shell plates, psi

t = minimum thickness of shell plate, in weakest course, inches

E = efficiency of longitudinal joint:

For tube ligaments, E shall be determined by the rules in Section I of the ASME Code for Power Boilers. For riveted joints, E shall be determined by the rules in the applicable edition of the ASME Code. For seamless construction, E shall be considered 100%.

R = inside radius of the weakest course of the shell, in inches

FS = factor of safety permitted.

2. Tensile strength. When the tensile strength of steel or wrought iron shell plates is not known, it shall be taken as 55,000 psi.

3. Crushing strength of mild steel. The resistance to crushing of mild steel shall be taken at 95,000 psi of cross-sectional area.

4. Strength of rivets in shear. When computing the ultimate strength of rivets in shear, the following values, in pounds per square inch, of the cross-sectional area of the rivet shank shall be used.

	PSI
Iron rivets in single shear	38,000
iron rivets in double shear	76,000
Steel rivets in single shear	44,000
Steel rivets in double shear	88,000

When the diameter of the rivet holes in the longitudinal joints of a boiler is not known, the diameter and cross-sectional area of rivets, after driving, may be selected from Table 1, or as ascertained by cutting out one rivet in the body of the joint.

TABLE 1 SIZES OF RIVETS BASED ON PLATE THICKNESS (in inches)	
Plate of Thickness	Rivet Diameter after Driving
1/4	11/16
9/32	11/16
5/16	3/4
11/32	3/4
3/8	13/16
13/32	13/16
7/16	15/16
15/32	15/16
1/2	15/16
9/16	1-1/16
5/8	1-1/16

5. Factors of safety. The following factors of safety shall be increased by the inspector if the condition and safety of the boiler demand it:

a. The lowest factor of safety permissible on existing installations shall be 4.5 for vessels built prior to January 1, 1999. For vessels built on or after January 1, 1999, the factor of safety may be 4.0. Horizontal-return-tubular boilers having continuous longitudinal lap seams more than 12 feet in length, shall have a factor of safety of eight. When this type of boiler is removed from its existing setting, it shall not be reinstalled for pressures in excess of 15 psig.

b. Reinstalled or secondhand boilers shall have a minimum factor of safety of six when the longitudinal seams are of lap-riveted construction, and a minimum factor of safety of five when the longitudinal seams are of butt-strap and double-strap construction.

D. Cast-iron headers and mud drums. The maximum allowable working pressure on a water tube boiler, the tubes of which are secured to cast iron or malleable-iron headers, or which have cast iron mud drums, shall not exceed 160 psig.

E. Pressure on cast iron boilers. The maximum allowable working pressure for any cast iron boiler, except hot water boilers, shall be 15 psig.

#### F. Safety valves.

1. The use of weighted-lever safety valves, or safety valves having either the seat or disk of cast iron, shall be prohibited. Valves of this type shall be replaced by direct, spring-loaded, pop-type valves that conform to the requirements of the ASME Code, Section I.

2. Each boiler shall have at least one safety valve and, if it has more than 500 square feet of water-heating surface or an electric power input of more than 500 kilowatts, it shall have two or more safety valves.

3. The valve or valves shall be connected to the boiler, independent of any other steam connection, and attached as close as possible to the boiler without unnecessary intervening pipe or fittings. Where alteration is required to conform to this requirement, the chief inspector shall allow the owner or user reasonable time in which to complete the work.

4. No valves of any description shall be placed between the safety valve and the boiler nor on the escape pipe, if used, between the safety valve and the atmosphere, except as provided by applicable sections of the ASME Code. When an escape pipe is used, it shall be at least full size of the safety-valve discharge and fitted with an open drain to prevent water lodging in the upper part of the safety valve or escape pipe. When an elbow is placed on a safety valve escape pipe, it shall be located close to the safety-valve outlet or the escape pipe shall be anchored and supported

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securely. All safety valve discharges shall be located or piped as not to endanger persons working in the area.

5. The safety-valve capacity of each boiler shall be so that the safety valve or valves will discharge all the steam that can be generated by the boiler without allowing the pressure to rise more than 6.0% above the highest pressure to which any valve is set, and in no case to more than 6.0% above the maximum allowable working pressure.

6. One or more safety valves on every boiler shall be set at or below the maximum allowable working pressure. The remaining valves may be set within a range of 3.0% above the maximum allowable working pressure, but the range of setting of all the safety valves on a boiler shall not exceed 10% of the highest pressure to which any valve is set.

7. When two or more boilers, operating at different pressures and safety valve settings, are interconnected, the lower pressure boilers or interconnected piping shall be equipped with safety valves of sufficient capacity to prevent overpressure, considering the maximum generating capacity of all boilers.

8. In those cases where the boiler is supplied with feedwater directly from water mains without the use of feeding apparatus (not to include return traps), no safety valve shall be set at a pressure higher than 94% of the lowest pressure obtained in the supply main feeding the boiler.

9. The relieving capacity of the safety valves on any boiler shall be checked by one of the three following methods and, if found to be insufficient, additional valves shall be provided:

a. By making an accumulation test, which consists of shutting off all other steam-discharge outlets from the boiler and forcing the fires to the maximum. The safety-valve capacity shall be sufficient to prevent a rise of pressure in excess of 6.0% of the maximum allowable working pressure. This method shall not be used on a boiler with a superheater or re heater.

b. By measuring the maximum amount of fuel that can be burned and computing the corresponding evaporative capacity (steam-generating capacity) upon the basis of the heating value of this fuel. These computations shall be made as outlined in the appendix of the ASME Code, Section I<sub>2</sub>.

c. By measuring the maximum amount of feedwater that can be evaporated.

When either of the methods (b or c) outlined in this subdivision is employed, the sum of the safety-valve capacities shall be equal to or greater than the maximum evaporative capacity (maximum steam-generating capacity) of the boiler.

10. The relieving capacity of safety valves for forced-flow steam generators shall be in accordance with the requirements of Section I of the ASME Boiler Code.

11. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repaired by the original manufacturer, its authorized representative or the holder of a "VR" Stamp.

## G. Boiler feeding.

1. Each boiler shall have a feed supply which will permit it to be fed at any time while under pressure.

2. A boiler having more than 500 square feet of water-heating surface shall have at least two means of feeding, one of which shall be an approved feed pump or injector. A source of feed directly from water mains at a pressure 6.0% greater than the set pressure of the safety valve with the highest setting may be considered one of the means. As provided in the ASME Power Boiler Code, Section I, boilers fired by gaseous, liquid or solid fuel in suspension may be equipped with a single means of feeding water provided means are furnished for the immediate shutoff of heat input if the water feed is interrupted.

3. The feedwater shall be introduced into the boiler in a manner so that it will not be discharged close to riveted joints of shell or furnace sheets, or directly against surfaces exposed to products of combustion, or to direct radiation from the fire.

4. The feed piping to the boiler shall be provided with a check valve near the boiler and a valve or cock between the check valve and the boiler. When two or more boilers are fed from a common source, there shall also be a valve on the branch to each boiler between the check valve and source of supply. Whenever a globe valve is used on feed piping, the inlet shall be under the disk of the valve.

5. In all cases where returns are fed back to the boiler by gravity, there shall be a check valve and stop valve in each return line, the stop valve to be placed between the boiler and the check valve, and both shall be located as close to the boiler as is practicable. No stop valves shall be placed in the supply and return pipe connections of a single boiler installation.

6. Where deaerating heaters are not employed, the temperature of the feedwater shall not be less than 120°F to avoid the possibility of setting up localized stress. Where deaerating heaters are employed, the minimum feedwater temperature shall not be less than 215°F so that dissolved gases may be thoroughly released.

## H. Water level indicators.

1. Each boiler shall have at least one water gauge glass installed and located so that the lowest visible part of the water glass shall be at least two inches above the lowest

permissible water level, at which level there will be no danger of overheating any part of the boiler when in operation at that level; except as provided by the ASME Code.

2. No outlet connections (except for damper regulator, feedwater regulator, low-water fuel cutout, drain, steam gauges, or such apparatus that does not permit the escape of an appreciable amount of steam or water from it) shall be placed on the piping that connects the water column to the boiler. The water column shall be provided with a valved drain of at least 3/4 inch pipe size; the drain is to be piped to a safe location.

3. When the direct reading of gauge glass water level is not readily visible to the operator in his working area dependable indirect indications shall be provided utilizing remote level indicators or equipment to transmit the gauge glass image. When remote level indication is provided for the operator instead of the gauge glass, the minimum level reference shall be clearly marked.

## I. Steam gauges.

1. Each steam boiler shall have a steam gauge, with dial range not less than 1-1/2 times the maximum allowable working pressure, connected to the steam space or to the steam connection to the water column. The steam gauge shall be connected to a siphon or equivalent device of sufficient capacity to keep the gauge tube filled with water and arranged so that the gauge cannot be shut off from the boiler except by a cock with a tee or lever handle placed in the pipe near the gauge. The handle of the cock shall be parallel to the pipe in which it is located when the cock is open.

2. When a steam gauge connection longer than eight feet becomes necessary, a shutoff valve may be used near the boiler provided the valve is of the outside-screw-and-yoke type and is locked open. The line shall be of ample size with provision for free blowing.

3. Each boiler shall be provided with a test gauge connection and suitable valving for the exclusive purpose of attaching a test gauge so that the accuracy of the boiler steam gauge may be ascertained while the boiler is in operation.

## J. Stop valves.

1. Except for a single-boiler, prime-mover installation, each steam outlet from a boiler (except safety valve and water column connections) shall be fitted with a stop valve located as close as practicable to the boiler.

2. In a single-boiler, prime-mover installation the steam stop valve may be omitted provided the prime-mover throttle valve is equipped with an indicator to show whether the valve is open or closed and is designed to

withstand the required hydrostatic pressure test of the boiler.

3. When a stop valve is so located that water can accumulate, ample drains shall be provided. The drainage shall be piped to a safe location and shall not be discharged on the top of the boiler or its setting.

4. When boilers provided with manholes are connected to a common steam main, the steam connection from each boiler shall be fitted with two stop valves having an ample free-blow drain between them. The discharge of the drain shall be visible to the operator and shall be piped clear of the boiler setting. The stop valves shall consist preferably of one automatic nonreturn valve (set next to the boiler) and a second valve of the outside-screw-and-yoke type.

## K. Blowoff connection.

1. The construction of the setting around each blowoff pipe shall permit free expansion and contraction. Careful attention shall be given to the problem of sealing these setting openings without restricting the movement of the blowoff piping.

2. All blowoff piping, when exposed to furnace heat, shall be protected by firebrick or other heat-resisting material constructed so that the piping may be inspected.

3. Each boiler shall have a blowoff pipe, fitted with a valve or cock, in direct connection with the lowest water space. Cocks shall be of the gland or guard type and suitable for the pressure allowed. The use of globe valves shall not be permitted. Where the maximum allowable working pressure exceeds 100 psig, each blowoff pipe shall be provided with two valves or a valve and cock; however only one valve need be provided for forced-flow steam generators with no fixed steam and waterline; high-temperature water boilers and those used for traction or portable purposes with less than 100 gallons normal water content.

4. Blowoff piping shall comply with the requirements of the ASME Code, Section I, and ANSI B31.1, from the boiler to the valve or valves, and shall be run full size without use of reducers or bushings. All piping shall be steel. Galvanized steel pipe and fittings shall not be used for blowoff piping.

5. All fittings between the boiler and blowoff valve shall be of steel. In case of renewal of blowoff pipe or fittings, they shall be installed in accordance with this chapter for new installations.

L. Repairs and renewals of boiler fittings and appliances. Whenever repairs are made to fittings or appliances or it becomes necessary to replace them, such repairs or replacements shall comply with the requirements for new installations.

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M. Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control device that will shut off the fuel supply to each boiler or system of commonly connected boilers when the steam pressure reaches a preset maximum operating pressure. In addition, each individual automatically fired steam boiler shall have a high steam pressure limit control that will prevent generation of steam pressure in excess of the maximum allowable working pressure.

N. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations pursuant to 16VAC25-50-280 or may be referred to the chief inspector for instructions concerning the requirements.

## 16VAC25-50-380. Pressure vessels.

A. Maximum allowable working pressure for standard pressure vessels. The maximum allowable working pressure for standard pressure vessels shall be determined in accordance with the applicable provisions of the edition of the ASME or API-ASME code under which they were constructed and stamped. The maximum allowable working pressure shall not be increased to a greater pressure than shown on the manufacturers nameplate stamping and data report.

B. Maximum allowable working pressure for nonstandard pressure vessels.

1. For internal pressure. The maximum allowable working pressure on the shell of a nonstandard pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the plate, the efficiency of the longitudinal joint, the inside diameter of the weakest course and the factor set by this chapter.

$$\frac{TStE}{RFS} = \text{maximum allowable working pressure, psi}$$

where:

TS = ultimate tensile strength of shell plate, psi. When the tensile strength of the steel plate is not known, it shall be taken as 55,000 psi for temperatures not exceeding 700°F.

t = minimum thickness of shell plate of weakest course, inches,

E = efficiency of longitudinal joint depending upon construction. Use the following values:

For riveted joints -- calculated riveted efficiency;

For fusion-welded joints:

Single lap weld	40%
Double lap weld	50%
Single butt weld	60%
Double butt weld	70%
Forge weld	70%
Brazed steel	80%

R = inside radius of weakest course of shell, inches, provided the thickness does not exceed 10% of the radius. If the thickness is over 10% of the radius, the outer radius shall be used.

FS = factor of safety allowed by this chapter.

2. For external pressure. The maximum allowable working pressure for cylindrical nonstandard pressure vessels subjected to external or collapsing pressure shall be determined by the rules in Section VIII, Division 1, of the ASME Code.

3. Factors of safety. The minimum factor of safety shall in no case be less than ~~four~~ 3.5 for ~~existing installations~~ vessels built on or after January 1, 1999. For vessels built prior to January 1, 1999, the minimum factor of safety shall in no case be less than 4.0. The factor of safety may be increased when deemed necessary by the inspector to insure the operation of the vessel within safe limits. The condition of the vessel and the particular service of which it is subject will be the determining factors.

4. The maximum allowable working pressure permitted for formed heads under pressure shall be determined by using the appropriate formulas from Section VIII, Division 1, ASME Code and the tensile strength and factors of safety given in subdivisions 1 and 3 of this subsection.

C. Inspection of inaccessible parts. Where in the opinion of the inspector, as the result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall remove the materials to permit proper inspection and to establish construction details. Metal thickness shall be determined utilizing appropriate equipment including drilling if necessary.

D. Pressure relief devices. Pressure relief devices for each pressure vessel installation, not exempt by the Act, shall comply with the requirements of ASME Pressure Vessel Code, Section VIII.

## E. Safety appliances.

1. Each pressure vessel shall be protected by safety and relief valves and indicating and controlling devices which will insure its safe operation. These valves and devices shall be constructed, located and installed so that they

cannot readily be rendered inoperative. The relieving capacity of the safety valves shall prevent a rise of pressure in the vessel of more than 10% above the maximum allowable working pressure, taking into account the effect of static head. Safety valve discharges shall be located or piped so as not to endanger persons working in the area.

2. Safety valves and safety relief valves requiring repair shall be replaced with a new valve or repairs shall be performed by the original manufacturer, its authorized representative, or the holder of a "VR" stamp.

