# VIRGINIA
## REGISTER OF REGULATIONS

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TABLE OF CONTENTS

**Register Information Page** ........ 1

**Publication Schedule and Deadlines** ........ 2

**Petitions for Rulemaking** ........ 3

**Notices of Intended Regulatory Action** ........ 4

**Regulations** ........ 5

1VAC20-70. Absentee Voting (Reproposed) ........ 5
2VAC5-405. Regulations for the Application of Fertilizer to Nonagricultural Lands (Final) ........ 6
10VAC5-10. Delegation of Certain Authority to the Commissioner of the Bureau of Financial Institutions (Final) ........ 9
10VAC5-20. Banking and Savings Institutions (Final) ........ 9
10VAC5-22. Trust Company Regulations (Final) ........ 10
10VAC5-30. Savings Institution Holding Companies (Final) ........ 10
10VAC5-40. Credit Unions (Final) ........ 10
10VAC5-200. Payday Lending (Final) ........ 18
13VAC10-180. Rules and Regulations for Allocation of Low-Income Housing Tax Credits (Proposed) ........ 19
22VAC40-72. Standards for Licensed Assisted Living Facilities (Final) ........ 31
22VAC40-890. Human Subject Research Regulations (Final) ........ 33
22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (Notice of Suspension of Regulatory Process and Additional Public Comment Period) ........ 34
22VAC40-131. Standards for Licensed Child-Placing Agencies (Notice of Suspension of Regulatory Process and Additional Public Comment Period) ........ 34
24VAC30-61. Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities (Final) ........ 34

**Governor** ........ 37

**General Notices/Errata** ........ 38

**Virginia Code Commission** **http://register.dls.virginia.gov**

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# THE VIRGINIA REGISTER INFORMATION PAGE

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

**ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS**

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

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

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

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

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

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

A regulation becomes effective at the conclusion of the 30-day final adoption period, or at any other later date specified by the promulgating agency, unless (i) a legislative objection has been filed, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 21-day objection period; (ii) the Governor exercises his authority to require the agency to provide for additional public comment, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the period for which the Governor has provided for additional public comment; (iii) the Governor and the General Assembly exercise their authority to suspend the effective date of a regulation until the end of the next regular legislative session; or (iv) the agency suspends the regulatory process, in which event the regulation, unless withdrawn, becomes effective on the date specified, which shall be after the expiration of the 30-day public comment period and no earlier than 15 days from publication of the readopted action.

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

**FAST-TRACK RULEMAKING PROCESS**

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

**EMERGENCY REGULATIONS**

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 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. **26:20 VA.R. 2510-2515 June 7, 2010,** refers to Volume 26, Issue 20, pages 2510 through 2515 of the *Virginia Register* issued on June 7, 2010.

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

Members of the Virginia Code Commission: **John S. Edwards,** Chairman; **Bill Janis,** Vice Chairman; **James M. LeMunyon; Ryan T. McDougle; Robert L. Calhoun; Frank S. Ferguson; E.M. Miller, Jr.; Thomas M. Moncure, Jr.; Wesley G. Russell, Jr.; Charles S. Sharp; Robert L. Tavenner; Patricia L. West; J. Jasen Eige or Jeffrey S. Palmore.**

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.dls.virginia.gov).

**September 2011 through August 2012**

| Volume: Issue | Material Submitted By Noon* | Will Be Published On |
|---|---|---|
| 28:1 | August 24, 2011 | September 12, 2011 |
| 28:2 | September 7, 2011 | September 26, 2011 |
| 28:3 | September 21, 2011 | October 10, 2011 |
| 28:4 | October 5, 2011 | October 24, 2011 |
| 28:5 | October 19, 2011 | November 7, 2011 |
| 28:6 | November 2, 2011 | November 21, 2011 |
| 28:7 | November 15, 2011 **(Tuesday)** | December 5, 2011 |
| 28:8 | November 30, 2011 | December 19, 2011 |
| 28:9 | December 13, 2011 **(Tuesday)** | January 2, 2012 |
| 28:10 | December 27, 2011 **(Tuesday)** | January 16, 2012 |
| 28:11 | January 11, 2012 | January 30, 2012 |
| 28:12 | January 25, 2012 | February 13, 2012 |
| 28:13 | February 8, 2012 | February 27, 2012 |
| 28:14 | February 22, 2012 | March 12, 2012 |
| 28:15 | March 7, 2012 | March 26, 2012 |
| 28:16 | March 21, 2012 | April 9, 2012 |
| 28:17 | April 4, 2012 | April 23, 2012 |
| 28:18 | April 18, 2012 | May 7, 2012 |
| 28:19 | May 2, 2012 | May 21, 2012 |
| 28:20 | May 16, 2012 | June 4, 2012 |
| 28:21 | May 30, 2012 | June 18, 2012 |
| 28:22 | June 13, 2012 | July 2, 2012 |
| 28:23 | June 27, 2012 | July 16, 2012 |
| 28:24 | July 11, 2012 | July 30, 2012 |
| 28:25 | July 25, 2012 | August 13, 2012 |
| 28:26 | August 8, 2012 | August 27, 2012 |

*Filing deadlines are Wednesdays unless otherwise specified.

# 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: Dr. Kenneth Knox.

Nature of Petitioner's Request: To amend regulations to allow a chiropractor who has been practicing for five or more years in another state to be licensed if he has passed Parts I, II, and III of the board examination and has failed Part IV but has a score of 375 on the Special Purpose Examination for Chiropractic.

Agency Decision: Denied.

Statement of Reason for Decision: At its meeting on August 5, 2011, the board reiterated its determination to require passage of Part IV of the National Board of Chiropractic Examiners (NBCE) examination for any applicant who graduated after January 31, 1996. Passage of the clinical portion of the examination has been required for 15 years, and the board does not believe it is in the interest of public safety to lessen the examination requirement.

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

VA.R. Doc. No. R11-44; Filed August 24, 2011, 12:21 p.m.

# TITLE 9. ENVIRONMENT

## STATE WATER CONTROL BOARD

### Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Water Control Board intends to consider amending **9VAC25-260, Water Quality Standards.** The purpose of the proposed action is to consider amending site specific numeric chlorophyll criteria for the tidal James River. The intent of this rulemaking is to protect designated and beneficial uses of the tidal James River by amending or adopting regulations that are technically correct, reasonable, and necessary. These standards will be used in setting Virginia Pollutant Discharge Elimination System Permit limits and for evaluating the waters of the Commonwealth for inclusion in the Clean Water Act § 305(b) report and on the § 303(d) list. Amending the chlorophyll criteria for the tidal James River may result in amending that portion of the December 2010 Chesapeake Bay total maximum daily load allocations for nitrogen, phosphorus, and sediment in the James River basin. This rulemaking is warranted given the addition of new information related to algal communities and their relationship to designated and beneficial use. The goals of the new or amended regulation will be to ensure protection of designated and beneficial uses of the tidal James River through the best science and regulatory approaches.

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

Statutory Authority: § 62.1-44.15 of the Code of Virginia; federal Clean Water Act (33 USC § 1251 et seq.); 40 CFR Part 131.

Public Comment Deadline: October 12, 2011.

Agency Contact: David C. Whitehurst, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4121, FAX (804) 698-4116, or email david.whitehurst@deq.virginia.gov.

VA.R. Doc. No. R12-2932; Filed August 23, 2011, 9:35 a.m.

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# TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

## BOARD OF LONG-TERM CARE ADMINISTRATORS

### 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 Long-Term Care Administrators intends to consider amending **18VAC95-30, Regulations Governing the Practice of Assisted Living Facility Administrators.** The purpose of the proposed action is to comply with the second enactment of Chapter 609 of the 2011 Acts of Assembly. To implement the provisions of Chapter 609, the board will amend certain regulations for an administrator-in-training to ensure adequate oversight by the preceptor who is supervising the training of a person serving as the acting administrator for an assisted living facility. Regulations are intended to clarify that the acting administrator is in training, that the preceptor is responsible for appropriate oversight, and that survey visit reports for the facility become part of the administrator-in-training reports.

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

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

Public Comment Deadline: October 12, 2011.

Agency Contact: Lisa Russell Hahn, Executive Director, Board of Long-Term Care Administrators, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4595, FAX (804) 527-4413, or email ltc@dhp.virginia.gov.

VA.R. Doc. No. R12-2920; Filed August 22, 2011, 7:36 a.m.

# REGULATIONS

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

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

## TITLE 1. ADMINISTRATION

### STATE BOARD OF ELECTIONS

### Reproposed Regulation

REGISTRAR'S NOTICE: The State Board of Elections is claiming an exemption from the Administrative Process Act pursuant to § 2.2-4002 B 8 of the Code of Virginia, which exempts agency action relating to the conduct of elections or eligibility to vote.

Title of Regulation: **1VAC20-70. Absentee Voting (adding 1VAC20-70-20).**

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

Public Hearing Information: October 17, 2011 - 3 p.m. - State Capitol, House Room 2, Richmond, VA

Public Comment Deadline: October 12, 2011.

Agency Contact: Justin Riemer, Confidential Policy Advisor, State Board of Elections, 1100 Bank Street, Richmond, VA 23219, telephone (804) 864-8904, or email justin.riemer@sbe.virginia.gov.

Background: On December 20, 2010 (27:8 VA.R. 733-734), the State Board of Elections published a regulation defining material omissions from absentee ballots with an effective date contingent upon preclearance approval by the U.S. Attorney General. This regulation did not become effective and a Notice of Withdrawal of that action was published in Volume 27, Issue 24 of the Virginia Register of Regulations on August 1, 2011. On July 6, 2011, the board approved proposing for public comment different language for a regulation defining material omissions from absentee ballots to replace board policy 2008-006, Substantial Compliance, which was also published in Volume 27, Issue 24 of the Virginia Register of Regulations on August 1, 2011. On August 16, 2011, the board received additional public comment and directed that a further public comment period be provided.

Summary:

*This regulation details standards to assist local election officials in determining whether an absentee ballot may be counted by distinguishing what errors or omissions are always material and render the ballot invalid from those that are not material.*

**1VAC20-70-20. Material omissions from absentee ballots.**

A. Pursuant to the requirements of § 24.2-706 of the Code of Virginia, a timely received absentee ballot contained in an Envelope B should not be rendered invalid if it contains an error or omission not material to its proper processing.

B. The following omissions are always material and any Envelope B containing such omissions should be rendered invalid if any of the following exists:

1. The voter did not include his full name in any order;

2. The voter did not include [ ~~a~~ his ] first name;

3. The voter did not include his last name;

4. The voter did not provide his house number, street name or rural route address, [ or ] city of residence [ ~~, or zip code~~ ];

5. The voter did not sign Envelope B;

6. The voter's witness did not sign Envelope B; [ ~~or~~ ]

7. The ballot is not sealed in Envelope B [ ~~.~~ ; or

8. The voter did not provide the date on which he signed Envelope B ].

C. The ballot should not be rendered invalid if on [ the ] Envelope B:

1. The voter included his full name in an order other than "last, first, middle";

2. The voter used his middle initial instead of his full middle name;

3. The voter used a derivative of his legal name as a first name (e.g., "Bob" instead of "Robert");

4. The voter did not provide his residential street identifier (Street, Drive, etc.); [ ~~or~~ ]

5. [ The voter did not provide a zip code; or

6. ] The voter omitted the year in the date [ on which he signed Envelope B ].

VA.R. Doc. No. R11-2923; Filed August 24, 2011, 11:53 a.m.

## TITLE 2. AGRICULTURE

### BOARD OF AGRICULTURE AND CONSUMER SERVICES

### Final Regulation

Title of Regulation: **2VAC5-405. Regulations for the Application of Fertilizer to Nonagricultural Lands (adding 2VAC5-405-10 through 2VAC5-405-110).**

Statutory Authority: § 3.2-3602.1 of the Code of Virginia.

Effective Date: October 12, 2011.

Agency Contact: Erin Williams, Policy and Planning Coordinator, Department of Agriculture and Consumer Services, P.O. Box 1163, Richmond, VA 23218, telephone (804) 786-1308, FAX (804) 371-7479, TTY (800) 828-1120, or email erin.williams@vdacs.virginia.gov.

Summary:

*Pursuant to Chapter 686 of the 2008 Acts of the Assembly, the regulations establish requirements for certification of fertilizer applicators. Specifically, the regulations establish: (i) the application process for becoming a certified fertilizer applicator; (ii) exemptions from the requirements of these regulations for certain categories of individuals; (iii) core areas of testing for certification applicants; (iv) the certification renewal process; (v) supervision requirements for noncertified individuals who apply fertilizer to nonagricultural lands; (vi) recordkeeping requirements for fertilizer applicators; and (vii) the $250 civil penalty that will be assessed to individuals who offer their services as certified fertilizer applicators without first obtaining board certification or who supervise the application of fertilizer to nonagricultural land when they have not been certified by the board.*

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 405
REGULATIONS FOR THE APPLICATION OF FERTILIZER TO NONAGRICULTURAL LANDS

**2VAC5-405-10. Definitions.**

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

"Accident" means an unexpected, undesirable event involving the use of fertilizer or the presence of a fertilizer that adversely affects the environment.

"Agricultural activity" means any activity used in the production of [ ~~food and fiber~~ agricultural products ] for commercial purposes, including farming, feedlots, grazing livestock, poultry raising, dairy farming, and aquaculture activities.

"Agricultural products" means any livestock, aquacultural, poultry, horticultural, floricultural, viticultural, silvicultural, or other farm crops produced for commercial purposes.

"Board" means the Board of Agriculture and Consumer Services.

"Board-approved training" means training offered by a state agency or private entity approved by the board that includes, at a minimum, study and review of course material pertaining to the application of fertilizer on nonagricultural land. Such training shall include testing and certification of the individual's successful completion of the training.

"Certificate" means the document issued to a fertilizer applicator upon satisfactory completion of board-approved training.

"Certification" means the recognition granted by the board to a fertilizer applicator upon satisfactory completion of board-approved training.

"Certified fertilizer applicator" means any individual who has successfully completed board-approved training.

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

"Contractor-applicator" means any person required to hold a permit to distribute or apply any fertilizer pursuant to § 3.2-3608 of the Code of Virginia.

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

"Distribute" means to import, consign, manufacture, produce, compound, mix, blend, or in any way alter the chemical or physical characteristics of a fertilizer, or to offer for sale, sell, barter, warehouse, or otherwise supply fertilizer in the Commonwealth.

"Fertilizer" means any substance containing one or more recognized plant nutrients that is used for its plant nutrient content and that is designed for use, or claimed to have value, in promoting plant growth. Fertilizer does not include unmanipulated animal and vegetable manures, marl, lime, limestone, and other products exempted by regulation.

"Incident" means a definite and separate occurrence or event involving the use of fertilizer or the presence of a fertilizer that adversely affects the environment.

"Individual applicator training" means training provided to individuals by a certified fertilizer applicator or training offered to individuals by any state agency or private entity approved by the board that includes, at a minimum, a study and review of fertilizer equipment calibration; handling of accidents involving fertilizer; proper methods of storing,

mixing, loading, transporting, handling, applying, and disposing of fertilizer; and safety and health concerns related to fertilizer, including proper use of personal protective equipment.

"Label" means the display of all written, printed, or graphic matter upon the immediate container or a statement accompanying a fertilizer, including an invoice.

"Licensee" means the person who receives a license to distribute any fertilizer under the provisions of § 3.2-3606 of the Code of Virginia.

"Nonagricultural land" means land upon which no agricultural activities are conducted and from which no agricultural products are derived.

"Noncertified fertilizer applicator" means either a trained applicator or an untrained applicator, neither of whom has received certification as a certified fertilizer applicator.

"Trained applicator" means an individual who is not a certified fertilizer applicator but who has successfully completed individual applicator training.

"Under the direct on-site supervision of" means the act or process whereby the application of a fertilizer is made by an individual acting under the instructions and control of a certified fertilizer applicator who is responsible for the actions of that person and who is physically present on the land upon which the fertilizer is being applied.

"Untrained applicator" means an individual who is not seeking or has not successfully completed individual applicator training.

"Use of fertilizer" includes application or mixing and handling, transfer, or any act with respect to a particular fertilizer that is consistent with the label directions for that particular fertilizer.

**2VAC5-405-20. General requirements.**

A. The board authorizes the commissioner to approve all courses of training required in this regulation.

B. All licensees and contractor-applicators who apply fertilizer for commercial purposes to nonagricultural land shall:

1. Employ or retain the services of a certified fertilizer applicator.

2. Apply fertilizer at rates, times, and methods that are consistent with standards and criteria for nutrient management promulgated pursuant to § 10.1-104.2 of the Code of Virginia.

3. Ensure that fertilizer applications are conducted as prescribed by board-approved training or individual applicator training.

4. Comply with all applicable recordkeeping requirements in this regulation.

C. Certified fertilizer applicators may apply fertilizer to nonagricultural land for commercial purposes.

D. The following individuals may apply fertilizer to nonagricultural land for commercial purposes provided they are under the control and instruction of a certified fertilizer applicator who is responsible for the actions of those individuals:

1. Trained applicators. The certified fertilizer applicator does not need to be physically present on the land upon which trained applicators are applying fertilizer. Trained applicators are not authorized to supervise the application of fertilizer by untrained applicators.