F. Repairs and renewals of fittings and appliances. Whenever repairs are made to fittings or appliances, or it becomes necessary to replace them, the repairs or replacements shall comply with requirements for new installations.

G. Conditions not covered by this chapter. All cases not specifically covered by this chapter shall be treated as new installations or may be referred to the chief inspector for instructions concerning the requirements.

#### **16VAC25-50-430. Hydrostatic pressure tests.**

A. A hydrostatic pressure test, when applied to boilers or pressure vessels, shall not exceed ~~4½~~ 1.25 times the maximum allowable working pressure, except as provided by the ASME Code. The pressure shall be under proper control so that in no case shall the required test pressure be exceeded by more than 2.0%.

B. See 16VAC25-50-360 A 4 for temperature limitations on particular power boiler installations.

C. When a hydrostatic test is to be applied to existing installations, the pressure shall be as follows:

1. For all cases involving the question of tightness, the pressure shall be equal to the working pressure.
2. For all cases involving the question of safety, the test pressure shall be equal to ~~4½~~ not exceed 1.25 times the maximum allowable working pressure for temperature. During such test the safety valve or valves shall be removed or each valve disk shall be held to its seat by means of a testing clamp and not by screwing down the compression screw upon the spring.

#### **16VAC25-50-480. Repairs and alterations.**

A. Prior to any repair, the owner or user shall notify a special inspector with the appropriate endorsement for direction or advice, or both, regarding the method and extent of repair.

B. Repairs to boilers and pressure vessels shall be done in accordance with the National Board Inspection Code by holders of an "R" Certificate of Authorization. The completed repairs shall be reviewed by and found acceptable to the

inspector or the same inspection agency who authorized the repair.

C. Alterations to boilers and pressure vessels shall be performed by an organization holding an appropriate ASME or "R" Certificate of Authorization and shall be in accordance with the National Board Inspection Code.

D. All repairs and alterations, except seal welds as defined in this subsection, shall be reported on the applicable Report of Welded Repair or Alteration form. The completed form including proper certification shall be forwarded to the chief inspector by the organization performing the repair or alteration. ~~A seal weld is a tube to tubesheet weld used to supplement an expanded tube joint to ensure leak tightness. Seal welds on carbon steel (P 1) tube joints made by qualified welders will not require an inspection nor a Form R-1.~~

E. The completed forms for routine repairs, as the term is defined in the National Board Inspection Code, need not be forwarded to the chief inspector.

**NOTICE:** The forms used in administering the above regulation are not being published; however, the name of each form is listed below. The forms are available for public inspection by contacting the agency contact for this regulation, or at the office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia.

#### **FORMS (16VAC25-50)**

R 1 Form, Report of Welded \_\_\_\_\_ Repair or  
Alteration, CVR1 Rev 1.0.

Form R-1, Report of Welded Repair, National Board Inspection Code (eff. 1/1/99), NB-66, Rev. 11.

Form R-2, Report of Alteration, National Board Inspection Code (eff. 1/1/99).

Form R-3, Report of Parts Fabricated By Welding, National Board Inspection Code (eff. 1/1/99).

Form R-4, Report Supplementary Sheet, National Board Inspection Code (eff. 1/1/99).

BPV-5, Boiler or Pressure Vessel Data Report- First Internal Inspection (eff. 1/1/99).

BPV-6, Boiler - Fired Pressure Vessel - Report of Inspection (eff. 1/1/99).

#### **DOCUMENTS INCORPORATED BY REFERENCE (16VAC25-50)**

2004 2007 Boiler and Pressure Vessel Code, ASME Code, American Society of Mechanical Engineers.

National Board Bylaws, National Board of Boiler and Pressure Vessel Inspectors, August 8, 1996.

ANSI/NB 23, 2004 2007 National Board Inspection Code, National Board of Boiler and Pressure Vessel Inspectors.

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ASME B31.1, ASME Code for Pressure Piping, American National Standards Institute, ~~1998~~ 2006.

NFPA 85 Boiler and Combustion Systems Hazards, 2001 Edition, National Fire Protection Association.

Part CG (General), Part CW (Steam and Waterside Control) and Part CF (Combustion Side Control) Flame Safeguard of ANSI/ASME CSD-1, Controls and Safety Devices for Automatically Fired Boilers, ~~1998~~ 2006, American Society of Mechanical Engineers.

"Boiler Blowoff Equipment," National Board of Boiler and Pressure Vessel Inspectors, Rules and Recommendations for the Design and Construction of Boiler Blowoff Systems, 1991.

API510, Pressure Vessel Inspection Code, Maintenance Inspection, Rating, Repair and Alteration, ~~Sixth Edition, June 1989~~ Ninth Edition, June 2006, American Petroleum Institute.

V.A.R. Doc. No. R08-1235; Filed June 24, 2009, 10:39 a.m.

## Final Regulation

**REGISTRAR'S NOTICE:** The following regulation is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Safety and Health Codes Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** **16VAC25-90. Federal Identical General Industry Standards (adding 16VAC25-90-1910.1020).**

**16VAC25-80. Access to Employee Exposure and Medical Records (repealing 16VAC25-80-10).**

**Statutory Authority:** § 40.1-22 of the Code of Virginia; Occupational Safety and Health Act of 1970 (P.L. 91-596).

**Effective Date:** August 20, 2009.

**Agency Contact:** John J. Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Powers-Taylor Building, 13 South Thirteenth Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

**Background:** In 1990, when the Safety and Health Codes Board initially considered adoption of this OSHA identical change, it was reticent to adopt the revised standard for the following reasons: the federal revision no longer required first aid records to be retained by the employer; the retention of all records versus just those records specific to establishing baseline levels or detecting occupational illness; and that only chest x-rays were to be kept in original form and no records

would be required to be kept of employees of less than one year's duration.

The advances of medical technology and digital records retention over the last 18 years have rendered many of the implicit record storage concerns moot. There is also the substantial experience of federal OSHA in those states of direct federal enforcement of 29 CFR 1910.1020 to show that the effects of these 1990 changes have not been problematic.

Federal OSHA also noted in its initial regulatory preamble to this change that it "...deemed it necessary to modify the regulation so as to strike a better balance between providing employees with information necessary to maintain the benefits established by the regulation and at the same time protect legitimate trade secrets." [53 FR 38158]

Department staff noted the numerous additional requirements in the current federal standard when staff prepared a side-by-side comparison of the text of both the Virginia unique standard and that of the federal standard. The side-by-side comparison of the two standards highlighted federal OSHA's significant effort to solve the regulatory dilemma caused by seeking to accommodate the competing interests between the need for chemical identity disclosure for medical treatment of a patient's health problems, which may be a result of chemical exposure, and significantly stronger trade secret protection for the employer that, once lost, cannot be fully recaptured.

Under this regulatory review opportunity, the board approved the department's recommendation to repeal this state unique regulation that the department determined does not meet the "as effective as" requirement under the State Plan Agreement with federal OSHA, and to adopt the current OSHA standard at 29 CFR 1910.1020. This action adopting the current federal regulation has the added benefit of providing greater regulatory consistency of occupational safety and health standards with adjacent jurisdictions for those employers who work across state lines.

## Summary:

*This action repeals the Virginia unique regulation for Access to Employee Exposure and Medical Records, 16VAC25-80-10, and adopts the federal identical final rule, 29 CFR 1910.1020, as 16VAC25-90-1910.1020.*

**Note on Incorporation by Reference:** Pursuant to § 2.2-4103 of the Code of Virginia, 29 CFR 1910.1020, Access to Employee Exposure and Medical Records, is declared a document generally available to the public and appropriate for incorporation by reference. For this reason the document will not be printed in the Virginia Register of Regulations. A copy of the document is available for inspection at the Department of Labor and Industry, 13 South Thirteenth Street, Richmond, Virginia 23219, and in the office of the Registrar of Regulations, General Assembly Building, 9th and Broad Streets, Richmond, Virginia 23219.

Statement of Final Agency Action: On April 16, 2009, the Safety and Health Codes Board approved the adoption of federal OSHA's final rule for Access to Employee Exposure and Medical Records, 29 CFR 1910.1020 and repealed its Virginia unique version of the regulation, Access to Employee Exposure and Medical Records, 16VAC25-80-10.

Federal Terms and State Equivalents: When the regulations, as set forth in the final rule for Access to Employee Exposure and Medical Records, 29 CFR 1910.1020, are applied to the Commissioner of the Department of Labor and Industry or to Virginia employers, the following federal terms shall be considered to read as follows:

<u>Federal Terms</u>	<u>VOSH Equivalent</u>
29 CFR	VOSH Standard
Assistant Secretary	Commissioner of Labor and Industry
Agency	Department

VA.R. Doc. No. R09-1951; Filed June 24, 2009, 10:39 a.m.

**18VAC48-20-540, 18VAC48-20-550, 18VAC48-20-560,  
18VAC48-20-570, 18VAC48-20-580, 18VAC48-20-590,  
18VAC48-20-600, 18VAC48-20-610, 18VAC48-20-620,  
18VAC48-20-630, 18VAC48-20-640, 18VAC48-20-650,  
18VAC48-20-660, 18VAC48-20-670, 18VAC48-20-680,  
18VAC48-20-690, 18VAC48-20-700, 18VAC48-20-710,  
18VAC48-20-720, 18VAC48-20-730.**

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

Notice of Repeal of/Change in Expiration Date of Emergency Regulation transferring Condominium Regulations from the Real Estate Board to the Common Interest Community Board (18VAC48-20):

Effective July 9, 2009, I hereby repeal the above-styled emergency regulation promulgated by the Common Interest Community Board of the Department of Professional and Occupational Regulation through the Secretary of Commerce and Trade. I authorized this emergency regulation on October 17, 2008; it became effective on November 13, 2008, and is scheduled to expire on November 12, 2009.

Subsequent to the promulgation of this emergency regulation, Chapter 557, 2009 Acts of Assembly, was enacted which allowed the Common Interest Community Board to promulgate the Condominium Regulations as an exempt action. On April 28, 2009, the Common Interest Community Board authorized an exempt action to transfer the Condominium Regulations from the Real Estate Board to the Common Interest Community Board. This final exempt action is scheduled to become effective on July 9, 2009.

Accordingly, after July 8, 2009, there is no further need for the above-styled emergency regulation.

I am therefore directing the Secretary of Commerce and Trade and the Director of the Department of Professional and Occupational Regulation to reschedule this emergency regulation to expire on July 9, 2009, in light of the fact that on July 9, 2009, the final exempt regulation permanently transferring the Condominium Regulations to the Common Interest Community Board will take effect.

/s/ Timothy M. Kaine

Governor

Commonwealth of Virginia

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-0362, FAX (804) 367-4297, or email cic@dpor.virginia.gov.

VA.R. Doc. No. R09-1567; Filed June 26, 2009, 1:52 p.m.

**Title of Regulation: 18VAC48-20. Condominium Regulations (adding 18VAC48-20-10, 18VAC48-20-20, 18VAC48-20-30, 18VAC48-20-40, 18VAC48-20-50, 18VAC48-20-60, 18VAC48-20-70, 18VAC48-20-80, 18VAC48-20-90, 18VAC48-20-100, 18VAC48-20-110, 18VAC48-20-120, 18VAC48-20-130, 18VAC48-20-140, 18VAC48-20-150, 18VAC48-20-160, 18VAC48-20-170, 18VAC48-20-180, 18VAC48-20-190, 18VAC48-20-200, 18VAC48-20-210, 18VAC48-20-220, 18VAC48-20-230, 18VAC48-20-240, 18VAC48-20-250, 18VAC48-20-260, 18VAC48-20-270, 18VAC48-20-280, 18VAC48-20-290, 18VAC48-20-300, 18VAC48-20-310, 18VAC48-20-320, 18VAC48-20-330, 18VAC48-20-340, 18VAC48-20-350, 18VAC48-20-360, 18VAC48-20-370, 18VAC48-20-380, 18VAC48-20-390, 18VAC48-20-400, 18VAC48-20-410, 18VAC48-20-420, 18VAC48-20-430, 18VAC48-20-440, 18VAC48-20-450, 18VAC48-20-460, 18VAC48-20-470, 18VAC48-20-480, 18VAC48-20-490, 18VAC48-20-500, 18VAC48-20-510, 18VAC48-20-520, 18VAC48-20-530,**

# Regulations

## DEPARTMENT OF HEALTH PROFESSIONS

### Final Regulation

**REGISTRAR'S NOTICE:** The following regulation filed by the Department of Health Professions is exempt from the Administrative Process Act in accordance with § 2.2-4002 B 18 of the Code of Virginia, which exempts regulations for the implementation of the Health Practitioners' Monitoring Program, Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 of the Code of Virginia.

**Title of Regulation:** 18VAC76-10. Regulations Governing the Health Practitioners' Intervention Program for the Department of Health Professions (amending 18VAC76-10-10 through 18VAC76-10-70; repealing 18VAC76-10-90).

**Statutory Authority:** § 54.1-2516 of the Code of Virginia.

**Effective Date:** July 1, 2009.

**Agency Contact:** Peggy Wood, Program Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4418, FAX (804) 527-4475, or email peggy.wood@dhp.virginia.gov.

#### Summary:

*Consistent with Chapter 472 of the 2009 Acts of Assembly, in part, the title of the regulation is changed from Health Practitioners' Intervention Program to the Health Practitioners' Monitoring Program to more accurately reflect the intent and scope of the program. Other amendments include:*

- 1. Changes in the organization of the committee to delete outdated language and allow more flexibility in scheduling meetings as necessary;*
- 2. Changes in eligibility requirements to stipulate that a person must hold a current, active Virginia license, certification, registration, or multistate licensure privilege or be an applicant in order to focus program services on licensees who are or will be practicing in Virginia. The intent of the program is to monitor impaired practitioners to ensure that they are safe to engage in practice in Virginia. If a person does not hold a license (suspended, revoked, or lapsed), or if he is not currently practicing in Virginia, he will not be eligible for the program;*
- 3. Changes to allow the committee to designate staff to perform some of its functions in order to expedite decisions and actions, so the duties of the committee can be more policy oriented and less involved in routine operations of the program; and*
- 4. Changes to amend terminology that is outdated or inconsistent with the amended name of the program.*

## CHAPTER 10

### REGULATIONS GOVERNING THE HEALTH PRACTITIONERS' INTERVENTION MONITORING PROGRAM FOR THE DEPARTMENT OF HEALTH PROFESSIONS

#### 18VAC76-10-10. Definitions.

The words and terms used in this chapter shall have the definitions ascribed to them in § 54.1-2515 of the Code of Virginia or shall have the following meanings, unless the context clearly indicates otherwise:

"Committee" means the Intervention Health Practitioners' Monitoring Program Committee as defined in § 54.1-2515 of the Code of Virginia.

"Contractor" means an entity with whom the director has contracted for implementation and operation of intervention monitoring services.

"Director" means the Director of the Department of Health Professions.

"Program" means the Health Practitioners' Intervention Monitoring Program for the Virginia Department of Health Professions.

"Regulated" means a person who is or was licensed, certified, or registered or an applicant who is otherwise fully eligible for licensure, certification, or registration by a health regulatory board within the Virginia Department of Health Professions.

#### 18VAC76-10-20. Organization of committee.

A. Except for the initial appointments, members Members shall be appointed for a term of four years and shall be eligible for reappointment for one additional four-year term. A member who is appointed to fill a vacancy for the remainder of an unexpired term shall be eligible for two full four-year terms. Terms of appointment shall begin on July 1 of each calendar year.

B. The initial appointees to the committee shall begin their terms on July 1, 1997, and shall be appointed as follows:

1. Two members shall serve for a term of one year, two members shall serve for a term of two years, and two members shall serve for a term of three years. All of the above shall be eligible for reappointment to two four-year terms.

2. One member shall serve for a term of four years and shall be eligible for reappointment to one four-year term.

C. B. Members of the committee shall not be current members of a health regulatory board within the department.

D. The committee shall elect a chairman and vice chairman for a one year term ending June 30 of each calendar year.

~~E. C.~~ The committee shall ~~meet not less than once every two months and shall conduct all business according to Robert's Rules of Order schedule meetings as necessary to conduct its business.~~ Four members shall constitute a quorum. The committee may adopt bylaws to govern its operations as it deems necessary to conduct its business and as consistent with law and regulations.

~~F. D.~~ Except in the event of an emergency, any member who is unable to attend a scheduled meeting shall give notice to the program coordinator as soon as practical but no later than 48 hours prior to that scheduled meeting.

~~G. E.~~ The director shall have the authority to remove a member and shall report such removal to the Board of Health Professions at its next scheduled meeting. Failure of any member to attend two successive meetings without reasonable excuse or failure to give notice as required in subsection ~~F D~~ of this section shall constitute grounds for removal.

~~H. F.~~ By December 31 of each calendar year, each health regulatory board within the department shall designate, in accordance with § 54.1-2400 (8) of the Code of Virginia, a liaison to the committee for a term of one year. Likewise, each board shall select an alternate to serve in the absence of the liaison.

## 18VAC76-10-30. Eligibility.

~~A. Any In order to become eligible for the program and to maintain eligibility, an impaired practitioner regulated by the department shall be eligible for the program shall hold a current, active license, certification, a registration issued by a health regulatory board in Virginia or a multistate licensure privilege, with the exception that an applicant for initial licensure, certification, or registration or for reinstatement shall be eligible for participation for up to one year from the date of receipt of the application by a health regulatory board.~~

~~B. Individuals who are practicing exclusively outside of Virginia shall not participate in the program, except as may be required by specific board order or by permission between party states pursuant to the Nurse Licensure Compact (Article 6 (§ 54.1-3030 et seq.) of Chapter 30 of Title 54.1 of the Code of Virginia).~~

~~C. A practitioner who has been previously terminated for noncompliance from this or any other state-sponsored intervention monitoring program may be considered eligible at the discretion of the contractor committee or its designee.~~

~~B. D. For the purposes of eligibility for the program, impairment shall not include kleptomania, pyromania, transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, sexual behavioral disorders, homosexuality and bisexuality.~~

~~C. In order to become eligible for participation in the program, the ~~E. The~~ practitioner shall sign a participation~~

contract with the committee. Failure to adhere to the terms of the contract may subject the practitioner to termination from the program.

~~D. Unless otherwise ordered by a regulatory board, a practitioner shall maintain a current license, certificate, or registration to remain eligible for participation in the program.~~

## 18VAC76-10-40. Eligibility for stayed disciplinary action.

A. The committee ~~or its designee~~ shall consult with the board liaison for the purpose of determining whether disciplinary action ~~should~~ ~~shall~~ be stayed. If ~~it is determined that~~ an applicant for the program is not eligible for a stay and evidence of a violation has been reported to the committee, the committee shall make a report of the violation to the ~~Enforcement Division of the~~ department. If found ineligible for stayed disciplinary action, the practitioner may remain eligible for ~~participation in~~ the program.

B. Prior to making a decision on stayed disciplinary action, the committee ~~or its designee~~ shall review any applicable notices or orders and shall consult with the ~~Enforcement Division of the~~ department on any pending investigations.

C. Disciplinary action may be initiated by the appropriate health regulatory board upon receipt of investigative information leading to a determination of probable cause that impairment constitutes a danger to patients or clients or upon a determination that the ~~committee~~ decision for stayed disciplinary action is not consistent with provisions for a stay pursuant to § 54.1-2516 C of the Code of Virginia.

## 18VAC76-10-50. Participation contract.

A. The participation contract between the committee and the practitioner shall include at least the following elements:

1. The ~~treatment~~ monitoring plan to be followed by the practitioner;
2. Any provisions for withdrawal from practice or limitations on the scope of practice;
3. Consequences of failure to comply with the ~~treatment plan terms of the participation contract~~;
4. Any releases for seeking information or records related to the impairment from family, peers, medical personnel or employers;
5. A brief written history of the nature of the impairment; and
6. Any other terms or requirements as may be deemed necessary by the committee.

B. The participation contract shall specify that costs accruing to the individual practitioner, including but not limited to treatment and body fluid screens, shall not be the responsibility of the program.

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## 18VAC76-10-60. Recovery contract.

The recovery contract between the committee and the practitioner ~~may shall include but not be limited to the following:~~

1. Length of contract;
2. Type, frequency, and conditions of drug screens;
3. Type and frequency of self-help meetings;
4. Stipulations for self-reporting;
5. Quarterly reports from employers, peers, or peer assistance programs;
6. Conditions and terms for completion and release from the program; and
7. Any other terms or requirements as may be deemed necessary by the committee.

## 18VAC76-10-70. Procedures for consultation with liaisons of health regulatory boards.

A. The committee or its designee shall consult with the liaison of the relevant health regulatory board prior to making a determination on stayed disciplinary action; such consultation may include the following:

1. Eligibility of a practitioner for stayed disciplinary action;
2. The implications of the impairment on practice in the profession;
3. The circumstances of the impairment related to a possible violation of laws or regulation; or
4. Any other issues related to disciplinary action or the eligibility, treatment and recovery of a practitioner.

B. In its consultation with the board liaison, the committee shall not disclose the name of the practitioner.

## 18VAC76-10-90. Procedures for communication. (Repealed.)

Except as provided for in § 54.1-2518 of the Code of Virginia, no communication with an applicant or a participant in the program shall be initiated except through the contractor or through the committee.

VA.R. Doc. No. R09-1878; Filed July 1, 2009, 12:53 p.m.

## BOARD OF MEDICINE Final Regulation

**REGISTRAR'S NOTICE:** The Board of Medicine has claimed an exemption 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 or the appropriation act where no agency discretion is involved. The Board of

Medicine will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Titles of Regulations:** 18VAC85-20. Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (amending 18VAC85-20-21).

18VAC85-40. Regulations Governing the Practice of Respiratory Care Practitioners (amending 18VAC85-40-25).

18VAC85-50. Regulations Governing the Practice of Physician Assistants (adding 18VAC85-50-21).

18VAC85-80. Regulations Governing the Licensure of Occupational Therapists (amending 18VAC85-80-25).

18VAC85-101. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited (adding 18VAC85-101-26).

18VAC85-110. Regulations Governing the Practice of Licensed Acupuncturists (adding 18VAC85-110-36).

18VAC85-120. Regulations Governing the Licensure of Athletic Trainers (amending 18VAC85-120-30).

18VAC85-130. Regulations Governing the Practice of Licensed Midwives (adding 18VAC85-130-31).

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

**Effective Date:** August 19, 2009.

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

## Summary:

*In compliance with Chapter 687 of the 2009 Acts of Assembly, the Board of Medicine has amended its regulations relating to the responsibility of the licensee or registrant to provide current addresses. Every licensee and registrant is required to provide an address of record for use by the board, and is permitted to provide a second address to be used as the public address. If a second address is not provided, the address of record becomes the public address. Regulations are amended to use the statutory terminology of address of record and to clarify that the regulant has a responsibility to notify the board within 30 days if there is a change in the address of record or the public address, if different from the address of record.*

## 18VAC85-20-21. Current addresses.

Each licensee shall furnish the board his current address of record. All notices required by law or by this chapter to be mailed by the board to any such licensee shall be validly given when mailed to the latest address of record given by the

licensee. Any change of in the address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-40-25. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-50-21. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-80-25. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-101-26. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-110-36. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-120-30. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by these regulations to be mailed by the board to any such licensee shall be validly given when mailed to the latest address of record given to the board. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

## **18VAC85-130-31. Current name and address.**

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

VA.R. Doc. No. R09-1848; Filed July 1, 2009, 12:53 p.m.



## **TITLE 22. SOCIAL SERVICES**

### **STATE BOARD OF SOCIAL SERVICES**

#### **Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Social Services is claiming an exemption 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 State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **22VAC40-35. Virginia Independence Program (amending 22VAC40-35-40).**

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

**Effective Date:** August 19, 2009.

**Agency Contact:** Mark L. Golden, TANF Program Manager, Department of Social Services, 7 North Eighth Street, Room 5214, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7356, or email mark.golden@dss.virginia.gov.

#### **Summary:**

*To conform to Chapters 61 and 547 of the 2009 Acts of Assembly, the amendment amends the time frames during which needy households can receive diversionary cash assistance, a one-time lump sum assistance payment intended to divert the family from long-term welfare.*

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*Rather than being restricted to receipt of diversionary cash assistance once every 60 months, the law was amended to allow receipt of diversionary cash assistance up to once every 12 months.*

## **22VAC40-35-40. Diversionary assistance program eligibility criteria.**

A. An assistance unit shall be eligible to receive diversionary cash assistance if:

1. Verification is provided to the local department of social services that the assistance unit has a temporary loss of income or delay in starting to receive income resulting in an emergency;
2. The assistance unit meets AFDC requirements specified in § 63.2-617 of the Code of Virginia; and
3. The local department of social services determines that diversionary assistance will resolve the emergency.

B. The amount of assistance provided shall be up to the maximum TANF amount for 120 days that the family would otherwise be eligible to receive. The amount of the payment is based on immediate needs of the applicant. Local agencies shall strive to provide the most cost-effective solution to the one-time emergency.

C. If an assistance unit receives a diversionary assistance payment, all assistance unit members shall be ineligible for TANF for 1.33 times the number of days for which assistance is granted, beginning with the date that the diversionary assistance is issued.

D. An assistance unit shall be eligible to receive diversionary assistance once in a ~~60-month~~ 12-month period.

E. Receipt of diversionary assistance is voluntary.

F. Local social services agencies shall determine eligibility for diversionary assistance within five working days of the receipt of the final verification that substantiates eligibility, or within 30 days of the date of the receipt of the signed application, whichever occurs first.

VA.R. Doc. No. R09-1970; Filed June 26, 2009, 1:16 p.m.

## **Final Regulation**

**REGISTRAR'S NOTICE:** The State Board of Social Services is claiming an exemption 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 State Board of Social Services will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** 22VAC40-41. Neighborhood Assistance Tax Credit Program (amending 22VAC40-41-

**10, 22VAC40-41-20, 22VAC40-41-40, 22VAC40-41-50, 22VAC40-41-55, 22VAC40-41-60).**

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

**Effective Date:** September 1, 2009.

**Agency Contact:** J. Mark Grigsby, Director, Office of Community Services, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7922, FAX (804) 726-7946, or email james.grigsby@dss.virginia.gov.

## **Summary:**

*This regulatory action implements Chapters 463 and 585 of the 2008 Acts of Assembly and Chapters 10 and 851 of the 2009 Acts of Assembly. The proposed amendments (i) update obsolete Code of Virginia citations that resulted from the Neighborhood Assistance Program statutes being moved from Title 63.2 of the Code of Virginia, pertaining to Welfare (Social Services), to Title 58.1, pertaining to Taxation; (ii) change a number of definitions to reflect statutory changes; and (iii) reflect that an organization providing educational services applies to the Superintendent of Public Instruction, not to the Commissioner of the Department of Social Services.*

## **22VAC40-41-10. Definitions.**

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

"Approved organization" means a neighborhood organization that has been found eligible to participate in the Neighborhood Assistance Program.

"Audit" means any audit required under the federal Office of Management and Budget's Circular A-133, or, if a neighborhood organization is not required to file an audit under Circular A-133, a detailed financial statement prepared by an outside independent certified public accountant.

"Business firm" means any corporation, partnership, electing small business (Subchapter S) corporation, limited liability company, or sole proprietorship authorized to do business in this Commonwealth subject to tax imposed by Articles 2 (§ 58.1-320 et seq.) and 10 (§ 58.1-400 et seq.) of Chapter 3, Chapter 12 (§ 58.1-1200 et seq.), Article 1 (§ 58.1-2500 et seq.) of Chapter 25, or Article 2 (§ 58.1-2620 et seq.) of Chapter 26 of Title 58.1 of the Code of Virginia.

"Commissioner" means the Commissioner of the Department of Social Services, his designee or authorized representative.

"Community services" means any type of counseling and advice, emergency assistance, medical care, provision of basic necessities, or services designed to minimize the effects of poverty, furnished primarily to impoverished people.

"Contracting services" means the provision, by a business firm licensed by the Commonwealth of Virginia as a contractor under Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, of labor or technical advice to aid in the development, construction, renovation, or repair of (i) homes of impoverished people or (ii) buildings used by neighborhood organizations.

"Education" means any type of scholastic instruction or ~~scholarship~~ scholastic assistance to an individual who is impoverished.

"Housing assistance" means furnishing financial assistance, labor, material, or technical advice to aid the physical improvement of the homes of impoverished people.

"Impoverished people" means, for neighborhood organizations not providing education services, people in Virginia with incomes at or below 150% of the poverty guidelines as defined by the United States Office of Management and Budget as published in the Federal Register (62 FR 10856), and as updated and republished annually in the Federal Register updated periodically in the Federal Register by the U.S. Department of Health and Human Services under the authority of 42 USC § 9902(2).

"Job training" means any type of instruction to an individual who is impoverished that enables him to acquire vocational skills so that he can become employable or able to seek a higher grade of employment.

"Neighborhood assistance" means providing community services, education, housing assistance, or job training.

"Neighborhood organization" means any local, regional or statewide organization whose primary function is providing neighborhood assistance for impoverished people, and holding a ruling from the Internal Revenue Service of the United States Department of the Treasury that the organization is exempt from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code of 1986, as amended from time to time, or any organization defined as a community action agency in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.), or any housing authority as defined in § 36-3 of the Code of Virginia.

"Professional services" means any type of personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization and shall include, but not be limited to, the personal services rendered by medical doctors, dentists, architects, professional engineers, certified public accountants and attorneys-at-law, and veterinarians.

"Scholastic assistance" means (i) counseling or supportive services to elementary school, middle school, secondary school, or postsecondary school students or their parents in developing a postsecondary academic or vocational education

plan, including college financial options for such students or their parents, or (ii) scholarships.

**22VAC40-41-20. Purpose; procedure for becoming an approved organization; eligibility criteria; termination of approved organization; appeal procedure.**

A. The purpose of the Neighborhood Assistance Program is to encourage business firms and individuals to make donations to neighborhood organizations for the benefit of impoverished people.

B. Neighborhood organizations wishing that do not provide education services and that wish to become an approved organization must submit an application and provide the following information to the commissioner: Neighborhood organizations that provide education services must submit an application to the Superintendent of Public Instruction. The application submitted to the Superintendent of Public Instruction must comply with regulations or guidelines adopted by the Board of Education. The application submitted to the commissioner must contain the following information:

1. A description of their eligibility as a neighborhood organization, the programs being conducted, the impoverished people assisted, the estimated amount that will be donated to the programs, and plans for implementing the programs.