2. Untrained applicators provided that they are under the direct on-site supervision of a certified fertilizer applicator.

3. Individuals engaged in training required for certification as a certified fertilizer applicator provided that the individuals are under the direct on-site supervision of a certified fertilizer applicator.

**2VAC5-405-30. Qualifications for certification as a certified fertilizer applicator.**

All persons desiring certification as certified fertilizer applicators shall successfully complete board-approved training.

**2VAC5-405-40. Application process.**

A. The application to become a certified fertilizer applicator shall be in writing to the commissioner on a form as specified and approved by the commissioner and shall contain:

1. Last name, first name, and middle initial of the applicant;

2. Mailing address; and

3. Documentation of successful completion of board-approved training.

B. Any individual desiring certification as a certified fertilizer applicator who has completed a comparable course of training not yet approved by the board may petition the commissioner to approve the course. The petition shall include verifiable documentation of successful course completion.

C. Any individual who is denied certification as a certified fertilizer applicator may appeal the decision to the board through an appeal process that is compliant with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia). The procedure for appealing a decision shall be specified by the commissioner and shall be made available to the person denied certification.

D. Upon certification, a card will be issued to the certified fertilizer applicator, which will remain valid for four years from the date of issuance. A certified fertilizer applicator may request a duplicate of the certification card if the card has been lost, stolen, mutilated, or destroyed. The department shall issue a duplicate card to the certified fertilizer applicator upon payment of the costs of duplication.

**2VAC5-405-50. Exemptions from certification.**

The following individuals are exempt from certification:

1. Individuals conducting research in laboratories or field test plots involving fertilizers.

2. Individuals who use fertilizer or supervise the use of fertilizer as part of their duties only on nonagricultural land owned or leased by their employers.

3. Individuals holding turf and landscape certification from the Department of Conservation and Recreation as nutrient management planners.

**2VAC5-405-60. General knowledge requirements for certified fertilizer applicators; continuing education.**

A. All applicants for certification as a certified fertilizer applicator shall demonstrate practical knowledge of the principles and practices of the environmentally safe use of fertilizer.

B. Applicants shall be tested on their knowledge and qualifications concerning the use of fertilizer and the handling of fertilizer in the board-approved training. Testing will be based on problems and situations in the following core areas:

1. Proper nutrient management practices such as allowable rate of application for nutrients for various types of vegetation and determining quantity of product to apply based on nutrient analysis;

2. Timing of application during appropriate seasons for various types of vegetation and restrictions on intervals for reapplication;

3. Soil analysis techniques and interpretation of soil analysis results such as proper frequency and depth of sampling and determining appropriate rates of application based on soil analyses;

4. Equipment calibration techniques and procedures for liquid and dry fertilizer applicators and determination of size of application areas;

5. Understanding and interpreting fertilizer labels;

6. Proper handling and appropriate notification procedures of accidents and incidents;

7. Proper methods of storing, mixing, loading, transporting, handling, applying, and disposing of fertilizer;

8. Managing applications near impervious surfaces such as streets, driveways, sidewalks, or paved ditches, as well as near water bodies to avoid off-target applications;

9. Safety and health, including proper use of personal protective equipment; and

10. Recordkeeping requirements of this regulation.

C. Continuing education requirement. Certified fertilizer applicators shall complete a minimum of two hours of course work every two years on at least one of the following:

1. Proper nutrient management practices;

2. Timing of fertilizer application;

3. Soil analysis techniques and interpretation;

4. Equipment calibration;

5. Understanding and interpreting fertilizer labels; or

6. Management of fertilizer applications near impervious surfaces.

The courses may be offered by any state agency or private entity recognized by the board.

**2VAC5-405-70. Renewal of certification.**

A. Every certification shall be valid for a period of four years. Upon expiration of certification, the certified fertilizer applicator's certificate shall become invalid and the holder shall not be allowed to offer his services as a certified fertilizer applicator.

B. Any certified fertilizer applicator who desires to renew his certification shall submit an application for renewal. The application shall be in writing to the commissioner on a form as specified and approved by the commissioner and shall contain:

1. Last name, first name, and middle initial of the applicant;

2. Mailing address; and

3. Documentation of satisfactory compliance with the continuing education requirements in 2VAC5-405-60.

C. The application for certification renewal shall be submitted within the 60 days immediately prior to or the 60 days immediately following the expiration of the certification. Any certified fertilizer applicator who desires to renew his certification but fails to do so within this timeframe shall be subject to the application process requirements of 2VAC5-405-40. The 60 days following expiration of the certification is a grace period to allow certified fertilizer applicators to renew their certification. A certified fertilizer applicator whose certification has expired shall not offer his services as a certified fertilizer applicator during this 60-day grace period.

**2VAC5-405-80. Qualifications for trained applicators.**

All noncertified applicators desiring to apply fertilizer for commercial purposes on nonagricultural land while not under the direct on-site supervision of a certified fertilizer applicator shall successfully complete individual applicator training.

**2VAC5-405-90. Recordkeeping requirements for trained applicators.**

A. Licensees and contractor-applicators subject to this regulation shall maintain training records for each trained applicator employed by the licensee or contract-applicator.

B. The training record shall include (i) the name of the trained applicator; (ii) the name of the state agency or private entity approved by the board or the name and affiliation of the certified fertilizer applicator providing the training; (iii) the type of training received; and (iv) the date when the trained applicator successfully completed individual applicator training.

C. The training records shall be maintained for as long as the trained applicator continues to apply fertilizer on nonagricultural land on behalf of the licensee or contractor-applicator and for three years following separation and shall be available for inspection by the commissioner.

**2VAC5-405-100. Recordkeeping requirements for the application of fertilizer.**

Licensees and contractor-applicators shall maintain records of each application of fertilizer to nonagricultural land for at least three years following the application. These records shall be available for inspection by the commissioner. Each record shall contain the:

1. Name, mailing address, and telephone number of customer, as well as address of application site if different from customer's mailing address;

2. Name of the person making or supervising the application;

3. Day, month, and year of application;

4. Weather conditions at the start of the application;

5. Acreage, area, square footage, or plants treated;

6. Analysis of fertilizer applied;

7. Amount of fertilizer used, by weight or volume; and

8. Type of application equipment used.

**2VAC5-405-110. Violations and penalties for noncompliance.**

A. Any individual who offers his services as a certified fertilizer applicator or who supervises the application of any fertilizer on nonagricultural land without obtaining prior registration certification from the commissioner shall be assessed a penalty of $250.

B. Violations of the provisions of these regulations shall be handled in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

C. Any penalties assessed for violations of this regulation shall be handled in accordance with a board-approved administrative process.

D. In addition to any monetary penalties provided in this section, certified fertilizer applicators who violate any provision of this regulation may also be subject to the provisions of § 3.2-3621 of the Code of Virginia regarding the cancellation of certification.

NOTICE: The following forms used in administering the regulation were filed by the agency. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access a form. The forms are also available through the agency contact or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

[ FORMS (2VAC5-405)

Virginia Certified Fertilizer Applicator Application, Form CFA-101 (eff. 10/11).

Virginia Certified Fertilizer Applicator Renewal Application, Form CFA-102 (eff. 10/11). ]

VA.R. Doc. No. R09-1656; Filed August 24, 2011, 12:32 p.m.

# TITLE 10. FINANCE AND FINANCIAL INSTITUTIONS

## STATE CORPORATION COMMISSION

### Final Regulation

REGISTRAR'S NOTICE: The following amendments are exempt from the Virginia Administrative Process Act pursuant to § 2.2-4002 C of the Code of Virginia, which provides that minor changes to regulations published in the Virginia Administrative Code under the Virginia Register Act, Chapter 41 (§ 2.2-4100 et seq.) of Title 2.2 of the Code of Virginia, made by the Virginia Code Commission pursuant to § 30-150, shall be exempt from the provisions of the Virginia Administrative Process Act.

Titles of Regulations: **10VAC5-10. Delegation of Certain Authority to the Commissioner of the Bureau of Financial Institutions (amending 10VAC5-10-10).**

**10VAC5-20. Banking and Savings Institutions (amending 10VAC5-20-20, 10VAC5-20-30, 10VAC5-20-40, 10VAC5-20-50).**

**10VAC5-22. Trust Company Regulations (amending 10VAC5-22-10, 10VAC5-22-50, 10VAC5-22-140).**

**10VAC5-30. Savings Institution Holding Companies (amending 10VAC5-30-10, 10VAC5-30-20).**

**10VAC5-40. Credit Unions (amending 10VAC5-40-10, 10VAC5-40-20, 10VAC5-40-30, 10VAC5-40-40, 10VAC5-40-60).**

Statutory Authority: § 12.1-13 of the Code of Virginia.

Effective Date: September 1, 2011.

Agency Contact: Todd Rose, Senior Counsel, Office of General Counsel, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9107, FAX (804) 371-9211, or email todd.rose@scc.virginia.gov.

Summary:

*Several chapters of Title 10 of the Virginia Administrative Code pertaining to Finance and Financial Institutions have been updated to replace references to Title 6.1 of the Code of Virginia with references to Title 6.2 of the Code of Virginia to reflect the recodification of Title 6.1 of the Code of Virginia in the fall of 2010.*

**10VAC5-10-10. Powers delegated to Commissioner of Financial Institutions.**

A. The State Corporation Commission has delegated to the Commissioner of Financial Institutions the authority to exercise its powers and to act for it in the following matters:

1. To grant or deny petitions relating to service by an individual as a director of more than one financial institution. (§ ~~6.1-2.7~~ 6.2-104 of the Code of Virginia.)

2. To grant a certificate of authority to a bank formed for the purpose of its being acquired under the provisions of Chapter 14 (§ 6.1-390 et seq.) of Title 6.1 of the Code of Virginia, or for the purpose of facilitating the consolidation of banks or the acquisition by merger of a bank pursuant to any provision of Title ~~6.1~~ 6.2 of the Code of Virginia. (§§ ~~6.1-13~~ 6.2-816 and ~~6.1-43~~ 6.2-822 of the Code of Virginia.)

3. To grant or deny authority to a bank, or to a trust subsidiary, to engage in the trust business or exercise trust powers. (§§ ~~6.1-16~~ 6.2-819, 6.2-1001, 6.2-1049, and ~~6.1-32.5~~ 6.2-1054 of the Code of Virginia.)

4. To approve an office of a trust subsidiary; to authorize a trust company to establish an additional office; to authorize a state bank or trust company to establish or acquire a trust office in another state; and to deny an application by a state bank to establish a branch or relocate an authorized office in Virginia. (§§ ~~6.1-32.6, 6.1-32.21, 6.1-32.33~~ 6.2-831, 6.2-1028, 6.2-1055, and ~~6.1-39.3~~ 6.2-1066 of the Code of Virginia.) To approve the establishment, acquisition, maintenance, and operation of branches of state banks in states other than Virginia. (§§ ~~6.1-44.3~~ 6.2-837 and ~~6.1-44.17~~ 6.2-850 of the Code of Virginia.)

5. To permit a state bank to operate or advertise a branch office under a name that is not identical to the bank's own name. (§ ~~6.1-41~~ 6.2-834 of the Code of Virginia.)

6. To object to an application or notice by an out-of-state trust institution or an out-of-state bank to establish or acquire a trust office or branch in Virginia, upon finding that the filing requirements and the conditions for approval prescribed by law are not fulfilled. (§§ ~~6.1-32.38 and 6.1-32.39; 6.1-44.6 and 6.1-44.7; 6.1-44.19~~ 6.2-840, 6.2-841, 6.2-852, 6.2-853, 6.2-1069, and ~~6.1-44.20~~ 6.2-1070 of the Code of Virginia.)

7. To grant approval for directors' meetings of a bank or trust company to be held less frequently than monthly. (§ ~~6.1-52~~ 6.2-866 of the Code of Virginia; 10VAC5-22-20.)

8. To grant approval for the investing of more than 50% of the aggregate amount of a bank's capital stock, surplus, and undivided profits in its bank building and premises; and to permit the payment of dividends while such investment exceeds 50% of capital, surplus, and undivided profits. (§ ~~6.1-57~~ 6.2-870 of the Code of Virginia.)

9. To consent to a bank's investment in more than one service corporation. (§ ~~6.1-58~~ 6.2-871 of the Code of Virginia.)

10. To give permission for the aggregate investment of more than 50% of a bank's capital stock and permanent surplus in the stock, securities, or obligations of controlled-subsidiary and bank service corporations. (§ ~~6.1-58.1~~ 6.2-885 of the Code of Virginia.)

11. To give written consent and approval for a bank to hold the possession of certain real estate for a longer period than 10 years. (Subdivision 4 of § ~~6.1-59~~ 6.2-872 of the Code of Virginia.)

12. To approve the issuance by a bank of capital notes and debentures, so that such notes and debentures may qualify as surplus for the purpose of calculating the legal lending limit of a bank. (§ ~~6.1-61~~ 6.2-875 of the Code of Virginia.)

13. To give written approval in advance for a bank or trust company to pledge its assets as security for certain temporary purposes. (§ ~~6.1-80~~ 6.2-890 of the Code of Virginia.)

14. To require any bank to prepare and submit such reports and material as he may deem necessary to protect and promote the public interest. (§ ~~6.1-93~~ 6.2-907 of the Code of Virginia.)

15. To approve the issuance of stock in a savings institution in exchange for property or services valued at an amount not less than the aggregate value of the shares

issued. ~~(§§ 6.1-194.11 and 6.1-194.113~~ (§ 6.2-1117 of the Code of Virginia.)

16. To reduce temporarily the reserve requirements for a savings institution upon a finding that such reduction is in the best interest of the institution and its members. (§ ~~6.1-194.23~~ 6.2-1130 of the Code of Virginia.)

17. To grant a certificate of authority to a savings institution formed solely for the purpose of facilitating the merger or acquisition of savings institutions pursuant to any provision of Title ~~6.1~~ 6.2 of the Code of Virginia.

18. To grant or deny authority to a state association, a state savings bank or a foreign savings institution to establish a branch office, or other office or facility where deposits are accepted ~~(§§ 6.1-194.26 and 6.1-194.119~~ (§ 6.2-1133 of the Code of Virginia), or to change the location of a main or branch office. ~~(§§ 6.1-194.28 and 6.1-194.121~~ (§ 6.2-1135 of the Code of Virginia.)

19. To cause a special examination of a savings institution to be made. (§ ~~6.1-194.84:1~~ 6.2-1201 of the Code of Virginia.)

20. To grant or deny authority to a savings institution to exercise fiduciary powers. (§§ ~~6.1-195.77~~ 6.2-1081 et seq. and ~~6.1-194.138~~ 6.2-1099 of the Code of Virginia.)

21. To grant or deny approval to a credit union to maintain a service facility or office (other than a main office). (§ ~~6.1-225.20~~ 6.2-1326 of the Code of Virginia.)

22. To make such findings as are required by §§ ~~6.1-225.23~~ 6.2-1327 and ~~6.1-225.23:1~~ 6.2-1328 of the Code of Virginia relating to fields of membership of credit unions and the expansion of such fields of membership.

23. To approve the investment of credit union funds in certain stock, securities and other obligations. (Subdivision 8 of § ~~6.1-225.57~~ 6.2-1376 of the Code of Virginia.)

24. To grant or deny authority to an industrial loan association to relocate its office. (§ ~~6.1-233~~ 6.2-1408 of the Code of Virginia.)

25. To grant or deny licenses pursuant to Chapter ~~6~~ 15 (§ ~~6.1-244~~ 6.2-1500 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia. (§ ~~6.1-256.1~~ 6.2-1507 of the Code of Virginia.)

26. To grant or deny licenses to engage in the business of selling money orders or the business of money transmission, or both, and approve or disapprove acquisitions of ownership interests in licensees. (§§ ~~6.1-371~~ 6.2-1901, 6.2-1902, and ~~6.1-378.2~~ 6.2-1914 of the Code of Virginia.)

27. To grant or deny licenses to operate credit counseling agencies. (§ ~~6.1-363.7~~ 6.2-2005 of the Code of Virginia.)

28. To grant or deny permission to a credit counseling agency licensee to relocate an office or open an additional office and approve or disapprove acquisitions of ownership interests in licensees. (§§ ~~6.1-363.8~~ 6.2-2006 and ~~6.1-363.9~~ 6.2-2007 of the Code of Virginia.)

29. To grant or deny licenses to engage in business as a mortgage lender and/or mortgage broker, and prescribe conditions under which exclusive agents of licensees may act as mortgage brokers without a license and approve or disapprove individuals as qualified exclusive agents of licensees. (§§ ~~6.1-410~~ 6.2-1601 and ~~6.1-415~~ 6.2-1606 of the Code of Virginia.)

30. To grant or deny permission to a mortgage lender or mortgage broker licensee to relocate an office or open an additional office and approve or disapprove acquisitions of ownership interests in licensees. (§§ ~~6.1-416~~ 6.2-1607 and ~~6.1-416.1~~ 6.2-1608 of the Code of Virginia.)