2. Proof of the neighborhood organization's current exemption from income taxation under the provisions of § 501(c)(3) or § 501(c)(4) of the Internal Revenue Code, or the organization's eligibility as a community action agency as defined in the Economic Opportunity Act of 1964 (42 USC § 2701 et seq.) or housing authority as defined in § 36-3 of the Code of Virginia.

3. A copy of the neighborhood organization's current audit, a copy of the organization's current federal form 990, a current brochure describing the organization's programs, and a copy of the annual report filed with the Department of Agriculture and Consumer Services' Division of Consumer Protection.

4. A statement of objective and measurable outcomes that are expected to occur and the method the organization will use to evaluate the program's effectiveness.

C. To be eligible for participation in the Neighborhood Assistance Program, the applicant must meet the following criteria:

1. Applicants must have been in operation as a viable entity, providing neighborhood assistance for impoverished people, for at least 12 months.

2. Applicants must be able to demonstrate that at least 50% of the total people served and at least 50% of the total expenditures were for impoverished people.

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3. Applicant's audit must not contain any significant findings or areas of concern for the ongoing operation of the neighborhood organization.

4. Applicants must demonstrate that at least 75% of total revenue received is expended to support their ongoing programs each year.

D. The application period will start no later than March 15 of each year. All applications must be received by the Department of Social Services no later than the first business day of May.

E. Those applicants submitting all required information and reports and meeting the eligibility criteria described in this section will be determined an approved organization. The program year will run from July 1 through June 30 of the following year.

F. The commissioner may terminate an approved organization's eligibility based on a finding of program abuse involving illegal activities or fraudulent reporting on contributions.

G. Any neighborhood organization that disagrees with the disposition of its application, or its termination as an approved organization, may appeal to the commissioner in writing for a reconsideration. Such requests must be made within 30 days of the denial or termination. The commissioner will act on the request and render a final decision within 30 days of the request for reconsideration.

## **22VAC40-41-40. Value of donations.**

A. The approved organization is responsible for maintaining documentation as required by the Department of Social Services to verify the date and value of all donations.

B. The value of donations of cash, including stocks, real estate, and merchandise to be used by the approved organization is the value determined for federal tax purposes using IRS regulations (26 CFR 1 et seq., and as amended).

C. The value of merchandise, other than a motor vehicle, donated to be sold, auctioned or raffled is the lesser of the value determined for federal tax purposes using IRS regulations or the actual proceeds received by the approved organization.

D. The value of a motor vehicle donated to be sold, auctioned, or raffled is the value determined for federal tax purposes using IRS regulations.

D. E. The value assigned for donated rent/lease of the approved organization's facility must be reasonable and cannot exceed the prevailing square footage rental charge for comparable property.

E. F. The value of professional and contracting services is determined as follows:

1. When a business donates professional or contracting services provided by employees, the value of the donation shall be equal to the salary that such employee was actually paid for the period of time that such employee rendered professional or contracting services to the approved organization. Operating overhead and benefit costs are not included in determining the value.

2. When a sole proprietor, partner in a partnership, or member of a limited liability company renders professional or contracting services to an approved organization, the value of the professional or contracting services shall not exceed the lesser of the reasonable cost for similar services from other providers or the maximum amount set forth in §§ 63.2-2004 58.1-439.22 and 63.2-2005 58.1-439.23 of the Code of Virginia.

## **22VAC40-41-50. Donations by businesses and health care professionals.**

A. As provided by § 63.2-2003 58.1-439.21 of the Code of Virginia, a business firm shall be eligible for a tax credit based on the value of the money, property, professional services, and contracting services donated by the business firm during its taxable year to an approved organization.

B. No tax credit shall be granted to any business firm for donations to an approved organization providing job training or education for individuals employed by the business firm.

C. Health care professionals that meet certain conditions, as specified in § 63.2-2004 C 58.1-439.22 C of the Code of Virginia, shall be eligible for a tax credit based on the time spent in providing health care services for such clinic.

D. All donations must be made directly to the approved organization without any conditions or expectation of monetary benefit. Discounted donations and bargain sales are not allowable donations for the Neighborhood Assistance Program.

E. Granting of tax credits shall conform to the minimum and maximum amounts prescribed in § 63.2-2003 58.1-439.21 of the Code of Virginia.

F. Credits granted to a partnership, electing small business (Subchapter S) corporation, or limited liability company shall be allocated to their individual partners, shareholders, or members, respectively, in proportion to their ownership or interest in such business entities.

G. The approved organization and donor shall complete a certification on a form prescribed by the Department of Social Services. The certification shall identify the date, type, and value of the donation.

H. All certifications must be submitted to the Department of Social Services within four years of the date of donation.

I. Upon receipt and approval of the certification, the commissioner shall issue a tax credit certificate to the business.

## **22VAC40-41-55. Donations by individuals.**

A. As provided in § ~~63.2-2006~~ 58.1-430.24 of the Code of Virginia, an individual shall be eligible for a tax credit for a cash donation to an approved organization.

B. Such donations are subject to the minimum and maximum amounts and other provisions set forth in § ~~63.2-2006~~ 58.1-439.24 of the Code of Virginia.

C. The approved organization and the individual shall complete a certification on a form prescribed by the Department of Social Services. The certification shall identify the date and amount of the donation.

D. All certifications must be submitted to the Department of Social Services within four years of the date of donation.

E. Upon receipt and approval of the certification, the commissioner shall issue a tax credit certificate to the individual.

## **22VAC40-41-60. Determining date of donation.**

A. The date of donation for cash, including stocks, real estate, and merchandise to be used by the approved organization, is the date used for federal tax purposes according to IRS regulations.

B. The date of the donation for merchandise donated to be sold, auctioned, or raffled is the date the proceeds were received by the approved organization.

C. The date of donation for professional services is the date the service is completed.

D. The date of donation for donated rent/lease is the effective date of the lease.

VA.R. Doc. No. R09-1987; Filed June 26, 2009, 1:20 p.m.

## **Final Regulation**

**Titles of Regulations:** 22VAC40-410. Entitlement Date in the General Relief Program (repealing 22VAC40-410-10, 22VAC40-410-20).

**22VAC40-411. General Relief Program (adding 22VAC40-411-10 through 22VAC40-411-220).**

**22VAC40-570. General Relief (GR) Program - Locality Options (repealing 22VAC40-570-10 through 22VAC40-570-100).**

**22VAC40-640. General Relief Program - Deeming Income From Alien Sponsors (repealing 22VAC40-640-10 through 22VAC40-640-80).**

**Statutory Authority:** §§ 63.2-217 and 63.2-802 of the Code of Virginia.

**Effective Date:** September 1, 2009.

**Agency Contact:** Mark Golden, General Relief Program Manager, Department of Social Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7385, FAX (804) 726-7357, or email mark.golden@dss.virginia.gov.

## **Summary:**

*The General Relief Program provides assistance to individuals who are not eligible for other forms of assistance and is an optional program at the local level. The regulation defines the different types of assistance available, how income and resources are evaluated for aliens, how recipients can receive assistance through the disability advocacy project, and establishes the date for which eligibility for general relief begins. This action combines the provisions of four existing regulations into one comprehensive set of rules for the General Relief Program.*

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

## **CHAPTER 411 GENERAL RELIEF PROGRAM**

### **22VAC40-411-10. Definitions.**

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

"Advocacy services" means legal services to help establish eligibility for federal disability benefits.

"Affidavit of support" or "Form I-134" means a statement of a sponsor's income, resources, and willingness to support. Form I-134 or similar form is filed with the Citizenship and Immigrant Services (USCIS) by a United States resident who sponsors an alien seeking admission to the United States as a permanent resident. The affidavit is made for the purpose of assuring the United States government that the sponsored alien will not become a public charge in the United States.

"Agency" means the local department of social services.

"Agency action" or "action" means action taken by the superintendents or directors or local board certifying the individual or family is eligible for maintenance or emergency assistance.

"Agency contract" means the local department of social services has an agreement with a pharmacy to provide prescription drugs for recipients of General Relief.

"Appeal process" means a review of the decision on the disability claim that can involve four steps: reconsideration,

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hearing before an administrative law judge, review by Appeals Council, and hearing in a federal court.

"Assistance for unattached children" means a component of the General Relief Program that can provide assistance to children who would be eligible for Temporary Assistance for Needy Families (TANF) if the relationship requirement were met.

"Assistance for unemployable individuals" means a component of the General Relief Program that can provide assistance to individuals who are unable to work because of physical or mental disability, age or lack of training, illness in the family, or home responsibilities.

"Assistance for unemployed employable individuals" means a component of the General Relief Program that can provide assistance to individuals who are not working but are able to work.

"Assistance unit" means the individual or group of individuals whose needs, income, and resources are considered in determining eligibility for a component.

"Bar association" means a professional association for attorneys.

"Clothing assistance" means a component of the General Relief Program that can be used to purchase clothing for individuals who have an emergency need.

"Component" means a specific type of assistance provided under the General Relief Program.

"Disability" means a physical or mental condition rendering a person unable to perform any meaningful work and this condition is expected to last at least 12 months or result in death.

"Disability Determination Services" means a program administered by the Virginia Department of Rehabilitative Services that makes decisions on disability claims for the Social Security Administration.

"Disability insurance benefits" means Title II of the Social Security Act that provides benefits to disabled persons who have worked for a substantial period in employment covered by Social Security.

"Entitlement date or entitlement" means the date eligibility begins.

"Emergency medical assistance" means a component of the General Relief Program that can be used to purchase medical assistance for individuals who have an emergency need.

"Equal Access to Justice Act" means an act that allows a federal court to grant an attorney a fee for proceedings before an administrative agency.

"Food credit authorization assistance" means a component of the General Relief Program that can be used to purchase food for individuals who have an emergency need.

"Federal disability benefits" means disability insurance benefits or Supplemental Security Income.

"Foster child" means a child who is entrusted or committed to a state mandated service and the child is identified as "at risk" or "in crisis."

"General Relief Plan" means the document completed by a local department of social services to identify the components included in the General Relief Program for the locality.

"General Relief Program (GR)" means an optional program funded by state (62.5%) and local funds (37.5%) with the primary purpose of assisting individuals who do not qualify for aid in a federal category. The program is supervised by the State Department of Social Services and administered by local agencies. Each agency chooses the components and subcomponents to be included in its General Relief Program.

"Hearing before an administrative law judge" means the first level formal fair hearing of decisions of the Social Security Administration to deny federal disability benefits. The hearing is conducted by an attorney who is an official of the Social Security Administration.

"Interim assistance" means a component of the General Relief Program that can provide assistance to individuals who have applied for Supplemental Security Income (SSI), who must apply for SSI, or are appealing an SSI decision. Individuals receiving interim assistance must sign an authorization allowing the Social Security Administration to send their initial retroactive Supplemental Security Income benefits to the local agency, which then reimburses its general relief budget for the amount of financial assistance given the individuals while their Supplemental Security Income benefits were pending approval.

"Legal aid attorney" means an attorney who provides legal services at no cost to people within certain income guidelines.

[ "Maintenance payments" or "maintenance" means ongoing financial assistance from the general relief program. ]

"Maximum for the locality" means the amount of reimbursable assistance applicable to some components based on the agency group. Agencies are placed in one of three groups based on shelter expenses in the area.

[ "Maintenance payments" or "maintenance" means ongoing financial assistance from the general relief program. ]

"Monthly maximum" means the dollar amount of assistance specified in the General Relief Plan for some components.

"Ongoing medical assistance" means a component of the General Relief Program that can be used to provide

individuals continuing medical assistance. The component is composed of 10 subcomponents including prescription drugs.

"Permanent resident status" means having been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

"Private attorney" means an attorney engaged in the private practice of law for which a fee is charged.

"Provider" means an attorney, or an individual working under the supervision of an attorney legally allowed to do so, who provides assistance in establishing an individual's eligibility for federal disability benefits.

"Recipient" means an individual who is receiving interim assistance.

"Reconsideration" means a review of the disability claim by the Disability Determination Services.

[ "Recoupment" means the amount reimbursed to the general relief or state and local foster care funds from an individual's retroactive Supplemental Security Income benefits for assistance to that individual while approval for federal disability benefits was pending approval. ]

"Reimbursable" means the amount an assistance unit can receive per month for which the state/local match is available.

"Rent/house payments" means a subcomponent of the shelter assistance component that can be used to pay housing expenses.

[ "Recoupment" means the amount reimbursed to the general relief or state and local foster care funds from an individual's retroactive Supplemental Security Income benefits for assistance to that individual while approval for federal disability benefits was pending approval. ]

"Review by the Appeals Council" means a review of the decisions of the administrative law judge by a review unit of the Social Security Administration. The Appeals Council either decides the case or issues an order returning it to an administrative law judge for further review.

"Shelter assistance" means a component of the General Relief Program that can be used to provide for the shelter needs of individuals. The component's two subcomponents are rent/house payments and utility payments.

"Sponsor" means a person, or any public or private agency or organization, that executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry into the United States as a permanent resident.

"Sponsored alien" means an immigrant who due to the likelihood of his becoming a public charge would have been excluded from lawful admission into the United States. As a condition of this immigrant's admission, a person or public or private agency or organization executed an affidavit of support or similar agreement guaranteeing the federal, state,

and local governments that the immigrant would not become a public charge.

"Standard of assistance" means the amount of reimbursable assistance based on the size of the assistance unit and the local department of social services group. Local agencies are placed in one of three groups based on shelter expenses in the area.

"Standard of assistance at 90% of need" means the amount of reimbursable assistance applicable to some components based on the size of the assistance unit and the agency group. Agencies are placed in one of three groups based on shelter expenses in the area.

"Subcomponent" means a part of a component.

"Supplemental Security Income" means Title XVI of the Social Security Act that provides benefits to a disabled person based on financial need.

"Temporary Assistance for Needy Families" (TANF) means the federal program administered by the Virginia Department of Social Services that provides assistance for families with children.

"United States Citizenship and Immigration Services (USCIS)" is a branch of the United States Department of Homeland Security delegated authority to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens.

"Utility payments" means a subcomponent of the shelter assistance component that can be used to pay for items, such as electricity, oil, water, and natural gas.

## **22VAC40-411-20. General Relief Plan.**

The General Relief Program is an optional program designed to provide assistance, either maintenance or emergency, that cannot be provided through other means. Local departments of social services that operate a General Relief Program may offer one or more components. Each local department of social services must submit a plan to the Virginia Department of Social Services indicating which components are operated.

## **22VAC40-411-30. Assistance for unemployed employable individuals.**

An agency electing to provide this component will specify in its General Relief Plan the types of assistance units served. The choices are:

1. Parents and their minor children;
2. A parent and minor children;
3. A married couple with no children;
4. One individual; or
5. An unmarried pregnant woman.

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## **22VAC40-411-40. Assistance for unemployed individuals.**

An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:

1. The standard of assistance at 90% of need times three;
2. The standard of assistance at 90% of need times six;
3. The standard of assistance at 90% of need times nine; or
4. The standard of assistance at 90% of need times 12 or the maximum for the locality times 12.

## **22VAC40-411-50. Ongoing medical assistance.**

A. An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:

1. Three times the monthly maximum;
2. Six times the monthly maximum;
3. Nine times the monthly maximum; or
4. Twelve times the monthly maximum.

B. An agency electing to provide for the purchase of prescription drugs will specify in its General Relief Plan whether recipients are required to obtain drugs at a pharmacy with an agency contract. The choices are:

1. Recipients are not required to buy prescription drugs from a contracted pharmacy; or
2. Recipients are required to buy prescription drugs from a contracted pharmacy.

## **22VAC40-411-60. Interim assistance.**

An agency that elects to provide this component but does not elect to provide assistance for unemployed individuals will specify in its General Relief Plan whether interim assistance will be restricted to assistance units with an individual with a disability that will last 12 months, has lasted 12 months, or will result in death. The choices are:

1. Assistance will not be restricted; or
2. Assistance will be restricted.

## **22VAC40-411-70. Assistance for unattached children.**

An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:

1. The standard of assistance at 90% of need times three;
2. The standard of assistance at 90% of need times six;

3. The standard of assistance at 90% of need times nine; or
4. The standard of assistance at 90% of need times 12 or the maximum for the locality times 12.

## **22VAC40-411-80. Food credit authorization assistance.**

An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

## **22VAC40-411-90. Shelter assistance.**

A. An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

B. An agency electing to provide rent/house payments will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

C. An agency electing to provide utility payments will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

## **22VAC40-411-100. Emergency medical assistance.**

A. An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.

B. An agency electing to provide prescription drugs will specify in its General Relief Plan whether recipients are required to obtain drugs at a pharmacy with an agency contract. The choices are:

1. Recipients are not required to buy prescription drugs from a contracted pharmacy; or
2. Recipients are required to buy prescription drugs from a contracted pharmacy.

## **22VAC40-411-110. Clothing assistance.**

An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:

1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or
2. Assistance will be provided for a maximum of one to 12 months.

## **22VAC40-411-120. Entitlement date.**

When an individual or family has been found by agency action to be eligible, entitlement shall begin no later than the first day of the month following the month of application provided the individual or family meets all eligibility conditions at that time. In the following situations, the date of entitlement shall be the first of the month in which the application was made:

1. Action is taken during the month of application.
2. Action is taken in a month later than the month of application:
  - a. For reasons beyond the control of the applicant as determined by the agency; and
  - b. The applicant received general relief maintenance from another locality in Virginia for the month prior to the month of application.

## **22VAC40-411-130. Disability advocacy referral.**

The agency electing to provide disability advocacy services will identify recipients of the interim assistance component of general relief who have received written notification from the Social Security Administration that their disability claims at the application or reconsideration level have been denied. Within five working days after the identification, the agency will send letters to the interim assistance recipients explaining advocacy services, offering to refer them to advocacy providers for legal representation during the appeal process, providing information on how the appeal would affect their general relief benefits, and advising them that they have five days from the receipt of this letter to contact the agency requesting advocacy services.

If the interim assistance recipient chooses to participate in the Disability Advocacy Project, he will be allowed to select a provider from a list of qualified advocacy providers with whom the agency has contracts or be allowed to select another provider if that provider meets the qualifications and agrees to enter into a contract with the agency.

The agency will have the interim assistance recipient sign a Confidentiality Form (VDSS Form [ 032-01-040/2] 032-01-0040-03-eng) giving the agency permission to refer the recipient to the selected provider.

Within five working days after the selection, a referral letter will be sent by the agency to the selected advocacy provider.

## **22VAC40-411-140. Duties of the disability advocacy provider.**

Advocacy providers will perform the following services:

1. Within five working days of receipt of a referral letter from the agency, send a letter to the interim assistance recipient or the child's representative, acknowledging the referral and instructing the recipient or child's representative to protect the filing date by filing a Request for Reconsideration or Request for a Hearing with the Social Security Administration within 60 days of the date of his denial notice.
2. Contact the interim assistance recipient or child's representative by mail and telephone, if necessary, to schedule an appointment for an interview. If the provider cannot contact the recipient or the recipient does not keep the appointment, the provider will promptly notify the agency.
3. During the interview with the interim assistance recipient or child's representative, provide legal advice and counsel regarding federal disability benefits and the appeal process. The provider will assess the potential eligibility of the recipient or child for federal disability benefits. The decision whether to proceed or not proceed in the appeal process must be made by the recipient or the child's representative after receiving legal advice from the provider. The recipient or the child's representative must request the services of the advocacy provider by signing the Social Security Form SSA-1696-U4 under the Appointment of Representative section.
4. Within 15 working days of the initial interview with the recipient or child's representative, send a notification letter to the recipient or child's representative with a copy to the agency stating whether or not the provider will accept this case for legal representation.
5. If the provider agrees to provide advocacy services, sign Social Security Form SSA-1696-U4 under the Acceptance of Appointment and Waiver of Fee sections. Copies of the form will be sent within five working days to the Social Security Administration and to the agency.

# Regulations

6. Assist in the completion and timely filing of any necessary Social Security forms requesting a reconsideration, hearing, or review of the hearing decision.
7. Assist in obtaining and using medical, social, vocational evidence, or expert testimony that may substantiate the presence and severity of the disability.
8. Assist the recipient in making and keeping appointments for examinations.
9. Prepare for and adequately represent the recipient or child at interviews, hearings, or appeals related to application for Supplemental Security Income.
10. Notify the recipient or the child's representative of any denial and the right to appeal to the next level in the appeal process.
11. Notify the agency of any denial and the recipient's or child's representative's decision to proceed or not proceed to the next level in the appeal process.
12. Notify the recipient, the child's representative, and the agency when advocacy services have ended.

## **22VAC40-411-150. Disability advocacy contracts.**

Agencies shall contract with licensed legal aid or private attorneys or advocates working under the supervision of an attorney who may lawfully do so to provide legal representation in the appeal process. The providers must have previously provided successful representation to disability claimants during the reconsideration, administrative law judge hearing, Appeals Council, or federal district court levels of the federal disability adjudication process.

Qualified attorneys will be recruited by agencies giving written notice to their local legal aid and bar associations that contracts for legal representation of interim assistance recipients and foster children in the federal disability benefits appeal process will be available.

## **22VAC40-411-160. Disability advocacy disbursement.**

To receive payment, the advocacy provider must submit a petition and copy of the favorable Social Security Administration decision to the agency within 60 days of such a decision. Disbursement for legal representation will be made by the agency within 20 working days after the agency receives the initial Supplemental Security Income payment due the recipient or child.

No disbursement will be made unless the following have occurred:

1. The agency referred the recipient or child's representative for legal representation;
2. The recipient or child's representative requested the legal representation by signing the Appointment of

Representative section of Social Security Form SSA-1696-U4:

3. The advocacy provider signed the Acceptance of Appointment and Waiver of Fee sections of Social Security Form SSA-1696-U4; and
4. The agency received the initial Supplemental Security Income payment for the recipient or child.

No disbursement will be made for legal services given before the date of the agency's referral letter. Providers shall not require from the recipient or child's representative prepayment of any fees, costs, or disbursement.

The disbursement made by the agency will represent payment in full for all legal services to the recipient or child in this process with no further obligation on the part of the state or local department of social services, the recipient, nor the child's representative.

Neither the recipient, the child's representative, the State Department of Social Services, nor local agency shall be obligated to pay any additional fees, costs, or disbursement related to the provision of legal services in the appeal process including, but not limited to, payment for medical, psychological, or vocational consultations obtained to substantiate the disability claim. Under most circumstances, if preapproved by Disability Determination Services, the Social Security Administration will cover the cost of these consultations.

Contracting attorneys will agree to waive their right to legal fees paid by the Social Security Administration from the initial check for retroactive disability insurance benefits due the recipient or child should he be found eligible for both disability insurance benefits and Supplemental Security Income. An award for attorney's fees under the Equal Access to Justice Act will not be required to be waived.

The provider's fee will be paid entirely from the recoupment from the initial Supplemental Security Income payment for state and local financial assistance given the recipient or child while the Supplemental Security Income application was pending approval. The fee per favorable decision at the reconsideration level will be \$300; at the hearing before an administrative law judge, \$600; and at the Appeals Council or federal district court, \$750. The fee may in no event exceed the recoupment for the state and local assistance paid.

## **22VAC40-411-170. Alien three-year limit.**

For a period of three years from the month the United States Citizenship and Immigration Services (USCIS) grants the alien permanent resident status, the income and resources of the sponsor and the sponsor's spouse if they are living together shall be considered to be the unearned income of the alien.

The spouse's income and resources will be counted even if the sponsor and spouse married after the agreement to sponsor was signed.

## **22VAC40-411-180. Alien program ineligibility.**

Any alien sponsored by a public or private agency or organization shall be ineligible for general relief for a period of three years following entry unless the sponsored alien can provide documentation that the sponsor no longer exists or is unable to meet the alien's needs.

If a sponsored alien has been found ineligible for Temporary Assistance for Needy Families or Supplemental Security Income due to sponsorship, eligibility for general relief does not exist.

## **22VAC40-411-190. Responsibility of alien.**

A sponsored alien is responsible for obtaining the cooperation of his sponsor and supplying the local department of social services with any information and documentation necessary to determine the alien's eligibility for general relief benefits.

## **22VAC40-411-200. Income of sponsor deemed to a sponsored alien.**

The gross amount (with certain deductions) of earned and unearned income of the sponsor and the sponsor's spouse if living together shall be considered available as unearned income available to the alien or aliens being sponsored. Items that will be deducted from the sponsor's income are:

1. 20% of net earned income not exceeding \$175;
2. The standard of assistance (at 100% of need) for the sponsor and those individuals living in the household who the sponsor claims as dependents on his federal income tax statement excluding any members of the assistance unit;
3. Any amounts paid by the sponsor or the sponsor's spouse to individuals not living in the household who are claimed by him as dependents on his federal income tax statement; and
4. Any payments of alimony or child support for individuals not living in the household.

## **22VAC40-411-210. Resources of sponsor deemed to a sponsored alien.**

The resources of the sponsor and the sponsor's spouse determined to be available to the alien shall be the total amount of their nonexempt resources reduced by \$1,500.

## **22VAC40-411-220. Exception of deeming.**

The deeming of a sponsor's income and resources is not applicable to any alien who:

1. Entered the United States as a refugee, parolee, or political asylee;

2. Is a Cuban or Haitian entrant;

3. Is sponsored by a person receiving Temporary Assistance for Needy Families, Supplemental Security Income, or general relief;

4. Is an Amerasian from Vietnam; or

5. Is the spouse of the sponsor.

**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 (22VAC40-411)

Confidentiality Form, 032-01-0040-03-eng (eff. 9/04).

# Regulations

COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF SOCIAL SERVICES  
**CONFIDENTIALITY FORM**

CASE NAME \_\_\_\_\_

## PART A CLIENT PERMISSION TO RELEASE INFORMATION

1. I hereby give the local social service agency permission to give the following information:

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to: \_\_\_\_\_  
individual/organization/place of business

The agency will not give information about you in its records without your consent. By signing below you give your consent and specify what information may be given and who may receive it.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
client

2. I hereby give permission to \_\_\_\_\_ individual/organization/place of business

to give the local social service agency the following information:

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Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
client

## PART B CLIENT REQUEST FOR INFORMATION

- I hereby request:
- to read my case record
  - the following information from my case record

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I understand that I have the right to inspect information about myself (not others). However, I also understand that I will not be permitted access to mental records if my physician has made a written statement recommending against it. I understand if I find incorrect information in my records my worker will tell me about the procedures for correcting it.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_  
client

032-01-0040-03-eng (9/04)

**PART C REQUESTS FOR CLIENT INFORMATION FROM INDIVIDUALS OR ORGANIZATIONS WITHOUT REGULAR ACCESS AUTHORITY**

**NOTE:** The following have regular access authority and do not need client or other permission for access to client case records. It is unnecessary to document they have had access to the record.

- Virginia Department of Social Services staff
  - Staff of local departments of social services
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Three steps are necessary before information may be released.

1. The client must have given permission on A-1 on reverse side.
2. An eligibility/service staff member must fill out the following:

The purpose for which this information is to be released is: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_ Position: \_\_\_\_\_

3. The individual/agency representative must fill out the following:

I request the following information: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I agree not to divulge the information to other agencies or persons outside my agency.  
I also agree to use this information only for the purpose(s) designated above by the local social service agency.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Agency: \_\_\_\_\_ Position: \_\_\_\_\_

This form must be kept in the case folder to provide a record of those individuals/agencies without regular access authority who have received information from the record.

# Regulations

## Final Regulation

**REGISTRAR'S NOTICE:** The State Board of Social Services is claiming an exemption 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 State Board of Social Services will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**Title of Regulation:** **22VAC40-740. Adult Protective Services (amending 22VAC40-740-10, 22VAC40-740-15, 22VAC40-740-50).**

**Statutory Authority:** § 63.2-217 and Article 2 (§ 63.2-1603 et seq.) of Chapter 16 of Title 63.2 of the Code of Virginia.

**Effective Date:** September 1, 2009.

**Agency Contact:** Paige McCleary, Program Consultant, Department of Social Services, Adult Protective Services, 7 North Eighth Street, Richmond, VA 23219, telephone (804) 726-7536, FAX (804) 726-7895, or email paige.mccleary@dss.virginia.gov.

### Summary:

*The amendments to this chapter comport with legislative changes from the 2009 Session of the General Assembly. Changes include (i) amending the definition of "neglect" to include a religious nonmedical treatment exemption (Chapter 705 of the 2009 Acts of Assembly); (ii) changing the description of mandated reporting requirements for emergency medical services personnel to allow for direct reporting to the attending physician at the hospital to which an adult is transported (Chapter 538 of the 2009 Acts of Assembly); and (iii) changing the name of the Department of Mental Health, Mental Retardation and Substance Abuse Services to the Department of Behavioral Health and Developmental Services (Chapter 840 of the 2009 Acts of Assembly).*

### **22VAC40-740-10. Definitions.**

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

"Abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement.

"Adult" means any person in the Commonwealth who is abused, neglected, or exploited, or is at risk of being abused, neglected, or exploited; and is 18 years of age or older and incapacitated, or is 60 years of age and older.

"Adult protective services" means the receipt, investigation and disposition of complaints and reports of adult abuse, neglect, and exploitation of adults 18 years of age and over

who are incapacitated and adults 60 years of age and over by the local department of social services. Adult protective services also include the provision of casework and care management by the local department in order to stabilize the situation or to prevent further abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation. If appropriate and available, adult protective services may include the direct provision of services by the local department or arranging for home-based care, transportation, adult day services, meal service, legal proceedings, alternative placements and other activities to protect the adult and restore self-sufficiency to the extent possible.

"Collateral" means a person whose personal or professional knowledge may help confirm or rebut the allegations of adult abuse, neglect or exploitation or whose involvement may help ensure the safety of the adult.

"Conservator" means a person appointed by the court who is responsible for managing the estate and financial affairs of an incapacitated person, and where the context plainly indicates, includes a "limited conservator" or a "temporary conservator."

"Department" means the Virginia Department of Social Services.

"Director" means the director or his delegated representative of the department of social services of the city or county in which the adult resides or is found.

"Disposition" means the determination of whether or not adult abuse, neglect or exploitation has occurred.

"Documentation" means information and materials, written or otherwise, concerning allegations, facts and evidence.

"Exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage. This includes acquiring an adult's resources through the use of the adult's mental or physical incapacity, the disposition of the incapacitated adult's property by a second party to the advantage of the second party and to the detriment of the incapacitated adult, misuse of funds, acquiring an advantage through threats to withhold needed support or care unless certain conditions are met, or persuading an incapacitated adult to perform services including sexual acts to which the adult lacks the capacity to consent.

"Guardian" means a person who has been legally invested with the authority and charged with the duty of taking care of the person and managing his property and protecting the rights of the person who has been declared by the circuit court to be incapacitated and incapable of administering his own affairs. The powers and duties of the guardian are defined by the court and are limited to matters within the areas where the person in need of a guardian has been determined to be incapacitated.

"Guardian ad litem" means an attorney appointed by the court to represent the interest of the adult for whom a guardian or conservator is requested. On the hearing of the petition for appointment of a guardian or conservator, the guardian ad litem advocates for the adult who is the subject of the hearing, and his duties are usually concluded when the case is decided.

"Incapacitated person" means any adult who is impaired by reason of mental illness, mental retardation, physical illness or disability, advanced age or other causes to the extent that the adult lacks sufficient understanding or capacity to make, communicate or carry out reasonable decisions concerning his or her well-being. This definition is for the purpose of establishing an adult's eligibility for adult protective services and such adult may or may not have been found incapacitated through court procedures.

"Involuntary protective services" means those services authorized by the court for an adult who has been determined to need protective services and who has been adjudicated incapacitated and lacking the capacity to consent to receive the needed protective services.

"Lacks capacity to consent" means a preliminary judgment of a local department of social services social worker that an adult is unable to consent to receive needed services for reasons that relate to emotional or psychiatric problems, mental retardation, developmental delay, or other reasons which impair the adult's ability to recognize a substantial risk of death or immediate and serious harm to himself. The lack of capacity to consent may be either permanent or temporary. The worker must make a preliminary judgment that the adult lacks capacity to consent before petitioning the court for authorization to provide protective services on an emergency basis pursuant to § 63.2-1609 of the Code of Virginia.

"Legally incapacitated" means that the person has been adjudicated incapacitated by a circuit court because of a mental or physical condition which renders him, either wholly or partially, incapable of taking care of himself or his estate.

"Legally incompetent" means a person who has been adjudicated incompetent by a circuit court because of a mental condition which renders him incapable of taking care of his person or managing his estate.

"Legitimate interest" means a lawful, demonstrated privilege to access the information as defined in § 63.2-104 of the Code of Virginia.

"Local department" means any local department of social services in the Commonwealth of Virginia.

"Mandated reporters" means those persons who are required to report pursuant to § 63.2-1606 of the Code of Virginia when such persons have reason to suspect that an adult is

abused, neglected, or exploited or is at risk of adult abuse, neglect, or exploitation.

"Mental anguish" means a state of emotional pain or distress resulting from activity (verbal or behavioral) of a perpetrator. The intent of the activity is to threaten or intimidate, cause sorrow or fear, humiliate, change behavior or ridicule. There must be evidence that it is the perpetrator's activity that has caused the adult's feelings of pain or distress.

"Neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided such services as are necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is written or oral expression of consent by that adult. Neglect includes the failure of a caregiver or another responsible person to provide for basic needs to maintain the adult's physical and mental health and well-being, and it includes the adult's neglect of self. Neglect includes, but is not limited to:

1. The lack of clothing considered necessary to protect a person's health;
2. The lack of food necessary to prevent physical injury or to maintain life, including failure to receive appropriate food for adults with conditions requiring special diets;
3. Shelter that is not structurally safe; has rodents or other infestations which may result in serious health problems; or does not have a safe and accessible water supply, safe heat source or sewage disposal. Adequate shelter for an adult will depend on the impairments of an adult; however, the adult must be protected from the elements that would seriously endanger his health (e.g., rain, cold or heat) and could result in serious illness or debilitating conditions;
4. Inadequate supervision by a caregiver (paid or unpaid) who has been designated to provide the supervision necessary to protect the safety and well-being of an adult in his care;
5. The failure of persons who are responsible for caregiving to seek needed medical care or to follow medically prescribed treatment for an adult, or the adult has failed to obtain such care for himself. The needed medical care is believed to be of such a nature as to result in physical and/or mental injury or illness if it is not provided;
6. Medical neglect includes, but is not limited to, the withholding of medication or aids needed by the adult such as dentures, eye glasses, hearing aids, walker, etc. It also

# Regulations

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includes the unauthorized administration of prescription drugs, over- or under-medicating, and the administration of drugs for other than bona fide medical reasons, as determined by a licensed health care professional; and

7. Self-neglect by an adult who is not meeting his own basic needs due to mental and/or physical impairments. Basic needs refer to such things as food, clothing, shelter, health or medical care.

"Notification" means informing designated and appropriate individuals of the local department's action and the individual's rights.

"Preponderance of evidence" means the evidence as a whole shows that the facts are more probable and credible than not. It is evidence that is of greater weight or more convincing than the evidence offered in opposition.

"Report" means an allegation by any person that an adult is in need of protective services. The term "report" shall refer to both reports and complaints of abuse, neglect, and exploitation of adults. The report may be made orally or in writing to the local department or by calling the Adult Protective Services Hotline.

"Service plan" means a plan of action to address the service needs of an adult in order to protect the adult, to prevent future abuse, neglect or exploitation, and to preserve the autonomy of the adult whenever possible.

"Unreasonable confinement" means the use of restraints (physical or chemical), isolation, or any other means of confinement without medical orders, when there is no emergency and for reasons other than the adult's safety or well-being or the safety of others.

"Valid report" means the local department of social services has evaluated the information and allegations of the report and determined that the local department shall conduct an investigation because all of the following elements are present:

1. The alleged victim adult is 60 years of age or older or is 18 years of age or older and is incapacitated;
2. There is a specific adult with enough identifying information to locate the adult;
3. Circumstances allege abuse, neglect or exploitation or risk of abuse, neglect or exploitation; and
4. The local department receiving the report is a local department of jurisdiction as described in 22VAC40-740-21.

"Voluntary protective services" means those services provided to an adult who, after investigation by a local department, is determined to be in need of protective services and consents to receiving the services so as to prevent further

abuse, neglect, and exploitation of an adult at risk of abuse, neglect and exploitation.

## **22VAC40-740-15. Mandated reporters.**

Reports shall be made forthwith by the following persons acting in their professional capacity upon their suspicion that adult abuse, neglect or exploitation has occurred:

1. Any person licensed, certified, or registered by health regulatory boards listed in § 54.1-2503 of the Code of Virginia, with the exception of persons licensed by the Board of Veterinary Medicine;
2. Any mental health services provider as defined in § 54.1-2400.1 of the Code of Virginia;
3. Any emergency medical services personnel certified by the Board of Health pursuant to § 32.1-111.5 of the Code of Virginia, unless such personnel immediately reports the suspected abuse, neglect, or exploitation directly to the attending physician at the hospital to which the adult is transported, who shall make such report forthwith;
4. Any guardian or conservator of an adult;
5. Any person employed by or contracted with a public or private agency or facility and working with adults in an administrative, supportive or direct care capacity;
6. Any person providing full, intermittent or occasional care to an adult for compensation including, but not limited to, companion, chore, homemaker, and personal care workers;
7. Any law-enforcement officer; and
8. Medical facilities inspectors of the Department of Health. However, medical facilities inspectors are exempt from reporting suspected abuse immediately while conducting federal inspection surveys in accordance with Title XVIII (§ 1846) and Title XIX of the Social Security Act, as amended, of certified nursing facilities as defined in § 32.1-123 of the Code of Virginia. Findings of adult abuse, neglect or exploitation by a medical facilities inspector shall be made known to adult protective services after the exit conference at the facility so that the local department can provide follow up to facility residents who may be at risk of further abuse, neglect or exploitation.

## **22VAC40-740-50. Disclosure of adult protective services information.**

A. This chapter describes the protection of confidential information including a description of when such information must be disclosed, when such disclosure of the information is at the discretion of the local department, what information may be disclosed, and the procedure for disclosing the information.

B. Department staff having legitimate interest shall have regular access to adult protective services records maintained by the local department.

C. The following agencies have licensing, regulatory and legal authority for administrative action or criminal investigations, and they have a legitimate interest in confidential information when such information is relevant and reasonably necessary for the fulfillment of their licensing, regulatory and legal responsibilities:

1. Department of ~~Mental Health, Mental Retardation and Substance Abuse~~ Behavioral Health and Developmental Services;
2. Virginia Office for Protection and Advocacy;
3. Office of the Attorney General, including the Medicaid Fraud Control Program;
4. Department for the Aging;
5. Department of Health, including the Center for Quality Health Care Services and Consumer Protection and the Office of the Chief Medical Examiner;
6. Department of Medical Assistance Services;
7. Department of Health Professions;
8. Department for the Blind and Vision Impaired;
9. Department of Social Services, including the Division of Licensing Programs;
10. The Office of the State Long-Term Care Ombudsman and local ombudsman;
11. Law-enforcement agencies;
12. Medical examiners;
13. Adult fatality review teams;
14. Prosecutors; and
15. Any other entity deemed appropriate by the commissioner or local department director that demonstrates a legitimate interest.

D. The local department shall disclose all relevant information to representatives of the agencies identified in subsection C of this section except the identity of the person who reported the abuse, neglect or exploitation unless the reporter authorizes the disclosure of his identity or the disclosure is ordered by the court.

E. The local department shall refer any appropriate matter and all relevant documentation to the appropriate licensing, regulatory or legal authority for administrative action or criminal investigation.

F. Local departments may release information to the following persons when the local department has determined the person making the request has legitimate interest in

accordance with § 63.2-104 of the Code of Virginia and the release of information is in the best interest of the adult:

1. Representatives of public and private agencies including community services boards, area agencies on aging and local health departments requesting disclosure when the agency has legitimate interest;
2. A physician who is treating an adult whom he reasonably suspects is abused, neglected or exploited;
3. The adult's legally appointed guardian or conservator;
4. A guardian ad litem who has been appointed for an adult who is the subject of an adult protective services report;
5. A family member who is responsible for the welfare of an adult who is the subject of an adult protective services report;
6. An attorney representing a local department in an adult protective services case;
7. The Social Security Administration; or
8. Any other entity that demonstrates to the commissioner or local department director that legitimate interest is evident.

G. Local departments are required to disclose information under the following circumstances:

1. When disclosure is ordered by a court;
2. When a person has made an adult protective services report and an investigation has been completed; or
3. When a request for access to information is made pursuant to the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq. of the Code of Virginia).

H. Any or all of the following specific information may be disclosed at the discretion of the local department to agencies or persons specified in subsection F of this section:

1. Name, address, age, race, and gender of the adult who is the subject of the request for information;
2. Name, address, age, race, and gender of the person who is alleged to have perpetrated the abuse, neglect, or exploitation;
3. Description of the incident or incidents of abuse, neglect, or exploitation;
4. Description of medical problems to the extent known;
5. Disposition of the adult protective services report; and
6. The protective service needs of the adult.

I. The identity of the person who reported the suspected abuse, neglect or exploitation shall be held confidential unless

# Regulations

the reporter authorizes the disclosure of his identity or disclosure is ordered by the court.

J. Agencies or persons who receive confidential information pursuant to subsection G of this section shall provide the following assurances to the local department:

1. The purpose for which information is requested is related to the protective services goal in the service plan for the adult;
2. The information will be used only for the purpose for which it is made available; and
3. The information will be held confidential by the department or individual receiving the information except to the extent that disclosure is required by law.

K. Methods of obtaining assurances. Any one of the following methods may be used to obtain assurances required in subsection J of this section:

1. Agreements between local departments and other community service agencies that provide blanket assurances required in subsection J of this section for all adult protective services cases; or
2. State-level agreements that provide blanket assurances required in subsection C of this section for all adult protective services cases.

L. Notification that information has been disclosed. When information has been disclosed pursuant to this chapter, notice of the disclosure shall be given to the adult who is the subject of the information or to his legally appointed guardian. If the adult has given permission to release the information, further notification shall not be required.

VA.R. Doc. No. R09-1995; Filed June 26, 2009, 1:19 p.m.

telephone (804) 371-2332, FAX (804) 371-2355, or email bland.sutton@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." The authority for the current regulatory action is discretionary.

**Purpose:** As a result of legislation passed by the 2005 General Assembly, the law with respect to the application of the sales and use tax to automotive refinishers and repairers was altered. A legislative change in the definition of "retail sale" and "sale at retail" provided automotive refinishers and repairers the option of continuing to operate as service providers, or to treat themselves as retailers with respect to tangible personal property that becomes permanently attached to the motor vehicle during the repair process. The purpose of this action is to amend it to reflect this legislative change and to provide guidance to the automotive refinishing industry as to their options with respect to applying the sales and use tax.

This regulatory action is necessary to ensure a predictable and adequate revenue stream for the government to provide for the health, safety, and welfare of its citizens.

**Substance:** The 2005 General Assembly amended the definition of "retail sale" and "sale at retail" to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from longstanding policy that treats automotive refinishers and painters as service providers and the taxable user and consumer of tangible personal property used in providing their service.

Prior to the law change, automotive refinishers and painters are treated as service providers and are the taxable user and consumer of all tangible personal property, i.e., primer, paint, sealant, etc., consumed by them in restoring motor vehicles. The wording of this legislative change allows automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charges for materials. This regulation section is being amended to reflect this legislative change, provide guidance to the industry, and to also alleviate any confusion that may result from the differing tax application within the same industry.

**Issues:** The primary advantages to this regulatory action are to provide guidance to the automotive refinishing industry and the general public as to the tax application to the automotive refinishing and repair industry as a result of the 2005 legislative change to the definition of "retail sale" and "sale at retail." This guidance will ensure compliance with the department's policies with regard to automotive refinishers

## TITLE 23. TAXATION

### DEPARTMENT OF TAXATION

#### Proposed Regulation

**Title of Regulation:** 23VAC10-210. Retail Sales and Use Tax (amending 23VAC10-210-1020).

**Statutory Authority:** § 58.1-203 of the Code of Virginia.

**Public Hearing Information:**

August 20, 2009 - 10 a.m., 2220 West Broad Street,  
Multipurpose Room, Rear Entrance, Richmond, VA

**Public Comments:** Public comments may be submitted until 5 p. m. on September 18, 2009.

**Agency Contact:** Bland Sutton, Analyst, Department of Taxation, 600 East Main Street, Richmond, VA 23219,

and painters and ensure that these policies are universally applied by the department's audit staff.

The 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.** The 2005 General Assembly enacted House Bill 2762 (2005 Acts of Assembly, Chapter 121) amending the definition of "retail sale" and "sale at retail" set forth in Code of Virginia Section § 58.1-602 to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from the Department of Taxation's (Department) longstanding policy that treats automotive refinishers and painters as service providers and the taxable user and consumer of tangible personal property used in providing their service. This legislative change allows automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charges for materials. The Department proposes to amend these regulations to reflect the statutory change and to add some clarifying language.