31. To grant or deny licenses to engage in business as a mortgage loan originator, and set the amount of surety bond required for such licensure. (§§ ~~6.1-431.4~~ 6.2-1703 and ~~6.1-431.7~~ 6.2-1706 of the Code of Virginia.)

32. To enter into cooperative agreements with appropriate regulatory authorities for the examination of out-of-state bank holding companies and their subsidiaries and out-of-state savings institution holding companies and their subsidiaries and for the accomplishment of other duties imposed on the commission by Article ~~11~~ 5 (§ ~~6.1-194.96~~ 6.2-1148 et seq.) of Chapter ~~3.01~~ 11 and by Chapter ~~15~~ 7 (§ ~~6.1-398~~ 6.2-700 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia.

33. To prescribe the form and content of all applications, documents, undertakings, papers, and information required to be submitted to the commission under Title ~~6.1~~ 6.2 of the Code of Virginia.

34. To make all investigations and examinations, give all notices, and shorten, waive, or extend any time period within which any action of the commission must or may be taken or performed under Title ~~6.1~~ 6.2 of the Code of Virginia.

B. In the performance of the duties hereby delegated to him, the commissioner shall have the power and authority to make all findings and determinations permitted or required by law.

C. The foregoing delegations of authority shall be effective until revoked by order of the commission. All actions taken by the Commissioner of Financial Institutions pursuant to the authority granted here are subject to review by the commission in accordance with the Rules of Practice and Procedure of the State Corporation Commission. Each delegation set forth in a numbered subdivision of subsection A of this section shall be severable from all others.

**10VAC5-20-20. Reserves of Virginia banks.**

The percentage of reserves to be maintained against deposits, as established in accordance with § ~~6.1-69~~ 6.2-889 of the Code of Virginia, shall be: 0.0% against demand deposits, and 0.0% against time deposits.

This chapter shall not relieve any bank from complying with all applicable federal laws and with Regulation D, "Reserve Requirements of Depository Institutions," of the Board of Governors of the Federal Reserve System.

**10VAC5-20-30. Schedule prescribing annual fees paid for examination, supervision, and regulation of state-chartered banks and savings institutions.**

Pursuant to the provisions of §§ ~~6.1-94, 6.1-194.85~~ 6.2-908 and ~~6.1-194.149~~ 6.2-1202 of the Code of Virginia, the State Corporation Commission hereby sets the following schedule of annual fees to be paid by state-chartered banks, savings institutions, and savings banks for their examination, supervision, and regulation:

| SCHEDULE | | | | |
|---|---|---|---|---|
| Asset Interval | | Fee | | |
| Assets Exceeding | But Not Exceeding | This Amount | Plus | Assets Exceeding |
| $0 | $5 million | $6,900 | 0 x | |
| 5 million | 25 million | 6,900 | .0004025 x | $5 million |
| 25 million | 100 million | 14,950 | .00023 x | 25 million |
| 100 million | 200 million | 32,200 | .0001725 x | 100 million |
| 200 million | 1 billion | 49,450 | .0001265 x | 200 million |
| 1 billion | 5 billion | 150,650 | .0001035 x | 1 billion |
| 5 billion | | 564,650 | .0000805 x | 5 billion |

The fee assessed using the above schedule shall be rounded down to the nearest whole dollar. The assessment shall be based on the institution's total assets as shown by its Report of Condition as of the close of business for the preceding calendar year.

A bank or savings institution which opens for business January 1 through June 30 shall be assessed a fee of $6,900 for that year.

A bank or savings institution which opens for business on or after July 1 shall be assessed a fee of $5,175 for that year.

**10VAC5-20-40. State savings banks; corporate name and investment requirement.**

Pursuant to § ~~6.1-194.141~~ 6.2-1192 of the Code of Virginia, a state savings bank shall not be required to have as a part of its corporate name the word "savings," regardless of §§ ~~6.1-112~~ 6.2-939, 6.2-1040, and ~~6.1-194.112~~ 6.2-1116 of the Code of Virginia. Further, a state savings bank shall be deemed in compliance with the investment in "real estate loans" requirement of § ~~6.1-194.62~~ 6.2-1179 if it meets the "qualified thrift lender test" set forth in 12 USC § 1468a(m)(1)(B).

**10VAC5-20-50. Conversion of mutual to stock association.**

A. Conversion authorized. As authorized by § ~~6.1-194.32~~ 6.2-1139 of the Code of Virginia, a state mutual savings and loan association may convert to a stock association in accordance with this section, the Virginia Non-Stock Corporation Act (§ 13.1-801 et seq. of the Code of Virginia), and regulations promulgated by the federal Office of Thrift Supervision (OTS) relating to mutual-to-stock conversions.

B. Application for conversion. Upon the affirmative vote of 2/3 of its board of directors, a state mutual association may file with the Bureau of Financial Institutions (bureau) an application to convert to a stock association. The application shall be accompanied by a filing fee of $1,000.00.

The application shall conform to OTS requirements as to its form and content. (A copy of the conversion application submitted to the OTS may be submitted.) In addition, the application shall include:

1. A certified copy of the minutes of the meeting at which the board of directors authorized the association's officers to apply for conversion.

2. The proposed amended articles of incorporation and bylaws of the stock association to be formed.

3. The proposed form of notice to members of the meeting at which conversion will be formally considered and voted upon, which notice shall include a clear statement to account holders that the stock to which they may subscribe will not be an insured investment.

4. A statement of the time and manner in which such notice will be provided.

C. Plan of conversion. In addition to complying with the requirements of OTS regulations, a plan of conversion shall be filed with the bureau that provides:

1. A statement of the business purposes to be accomplished by the conversion.

2. That the word "mutual" will not be in the name of the association after its conversion to stock form of ownership.

3. That no reduction in the association's reserves or net worth will result from the conversion.

D. Preliminary approval. The Commissioner of Financial Institutions (commissioner) shall review the application and, if (i) the application, plan of conversion, and articles of amendment comply with the requirements of state law and regulations, (ii) the proposed plan of conversion appears to be fair and equitable to members of the association, and (iii) there is an intention to retain FDIC insurance of deposit accounts, the commissioner shall issue preliminary approval of the conversion. Such preliminary approval shall be given subject to a concurring shareholder vote and to continued compliance with all applicable laws and regulations.

Prior to granting preliminary approval, the commissioner may require the applicant to submit such additional information as may be necessary for making a determination of fairness and may require that changes in the application be made where necessary to protect the interests of the applicant's members.

E. Special meeting of members. When it has received the commissioner's preliminary approval, the board of directors may call a special meeting of the members of the association for the purpose of considering and voting upon the conversion and the proposed amendments to the association's articles of incorporation. Written notice of such meeting shall conform to the applicable provisions of law and shall be mailed to each member entitled to vote on the matters to be taken up. The plan of conversion, or a summary of it, shall accompany the notice. Notice of the meeting may not be waived.

Conduct of the special meeting and voting on the proposed amendments to the articles of incorporation shall be governed by the applicable provisions of the Non-Stock Corporation Act. Voting rights of members shall be determined in accordance with § ~~6.1-194.17~~ 6.2-1124 of the Code of Virginia. The plan of conversion shall be approved in accordance with § 13.1-886 ~~E~~ D of the Code of Virginia, and a certified copy of the minutes of the special meeting shall be filed promptly with the bureau.

F. Formal approval; effective date of conversion. Upon receiving (i) evidence that the plan of conversion and the amended articles have been duly approved by the association's members, (ii) evidence that the accounts of the stock association will continue to be insured by the FDIC, and (iii) a copy of the amended articles of incorporation, as approved, the commissioner, when satisfied that all applicable laws and regulations have been complied with, shall issue formal approval authorizing the conversion. Thereafter, the effective date of the conversion shall be the date when the Clerk of the State Corporation Commission issues a certificate of amendment giving legal effect to the association's amended articles of incorporation.

G. Actions performed by the commissioner under this section shall be subject to review pursuant to the State Corporation Commission Rules of Practice and Procedure (5VAC5-20).

**10VAC5-22-10. Definitions.**

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

"Affiliate" means generally a person that directly or indirectly controls, is controlled by, or is under common control with another person. In addition, for purposes of ~~the Trust Company Act, Article 3.2~~ Article 1 (§ 6.2-1000 et seq.) and Article 2 (§ ~~6.1-32.11~~ 6.2-1013 et seq.) of Chapter ~~2~~ 10 of Title ~~6.1~~ 6.2 of the Code of Virginia, a broker-dealer, investment advisor, or investment company is an affiliate of a trust company if a trust company holding company controls the trust company and owns, directly or indirectly, 5.0% or more of any class of the capital stock of the broker-dealer, investment advisor, or investment company.

"Affiliated trust company" means a trust company that is controlled by a trust company holding company. For purposes of ~~the Act~~ Articles 1 and 2 of Chapter 10 of Title 6.2 of the Code of Virginia, a trust company holding company or other person has control of a trust company or other legal entity if the person owns 25% or more of the voting stock of the trust company or entity; if, pursuant to the definition of control in the Bank Holding Company Act of 1956 (12 USC § 1841 et seq.), the person would be presumed to control the trust company or entity; or if the commission determines that the person exercises a controlling influence over the management and policies of the trust company or entity.

"Broker-dealer" means any person selling any type of security other than an interest or unit in a condominium as defined in subdivision (c) of § 55-79.2 of the Code of Virginia or cooperative housing corporation for the account of others or for his own account otherwise than with or through a broker-dealer or agent, but does not include a bank, a trust subsidiary formed under Article ~~3.1~~ 3 (§ ~~6.1-32.1~~ 6.2-1047 et seq.) of Chapter ~~2~~ 10 of Title ~~6.1~~ 6.2 of the Code of Virginia, an issuer or an agent.

"Bureau" means the Bureau of Financial Institutions of the State Corporation Commission.

"Commission" means the State Corporation Commission.

"Trust company" means a corporation, including an affiliated trust company, authorized to engage in the trust business under ~~Article 3.2~~ Article 1 (§ 6.2-1000 et seq.) and Article 2 (§ ~~6.1-32.11~~ 6.2-1013 et seq.) of Chapter ~~2~~ 10 of Title ~~6.1~~ 6.2 of the Code of Virginia with powers expressly restricted to the conduct of general trust business.

"Trust company holding company" means a corporation which owns, directly or indirectly, 5.0% or more of any class of capital stock of a broker-dealer, investment advisor, or investment company and which also controls a trust company.

**10VAC5-22-50. Insurance required.**

In addition to the surety bond required by § ~~6.1-32.17~~ 6.2-1016 of the Code of Virginia, a trust company shall maintain insurance coverage that, in kind and amount, provides adequate protection against the risks of the business. The coverage may be provided through the holding company of an affiliated trust company.

**10VAC5-22-140. Purchases from affiliate prohibited; exceptions; terms.**

Section ~~6.1-32.14:2~~ 6.2-1020 of the Code of Virginia provides that an affiliated trust company may not, during the underwriting period, purchase from an affiliated broker-dealer any security that is being underwritten by that broker-dealer.

Outside the scope of § ~~6.1-32.14:2~~ 6.2-1020 of the Code of Virginia, an affiliated trust company may not purchase any security or other property from an affiliate, except as authorized by a provision of a governing trust instrument or other controlling document, by a court, or in accordance with specific permission given by law (e.g., § 26-44.1 of the Code of Virginia). Any such purchase from an affiliate shall be made at arm's length and on terms no less stringent than those that would apply in a transaction with an unrelated third party.

**10VAC5-30-10. Definitions.**

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

"Company" means any corporation, partnership, trust, joint stock company, or similar organization.

"Control" means the ownership, control, or power to vote 25% percent or more of the voting shares of a state savings institution or other company, the ability to elect a majority of the directors of such an institution or company, or, as determined by the Commission on the basis of evidence, actual control of the management or policies of such an institution or company.

"Financial institution" means any bank, trust company, savings and loan association, industrial loan association, consumer finance company, or credit union. (§ ~~6.1-2.1~~ 6.2-100 of the Code of Virginia.)

"Person" means a company, association, joint venture, pool, syndicate, sole proprietorship, unincorporated association, individual or any other entity not specifically listed.

"Savings institution" means a savings and loan association, building and loan association, building association, or savings bank, whether organized as a capital stock corporation or a nonstock corporation, which is authorized by law to accept deposits and to hold itself out to the public as engaged in the savings institution business.

"Savings institution holding company" means any person that directly or indirectly, or acting in concert with one or more other companies or persons (including one or more subsidiaries or affiliates) controls one or more stock savings institutions, or that controls in any manner the election of a majority of the directors of such an institution.

"State savings institution" means a savings institution granted a certificate of authority pursuant to the laws of the Commonwealth. (The term is identical to "state association " as defined in § ~~6.1-194.2~~ 6.2-1100 of the Code of Virginia.)

"State savings institution holding company" means a savings institution holding company that controls one or more state savings institutions, but that is not a "regional savings institution holding company" as defined in § ~~6.1-194.96~~ 6.2-1148 of the Code of Virginia.

**10VAC5-30-20. Scope.**

This chapter governs acquisitions intra-state of control of state savings institutions and of state savings institution holding companies, and acquisitions by such holding companies. It governs the examination, supervision and regulation of state savings institution holding companies. This chapter does not apply to any inter-state acquisition authorized by Article ~~11~~ 5 (§ ~~6.1-194.96~~ 6.2-1148 et seq. of the Code of Virginia) of Chapter ~~3.01~~ 11 of Title ~~6.1~~ 6.2, or to the reporting, examination, supervision, and regulation of any regional savings institution holding company resulting from such an inter-state transaction; such matters are governed entirely by Article ~~11~~ 5 and by any regulation adopted pursuant thereto.

**10VAC5-40-10. Surety bond amount required.**

A. Every credit union incorporated and operating under the provisions of Chapter ~~4.01~~ 13 (§ ~~6.1-225.1~~ 6.2-1300 et seq.) of Title ~~6.1~~ 6.2 of the Code of Virginia shall obtain and keep in force a blanket surety bond upon all of its officials, committee members and employees in a surety company licensed to do business in Virginia in an amount of at least that shown in the following schedule based upon its total assets as shown by its latest statement of financial condition made to the Commission as of the end of each calendar year:

| ASSETS | MINIMUM BOND |
|---|---|
| $0 to $10,000 | Coverage equal to the credit union's assets. |
| $10,001 to $1,000,000 | $10,000 for each $100,000 or fraction thereof. |
| $1,000,001 to $50,000,000 | $100,000 plus $50,000 for each million or fraction over $1,000,000. |
| $50,000,001 to $295,000,000 | $2,550,000 plus $10,000 for each million or fraction thereof over $50,000,000. |
| Over $295,000,000 | $5,000,000 |

B. The maximum amount of deductibles allowed are based on the credit union's total assets. The following table sets out the maximum deductibles:

| ASSETS | MINIMUM DEDUCTIBLE |
|---|---|
| $0 - $100,000 | No deductibles allowed |
| $100,001 - $250,000 | $1,000 |
| $250,001 - $1,000,000 | $2,000 |
| Over $1,000,000 | $2,000 plus 1/1000 of total assets up to a maximum deductible of $200,000 |

C. No bond obtained pursuant to this chapter may be canceled unless written notice thereof is given to the Commissioner of Financial Institutions at least 30 days prior to the effective date of such cancellation, and every such bond shall contain a provision to that effect.

**10VAC5-40-20. Schedule prescribing annual fees paid for examination, supervision, and regulation of state chartered credit unions.**

Pursuant to the requirement of § ~~6.1-225.5~~ 6.2-1310 of the Code of Virginia, state-chartered credit unions shall pay annual fees for their examination, supervision and regulation in accordance with the following schedule:

| SCHEDULE | |
|---|---|
| Total Assets | FEE |
| $25,000 or less | $4 per $1,000 but not less than $20 |
| Over $25,000 through $100,000 | $100 plus $1.75 per $1,000 for assets in excess of $25,000 |
| Over $100,000 through $1,000,000 | $231.25 plus $.75 per $1,000 for assets in excess of $100,000 |
| Over $1,000,000 through $5,000,000 | $906.25 plus $.60 per $1,000 for assets in excess of $1,000,000 |
| Over $5,000,000 through $10,000,000 | $3,306.25 plus $.30 per $1,000 for assets in excess of $5,000,000 |
| Over $10,000,000 | $4,806.25 plus $.20 per $1,000 of assets in excess of $10,000,000 |

(These fees are to be applied to even $1,000 units, with fractional parts of $1,000 dropped.)

The assessment shall be computed on the basis of the credit union's total assets as shown by its Report of Condition as of the close of business for the preceding year (December 31), as filed with the Bureau of Financial Institutions on or before the first day of February.

**10VAC5-40-30. Regular reserve accounts.**

Pursuant to § ~~6.1-225.3:1~~ 6.2-1377 of the Code of Virginia, a state credit union shall establish and maintain a regular reserve account in accordance with applicable provisions of Part 702 of the National Credit Union Administration Rules and Regulations, 12 CFR 702.1 through 702.403, regardless of ~~subdivisions 1, 2, and 3 of~~ § ~~6.1-225.58~~ 6.2-1377 of the Code of Virginia.