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

**Estimated Economic Impact.** As a service firm, automotive refinishers and repairers pay sales tax on the paint they buy. As stated above, legislation passed in 2005 has permitted refinishers and repairers the option to be treated as retailers of the paint they apply to vehicles; and thus they become exempt from paying tax on the paint they buy, but instead collect sales tax from their customers on the paint use in refinishing and/or repairing of the customer's vehicle. The Department does not know how many of the 793 automotive body, paint, and interior repair and maintenance firms<sup>1</sup> have utilized the option of being treated as a retailer for the paint they apply to automobiles. The proposal to amend these regulations to reflect Chapter 121 of the 2005 Acts of Assembly will not likely have a significant effect since adding the language in no way alters options and/or requirements for firms, their clients, or anyone else.

**Businesses and Entities Affected.** The statutory changes affected the 793 automotive body, paint, and interior repair and maintenance firms in Virginia. The proposed amendments to these regulations do not significantly affect businesses and other entities since the proposed amendments only reflect the statutory changes which are already in effect and clarifications.

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

**Projected Impact on Employment.** Since the proposed amendments only reflect statutory changes and clarifications and do not change requirements for the public, there is no significant effect on employment.

**Effects on the Use and Value of Private Property.** Since the proposed amendments only reflect statutory changes and clarifications and do not change requirements for the public, there is no significant effect on the use and value of private property.

**Small Businesses: Costs and Other Effects.** Since the proposed amendments only reflect statutory changes and clarifications and do not change requirements for the public, there is no significant effect on small businesses.

**Small Businesses: Alternative Method that Minimizes Adverse Impact.** Since the proposed amendments only reflect statutory changes and clarifications and do not change requirements for the public, there is no significant effect on small businesses.

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

**Legal Mandate.** The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

<sup>1</sup> Data source: Virginia Employment Commission Quarterly Census of Employment and Wages (Quarter 4, 2007)

**Agency's Response to Economic Impact Analysis:** The agency agrees with the Department of Planning and Budget's Economic Impact Analysis.

# Regulations

## Summary:

*Chapter 121 of the 2005 Acts of Assembly amended the definition of "retail sale" and "sale at retail" set forth in § 58.1-602 of the Code of Virginia to include separately stated charges for materials used in automotive refinishing and repair when such materials become permanently attached to the vehicle being refinished or repaired. This change in the definition of "retail sale" and "sale at retail" is a departure from the department's longstanding policy that treats automotive refinishers and painters as service providers and the taxable user and consumer of tangible personal property used in providing their service. The proposed amendments allow automotive refinishers and repairers the option of continuing to operate as service providers or to be treated as retailers by separately stating their charges for materials.*

## 23VAC10-210-1020. Motor vehicle refinishers, painters and car washers.

A. Generally. Motor vehicle refinishers and, painters, and washers are generally engaged primarily in rendering personal services, and their gross receipts are not subject to the tax. However, they As personal service providers, motor vehicle refinishers, painters, and washers are the users and consumers of the materials used in their business and are required to pay tax on their purchases. When motor vehicle refinishers and, painters, and washers go beyond the rendition of services and sell tangible personal property such as accessories, parts, seatcovers, paint, etc., they are required to register and collect and pay remit the tax on those retail sales. This section also applies to car washers.

B. Optional tax treatment for motor vehicle refinishers and painters. Effective July 1, 2005, the definition of "retail sale" and "sale at retail" was amended to include separately stated charges made for automotive refinish repair materials that are permanently applied to or affixed to a motor vehicle during its repair. This definitional change affords motor vehicle refinishers and painters the option of either continuing to be treated as a personal service provider with respect to paint, clearcoat, sealants, and other similar items that become a component part of a motor vehicle during the refinishing or repair of the motor vehicle, or to be treated as a retailer with respect to such items. The election to be treated as a retailer is solely at the discretion of the motor vehicle refinisher or painter.

C. Motor vehicle refinishers and painters electing to operate as a retailer. A motor vehicle refinisher or painter electing to operate as a retailer is required to register with the Department of Taxation as a licensed dealer and collect and remit to the Department of Taxation the retail sales tax on all sales of tangible personal property made, including separately stated charges for automotive refinish repair materials. As a licensed dealer, a motor vehicle refinisher or painter may purchase all tangible personal property that becomes a

component part of a motor vehicle during the refinishing, painting, or repair of the motor vehicle exempt of the tax for resale. Once a motor vehicle refinisher or painter elects to treat himself as a retailer, such election and tax application must be uniformly applied to all motor vehicle refinishing and repair work performed by such dealer.

D. Consumables and equipment. Regardless of whether the optional tax treatment is elected or not, motor vehicle refinishers, painters, and washers are liable for the tax on purchases of all tangible personal property used or consumed in the performance of their work, and that does not transfer to the customer.

VA.R. Doc. No. R07-250; Filed June 25, 2009, 10:20 a.m.

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# GENERAL NOTICES/ERRATA

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## DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

### Notice of Public Hearing on Imported Fire Ant Quarantine

Pursuant to § 3.2-703 of the Code of Virginia, the Commissioner of Agriculture and Consumer Services has issued a temporary (90-day) quarantine relating to the imported fire ant (*Solenopsis invicta* Buren, *Solenopsis richteri* Forel, and hybrids of these species). A copy of the temporary quarantine is printed below. If it appears that a quarantine for more than 90 days will be necessary, § 3.2-703 provides that the Board of Agriculture and Consumer Services shall hold a public hearing on extending the commissioner's temporary quarantine. The Board of Agriculture and Consumer Services will hold such a public hearing at 2 p.m., August 4, 2009, at the Beale Memorial Baptist Church, 202 Church Lane, Tappahannock, Virginia 22560.

For further information, please contact Larry Nichols, Program Manager, Office of Plant and Pest Services, 102 Governor Street, Room LL55, Richmond, VA 23219, telephone (804) 786-3515, hearing impaired (800) 828-1120, FAX (804) 371-7793, or email at larry.nichols@vdacs.virginia.gov.

### Virginia Imported Fire Ant Temporary Quarantine for Enforcement of the Virginia Pest Law

Statutory authority: § 3.2-703 of the Code of Virginia

#### § 10. Declaration of quarantine.

A quarantine is hereby established to restrict the movement of certain articles capable of transporting imported fire ant into unregulated areas of the state, unless such articles comply with the conditions specified herein.

#### § 20. Purpose of quarantine.

The imported fire ant is an introduced species that is notorious for its aggressive behavior, ferocious sting, and the damage it causes to several agricultural commodities. The imported fire ant has become established in portions of the Commonwealth, and has the potential to spread to uninfested areas by natural means or through the movement of infested articles. The purpose of this quarantine is to prevent the artificial spread of the imported fire ant to uninfested areas of the state by regulating the movement of those articles that pose a significant threat of transporting the imported fire ant.

#### § 30. Definitions.

The following words and terms shall have the following meaning unless the context clearly indicates otherwise:

"Board" means the Virginia Board of Agriculture and Consumer Services.

"Certificate" means a document issued by an inspector or person operating in accordance with a compliance agreement to allow the movement of regulated articles to any destination.

"Commissioner" means the Commissioner of the Virginia Department of Agriculture and Consumer Services.

"Compliance agreement" means a written agreement between a person engaged in growing, handling, receiving, or moving regulated articles and the Virginia Department of Agriculture and Consumer Services, the United States Department of Agriculture, or both, wherein the former agrees to comply with the requirements of the compliance agreement and comply with the provisions of this regulation.

"Department" means the Virginia Department of Agriculture and Consumer Services.

"Imported fire ant" means the live insect, in any life stage, known as the imported fire ant, *Solenopsis invicta* Buren (commonly known as Red Imported Fire Ant) and *Solenopsis richteri* Forel (commonly known as Black Imported Fire Ant), and hybrids of these species.

"Infestation" means the presence of the imported fire ant or the existence of circumstances that make it reasonable to believe that the imported fire ant is present.

"Inspector" means an employee of the Virginia Department of Agriculture and Consumer Services or other person authorized by the Commissioner of the Virginia Department of Agriculture and Consumer Services to enforce the provisions of this quarantine or regulation.

"Limited permit (permit)" means a document issued by an inspector to allow the movement of regulated articles to a specific destination.

"Moved (move, movement)" means shipped, offered for shipment, received for transportation, transported, carried, or allowed to be moved, shipped, transported, or carried.

"Noncompacted soil" means soil that can be removed from an article by brisk brushing or washing.

"Person" means the term as defined in § 1-230 of the Code of Virginia.

"Regulated area" means the locality or area listed in § 50 of this quarantine.

"Soil-moving equipment" means any equipment used for moving or transporting soil, including, but not limited to, bulldozers, backhoes, dump trucks, or road scrapers.

"Virginia Pest Law" means the statute set forth in § 3.2-700 et seq. of the Code of Virginia.

# General Notices/Errata

## § 40. Regulated articles.

The following articles are regulated under the provisions of this quarantine, and shall not be moved out of any regulated area in Virginia, except in compliance with the conditions prescribed in this quarantine:

- (1) Any life stage of imported fire ant.
- (2) Soil, except potting soil that is shipped in original containers after commercial preparation, and soil samples shipped to approved laboratories.
- (3) Plants with roots with soil attached, or roots and rhizomes of plants with soil attached, except plants maintained indoors in a home or office environment and not for sale.
- (4) Grass sod.
- (5) Used soil-moving equipment, unless free of all noncompacted soil.
- (6) Used farm equipment, unless free of all noncompacted soil.
- (7) Hay and straw, including pine straw, that has been stored in direct contact with the ground.
- (8) Honey bee hives that have been in direct contact with the ground, including hive stands containing soil.
- (9) Logs, pulpwood, and stump wood with soil attached.
- (10) Any other article or means of conveyance, when it is determined by an inspector that it presents a risk of spread of the imported fire ant.

## § 50. Regulated areas.

The following areas in Virginia are quarantined for imported fire ant:

The entire counties of:

James City  
York

The entire cities of:

Chesapeake  
Hampton  
Newport News  
Norfolk  
Poquoson  
Portsmouth  
Suffolk  
Virginia Beach  
Williamsburg

## § 60. Conditions governing the intrastate movement of regulated articles.

- A. Movement Within Regulated Areas – Movement of a regulated article solely within the quarantined area is allowed without restriction.
- B. Movement From Quarantined Areas To Nonquarantined Areas - Movement of a regulated article that originates from within the quarantined area to an area outside of the quarantined area is allowed only if the regulated article is accompanied by a certificate or limited permit issued in accordance with § 70 of this quarantine and attached in accordance with § 100 of this quarantine.
- C. Movement From Noregulated Area through Regulated Area – Regulated articles that originate outside of the quarantined area may move through the quarantined area under the following conditions:
  - (1) With a certificate or limited permit issued in accordance with § 70 of this quarantine and attached in accordance with § 100 of this quarantine, or
  - (2) Without a certificate or limited permit if:
    - (a) Accompanied by a waybill that indicates the point of origin of the regulated article; and
    - (b) The regulated article is moved directly through the regulated area without stopping, except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the imported fire ant; and
    - (c) The regulated article has not been combined or commingled with other articles so as to lose its individual identity.
- D. Movement From Quarantined Area through Nonquarantined Area – Regulated articles that originate from within the quarantine may travel through the nonquarantined area to a destination that is quarantined, under the following conditions:
  - (1) With a certificate or limited permit issued in accordance with § 70 of this quarantine and attached in accordance with § 100 of this quarantine, or
  - (2) Without a certificate or limited permit if:
    - (a) Accompanied by a waybill that indicates the point of origin of the regulated article; and
    - (b) The regulated article is moved directly through the nonregulated area without stopping except for refueling or due to traffic conditions; or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by the imported fire ant; and

(c) The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

## § 70. Issuance and cancellation of certificates and limited permits.

A. Certificates and limited permits may be issued by an inspector for the movement of regulated articles to any destination within Virginia when:

- (1) The regulated articles have been examined by the inspector and found to be apparently free of the imported fire ant;
- (2) The regulated articles have been grown, produced, manufactured, stored, or handled in such a manner that, in the judgment of the inspector, would prevent an infestation or destroy all life stages of imported fire ant;
- (3) The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the imported fire ant; and
- (4) The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

B. Certificates may be issued by any person operating under a compliance agreement for the movement of regulated articles to any destination within Virginia when:

- (1) The regulated articles have been examined by any person operating under a compliance agreement and found to be apparently free of the imported fire ant;
- (2) The regulated articles have been grown, produced, manufactured, stored, or handled in such a manner, and following all requirements of the compliance agreement, that would prevent an infestation or destroy all life stages of imported fire ant;
- (3) The regulated articles are to be moved in compliance with any additional conditions deemed necessary under the Virginia Pest Law to prevent the spread of the imported fire ant; and
- (4) The regulated articles are eligible for unrestricted movement under all other domestic plant quarantines and regulations applicable to the regulated articles.

C. Any certificate or limited permit that has been issued or authorized may be withdrawn by the inspector orally or in writing if the inspector determines that the holder of the certificate or limited permit has not complied with all conditions for the use of the certificate or limited permit or with any applicable compliance agreement. If the withdrawal is oral, the withdrawal and the reasons for the withdrawal shall be confirmed in writing and communicated to the

certificate or limited permit holder as promptly as circumstances allow.

## § 80. Compliance agreements and cancellation.

A. Any person engaged in growing, handling, or moving regulated articles may enter into a compliance agreement when an inspector determines that the person understands that person's requirements and obligations under this quarantine. The agreement shall stipulate safeguards that must be maintained against the establishment and spread of imported fire ants, and the conditions governing the movement of regulated articles.

B. Any compliance agreement may be canceled orally or in writing by an inspector whenever the inspector finds that the person who has entered into the compliance agreement has failed to comply with this quarantine. If the cancellation is oral, the cancellation and the reasons for the cancellation shall be confirmed in writing and communicated to the person who entered into such compliance agreement as promptly as circumstances allow.

## § 90. Assembly and inspection of regulated articles.

A. Any person other than a person authorized to issue certificates under § 70 who desires to move a regulated article intrastate and is seeking a certificate or limited permit shall apply for inspection of the regulated article as far in advance as practical but no less than five business days before the regulated articles are to be moved.

B. The regulated article must be assembled at the place and in the manner the inspector designates as necessary to facilitate inspection and shall be safeguarded from infestation.

## § 100. Attachment and disposition of certificates and limited permits.

A. A certificate or limited permit required for the intrastate movement of a regulated article must be attached at all times during the intrastate movement to the outside of the container that contains the regulated article or to the regulated article itself. The requirements of this section may also be met by attaching the certificate or limited permit to the consignee's copy of the waybill, provided the regulated article is sufficiently described on the certificate or limited permit and on the waybill to facilitate the identification of the regulated article.

B. The certificate or limited permit for the intrastate movement of a regulated article must be furnished by the carrier to the consignee at the destination of the regulated article. A copy of the certificate or the limited permit must be retained by the sender of the regulated article at the place of shipment.

# General Notices/Errata

## § 110. Inspection and disposal of regulated articles and pests.

Upon presentation of official credentials, an inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles as provided in the Virginia Pest Law.

## § 120. Nonliability of the department.

The department shall not be liable for any costs incurred by third parties, which costs result from or are incidental to inspections required under the provisions of the quarantine.

This temporary quarantine becomes effective on June 24, 2009, and shall continue for a period not to exceed 90 days.

Issued on June 24, 2009, in Richmond, Virginia

/s/ Todd P. Haymore  
Commissioner

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Total Maximum Daily Load Studies in the Tidewater Regional Area

The Virginia Department of Environmental Quality will host a public meeting on water quality studies for several water bodies that are impaired due to not meeting dissolved oxygen water quality standards.

The meeting will be held on Tuesday, July 28, 2009, and will start at 6:30 p.m. at the Virginia Department of Environmental Quality, Tidewater Regional Office located at 5636 Southern Blvd., Virginia Beach. The purpose of the meeting is to provide information and discuss the studies with interested local community members and local government.

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 waters listed below were identified in Virginia's 1998 § 303(d) TMDL Priority List and Report as impaired for not supporting the aquatic life use. The impairments are based on water quality monitoring data reports of sufficient exceedances of Virginia's water quality standard for dissolved oxygen.

Albemarle Canal	(VAT-K41R_AAC01A06)
North Landing River-middle	(VAT-K41R_NLR02A06)
West Neck Creek-middle	(VAT-K41R_WNC01A00)
Milldam Creek-lower	(VAT-K41R_MLD02A06)
Nawney Creek-upper	(VAT-K42E_NWN01A00)
Nawney Creek-lower	(VAT-K42E_NWN02A00)

Several impaired segments were identified as needing an assessment to determine if natural conditions are the cause of the low dissolved oxygen (DO) values. If it is determined that anthropogenic causes contribute to the impairments, a TMDL will be developed for each waterbody listed below:

Tarrara Creek	(VAT-K13R_TRR01A00)
Mill Swamp	(VAT-K34R_MSW01A00)
Rattlesnake Swamp	(VAT-K34R_RKN01A02)
Seacock Swamp-upper	(VAT-K35R_SCK01A00)
Blackwater River-middle K36	(VAT-K36R_BLW02A08)
Blackwater River-middle K36	(VAT-K36R_BLW03A08)
Blackwater River-lower middle K36	(VAT-K36R_BLW04A08)
Blackwater River-lower K36	(VAT-K36R_BLW05A08)
Blackwater River mouth K36	(VAT-K36R_BLW06A08)
Blackwater River-upper K33	(VAT-K33R_BLW01A00)
Blackwater River-lower K33	(VAT-K33R_BLW02A04)
Blackwater River-lower K33	(VAT-K33R_BLW03A08)

The public comment period on materials presented at this meeting will extend from July 28, 2009, to August 26, 2009. For additional information or to submit comments, contact Jennifer Howell, in the 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.

\* Additional information is also available on the DEQ website at [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

### Study to Restore Water Quality in the Upper Roanoke River Watershed and Lower Roanoke (Staunton) River Watershed

Public meetings (Please attend the meeting that is most convenient for you):

Roanoke (Upper Roanoke River watershed) – Virginia Department of Environmental Quality's Roanoke Office conference room located at 3019 Peters Creek Road on Wednesday, July 29, 2009, from 7 p.m. to 9 p.m. Directions:

From Route 581, take the exit 2S, Peters Creek Road. After the second stop light, turn left into Brammer Village just past the Subway Restaurant. Proceed up the hill and turn right after the second set of brown buildings. Look for the DEQ sign.

Brookneal (Lower Roanoke/Staunton River watershed) - Brookneal Elementary School gymnasium located at 1330 Charlotte Street on Thursday, July 30, 2009, from 7 p.m. to 9 p.m. Directions: From Route 501, turn onto Charlotte Street in Brookneal. School will be on right. Doors to the gymnasium are located at the far right end of the school.

Purpose of notice: The Virginia Department of Environmental Quality announces a public meeting to discuss a study to restore water quality in the Roanoke (Staunton) River watershed and tributaries.

Description of study: Virginia agencies are working with the Environmental Protection Agency (EPA) to identify sources of polychlorinated biphenyl (PCB) found in fish tissue in the Upper Roanoke River watershed and Lower Roanoke (Staunton) River watershed. The Virginia Department of Health (VDH) issued fish consumption advisories based on elevated PCB levels in fish tissue. Therefore, the river is not supporting the Fish Consumption Designated Use.

The following is a list of the "impaired" waters in the Upper Roanoke River watershed and the length of the impaired segment: Roanoke River, 28.6 miles; Tinker Creek, 5.33 miles; Peters Creek, 2.52 miles. These impairments are located in Montgomery County, Roanoke County, Salem City, Roanoke City, and/or Bedford County. These impairments will be discussed at the meeting in Roanoke on Wednesday, July 29, 2009.

The following is a list of the impaired waters in the Lower Roanoke/Staunton River watershed and the length of the impaired segment: Roanoke (Staunton) River, 88.4 miles; Little Otter River, 14.36 miles; Cub Creek, 14.25 miles. These impairments are located in Bedford County, Campbell County, Charlotte County, Halifax County, and/or Pittsylvania County. These impairments will be discussed at the meeting in Brookneal on Thursday, July 30, 2009.

During the study, EPA and the state agencies developed a total maximum daily load (TMDL) 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, contamination levels have to be reduced to the TMDL amount.

How to comment: 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 Thursday, August 27, 2009. DEQ also accepts written and oral comments at the public meeting announced in this notice.

Contacts for additional information: Mary Dail, Virginia Department of Environmental Quality, Roanoke Office, 3019 Peters Creek Road, Roanoke, VA 24019, telephone (540) 562-6715, FAX (540) 562-6725, or email [mary.dail@deq.virginia.gov](mailto:mary.dail@deq.virginia.gov), [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl)

Amanda Gray, Virginia Department of Environmental Quality, Lynchburg Office, 7705 Timberlake Road, Lynchburg, VA 24502, telephone (434) 582-6227, FAX (434) 582-5125, or email [amanda.gray@deq.virginia.gov](mailto:amanda.gray@deq.virginia.gov), [www.deq.virginia.gov/tmdl](http://www.deq.virginia.gov/tmdl).

### DEPARTMENT OF HEALTH

#### **Drinking Water State Revolving Fund Program Intended Use Plan for FY 2009**

The Virginia Department of Health (VDH) received numerous loan requests and set-aside suggestions following our announcement in January 2008 of funds available from the Drinking Water State Revolving Fund Program. Through the Safe Drinking Water Act, Congress authorizes capitalization grants to the states but authorization has not been finalized.

The VDH's Office of Drinking Water (ODW) has prepared a draft intended use plan (IUP) using information submitted via the loan requests and set-aside suggestions. This IUP is for your review and comment. The document dated January 7, 2008, and entitled "Virginia Drinking Water State Revolving Fund Program – Program Design Manual" is a part of the intended use plan. This document was mailed in our January announcement. The draft IUP is available on our website at <http://www.vdh.virginia.gov/drinkingwater/financial>.

As previously announced, the VDH will hold a public meeting. The meeting will be on Wednesday, August 12, 2009, from 8:30 a.m. to 10:30 a.m., at the Office of Drinking Water East Central Field Office, 300 Turner Road, Richmond, VA 23225. In addition, comments from the public must be postmarked by Friday, August 21, 2009.

If you plan to attend, please contact Theresa Hewlett at (804) 864-7501 by the close of business on Monday, August 10, 2009, so that the meeting can be properly planned.

Please direct your requests for information and forward written comments to: Steven D. Pellei, P. E., Virginia Department of Health, Division for Construction Assistance, Planning, and Policy, Office of Drinking Water, James Madison Building, Room 622, 109 Governor Street, Richmond VA 23219, telephone (804) 864-7489, FAX (804) 864-7521.

# General Notices/Errata

## STATE LOTTERY DEPARTMENT

### Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on June 29, 2009, and June 30, 2009. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, Virginia, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, Virginia.

Final Rules for Game Operation:

#### Director's Order Number Forty-Six (09)

Virginia's Instant Game Lottery 1127; "Right On The Money" (effective 6/28/09)

#### Director's Order Number Forty-Seven (09)

Virginia's Instant Game Lottery 1144; "\$50,000 Redskins Mania" (effective 6/28/09)

#### Director's Order Number Forty-Eight (09)

Virginia's Instant Game Lottery 1148; "Spades" (effective 6/28/09)

#### Director's Order Number Forty-Nine (09)

Virginia's Instant Game Lottery 1150; "Ace In The Hole" (effective 6/28/09)

#### Director's Order Number Fifty (09)

Virginia's Instant Game Lottery 1155; "Classic Poker" (effective 6/28/09)

#### Director's Order Number Fifty-Two (09)

Virginia's Instant Game Lottery 1132; "High Card" (effective 6/28/09)

#### Director's Order Number Fifty-Three (09)

Virginia's Instant Game Lottery 1131; "Molten Money" (effective 6/28/09)

#### Director's Order Number Fifty-Four (09)

Virginia's Instant Game Lottery 1140; "Mega Money<sup>TM</sup>" (effective 6/28/09)

#### Director's Order Number Forty-Five (09)

Virginia's Instant Game Lottery 1108; "Bonus Word Crossword" (effective 6/28/09)

#### Director's Order Number Fifty-Five (09)

Virginia Lottery's "Summer Subscription Sweepstakes" (effective 6/29/09)

#### Director's Order Number Fifty-Six (09)

Virginia Lottery Retailer Incentive Program "Hail to the Redskins" (effective 6/29/09)

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The following Director's Orders of the State Lottery Department was filed with the Virginia Registrar of Regulations on June 29, 2009.

#### Director's Order Number Fifty-Seven (09)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on July 3, 2009. Game 1106 will be closing in preparation for the new \$3 game:

Game 820	Lightning 7's
Game 1036	Money Maker
Game 1037	Bingo Night
Game 1087	\$250K High Roller
Game 1106	Crossword

The last day for lottery retailers to return for credit unsold tickets from any of these games will be August 7, 2009. The last day to redeem winning tickets for any of these games will be December 30, 2009, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of December 30, 2009, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order becomes effective on the date of its signing and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto  
Executive Director  
June 29, 2009

## DEPARTMENT OF MINES, MINERALS AND ENERGY

### Notice of Periodic Review

Pursuant to Executive Order 36 (2006), the Department of Mines, Minerals and Energy (DMME) is conducting a periodic review and invites public comment on the following regulation:

#### 4VAC25-140, Coal Surface Mining Regulations

The department will consider whether this existing regulation is essential to protecting the health, safety, and welfare of the public. The department welcomes specific comments on the performance and effectiveness of this regulation and also requests suggestions to improve the content and organization of the regulation to make it more understandable and useful.

The comment period for this review begins on July 20, 2009, and ends at 5 p.m. on August 19, 2009. Comments may be submitted to Tabitha Hibbitts Peace, Policy Analyst, Department of Mines, Minerals and Energy, Division of Administration, P.O. Drawer 900, Big Stone Gap, VA 24219-0900 or email [tabitha.peace@dmme.virginia.gov](mailto:tabitha.peace@dmme.virginia.gov).

Regulations may be viewed online at the Virginia Regulatory Town Hall website located at <http://www.townhall.state.va.us>, or copies will be sent upon request.

## STATE WATER CONTROL BOARD

### Proposed Special Order - Highlands Petroleum Oil Corp.

An enforcement action has been proposed for Highlands Petroleum Oil Corp. for alleged violations in Smyth County, Virginia. The special order by consent will resolve the unauthorized discharge of petroleum product to Watson Gap Branch and North Fork Holston 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). Dallas R. Sizemore will accept comments by email at [dallas.sizemore@deq.virginia.gov](mailto:dallas.sizemore@deq.virginia.gov), FAX (276) 676-4899, or postal mail Department of Environmental Quality, Southwest Regional Office, P.O. Box 1688, 355 Deadmore Street, Abingdon, VA 24212, from July 20, 2009, to August 19, 2009.

### Proposed Consent Order - Standex Engraving, LLC

An enforcement action has been proposed for Standex Engraving, LLC, to resolve stormwater contamination issues at its facility in Henrico County. The proposed consent order describes the situation and requires corrective action. 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). Allison Dunaway will accept comments by email at [acdunaway@deq.virginia.gov](mailto:acdunaway@deq.virginia.gov), FAX (804) 527-5106, or

postal mail at Department of Environmental Quality, Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA 23060, from July 20, 2009, to August 21, 2009.

### Notice of Change of Public Hearing Date and Time

The State Water Control Board announced public hearings and a public comment period on proposed amendments to 9VAC25-630 in the Virginia Register of Regulations in Volume 25, Issue 21, page 3867. There has been a change in the date and time of the public hearing in Onley, Virginia. The public hearing is now scheduled for 7:30 p.m. on August 4, 2009, at Nandua High School, Auditorium, 26350 Lankford Highway, Onley, VA. An informational briefing will be held one hour prior to the public hearing.

For additional information or questions contact Betsy Bowles, Department of Environmental Quality, Office of Land Application Programs, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4059, FAX (804) 698-4116, or email [betsy.bowles@deq.virginia.gov](mailto:betsy.bowles@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.

# General Notices/Errata

## ERRATA

### STATE BOARD OF EDUCATION

Titles of Regulations: **8VAC20-80. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (repealing 8VAC20-80-10 through 8VAC20-80-190).**

**8VAC20-81. Regulations Governing Special Education Programs for Children with Disabilities in Virginia (adding 8VAC20-81-10 through 8VAC20-81-340).**

Publication: 25:16 VA.R. 2872-2968 April 13, 2009.

Correction to Final Regulation:

Page 2944, 8VAC20-81-210 D 2 b, line 3, strike "the effective date of this regulation" and insert "July 7, 2009."

Page 2944, 8VAC20-81-210 D 3 b, lines 3 and 4, strike "the effective date of these regulations" and insert "July 7, 2009"

Publication: 25:21 VA.R. 3849 June 22, 2009.

Correction to Final Regulation:

Change first paragraph of Summary to read:

Summary:

*This action represents the Board of Education's readoption of the final regulations on May 28, 2009, with no changes from its adoption at the September 28, 2008, Board of Education meeting. Refer to 25:16 VA.R. 2872-2968 April 13, 2009, for the full text of the final regulations that becomes effective on July 7, 2009, with the effective date set into text at 8VAC20-81-210 D 2 b and 3 b as follows:*

*Page 2944, 8VAC20-81-210 D 2 b, line 3, strike "the effective date of this regulation" and insert "July 7, 2009."*

*Page 2944, 8VAC20-81-210 D 3 b, lines 3 and 4, strike "the effective date of these regulations" and insert "July 7, 2009"*

V.A.R. Doc No. R07-95

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Title of Regulation: **12VAC30-120. Waiver Services.**

Publication: 25:20 VA.R. 3599-3638 June 8, 2009.

Correction to Final Regulation:

Page 3604, 12VAC30-120-140, column 1, definition of "Personal services" or "PAS," line 1, after "Personal" insert "assistance"

Pages 3603-3604, change alphabetical order of definitions to the following:

Participating provider

Personal assistance services

Personal assistant

Personal care agency

Personal care services

Personal emergency response systems

Plan of care

V.A.R. Doc. No. R08-1107

## SAFETY AND HEALTH CODES BOARD

Title of Regulation: **16VAC25-90-1910. Federal Identical General Industry Standards (29 CFR Part 1910).**

Publication: 22:23 VA.R. 3396 July 24, 2006

Correction to Final Regulation:

Page 3396, Column 1, Titles of Regulations, line 7, delete 16VAC25-90-1910.1020. The Virginia Register erroneously reflected this section as being amended; however, it was not adopted by the Safety and Health Codes Board.

V.A.R. Doc. No. R06-273