**10VAC5-40-40. Serving underserved areas.**

Any multiple-group state credit union shall have the power to amend its articles of incorporation or bylaws, pursuant to § ~~6.1-225.16~~ 6.2-1323 of the Code of Virginia, to expand its field of membership to include individuals and organizations in one or more underserved areas to the same extent, and subject to the same conditions, as is authorized for federal credit unions under 12 USC § 1759. The numerical limitations contained in § ~~6.1-225.23~~ 6.2-1327 B 2 and the provisions of § ~~6.1-225.23:1~~ 6.2-1328 of the Code of Virginia shall not apply to the exercise of this power.

**10VAC5-40-60. Credit union service organizations (CUSOs).**

A. 1. Except as otherwise provided in this section, a state-chartered credit union shall not, directly or indirectly, invest its funds or make loans pursuant to subdivision 10 of § ~~6.1-225.57~~ 6.2-1376 of the Code of Virginia.

2. Except as provided in subsection H of this section, a CUSO shall not, directly or indirectly, invest any of its funds in a corporation, limited liability company, partnership, association, trust, or other legal or commercial entity unless the state-chartered credit union or credit unions having an interest in the CUSO would be permitted to directly invest its funds in such entity and the state-chartered credit union or credit unions comply with the

notice requirement in subsection B and the other provisions of this section.

3. CUSOs shall not, directly or indirectly, acquire control of another depository institution, nor invest in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization, corporation, or association.

B. 1. A state-chartered credit union shall give the Commissioner of Financial Institutions (commissioner) written notice of its investment in or loans to a CUSO.

2. A state-chartered credit union may invest up to 5.0% of its outstanding shares and reserves in a CUSO. However, a state-chartered credit union's total investments in all CUSOs shall not exceed, in the aggregate, 5.0% of its outstanding shares and reserves.

3. A state-chartered credit union may make loans to a CUSO provided that the amount of the loans, when combined with the credit union's total investments in and loans to all CUSOs, does not exceed, in the aggregate, 5.0% of its outstanding shares and reserves.

4. If the limits specified above are reached or exceeded because of the profitability of the CUSO and the related GAAP valuation of the investment under the equity method, without an additional cash outlay by the state-chartered credit union, divestiture is not required. A state-chartered credit union may continue to invest up to these limits without regard to the increase in the GAAP valuation resulting from a CUSO's profitability.

5. The 5.0% limits specified in this subsection may be exceeded with prior written approval from the commissioner.

C. 1. A state-chartered credit union may invest in or make loans to a CUSO only if the CUSO is or will be structured as a corporation, limited liability company, or limited partnership. A state-chartered credit union may only participate in a limited partnership as a limited partner.

2. A state-chartered credit union may invest in or make loans to a CUSO only if the CUSO primarily serves credit unions, its membership, or the membership of credit unions contracting with the CUSO.

3. A state-chartered credit union shall account for its investments in or loans to a CUSO in conformity with GAAP.

4. A state-chartered credit union shall obtain written agreements from a CUSO, prior to investing in or making loans to the CUSO, that the CUSO shall:

a. Account for all of its transactions in accordance with GAAP;

b. Prepare quarterly financial statements and obtain an annual financial statement audit of its financial statements by a licensed certified public accountant in accordance with generally accepted auditing standards. A wholly owned CUSO is not required to obtain a separate annual financial statement audit if it is included in the annual consolidated financial statement audit of the credit union that is its parent; and

c. Provide the Bureau of Financial Institutions (bureau) and its staff with complete access to any books and records of the CUSO and the ability to review CUSO internal controls, as deemed necessary by the bureau in carrying out its responsibilities under ~~the Virginia Credit Union Act (§ 6.1-225.1 et seq. of the Code of Virginia)~~ Chapter 13 (§ 6.2-1300 et seq.) of Title 6.2 of the Code of Virginia.

5. A CUSO shall comply with all applicable federal, state, and local laws and regulations.

D. 1. A state-chartered credit union and a CUSO shall be operated in a manner that demonstrates to the public the separate existence of the state-chartered credit union and the CUSO. Good business practices dictate that each shall operate so that:

a. Its respective business transactions, accounts, and records are not intermingled;

b. Each observes the formalities of its separate company procedures;

c. Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

d. Each is held out to the public as a separate enterprise;

e. The state-chartered credit union does not dominate the CUSO to the extent that the CUSO is treated as a department of the credit union; and

f. Unless the state-chartered credit union has guaranteed a loan obtained by the CUSO, all borrowings by the CUSO shall indicate that the state-chartered credit union is not liable.

2. If a CUSO in which a state-chartered credit union has an investment plans to change its structure, the credit union shall obtain prior, written legal advice that the CUSO shall remain established in a manner that will limit potential exposure of the credit union to no more than the loss of funds invested in or loaned to the CUSO. The legal advice shall address factors that have led courts to "pierce the corporate veil" such as inadequate capitalization, lack of separate corporate identity, common boards of directors and employees, control of one entity over another, and lack of separate books and records. The legal advice may be

provided by independent legal counsel of either the investing state-chartered credit union or the CUSO.

E. The commissioner may at any time, based upon supervisory, legal, or safety and soundness considerations, prohibit or otherwise limit any CUSO activities or services.

F. A state-chartered credit union may only invest in or make loans to CUSOs that are or will be sufficiently bonded or insured for their specific operations.

G. A state-chartered credit union may only invest in or make loans to CUSOs that are or will be engaged in activities and services that are reasonably related to the operations of credit unions, including but not limited to the following:

1. Checking and currency services (i.e., check cashing, coin and currency services, money orders, savings bonds, travelers checks, and purchase and sale of U.S. Mint commemorative coin services);

2. Clerical, professional and management services (i.e., accounting services, courier services, credit analyses, facsimile transmissions, copying services, internal audits for credit unions, locator services, management and personnel training and support, marketing services, research services, and supervisory committee audits);

3. Business loan origination;

4. Consumer mortgage loan origination and processing;

5. Electronic transaction services (i.e., automated teller machine (ATM) services, credit card and debit card services, data processing, electronic fund transfer (EFT) services, electronic income tax filing, payment item processing, wire transfer services, and cyber financial services);

6. Financial counseling services (i.e., developing and administering Individual Retirement Accounts (IRAs), Keogh, deferred compensation, and other personnel benefit plans, estate planning, financial planning and counseling, income tax preparation, investment counseling, and retirement counseling);

7. Fixed asset services (i.e., management, development, sale, or lease of fixed assets, and sale, lease, or servicing of computer hardware or software);

8. Insurance brokerage or agency (i.e., agency for sale of insurance, provision of vehicle warranty programs, and provision of group purchasing programs);

9. Leasing personal property and real estate leasing of excess CUSO property;

10. Loan support services (i.e., debt collection services, loan processing, loan servicing, loan sales, and selling repossessed collateral);

11. Record retention, security and disaster recovery services (i.e., alarm-monitoring and other security services, disaster recovery services, microfilm, microfiche, optical and electronic imaging, CD-ROM data storage and retrieval services, provision of forms and supplies, and record retention and storage);

12. Securities brokerage services;

13. Shared credit union branch (service center) operations;

14. Student loan origination;

15. Travel agency services;

16. Trust and trust-related services (i.e., acting as administrator for prepaid legal service plans, acting as trustee, guardian, conservator, estate administrator, or in any other fiduciary capacity, and other trust services); and

17. Real estate brokerage services and real estate listing services.

H. In connection with providing a permissible service, a CUSO may invest in a non-CUSO service provider. The amount of the CUSO's investment is limited to the amount necessary to participate in the service provider, or a greater amount if necessary to receive a reduced price for goods or services.

I. In order for a state-chartered credit union to invest in or make loans to a CUSO that is or will be engaged in activities or services that are not enumerated in subsection G of this section, the state-chartered credit union shall obtain prior approval from the State Corporation Commission (commission). A request for commission approval of an activity or service that is not enumerated in subsection G of this section shall be submitted in writing to the commissioner and include a full explanation and complete documentation of the activity or service and how that activity or service is reasonably related to the operations of credit unions.

J. 1. If a state-chartered credit union has outstanding loans or investments in a CUSO, then the credit union's officials, senior management employees, and their immediate family members shall not receive, either directly or indirectly, any salary, commission, investment income, or other income or compensation from the CUSO or from any person being served through the CUSO. This provision does not prohibit the credit union's officials or senior management employees from assisting in the operation of a CUSO, provided the officials or senior management employees are not compensated by the CUSO. Furthermore, the CUSO may reimburse the state-chartered credit union for the services provided by such credit union officials and senior management employees only if the account receivable of the credit union due from the CUSO is paid in full at least every 120 days.

2. The prohibition contained in subdivision 1 of this subsection also applies to state-chartered credit union employees not otherwise covered if the employees are directly involved in dealing with the CUSO, unless the state-chartered credit union's board of directors determines that the credit union's employees' positions do not present a conflict of interest.

3. All transactions with business associates or family members of state-chartered credit union officials, senior management employees, or their immediate family members that are not specifically prohibited by subdivision 1 or 2 of this subsection shall be conducted at arm's length and in the interest of the state-chartered credit union.

K. 1. A state-chartered credit union's investments in CUSOs in existence prior to July 1, 2008, shall conform with this section no later than January 1, 2009, unless the commissioner grants prior written approval to continue the credit union's investments for a stated period.

2. A state-chartered credit union's loans to CUSOs in existence prior to July 1, 2008, shall conform with this section no later than January 1, 2009, unless (i) the commissioner grants prior written approval to continue the credit union's loans for a stated period, or (ii) under the terms of its loan agreement, the credit union cannot require accelerated repayment without breaching the agreement.

VA.R. Doc. No. R12-2558; Filed August 19, 2011, 3:10 p.m.

### 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: **10VAC5-200. Payday Lending (amending 10VAC5-200-90).**

Statutory Authority: §§ 6.2-1814, 6.2-1815, and 12.1-13 of the Code of Virginia.

Effective Date: September 1, 2011.

Agency Contact: Gerald Fallen, Deputy Commissioner, Bureau of Financial Institutions, State Corporation Commission, P.O. Box 640, Richmond, VA 23218, telephone (804) 371-9699, FAX (804) 371-9416, or email gerald.fallen@scc.virginia.gov.

Summary:

*The State Corporation Commission is amending 10VAC5-200-90, which prescribes the schedule of annual fees to be paid by payday lenders licensed under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. The amendments increase the annual fee to $500 per office plus $.47 per payday loan made by each licensee. The amendments also update references to the Code of Virginia.*

AT RICHMOND, AUGUST 23, 2011

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. BFI-2011-00085

Ex Parte: In re: annual fees paid
by licensed payday lenders

ORDER ADOPTING A REGULATION

On July 12, 2011, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Bureau of Financial Institutions ("Bureau") to amend 10 VAC 5-200-90, which prescribes the schedule of annual fees to be paid by licensed payday lenders ("licensees"). The Order and proposed regulation were published in the Virginia Register of Regulations on August 1, 2011, posted on the Commission's website, and mailed to all licensees and other interested parties. Licensees and other interested parties were afforded the opportunity to file written comments or request a hearing on or before August 15, 2011.

Comments on the proposed regulation were timely filed by RKZ Management, LLC, and the Community Financial Services Association of America.[1] The Commission did not receive any requests for a hearing.

NOW THE COMMISSION, having considered the proposed regulation, the comments filed, the record herein, and applicable law, concludes that the proposed increase in annual fees is necessary in order to recover the various costs incurred by the Bureau in examining, supervising, and regulating licensees and that the proposed regulation should be adopted. The Commission further concludes that the Bureau should continue to monitor whether the annual fees assessed pursuant to § 6.2-1814 A of the Code of Virginia and 10 VAC 5-200-90 remain offset by the total costs associated with examining, supervising, and regulating licensees.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulation, as attached hereto, is adopted effective September 1, 2011.

(2) This Order and the attached regulation 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 regulation, 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, together with a copy of the attached regulation, shall be sent by the Clerk of the Commission to the Commission's Office of General Counsel and the Commissioner of Financial Institutions, who shall send a copy of this Order and the attached regulation to all licensed payday lenders and other interested parties designated by the Bureau.

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[1] After the comment period deadline, a comment letter was filed by EXTOL Corporation, Inc. d/b/a QUICK CHECK: Cash Advance.

**10VAC5-200-90. Schedule of annual fees for the examination, supervision, and regulation of payday lenders.**

Pursuant to § ~~6.1-457~~ 6.2-1814 of the Code of Virginia, the commission sets the following schedule of annual fees to be paid by payday lenders ~~required to be~~ licensed under Chapter 18 ~~(§ 6.1-444 et seq.) of Title 6.1~~ (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia. Such fees are to defray the costs of the examination, supervision, and regulation of ~~such lenders~~ licensees by the ~~Bureau of Financial Institutions~~ bureau. The fees are related to the actual costs of the bureau, to the number of offices operated by ~~the lenders~~ licensees, to the volume of business of ~~the lenders~~ licensees, and to other factors relating to their supervision and regulation.

The annual fee shall be ~~$300~~ $500 per office~~, authorized and opened, as of December 31,~~ plus ~~$.18~~ $ .47 per payday loan made by each licensee. The annual fee ~~for each payday lender~~ shall be computed on the basis of (i) the number of offices ~~operated~~ [ , ] authorized and opened [ , ] as of December 31 of the year preceding the year of the assessment, and (ii) the number of payday loans ~~as defined in § 6.1-444 of the Code of Virginia~~ made under Chapter 18 (§ 6.2-1800 et seq.) of Title 6.2 of the Code of Virginia during the calendar year preceding the year of the assessment.

Fees shall be assessed on or before September 15 for the current calendar year. ~~By law the fee must~~ The assessment shall be paid by licensees on or before October 15.

The annual report, due March 25 each year, of each licensee provides the basis for its assessment~~,~~ (i.e., the number of offices and payday loans made). In cases where a license has been granted between January 1 and September 15 of the year of the assessment, the licensee shall pay ~~$150~~ $250 per office, authorized and opened, as of September 15 of that year.

Fees prescribed and assessed ~~by~~ pursuant to this schedule are apart from, and do not include, the reimbursement for expenses ~~permitted~~ authorized by subsection B of § ~~6.1-457~~ 6.2-1814 of the Code of Virginia.

VA.R. Doc. No. R11-2918; Filed August 23, 2011, 4:09 p.m.

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# TITLE 13. HOUSING

## VIRGINIA HOUSING DEVELOPMENT AUTHORITY

### Proposed 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 (amending 13VAC10-180-60).**

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

Public Hearing Information:

September 27, 2011 - 10 a.m. - Virginia Housing Development Authority, 601 South Belvidere Street, Richmond, VA

Public Comment Deadline: September 27, 2011.

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

Summary:

*The proposed amendments to the authority's rules and regulations for the allocation of low-income housing tax credits will (i) delete certain requirements for new construction points; (ii) remove amenity points for the number of bathrooms in certain size units; (iii) revise the amenity point categories for low-flow faucets, energy efficient water heaters, and geothermal heat pumps; (iv) add amenity point categories for water efficient toilets, energy efficient bathroom vents, wall insulation, and fire prevention for cooking surfaces; (v) delete the point category for constructing 4.0% of the units in a development as accessible units; (vi) add a provision for the distribution of credits among the allocation pools; (vii) remove the noncompetitive preservation pool; and (viii) make other miscellaneous administrative clarification changes.*

**13VAC10-180-60. Review and selection of applications; reservation of credits.**

The executive director may divide the amount of credits 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 by him to best meet the housing needs of the Commonwealth.

An amount, as determined by the executive director, not less than 10% of the Commonwealth's annual state housing credit ceiling for credits, shall be available for reservation and allocation to buildings or developments with respect to which the following requirements are met:

1. A "qualified nonprofit organization" (as described in § 42(h)(5)(C) of the IRC) which is authorized to do business in Virginia and is determined by the executive director, on the basis of such relevant factors as he shall consider appropriate, to be substantially based or active in the community of the development and is to materially participate (regular, continuous and substantial involvement as determined by the executive director) in the development and operation of the development throughout the "compliance period" (as defined in § 42(i)(1) of the IRC); and

2. (i) The "qualified nonprofit organization" described in the preceding subdivision 1 is to own (directly or through a partnership), prior to the reservation of credits to the buildings or development, all of the general partnership interests of the ownership entity thereof; (ii) the executive director of the authority shall have determined that such qualified nonprofit organization is not affiliated with or controlled by a for-profit organization; (iii) the executive director of the authority shall have determined that the qualified nonprofit organization was not formed by one or more individuals or for-profit entities for the principal purpose of being included in any nonprofit pools (as defined below) established by the executive director, and (iv) the executive director of the authority shall have determined that no staff member, officer or member of the board of directors of such qualified nonprofit organization will materially participate, directly or indirectly, in the proposed development as a for-profit entity.

In making the determinations required by the preceding subdivision 1 and clauses (ii), (iii) and (iv) of subdivision 2 of this section, the executive director may apply such factors as he deems relevant, including, without limitation, the past experience and anticipated future activities of the qualified nonprofit organization, the sources and manner of funding of the qualified nonprofit organization, the date of formation and expected life of the qualified nonprofit organization, the number of paid staff members and volunteers of the qualified nonprofit organization, the nature and extent of the qualified nonprofit organization's proposed involvement in the construction or rehabilitation and the operation of the proposed development, the relationship of the staff, directors or other principals involved in the formation or operation of the qualified nonprofit organization with any persons or entities to be involved in the proposed development on a for-profit basis, and the proposed involvement in the construction or rehabilitation and operation of the proposed development by any persons or entities involved in the proposed development on a for-profit basis. The executive director may include in the application of the foregoing factors any other nonprofit organizations which, in his determination, are related (by shared directors, staff or otherwise) to the qualified nonprofit organization for which such determination is to be made.

For purposes of the foregoing requirements, a qualified nonprofit organization shall be treated as satisfying such requirements if any qualified corporation (as defined in § 42(h)(5)(D)(ii) of the IRC) in which such organization (by itself or in combination with one or more qualified nonprofit organizations) holds 100% of the stock satisfies such requirements.

The applications shall include such representations and warranties and such information as the executive director may require in order to determine that the foregoing requirements have been satisfied. In no event shall more than 90% of the Commonwealth's annual state housing credit ceiling for credits be available for developments other than those satisfying the preceding requirements. The executive director may establish such pools (nonprofit pools) of credits as he may deem appropriate to satisfy the foregoing requirement. If any such nonprofit pools are so established, the executive director may rank the applications therein and reserve credits to such applications before ranking applications and reserving credits in other pools, and any such applications in such nonprofit pools not receiving any reservations of credits or receiving such reservations in amounts less than the full amount permissible hereunder (because there are not enough credits then available in such nonprofit pools to make such reservations) shall be assigned to such other pool as shall be appropriate hereunder; provided, however, that if credits are later made available (pursuant to the IRC or as a result of either a termination or reduction of a reservation of credits made from any nonprofit pools or a rescission in whole or in part of an allocation of credits made from such nonprofit pools or otherwise) for reservation and allocation by the authority during the same calendar year as that in which applications in the nonprofit pools have been so assigned to other pools as described above, the executive director may, in such situations, designate all or any portion of such additional credits for the nonprofit pools (or for any other pools as he shall determine) and may, if additional credits have been so designated for the nonprofit pools, reassign such applications to such nonprofit pools, rank the applications therein and reserve credits to such applications in accordance with the IRC and this chapter. In the event that during any round (as authorized hereinbelow) of application review and ranking the amount of credits reserved within such nonprofit pools is

less than the total amount of credits made available therein, the executive director may either (i) leave such unreserved credits in such nonprofit pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute, to the extent permissible under the IRC, such unreserved credits to such other pool or pools as the executive director shall designate reservations therefore in the full amount permissible hereunder (which applications shall hereinafter be referred to as "excess qualified applications") or (iii) carry over such unreserved credits to the next succeeding calendar year for the inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year. Notwithstanding anything to the contrary herein, no reservation of credits shall be made from any nonprofit pools to any application with respect to which the qualified nonprofit organization has not yet been legally formed in accordance with the requirements of the IRC. In addition, no application for credits from any nonprofit pools or any combination of pools may receive a reservation or allocation of annual credits in an amount greater than $750,000 unless credits remain available in such nonprofit pools after all eligible applications for credits from such nonprofit pools receive a reservation of credits.

Notwithstanding anything to the contrary herein, applicants relying on the experience of a local housing authority for developer experience points described hereinbelow and/or using Hope VI funds from HUD in connection with the proposed development shall not be eligible to receive a reservation of credits from any nonprofit pools.

The authority shall review each application, and, based on the application and other information available to the authority, shall assign points to each application as follows:

1. Readiness.

a. Written evidence satisfactory to the authority of unconditional approval by local authorities of the plan of development or site plan for the proposed development or that such approval is not required. (40 points; applicants receiving points under this subdivision 1 a are not eligible for points under subdivision 5 a below)

b. Written evidence satisfactory to the authority (i) of proper zoning or special use permit for such site or (ii) that no zoning requirements or special use permits are applicable. (40 points)

2. Housing needs characteristics.

a. Submission of the form prescribed by the authority with any required attachments, providing such information necessary for the authority to send a letter addressed to the current chief executive officer (or the equivalent) of the locality in which the proposed development is located, soliciting input on the proposed development from the locality within the deadlines established by the executive director. (minus 50 points for failure to make timely submission)

b. (1) A letter dated within three months prior to the application deadline addressed to the authority and signed by the chief executive officer of the locality in which the proposed development is to be located stating, without qualification or limitation, the following:

"The construction or rehabilitation of (name of development) and the allocation of federal housing tax credits available under IRC Section 42 for that development will help meet the housing needs and priorities of (name of locality). Accordingly, (name of locality) supports the allocation of federal housing tax credits requested by (name of applicant) for that development." (50 points)

(2) No letter from the chief executive officer of the locality in which the proposed development is to be located, or a letter addressed to the authority and signed by such chief executive officer stating neither support (as described in subdivision b (1) above) nor opposition (as described in subdivision b (3) below) as to the allocation of credits to the applicant for the development. (25 points)

(3) A letter in response to its notification to the chief executive officer of the locality in which the proposed development is to be located opposing the allocation of credits to the applicant for the development. In any such letter, the chief executive officer must certify that the proposed development is not consistent with current zoning or other applicable land use regulations. (0 points)

c. Documentation in a form approved by the authority from the chief executive officer (or the equivalent) of the local jurisdiction in which the development is to be located (including the certification described in the definition of revitalization area in 13VAC10-180-10) that the area in which the proposed development is to be located is a revitalization area and the proposed development is an integral part of the local government's plan for revitalization of the area. (30 points)

d. If the proposed development is located in a qualified census tract as defined in § 42(d)(5)(C)(ii) of the IRC and is in a revitalization area. (5 points)

e. Commitment by the applicant for any development without section 8 project-based assistance to give leasing preference to individuals and families (i) on public housing waiting lists maintained by the local housing authority operating in the locality in which the proposed development is to be located and notification of the availability of such units to the local housing authority by the applicant or (ii) on section 8 (as defined in 13VAC10-180-90) waiting lists maintained by the local or nearest section 8 administrator for the locality in

which the proposed development is to be located and notification of the availability of such units to the local section 8 administrator by the applicant. (10 points; Applicants receiving points under this subdivision may not require an annual minimum income requirement for prospective tenants that exceeds the greater of $3,600 or 2.5 times the portion of rent to be paid by such tenants.)

f. Any of the following: (i) firm financing commitment(s) from the local government, local housing authority, Federal Home Loan Bank affordable housing funds, Commonwealth of Virginia Department of Behavioral Health and Developmental Services funds from Item 315-Z of the 2008-2010 Appropriation Act, or the Rural Development for a below-market rate loan or grant or Rural Development's interest credit used to reduce the interest rate on the loan financing the proposed development; (ii) a resolution passed by the locality in which the proposed development is to be located committing such financial support to the development in a form approved by the authority; or (iii) a commitment to donate land, buildings or waive tap fee waivers from the local government. (The amount of such financing or dollar value of local support will be divided by the total development sources of funds and the proposed development receives two points for each percentage point up to a maximum of 40 points.)

g. Any development subject to (i) HUD's Section 8 or Section 236 programs or (ii) Rural Development's 515 program, at the time of application. (20 points, unless the applicant is, or has any common interests with, the current owner, directly or indirectly, the application will only qualify for these points if the applicant waives all rights to any developer's fee and any other fees associated with the acquisition and rehabilitation (or rehabilitation only) of the development unless permitted by the executive director for good cause.)

h. Any development receiving (i) a real estate tax abatement on the increase in the value of the development or (ii) new project-based subsidy from HUD or Rural Development for the greater of 5 units or 10% of the units of the proposed development. (10 points)

i. Any proposed development located in a census tract that has less than a 10% poverty rate (based upon Census Bureau data) with no other tax credit units in such census tract. (25 points)

j. Any proposed development listed in the top 25 developments identified by Rural Development as high priority for rehabilitation at the time the application is submitted to the authority. (15 points)

k. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) located in a pool identified by the authority as a pool with little or no increase in rent-burdened population. (up to minus 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool. The executive director may make exceptions in the following circumstances:

(1) Specialized types of housing designed to meet special needs that cannot readily be addressed utilizing existing residential structures;

(2) Housing designed to serve as a replacement for housing being demolished through redevelopment; or

(3) Housing that is an integral part of a neighborhood revitalization project sponsored by a local housing authority.)

l. Any proposed new construction development (including adaptive re-use and rehabilitation that creates additional rental space) that is located in a pool identified by the authority as a pool with an increasing rent-burdened population ~~and is also in an urban development area as defined in § 15.2-2223.1 of the Code of Virginia or participating in a locally adopted affordable housing dwelling unit program as described in either § 15.2-2304 or 15.2-2305 of the Code of Virginia~~. (up to 20 points, depending upon the portion of the development that is additional rental space, in all pools except the at-large pool, 0 points in the at-large pool)

3. Development characteristics.

a. The average unit size. (100 points multiplied by the sum of the products calculated by multiplying, for each unit type as defined by the number of bedrooms per unit, (i) the quotient of the number of units of a given unit type divided by the total number of units in the proposed development, times (ii) the quotient of the average actual gross square footage per unit for a given unit type minus the lowest gross square footage per unit for a given unit type established by the executive director divided by the highest gross square footage per unit for a given unit type established by the executive director minus the lowest gross square footage per unit for a given unit type established by the executive director. If the average actual gross square footage per unit for a given unit type is less than the lowest gross square footage per unit for a given unit type established by the executive director or greater than the highest gross square footage per unit for a given unit type established by the executive director, the lowest or highest, as the case may be, gross square footage per unit for a given unit type established by the executive director shall be used in the above calculation rather than the actual gross square footage per unit for a given unit type.)

b. Evidence satisfactory to the authority documenting the quality of the proposed development's amenities as determined by the following:

(1) The following points are available for any application:

~~(a) If 2-bedroom units have 1.5 bathrooms and 3-bedroom units have 2 bathrooms. (15 points multiplied by the percentage of units meeting these requirements)~~

~~(b)~~ (a) If a community/meeting room with a minimum of 749 square feet is provided. (5 points)

~~(c)~~ (b) Brick covering 30% or more of the exterior walls. (20 points times the percentage of exterior walls covered by brick)

~~(d)~~ (c) If all kitchen and laundry appliances meet the EPA's Energy Star qualified program requirements. (5 points)

~~(e)~~ (d) If all the windows meet the EPA's Energy Star qualified program requirements. (5 points)

~~(f)~~ (e) If every unit in the development is heated and cooled with either (i) heat pump equipment with both a SEER rating of 15.0 or more and a HSPF rating of 8.5 or more or (ii) air conditioning equipment with a SEER rating of 15.0 or more, combined with a gas furnace with an AFUE rating of 90% or more. (10 points)

~~(g)~~ (f) If the water expense is submetered (the tenant will pay monthly or bimonthly bill). (5 points)

~~(h)~~ (g) If each bathroom contains only ~~low-flow~~ WaterSense labeled faucets and showerheads ~~as defined by the authority~~. ~~(3~~ (2 points)

~~(i)~~ (h) If each unit is provided with the necessary infrastructure for high-speed cable, DSL or wireless Internet service. (1 point)

~~(j)~~ (i) If all the water heaters meet the EPA's Energy Star qualified program requirements; or any centralized commercial system that has a 95%+ efficiency performance rating, and any solar thermal system that meets at least 60% of the development's domestic hot water load. (5 points)

~~(k)~~ (j) If every unit in the development is heated and cooled with a geothermal heat pump that meets the EPA's Energy Star qualified program requirements. ~~(5~~ (10 points)

~~(l)~~ (k) If the development has a solar electric system that will remain unshaded year-round, be oriented to within 15 degrees of true south, and be angled horizontally within 15 degrees of latitude. (1 point for each 2.0% of the development's electrical load that can be met by the solar electric system, up to 5 points)

(l) If each bathroom is equipped with a WaterSense labeled toilet. (2 points)

(m) If each full bathroom is equipped with EPA Energy Star qualified bath vent fans/lights. (2 points)

(n) New installation of continuous R-3 or higher wall sheathing insulation. (5 points)

(o) If all cooking surfaces are equipped with fire prevention or suppression features that meet the authority's design and construction standards. (2 points)

(2) The following points are available to applications electing to serve elderly and/or physically disabled tenants:

(a) If all cooking ranges have front controls. (1 point)

(b) If all units have an emergency call system. (3 points)

(c) If all bathrooms have an independent or supplemental heat source. (1 point)

(d) If all entrance doors to each unit have two eye viewers, one at ~~48~~ 42 inches and the other at standard height. (1 point)

(3) If the structure is historic, by virtue of being listed individually in the National Register of Historic Places, or due to its location in a registered historic district and certified by the Secretary of the Interior as being of historical significance to the district, and the rehabilitation will be completed in such a manner as to be eligible for historic rehabilitation tax credits. (5 points)

The maximum number of points that may be awarded under any combination of the scoring categories under subdivision 3 b of this section is 70 points.

c. Any nonelderly development or elderly rehabilitation development in which (i) the greater of 5 units or 10% of the units will be subject to federal project-based rent subsidies or equivalent assistance (approved by the executive director) in order to ensure occupancy by extremely low-income persons; and (ii) the greater of 5 units or 10% of the units will conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and be actively marketed to people with special needs in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act, and all the units described in (ii) above must include roll-in showers and roll-under sinks and ranges, unless agreed to by the authority prior to the applicant's submission of its application). (50 points)

d. Any nonelderly development or elderly rehabilitation development in which the greater of 5 units or 10% of the units (i) have rents within HUD's Housing Choice

Voucher (HCV) payment standard; (ii) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) are actively marketed to people with mobility impairments including HCV holders in accordance with a plan submitted as part of the application for credits (all common space must also conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act). (30 points)

~~e. Any nonelderly development or elderly rehabilitation development in which 4.0% of the units (i) conform to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act and (ii) are actively marketed to people with mobility impairments in accordance with a plan submitted as part of the application for credits. (15 points)~~

~~f.~~ e. Any development located within one-half mile of an existing commuter rail, light rail or subway station or one-quarter mile of one or more existing public bus stops. (10 points, unless the development is located within the geographical area established by the executive director for a pool of credits for northern Virginia, in which case, the development will receive 20 points if the development is ranked against other developments in such northern Virginia pool, 10 points if the development is ranked against other developments in any other pool of credits established by the executive director)

~~g.~~ f. Any development for which the applicant agrees to obtain either (i) EarthCraft certification or (ii) US Green Building Council LEED green-building certification prior to the issuance of an IRS Form 8609 with the proposed development's architect certifying in the application that the development's design will meet the criteria for such certification, provided that the proposed development's architect is on the authority's list of LEED/EarthCraft certified architects. (15 points for a LEED Silver development, or a new construction development that is 15% more energy efficient than the 2004 International Energy Conservation Code (IECC) as measured by EarthCraft or a rehabilitation development that is 30% more energy efficient post-rehabilitation as measured by EarthCraft; 30 points for a LEED Gold development, or a new construction development that is 20% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 40% more energy efficient post-rehabilitation as measured by EarthCraft; 45 points for a LEED Platinum development, or a new construction development that is 25% more energy efficient than the 2004 IECC as measured by EarthCraft or a rehabilitation development that is 50% more energy efficient post-rehabilitation as measured by EarthCraft.) The executive director may, if needed, designate a proposed development as requiring an increase in credit in order to be financially feasible and such development shall be treated as if in a difficult development area as provided in the IRC for any applicant receiving 30 or 45 points under this subdivision, provided however, any resulting increase in such development's eligible basis shall be limited to 5.0% of the development's eligible basis for 30 points awarded under this subdivision and 10% for 45 points awarded under this subdivision of the development's eligible basis.

~~h.~~ g. Any development for which the applicant agrees to use an authority-certified property manager to manage the development. (25 points)

~~i.~~ h. If units are constructed to ~~meet~~ include the authority's universal design ~~standards~~ features, provided that the proposed development's architect is on the authority's list of universal design certified architects. (15 points, if all the units in an elderly development meet this requirement; 15 points multiplied by the percentage of units meeting this requirement for nonelderly developments)

~~j.~~ i. Any development in which the applicant proposes to produce less than 100 low-income housing units. (20 points for producing 50 low-income housing units or less, minus 0.4 points for each additional low-income housing unit produced down to 0 points for any development that produces 100 or more low-income housing units.)

4. Tenant population characteristics. Commitment by the applicant to give a leasing preference to individuals and families with children in developments that will have no more than 20% of its units with one bedroom or less. (15 points; plus 0.75 points for each percent of the low-income units in the development with three or more bedrooms up to an additional 15 points for a total of no more than 30 points)

5. Sponsor characteristics.

a. Evidence that the principal or principals, as a group or individually, for the proposed development have developed, as controlling general partner or managing member, (i) at least three tax credit developments that contain at least three times the number of housing units in the proposed development or (ii) at least six tax credit developments that contain at least the number of housing units in the proposed development. (50 points; applicants receiving points under this subdivision 5 a are not eligible for points under subdivision 1 a above)

b. Evidence that the principal or principals for the proposed development have developed at least one tax credit development that contains at least the number of housing units in the proposed development. (10 points)

c. Any applicant that includes a principal that was a principal in a development at the time the authority reported such development to the IRS for an uncorrected life-threatening hazard under HUD's Uniform Physical Condition Standards. (minus 50 points for a period of three years after the violation has been corrected)

d. Any applicant that includes a principal that was a principal in a development that either (i) at the time the authority reported such development to the IRS for noncompliance had not corrected such noncompliance by the time a Form 8823 was filed by the authority or (ii) remained out-of-compliance with the terms of its extended use commitment after notice and expiration of any cure period set by the authority. (minus 15 points for a period of three calendar years after the year the authority filed Form 8823 or expiration of such cure period, unless the executive director determines that such principal's attempts to correct such noncompliance was prohibited by a court, local government or governmental agency, in which case, no negative points will be assessed to the applicant, or 0 points, if the appropriate individual or individuals connected to the principal attend compliance training as recommended by the authority)

e. Any applicant that includes a principal that is or was a principal in a development that (i) did not build a development as represented in the application for credit (minus two times the number of points assigned to the item or items not built or minus 20 points for failing to provide a minimum building requirement, for a period of three years after the last Form 8609 is issued for the development, in addition to any other penalties the authority may seek under its agreements with the applicant), or (ii) has a reservation of credits terminated by the authority (minus 10 points a period of three years after the credits are returned to the authority).

f. Any applicant that includes a management company in its application that is rated unsatisfactory by the executive director or if the ownership of any applicant includes a principal that is or was a principal in a development that hired a management company to manage a tax credit development after such management company received a rating of unsatisfactory from the executive director during the compliance period and extended use period of such development. (minus 25 points)

6. Efficient use of resources.

a. The percentage by which the total of the amount of credits per low-income housing unit (the "per unit credit amount") of the proposed development is less than the standard per unit credit amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (180 points multiplied by the percentage by which the total amount of the per unit credit amount of the proposed development is less than the applicable standard per unit credit amount established by the executive director, negative points will be assessed using the percentage by which the total amount of the per unit credit amount of the proposed development exceeds the applicable standard per unit credit amount established by the executive director.)

b. The percentage by which the cost per low-income housing unit (the "per unit cost"), adjusted by the authority for location, of the proposed development is less than the standard per unit cost amounts established by the executive director for a given unit type, based upon the number of such unit types in the proposed development. (75 points multiplied by the percentage by which the total amount of the per unit cost of the proposed development is less than the applicable standard per unit cost amount established by the executive director.)

The executive director may use a standard per square foot credit amount and a standard per square foot cost amount in establishing the per unit credit amount and the per unit cost amount in subdivision 6 above. For the purpose of calculating the points to be assigned pursuant to such subdivision 6 above, all credit amounts shall include any credits previously allocated to the development, and the per unit credit amount for any building documented by the applicant to be located in both a revitalization area and either (i) a qualified census tract or (ii) difficult development area (such tract or area being as defined in the IRC) shall be determined based upon 100% of the eligible basis of such building, in the case of new construction, or 100% of the rehabilitation expenditures, in the case of rehabilitation of an existing building, notwithstanding any use by the applicant of 130% of such eligible basis or rehabilitation expenditures in determining the amount of credits as provided in the IRC.

7. Bonus points.

a. Commitment by the applicant to impose income limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision a may not receive points under subdivision b below. (The product of (i) 50 points multiplied by (ii) the percentage of housing units in the proposed development both rent restricted to and occupied by households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of

40% of the area median gross income up to an additional 10 points.)

b. Commitment by the applicant to impose rent limits on the low-income housing units throughout the extended use period (as defined in the IRC) below those required by the IRC in order for the development to be a qualified low-income development. Applicants receiving points under this subdivision b may not receive points under subdivision a above. (The product of (i) 25 points (50 points for proposed developments in low-income jurisdictions) multiplied by (ii) the percentage of housing units in the proposed development rent restricted to households at or below 50% of the area median gross income; plus 1 point for each percentage point of such housing units in the proposed development which are further restricted to rents at or below 30% of 40% of the area median gross income up to an additional 10 points.)

c. Commitment by the applicant to maintain the low-income housing units in the development as a qualified low-income housing development beyond the 30-year extended use period (as defined in the IRC). Applicants receiving points under this subdivision c may not receive bonus points under subdivision d below. (40 points for a 10-year commitment beyond the 30-year extended use period or 50 points for a 20-year commitment beyond the 30-year extended use period.)

d. Participation by a local housing authority or qualified nonprofit organization (substantially based or active in the community with at least a 10% ownership interest in the general partnership interest of the partnership) and a commitment by the applicant to sell the proposed development pursuant to an executed, recordable option or right of first refusal to such local housing authority or qualified nonprofit organization or to a wholly owned subsidiary of such organization or authority, at the end of the 15-year compliance period, as defined by IRC, for a price not to exceed the outstanding debt and exit taxes of the for-profit entity. The applicant must record such option or right of first refusal immediately after the low-income housing commitment described in 13VAC10-180-70. Applicants receiving points under this subdivision d may not receive bonus points under subdivision c above. (60 points; plus 5 points if the local housing authority or qualified nonprofit organization submits a homeownership plan satisfactory to the authority in which the local housing authority or qualified nonprofit organization commits to sell the units in the development to tenants.)

In calculating the points for subdivisions 7 a and b above, any units in the proposed development required by the locality to exceed 60% of the area median gross income will not be considered when calculating the percentage of low-income units of the proposed development with incomes below those required by the IRC in order for the development to be a qualified low-income development, provided that the locality submits evidence satisfactory to the authority of such requirement.

After points have been assigned to each application in the manner described above, the executive director shall compute the total number of points assigned to each such application. Any application that is assigned a total number of points less than a threshold amount of 500 points (475 points for developments financed with tax-exempt bonds in such amount so as not to require under the IRC an allocation of credits hereunder) shall be rejected from further consideration hereunder and shall not be eligible for any reservation or allocation of credits.

During its review of the submitted applications, the authority may conduct its own analysis of the demand for the housing units to be produced by each applicant's proposed development. Notwithstanding any conclusion in the market study submitted with an application, if the authority determines that, based upon information from its own loan portfolio or its own market study, inadequate demand exists for the housing units to be produced by an applicant's proposed development, the authority may exclude and disregard the application for such proposed development.

The executive director may exclude and disregard any application which he determines is not submitted in good faith or which he determines would not be financially feasible.

Upon assignment of points to all of the applications, the executive director shall rank the applications based on the number of points so assigned. If any pools shall have been established, each application shall be assigned to a pool and, if any, to the appropriate tier within such pool and shall be ranked within such pool or tier, if any. The amount of credits made available to each pool will be determined by the executive director. Available credits will include unreserved per capita dollar amount credits from the current calendar year under § 42(h)(3)(C)(i) of the IRC, any unreserved per capita credits from previous calendar years, and credits returned to the authority prior to the final ranking of the applications and may include up to 10% of next calendar year's per capita credits as shall be determined by the executive director. Those applications assigned more points shall be ranked higher than those applications assigned fewer points. However, if any set-asides established by the executive director cannot be satisfied after ranking the applications based on the number of points, the executive director may rank as many applications as necessary to meet the requirements of such set-aside (selecting the highest ranked application, or applications, meeting the requirements of the set-aside) over applications with more points.

In the event of a tie in the number of points assigned to two or more applications within the same pool, or, if none, within

the Commonwealth, and in the event that the amount of credits available for reservation to such applications is determined by the executive director to be insufficient for the financial feasibility of all of the developments described therein, the authority shall, to the extent necessary to fully utilize the amount of credits available for reservation within such pool or, if none, within the Commonwealth, select one or more of the applications with the highest combination of points from subdivision 7 above, and each application so selected shall receive (in order based upon the number of such points, beginning with the application with the highest number of such points) a reservation of credits. If two or more of the tied applications receive the same number of points from subdivision 7 above and if the amount of credits available for reservation to such tied applications is determined by the executive director to be insufficient for the financial feasibility of all the developments described therein, the executive director shall select one or more of such applications by lot, and each application so selected by lot shall receive (in order of such selection by lot) a reservation of credits.

For each application which may receive a reservation of credits, the executive director shall determine the amount, as of the date of the deadline for submission of applications for reservation of credits, 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. In making this determination, the executive director shall consider the sources and uses of the funds, the available federal, state and local subsidies committed to the development, the total financing planned for the development as well as the investment proceeds or receipts expected by the authority to be generated with respect to the development, and the percentage of the credit dollar amount used for development costs other than the costs of intermediaries. He shall also examine the development's costs, including developer's fees and other amounts in the application, for reasonableness and, if he determines that such costs or other amounts are unreasonably high, he shall reduce them to amounts that he determines to be reasonable. The executive director shall review the applicant's projected rental income, operating expenses and debt service for the credit period. The executive director may establish such criteria and assumptions as he shall deem reasonable for the purpose of making such determination, including, without limitation, criteria as to the reasonableness of fees and profits and assumptions as to the amount of net syndication proceeds to be received (based upon such percentage of the credit dollar amount used for development costs, other than the costs of intermediaries, as the executive director shall determine to be reasonable for the proposed development), increases in the market value of the development, and increases in operating expenses, rental income and, in the case of applications without firm financing commitments (as defined hereinabove) at fixed interest rates, debt service on the proposed mortgage loan. The executive director may, if he deems it appropriate, consider the development to be a part of a larger development. In such a case, the executive director may consider, examine, review and establish any or all of the foregoing items as to the larger development in making such determination for the development.

At such time or times during each calendar year as the executive director shall designate, the executive director shall reserve credits to applications in descending order of ranking within each pool and tier, if applicable, until either substantially all credits therein are reserved or all qualified applications therein have received reservations. (For the purpose of the preceding sentence, if there is not more than a de minimis amount, as determined by the executive director, of credits remaining in a pool after reservations have been made, "substantially all" of the credits in such pool shall be deemed to have been reserved.) The executive director may rank the applications within pools at different times for different pools and may reserve credits, based on such rankings, one or more times with respect to each pool. The executive director may also establish more than one round of review and ranking of applications and reservation of credits based on such rankings, and he shall designate the amount of credits to be made available for reservation within each pool during each such round. The amount reserved to each such application shall be equal to the lesser of (i) the amount requested in the application or (ii) an amount determined by the executive director, as of the date of application, 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; provided, however, that in no event shall the amount of credits so reserved exceed the maximum amount permissible under the IRC.

Not more than 20% of the credits in any pool may be reserved to developments intended to provide elderly housing, unless the feasible credit amount, as determined by the executive director, of the highest ranked elderly housing development in any pool exceeds 20% of the credits in such pool, then such elderly housing development shall be the only elderly housing development eligible for a reservation of credits from such pool. However, if credits remain available for reservation after all eligible nonelderly housing developments receive a reservation of credits, such remaining credits may be made available to additional elderly housing developments. The above limitation of credits available for elderly housing shall not include elderly housing developments with project-based subsidy providing rental assistance for at least 20% of the units that are submitted as rehabilitation developments or assisted living facilities licensed under Chapter 17 of Title 63.2 of the Code of Virginia.

If the amount of credits available in any pool is determined by the executive director to be insufficient for the financial

feasibility of the proposed development to which such available credits are to be reserved, the executive director may move the proposed development and the credits available to another pool. If any credits remain in any pool after moving proposed developments and credits to another pool, the executive director may for developments that meet the requirements of § 42(h)(1)(E) of the IRC only, reserve the remaining credits to any proposed development(s) scoring at or above the minimum point threshold established by this chapter without regard to the ranking of such application with additional credits from the Commonwealth's annual state housing credit ceiling for the following year in such an amount necessary for the financial feasibility of the proposed development, or developments. However, the reservation of credits from the Commonwealth's annual state housing credit ceiling for the following year shall be in the reasonable discretion of the executive director if he determines it to be in the best interest of the plan. In the event a reservation or an allocation of credits from the current year or a prior year is reduced, terminated or cancelled, the executive director may substitute such credits for any credits reserved from the following year's annual state housing credit ceiling.

In the event that during any round of application review and ranking the amount of credits reserved within any pools is less than the total amount of credits made available therein during such round, the executive director may either (i) leave such unreserved credits in such pools for reservation and allocation in any subsequent round or rounds or (ii) redistribute such unreserved credits to such other pool or pools as the executive director may designate or (iii) supplement such unreserved credits in such pools with additional credits from the Commonwealth's annual state housing credit ceiling for the following year for reservation and allocation, if in the reasonable discretion of the executive director, it serves the best interest of the plan, or (iv) carry over such unreserved credits to the next succeeding calendar year for inclusion in the state housing credit ceiling (as defined in § 42(h)(3)(C) of the IRC) for such year.

Notwithstanding anything contained herein, the total amount of credits that may be awarded in any credit year after credit year 2001 to any applicant or to any related applicants for one or more developments shall not exceed 15% of Virginia's per capita dollar amount of credits for such credit year (the "credit cap"). However, if the amount of credits to be reserved in any such credit year to all applications assigned a total number of points at or above the threshold amount set forth above shall be less than Virginia's dollar amount of credits available for such credit year, then the authority's board of commissioners may waive the credit cap to the extent it deems necessary to reserve credits in an amount at least equal to such dollar amount of credits. Applicants shall be deemed to be related if any principal in a proposed development or any person or entity related to the applicant or principal will be a principal in any other proposed development or developments. For purposes of this paragraph, a principal shall also include any person or entity who, in the determination of the executive director, has exercised or will exercise, directly or indirectly, substantial control over the applicant or has performed or will perform (or has assisted or will assist the applicant in the performance of), directly or indirectly, substantial responsibilities or functions customarily performed by applicants with respect to applications or developments. For the purpose of determining whether any person or entity is related to the applicant or principal, persons or entities shall be deemed to be related if the executive director determines that any substantial relationship existed, either directly between them or indirectly through a series of one or more substantial relationships (e.g., if party A has a substantial relationship with party B and if party B has a substantial relationship with party C, then A has a substantial relationship with both party B and party C), at any time within three years of the filing of the application for the credits. In determining in any credit year whether an applicant has a substantial relationship with another applicant with respect to any application for which credits were awarded in any prior credit year, the executive director shall determine whether the applicants were related as of the date of the filing of such prior credit year's application or within three years prior thereto and shall not consider any relationships or any changes in relationships subsequent to such date. Substantial relationships shall include, but not be limited to, the following relationships (in each of the following relationships, the persons or entities involved in the relationship are deemed to be related to each other): (i) the persons are in the same immediate family (including, without limitation, a spouse, children, parents, grandparents, grandchildren, brothers, sisters, uncles, aunts, nieces, and nephews) and are living in the same household; (ii) the entities have one or more common general partners or members (including related persons and entities), or the entities have one or more common owners that (by themselves or together with any other related persons and entities) have, in the aggregate, 5.0% or more ownership interest in each entity; (iii) the entities are under the common control (e.g., the same person or persons and any related persons serve as a majority of the voting members of the boards of such entities or as chief executive officers of such entities) of one or more persons or entities (including related persons and entities); (iv) the person is a general partner, member or employee in the entity or is an owner (by himself or together with any other related persons and entities) of 5.0% or more ownership interest in the entity; (v) the entity is a general partner or member in the other entity or is an owner (by itself or together with any other related persons and entities) of 5.0% or more ownership interest in the other entity; or (vi) the person or entity is otherwise controlled, in whole or in part, by the other person or entity. In determining compliance with the credit cap with respect to any application, the executive director may exclude any person or entity related to the applicant or to any principal in such

applicant if the executive director determines that (i) such person or entity will not participate, directly or indirectly, in matters relating to the applicant or the ownership of the development to be assisted by the credits for which the application is submitted, (ii) such person or entity has no agreement or understanding relating to such application or the tax credits requested therein, and (iii) such person or entity will not receive a financial benefit from the tax credits requested in the application. A limited partner or other similar investor shall not be determined to be a principal and shall be excluded from the determination of related persons or entities unless the executive director shall determine that such limited partner or investor will, directly or indirectly, exercise control over the applicant or participate in matters relating to the ownership of the development substantially beyond the degree of control or participation that is usual and customary for limited partners or other similar investors with respect to developments assisted by the credits. If the award of multiple applications of any applicant or related applicants in any credit year shall cause the credit cap to be exceeded, such applicant or applicants shall, upon notice from the authority, jointly designate those applications for which credits are not to be reserved so that such limitation shall not be exceeded. Such notice shall specify the date by which such designation shall be made. In the absence of any such designation by the date specified in such notice, the executive director shall make such designation as he shall determine to best serve the interests of the program. Each applicant and each principal therein shall make such certifications, shall disclose such facts and shall submit such documents to the authority as the executive director may require to determine compliance with credit cap. If an applicant or any principal therein makes any misrepresentation to the authority concerning such applicant's or principal's relationship with any other person or entity, the executive director may reject any or all of such applicant's pending applications for reservation or allocation of credits, may terminate any or all reservations of credits to the applicant, and may prohibit such applicant, the principals therein and any persons and entities then or thereafter having a substantial relationship (in the determination of the executive director as described above) with the applicant or any principal therein from submitting applications for credits for such period of time as the executive director shall determine.

Within a reasonable time after credits are reserved to any applicants' applications, the executive director shall notify each applicant for such reservations of credits either of the amount of credits reserved to such applicant's application (by issuing to such applicant a written binding commitment to allocate such reserved credits subject to such terms and conditions as may be imposed by the executive director therein, by the IRC and by this chapter) or, as applicable, that the applicant's application has been rejected or excluded or has otherwise not been reserved credits in accordance herewith. The written binding commitment shall prohibit any transfer, direct or indirect, of partnership interests (except those involving the admission of limited partners) prior to the placed-in-service date of the proposed development unless the transfer is consented to by the executive director. The written binding commitment shall further limit the developers' fees to the amounts established during the review of the applications for reservation of credits and such amounts shall not be increased unless consented to by the executive director.

If credits are reserved to any applicants for developments which have also received an allocation of credits from prior years, the executive director may reserve additional credits from the current year equal to the amount of credits allocated to such developments from prior years, provided such previously allocated credits are returned to the authority. Any previously allocated credits returned to the authority under such circumstances shall be placed into the credit pools from which the current year's credits are reserved to such applicants.

The executive director shall make a written explanation available to the general public for any allocation of housing credit dollar amount which is not made in accordance with established priorities and selection criteria of the authority.

The authority's board shall review and consider the analysis and recommendation of the executive director for the reservation of credits to an applicant, and, if it concurs with such recommendation, it shall by resolution ratify the reservation by the executive director of the credits to the applicant, subject to such terms and conditions as it shall deem necessary or appropriate to assure compliance with the aforementioned binding commitment issued or to be issued to the applicant, the IRC and this chapter. If the board determines not to ratify a reservation of credits or to establish any such terms and conditions, the executive director shall so notify the applicant.

Subsequent to such ratification of the reservation of credits, the executive director may, in his discretion and without ratification or approval by the board, increase the amount of such reservation by an amount not to exceed 10% of the initial reservation amount.

The executive director may require the applicant to make a good faith deposit or to execute such contractual agreements providing for monetary or other remedies as it may require, or both, to assure that the applicant will comply with all requirements under the IRC, this chapter and the binding commitment (including, without limitation, any requirement to conform to all of the representations, commitments and information contained in the application for which points were assigned pursuant to this section). Upon satisfaction of all such aforementioned requirements (including any post-allocation requirements), such deposit shall be refunded to the applicant or such contractual agreements shall terminate, or both, as applicable.

If, as of the date the application is approved by the executive director, the applicant is entitled to an allocation of the credits under the IRC, this chapter and the terms of any binding commitment that the authority would have otherwise issued to such applicant, the executive director may at that time allocate the credits to such qualified low-income buildings or development without first providing a reservation of such credits. This provision in no way limits the authority of the executive director to require a good faith deposit or contractual agreement, or both, as described in the preceding paragraph, nor to relieve the applicant from any other requirements hereunder for eligibility for an allocation of credits. Any such allocation shall be subject to ratification by the board in the same manner as provided above with respect to reservations.

The executive director may require that applicants to whom credits have been reserved shall submit from time to time or at such specified times as he shall require, written confirmation and documentation as to the status of the proposed development and its compliance with the application, the binding commitment and any contractual agreements between the applicant and the authority. If on the basis of such written confirmation and documentation as the executive director shall have received in response to such a request, or on the basis of such other available information, or both, the executive director determines any or all of the buildings in the development which were to become qualified low-income buildings will not do so within the time period required by the IRC or will not otherwise qualify for such credits under the IRC, this chapter or the binding commitment, then the executive director may (i) terminate the reservation of such credits and draw on any good faith deposit, or (ii) substitute the reservation of credits from the current credit year with a reservation of credits from a future credit year, if the delay is caused by a lawsuit beyond the applicant's control that prevents the applicant from proceeding with the development. If, in lieu of or in addition to the foregoing determination, the executive director determines that any contractual agreements between the applicant and the authority have been breached by the applicant, whether before or after allocation of the credits, he may seek to enforce any and all remedies to which the authority may then be entitled under such contractual agreements.

The executive director may establish such deadlines for determining the ability of the applicant to qualify for an allocation of credits as he shall deem necessary or desirable to allow the authority sufficient time, in the event of a reduction or termination of the applicant's reservation, to reserve such credits to other eligible applications and to allocate such credits pursuant thereto.

Any material changes to the development, as proposed in the application, occurring subsequent to the submission of the application for the credits therefor shall be subject to the prior written approval of the executive director. As a condition to any such approval, the executive director may, as necessary to comply with this chapter, the IRC, the binding commitment and any other contractual agreement between the authority and the applicant, reduce the amount of credits applied for or reserved or impose additional terms and conditions with respect thereto. If such changes are made without the prior written approval of the executive director, he may terminate or reduce the reservation of such credits, impose additional terms and conditions with respect thereto, seek to enforce any contractual remedies to which the authority may then be entitled, draw on any good faith deposit, or any combination of the foregoing.

In the event that any reservation of credits is terminated or reduced by the executive director under this section, he may reserve, allocate or carry over, as applicable, such credits in such manner as he shall determine consistent with the requirements of the IRC and this chapter.

Notwithstanding the provisions of this section, the executive director may make a reservation of credits to any applicant that proposes a nonelderly development that (i) provides rent subsidies or equivalent assistance in order to ensure occupancy by extremely low-income persons; (ii) conforms to HUD regulations interpreting the accessibility requirements of § 504 of the Rehabilitation Act; and (iii) will be actively marketed to people with disabilities in accordance with a plan submitted as part of the application for credits and approved by the executive director for at least 50% of the units in the development. Any such reservations made in any calendar year may be up to 6.0% of the Commonwealth's annual state housing credit ceiling for the applicable credit year. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.

~~Notwithstanding the provisions of this section, the executive director may, except in calendar years 2010 and 2011, make a reservation of credits, to any applicant that proposes to acquire and rehabilitate a nonelderly development that the executive director determines (i) cannot be acquired within the schedule for the competitive scoring process described in this section and (ii) cannot be financed with tax-exempt bonds using the authority's normal underwriting criteria for its multifamily tax-exempt bond program. Any proposed development subject to an application submitted under this paragraph must meet the following criteria: (i) at least 20% of the units in the development must be low-income housing units for residents at 50% of the area median income or less, (ii) the development must be eligible for points under subdivision 3 b (1) (g) of this section or a combination of at least 20 points under subdivisions 3 b (1) (b) through 3 b (1) (j), excluding subdivision 3 b (1) (c), (iii) the executive director's review of the application must confirm that the portion of the developer's fee to be deferred is at least 5.0% of the total development costs, (iv) participation by the local~~

~~government in the form of low-interest loan/grant moneys from such locality's affordable housing funds in an amount equal to or greater than 20% of the total development costs, and (v) the application for the development must obtain as many points as the lowest ranked development that could have received a partial reservation of credits from the geographic pool in which the applicant would have been ranked in the most recent competitive scoring round. Any such reservations made in any calendar year may be up to 15% of the Commonwealth's annual state housing credit ceiling for the applicable credit year, of which at least 10% of the Commonwealth's annual state housing credit ceiling for the applicable credit year will be reserved for developments within Arlington County, Fairfax County, Alexandria City, Fairfax City or Falls Church City. However, such reservation will be for credits from the Commonwealth's annual state housing credit ceiling from the following calendar year.~~

VA.R. Doc. No. R12-2966; Filed August 22, 2011, 10:19 a.m.

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# TITLE 22. SOCIAL SERVICES

## STATE BOARD OF SOCIAL SERVICES

### Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services 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 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: **22VAC40-72. Standards for Licensed Assisted Living Facilities (amending 22VAC40-72-201, 22VAC40-72-660).**

Statutory Authority: §§ 63.2-217 and 63.2-1732 of the Code of Virginia.

Effective Date: November 1, 2011.

Agency Contact: Judith McGreal, Program Consultant, Department of Social Services, Division of Licensing Programs, 801 North Main Street, Richmond, VA 23219, telephone (804) 726-7157, FAX (804) 726-7132, TTY (800) 828-1120, or email judith.mcgreal@dss.virginia.gov.

Summary:

*The amendments conform the regulations to Chapters 463 and 609 of the 2011 Acts of Assembly. An amendment allows an assisted living facility to be operated for 150 days by an acting administrator who has applied for licensure, with a possible 30-day extension when awaiting the results of the national exam. Facilities are limited to operating with an acting administrator one time during any two-year period unless authorized otherwise by the Department of Social Services. Another amendment provides that an assisted living facility administrator report certain information to the Department of Health Professions under specified circumstances about persons regulated by that department. This includes, but is not limited to, information regarding substance abuse and unethical or fraudulent conduct.*

**22VAC40-72-201. Administrator provisions and responsibilities.**

A. Each facility shall have an administrator of record.

B. When an administrator terminates employment, the ~~licensee shall hire a new administrator within 90 days from the date of termination~~ facility shall immediately employ a new administrator or appoint a qualified acting administrator so that no lapse in administrator coverage occurs. ~~If a new administrator is not employed immediately when the administrator terminates employment, a qualified acting administrator, who is not required to be licensed, shall be appointed so that no lapse in administrator coverage occurs.~~

1. The ~~licensee~~ facility shall notify the department's regional licensing office in writing within 10 working days of a change in a facility's administrator including, but not limited to, the resignation of an administrator, appointment of an acting administrator, and appointment of a new administrator, except that the time period for notification may differ as specified in subdivision 2 of this subsection.

2. For facilities licensed for both residential and assisted living care, ~~if the facility is operating without an administrator licensed by the Virginia Board of Long-Term Care Administrators, the acting administrator~~ the facility shall immediately notify the Virginia Board of Long-Term Care Administrators and the department's regional licensing office ~~of this fact~~ that a new licensed administrator has been employed or that the facility is operating without an administrator licensed by the Virginia Board of Long-Term Care Administrators, whichever is the case, and provide the last date of employment of the previous licensed administrator.

3. For facilities licensed for both residential and assisted living care, when an acting administrator is named, he shall notify the department's regional licensing office of his employment, and if he is intending to assume the position permanently, submit a completed application for an approved administrator-in-training program to the Virginia Board of Long-Term Care Administrators within 10 days of employment.

4. For facilities licensed for both residential and assisted living care, the acting administrator shall be qualified by education for an approved administrator-in-training

program and have a minimum of one year of administrative or supervisory experience in a health care or long-term care facility or have completed such a program and be awaiting licensure.

5. A facility may be operated by an acting administrator for no more than 150 days, or not more than 90 days if the acting administrator has not applied for licensure, from the last date of employment of the licensed administrator.

~~EXCEPTION: An acting administrator who is awaiting the final licensing decision of the Virginia Board of Long-Term Care Administrators may be granted one extension of up to 60 days in addition to the 90 allowed days if a written request to the regional licensing office of the Virginia Department of Social Services provides documentation of such.~~

EXCEPTION: An acting administrator may be granted one extension of up to 30 days in addition to the 150 days, as specified in this subdivision, upon written request to the department's regional licensing office. An extension may only be granted if the acting administrator (i) has applied for licensure as a long-term care administrator pursuant to Chapter 31 (§ 54.1-3100 et seq.) of Title 54.1 of the Code of Virginia, (ii) has completed the administrator-in-training program, and (iii) is awaiting the results of the national examination. If a 30-day extension is granted, the acting administrator shall immediately submit written notice of such to the Virginia Board of Long-Term Care Administrators.

6. A facility may not operate under the supervision of an acting administrator pursuant to §§ 54.1-3103.1 and 63.2-1803 of the Code of Virginia more than one time during any two-year period unless authorized to do so by the department.

C. The administrator shall be responsible for the general administration and management of the facility and shall oversee the day-to-day operation of the facility. This shall include, but shall not be limited to, responsibility for:

1. Maintaining compliance with applicable laws and regulations;

2. Developing and implementing all policies, procedures and services as required by this chapter;

3. Ensuring staff and volunteers comply with residents' rights;

4. Maintaining buildings and grounds;

5. Recruiting, hiring, training, and supervising staff; and

6. Ensuring the development, implementation, and monitoring of an individualized service plan for each resident, except that a plan is not required for a resident with independent living status.

D. The administrator shall report to the Director of the Department of Health Professions information required by and in accordance with § 54.1-2400.6 of the Code of Virginia regarding any person (i) licensed, certified, or registered by a health regulatory board or (ii) holding a multistate licensure privilege to practice nursing or an applicant for licensure, certification, or registration. Information required to be reported under specified circumstances includes, but is not limited to, substance abuse and unethical or fraudulent conduct.

~~D.~~ E. For facilities licensed for residential living care only, either the administrator or a designated assistant who meets the qualifications of the administrator shall be awake and on duty on the premises at least 40 hours per week with no fewer than 24 of those hours being during the day shift on week days.

EXCEPTIONS:

1. 22VAC40-72-220 allows a shared administrator for smaller facilities.

2. If the administrator is licensed as an assisted living facility administrator or nursing home administrator by the Board of Long-Term Care Administrators, the provisions regarding the administrator in subsection ~~E~~ F of this section apply. When such is the case, there is no requirement for a designated assistant.

~~E.~~ F. For facilities licensed for both residential and assisted living care, an administrator licensed by the Virginia Board of Long-Term Care Administrators, as specified in 22VAC40-72-191 E, shall serve as the on-site agent of the licensee and shall be responsible on a full-time basis for the day-to-day administration and management of the facility, except as provided in 22VAC40-72-220.

~~F.~~ G. The administrator, acting administrator or, as allowed in subsection ~~D~~ E of this section, designated assistant administrator shall not be a resident of the facility.

~~G.~~ H. The facility shall maintain a written work schedule of the on-site presence of the administrator and, if applicable, the designated assistant or, as provided for in 22VAC40-72-220 and 22VAC40-72-230, the manager.

1. Any changes shall be noted on the schedule.

2. The facility shall maintain a copy of the schedule for two years.

**22VAC40-72-660. Qualifications and supervision of staff administering medications.**

When staff administers medications to residents, the following standards shall apply:

1. Each staff person who administers medication shall be authorized by § 54.1-3408 of the Virginia Drug Control

Act. All staff responsible for medication administration shall:

a. Be licensed by the Commonwealth of Virginia to administer medications; or

b. Be registered with the Virginia Board of Nursing as a medication aide, except as specified in subdivision 2 of this section.

2. Any applicant for registration as a medication aide who has provided to the Virginia Board of Nursing evidence of successful completion of the education or training course required for registration may act as a medication aide on a provisional basis for no more than 120 days before successfully completing any required competency evaluation. However, upon notification of failure to successfully complete the written examination after three attempts, an applicant shall immediately cease acting as a medication aide.

3. Medication aides shall be supervised by:

a. An individual employed full time at the facility who is licensed by the Commonwealth of Virginia to administer medications;

b. The administrator who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration; or

c. For facilities licensed for residential living care only, the designated assistant administrator, as specified in 22VAC40-72-201 ~~D~~ E, who is licensed by the Commonwealth of Virginia to administer medications or who has successfully completed a training program approved by the Virginia Board of Nursing for the registration of medication aides. The training program for designated assistant administrators who supervise medication aides, but are not registered medication aides themselves, must include a minimum of 68 hours of student instruction and training, but need not include the prerequisite for the program or the written examination for registration.

VA.R. Doc. No. R12-2907; Filed August 22, 2011, 8:54 a.m.

## Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services 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 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: **22VAC40-890. Human Subject Research Regulations (amending 22VAC40-890-10).**

Statutory Authority: §§ 63.2-217 and 63.2-218 of the Code of Virginia.

Effective Date: November 1, 2011.

Agency Contact: Todd Areson, Institutional Review Board Administrator, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7490, FAX (804) 726-7946, or email todd.areson@dss.virginia.gov.

Summary:

*The amendment replaces the definition of "local agency" with the definition of "local department" in conformance with § 63.2-100 of the Code of Virginia.*

**22VAC40-890-10. Definitions.**

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

"Affiliated with the department" means any individual employed, either on a paid or volunteer basis, by the Virginia Department of Social Services, by a local department of social services, or by an agency licensed by the Virginia Department of Social Services.

"Authorized" means to permit the implementation or conducting of research.

"Board" means the Virginia State Board of Social Services.

"Commissioner" means the Commissioner of the Virginia Department of Social Services or his designee.

"Committee" means the human research review committee which reviews and approves human research activities related to this chapter.

"Contractor" means agencies, organizations, or individuals providing goods or services, receiving funds, or under contract with the department or a local agency including, but not limited to, foster homes and day-care homes.

"Department" means the Virginia Department of Social Services.

"Discomforts, risks, and benefits" means the expected advantages and disadvantages to the participant for participating in the research.

"Facility" means any agency licensed by the department including, but not limited to, adult and child day and residential facilities.

"Human participant" or "participant" means any individual, customer, volunteer, or employee who is the subject of research conducted or authorized by the department, facility, local agency, or contractor.

"Human research" or "research" means any formal and structured evaluation involving individuals in a special project, program, or study.

"Informed consent" means the knowing and voluntary agreement of the participant exercising free choice, without undue inducement or any element of force, fraud, deceit, duress, or other form of constraint or coercion.

"Legally authorized representative" means a person with authority to consent on behalf of a prospective participant to include (i) the parent or parents having custody, (ii) the legal guardian, or (iii) any person or judicial or other person or body authorized by law or regulation, including an attorney in fact appointed under a durable power of attorney, to the extent the power grants the authority to make a decision related to human research. The attorney in fact shall not be employed by the person or department conducting the human research. No official or employee of the department, facility or local agency conducting or authorizing the research shall be qualified to act as a legally authorized representative.

"Local ~~agency~~ department" means ~~any~~ the local department of social services ~~or department of welfare~~ of any county or city in this Commonwealth.

"Minimal risk" means that the risks of harm to the prospective participant anticipated in the proposed research are not greater, considering probability and magnitude, than those ordinarily encountered in daily life or during the performance of routine physical or psychological examinations or tests.

VA.R. Doc. No. R12-2903; Filed August 22, 2011, 8:57 a.m.

### Notice of Suspension of Regulatory Process and Additional Public Comment Period

Titles of Regulations: **22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (repealing 22VAC40-130-10 through 22VAC40-130-550).**

**22VAC40-131. Standards for Licensed Child-Placing Agencies (adding 22VAC40-131-10 through 22VAC40-131-610).**

Statutory Authority: §§ 63.2-217 and 63.2-1734 of the Code of Virginia.

Public Comment Deadline: October 11, 2011.

Notice is hereby given that, pursuant to § 2.2-4007.06 of the Code of Virginia, the State Board of Social Services is suspending 22VAC40-131, Standards for Licensed Private Child Placing Agencies, published in 27:25 VA.R. 2675-2717 August 15, 2011, and soliciting additional comments on changes made to the regulations between publication of the proposed regulations and publication of the final regulations. These changes are shown in brackets in the final version of the regulations as published in the Virginia Register of Regulations. The State Board of Social Services is also suspending the effective date of the repeal of 22VAC40-130, Minimum Standards for Licensed Private Child Placing Agencies.

The effective date of this regulatory action is suspended until the State Board of Social Services readopts the regulations after the close of the additional comment period and publishes additional changes, if any, and the new effective date of the final regulations and the repealed regulations in the Virginia Register of Regulations.

The additional comment period ends on October 11, 2011. Written comment regarding the changes made between publication of the proposed regulations and publication of the final regulations may be submitted to the agency contact listed below or through the Virginia Regulatory Town Hall website at http://www.townhall.virginia.gov.

Agency Contact: Joni S. Baldwin, Program Development Consultant, Division of Licensing Programs, Department of Social Services, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7162, FAX (804) 726-7132, or email joni.baldwin@dss.virginia.gov.

VA.R. Doc. No. R10-2036; Filed August 18, 2011, 11:32 a.m.

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# TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

## COMMONWEALTH TRANSPORTATION BOARD

### Final Regulation

REGISTRAR'S NOTICE: The Commonwealth Transportation Board is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 3, which excludes regulations that consist only of changes in style or form or corrections of technical errors. The Commonwealth Transportation Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **24VAC30-61. Rules and Regulations Governing the Transportation of Hazardous Materials Through Bridge-Tunnel Facilities (amending 24VAC30-61-20, 24VAC30-61-30, 24VAC30-61-40).**

Statutory Authority: §§ 33.1-12 and 33.1-49 of the Code of Virginia.

Effective Date: October 12, 2011.

Agency Contact: Perry Cogburn, Director, Emergency Operations Center, Department of Transportation, 1221 East

Broad St., Richmond, VA 23219, telephone (804) 786-2848, or email perry.cogburn@vdot.virginia.gov.

Summary:

*The amendments (i) eliminate listed phone numbers and add an agency website address where contact information is available, (ii) correct a reference to "I-64" in table of facilities to "I-664," and (iii) revise the table in 24VAC30-61-40 to reflect content of information currently used at VDOT facilities covered by the regulation.*

**24VAC30-61-20. List of state-owned bridge-tunnel facilities in the Commonwealth.**

The following table lists the six state-owned bridge-tunnel facilities in the Commonwealth. The Virginia Department of Transportation owns and operates all six facilities listed. A list of telephone numbers for each facility is available at the following website: http://www.virginiadot.org/info/hazmat.asp.

| Name of Facility | ~~Telephone Number~~ | Route |
|---|---|---|
| Big Walker Mountain Tunnel | ~~540-228-5571~~ | Interstate 77 |
| East River Mountain Tunnel | ~~540-928-1994~~ | Interstate 77 |
| Elizabeth River Tunnel-Downtown | ~~757-494-2424~~ | Interstate 264 |
| Elizabeth River Tunnel-Midtown | ~~757-683-8123~~ | Route 58 |
| Hampton Roads Bridge-Tunnel | ~~757-727-4832~~ | Interstate 64 |
| Monitor-Merrimac Memorial Bridge-Tunnel | ~~757-247-2123~~ | Interstate ~~64~~ 664 |

For purposes of this chapter, the facilities listed above are classified into two groups: rural and essentially distanced from bodies of water, and urban and essentially proximate to bodies of water.

**24VAC30-61-30. Restrictions on hazardous material transportation across rural and distanced-from-water facilities.**

The two rural and distanced-from-water tunnel facilities are: the Big Walker Mountain Tunnel and the East River Mountain Tunnel. For these two tunnels, and these two only, no restrictions apply on the transport of hazardous materials, so long as transporters and shippers are in compliance with 49 CFR 100 through 180, and any present and future state regulations which may become in force to implement the federal regulations. In addition, the Commonwealth Transportation Commissioner may, at any time, impose emergency or temporary restrictions on the transport of hazardous materials through these facilities, so long as sufficient advanced signage is positioned to allow for a reasonable detour.

Questions on this section of the regulation should be directed to the VDOT Emergency Operations Center ~~at the following telephone number: (804) 371-0891~~, contact information for which is available from the following website: http://www.virginiadot.org/info/hazmat.asp. Copies of the regulation will be provided free of charge. For copies, please write to:

Virginia Department of Transportation
ATTN: Emergency Operations Center
1221 East Broad Street
Richmond, Virginia 23219

**24VAC30-61-40. Restrictions on hazardous material transportation across urban and water-proximate facilities.**

Hazardous materials are regulated in the four urban and water-proximate tunnels (Elizabeth River (Midtown and Downtown), Hampton Roads, and Monitor-Merrimac) based exclusively on the "hazard class" of the material being conveyed. The following tables list those categories of materials grouped under the designations "Prohibited," "No Restrictions," or "Restricted."

~~** Please contact the Chesapeake Bay Bridge Tunnel at 757-331-2960 for information on their regulation.~~ Regulations concerning the transportation of hazardous materials across the Chesapeake Bay Bridge Tunnel (CBBT) are available from the CBBT website: http://www.cbbt.com/hazmat.html.

*PROHIBITED*

Materials defined in the following classes are not allowed passage through the four urban, water-proximate tunnels.

| CATEGORY | PLACARD NAME | PLACARD REFERENCE |
|---|---|---|
| 1.1 | Explosives 1.1 | 49 CFR 172.522 |
| 1.2 | Explosives 1.2 | 49 CFR 172.522 |
| 1.3 | Explosives 1.3 | 49 CFR 172.522 |
| 2.3 | Poison Gas | 49 CFR 172.540 |
| 4.3 | Dangerous When Wet | 49 CFR 172.548 |
| 6.1 (PG I, inhalation hazard only) | Poison | 49 CFR 172.554 |

*NO RESTRICTIONS*

Materials in the following hazard classes are not restricted in the four urban, water-proximate tunnels.

| CATEGORY | PLACARD NAME | PLACARD REFERENCE |
|---|---|---|
| 1.4 | Explosives 1.4 | 49 CFR 172.523 |
| 1.5 | Explosives 1.5 | 49 CFR 172.524 |
| 1.6 | Explosives 1.6 | 49 CFR 172.525 |
| 2.2 | Nonflammable Gas | 49 CFR 172.528 |
| ~~Combustible liquid~~ 3 | Combustible Liquids | 49 CFR 172.544 |
| 4.1 | Flammable Solid | 49 CFR 172.546 |
| 4.2 | Spontaneously Combustible | 49 CFR 172.547 |
| 6.1 (PG I or II, other than PG I inhalation hazard) | Poison | 49 CFR 172.554 |
| 6.1 (PG III) | Keep Away From Food | 49 CFR 172.553 |
| 6.2 | (None) | |
| 7 Radioactive | Radioactive | 49 CFR 172.556 |
| 9 | Class 9 | 49 CFR 172.560 |
| ORM-D | (None) | |

*RESTRICTED*

Materials in the following hazard classes are allowed access to the four urban, water-proximate tunnels in "Non-bulk" (maximum capacity of 119 gallons/450 liters or less as a receptacle for liquids, a water capacity of 1000 pounds/454 kilograms or less as a receptacle for gases, and a maximum net mass of 882 pounds/400 kilograms or less and a maximum capacity of 119 gallons/450 liters or less as a receptacle for solids) quantities per container only.

| CATEGORY | PLACARD NAME | PLACARD REFERENCE |
|---|---|---|
| 2.1 | Flammable Gas | 49 CFR 172.532 |
| 3 | Flammable | 49 CFR 172.542 |
| 5.1 | Oxidizer | 49 CFR 172.550 |
| 5.2 | Organic Peroxide | 49 CFR 172.552 |
| 8 | Corrosive | 49 CFR 172.558 |

VA.R. Doc. No. R12-2957; Filed August 24, 2011, 8:12 a.m.

EXECUTIVE ORDER NUMBER 37 (2011)

## Continuing the Virginia Indian Commemorative Commission

Importance of the Issue

Native Americans have lived in the land now known as Virginia for thousands of years, their history having been and continuing to be documented. The historical record confirms that Virginia Indians provided aid and comfort to the British colonists in 1607 and were instrumental in the establishment of the first permanent English-speaking settlement in North America at Jamestown.

The legacy of the indigenous peoples of the Commonwealth has been recorded in the names of many Virginia locations and landmarks, such as the Cities of Chesapeake and Roanoke, the Counties of Accomack, Appomattox, and Powhatan, and the Chickahominy, Mattaponi, Pamunkey, Potomac, Powhatan, and Rappahannock Rivers, as well as many other sites. Despite hardships brought about by the loss of lands, languages, and civil rights, American Indians in Virginia have persisted and continued to contribute to the Commonwealth through agriculture, land stewardship, teaching, military and civil service, the arts, and other avenues of productive citizenship.

Continuation of the Virginia Indian Commemorative Commission

In recognition that the courage, persistence, determination, and cultural values of Virginia's Indians have significantly enhanced and contributed to society, the General Assembly approved House Joint Resolution 680 (2009), requesting the creation of a commission to recommend an appropriate monument in Capitol Square to commemorate the life, achievements, and legacy of American Indians in the Commonwealth. On October 22, 2009, Governor Kaine issued Executive Order 100 that established the Virginia Indian Commemorative Commission. Since then, the Commission has met regularly and developed a plan for execution of the monument, but there is more work to be done. Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Virginia Indian Commemorative Commission.

Composition of the Commission

The Virginia Indian Commemorative Commission shall consist of the Governor, the Lieutenant Governor of Virginia, the Speaker of the House of Delegates, or their respective designees, three members of the House of Delegates appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates, the Clerk of the House of Delegates, the Chairwoman of the Senate Committee on Rules, two citizen members of the Senate appointed by the Senate Committee on Rules, the Clerk of the Senate, the Executive Director of the Capitol Square Preservation Council, three members who shall be representatives of Virginia Indians to be appointed by the Governor, and the Executive Director of the Virginia Capitol Foundation. Additional members may be appointed at the Governor's discretion. The Virginia Council on Indians shall provide staff support for the Commission. The Chairman and the Vice Chairman shall be appointed by the Governor.

Members of the Commission shall serve without compensation, but they may receive reimbursement for expenses incurred in the discharge of their official duties.

Charge for the Commission

The Commission shall determine and recommend to the General Assembly an appropriate monument in Capitol Square to commemorate the life, achievements, and legacy of American Indians in the Commonwealth. The Commission shall seek private funding for the operation and support of the Commission and the erection of an appropriate monument. However, the costs of implementation of the Commission, its work, and the compensation and reimbursement of members, estimated to be $5,000.00, shall be borne by the Commission from such private funds as it may acquire to cover the costs of its operation and work. The Commission may establish an organization with 501c(3) status for fundraising purposes. All agencies of the Commonwealth shall provide assistance to the Commission, upon request. An estimated 200 hours of staff time will be required to support the work of the Commission.

The Commission shall report annually the status of its work, including any findings and recommendations, to the General Assembly, beginning on December 1, 2011.

This Executive Order rescinds Executive Order 100 (2009), becomes effective upon its signing, and shall remain in effect for one year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under the Seal of the Commonwealth of Virginia this 23rd day of August, 2011.

/s/ Robert F. McDonnell
Governor

## VIRGINIA EMPLOYMENT COMMISSION

### Small Business Impact Review

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Employment Commission will review 16VAC5-10 through 16VAC5-80, the regulations and general rules affecting unemployment compensation, to determine whether the regulations should be continued without change, amended, or repealed, consistent with stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The deadline for public comment is October 12, 2011.

Contact Information: Coleman Walsh, Chief Administrative Law Judge, Virginia Employment Commission, 703 East Main Street, Room 126, Richmond, VA 23219, telephone (804) 786-7263, FAX (804) 786-9034, or email coleman.walsh@vec.virginia.gov.

## DEPARTMENT OF ENVIRONMENTAL QUALITY

### Proposed Consent Order for Dr. Lawrence V. Phillips

An enforcement action has been proposed for Dr. Lawrence V. Phillips for violations of the State Water Control Law and Regulations in Loudoun County associated with the Highlands Development. The consent order describes a settlement to resolve violations of the State Water Control Law and Regulations. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 13, 2011, through October 13, 2011.

### Proposed Consent Order for Potomac Electric Power Company

An enforcement action has been proposed for Potomac Electric Power Company for violations of State Water Control Law and Regulations, resulting from an oil discharge to state waters and land at the Potomac Electric Power Company substation located at 1300 K N. Royal Street, in Alexandria, Virginia. The consent order describes a settlement to resolve these violations. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from September 13, 2011, through October 13, 2011.

### Proposed Consent Order for Shrine Mont, Inc.

An enforcement action has been proposed for Shrine Mont, Inc. for violations in Shenandoah County. A proposed consent order describes a settlement to resolve permit effluent limitation violations at its STP. A description of the proposed action is available at the Department of Environmental Quality (DEQ) office named below or online at www.deq.virginia.gov. Steven W. Hetrick will accept comments by email at steven.hetrick@deq.virginia.gov, FAX (540) 574-7878, or postal mail at Department of Environmental Quality, Valley Regional Office, P.O. Box 3000, 4411 Early Road, Harrisonburg, VA 22801, from September 12, 2011, to October 12, 2011.

### Proposed State Implementation Plan Revision

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed revision to the Commonwealth of Virginia State Implementation Plan (SIP). The SIP is a plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act. The Commonwealth intends to submit relevant portions of the amended regulations to EPA as revisions to the SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act.

Regulations affected: The regulations of the board affected by this action are as follows: Emission Standards for Municipal Solid Waste Landfills, Article 43 of 9VAC5-40, Existing Stationary Sources; Environmental Protection Agency Standards of Performance for New Stationary Sources, Article 5 of 9VAC5-50, New and Modified Stationary Sources; and Regulation for Open Burning, 9VAC5-130.

Purpose of notice: DEQ is seeking comment on the issue of whether the regulation amendments should be submitted as a revision to the SIP.

Public comment period: August 15, 2011, to September 14, 2011.

Public hearing: A public hearing may be conducted if a request is made in writing to the contact listed below. In order to be considered, the request must include the full name, address, and telephone number of the person requesting the hearing and be received by DEQ by the last day of the comment period. Notice of the date, time, and location of any requested public hearing will be announced in a separate notice, and another 30-day comment period will be conducted.

Public comment stage: The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 3 of the Code of Virginia as they are changes in form, style, and technical corrections. Since the amendments are exempt from administrative procedures for the adoption of regulations, DEQ is accepting comment only on the issue cited in this notice under "purpose of notice" and not on the content of the regulation amendments.

Description of proposal: In essence, the proposed revision will consist of amendments to existing regulation provisions to update regulatory cross-references. The Solid Waste Management Regulations were amended and recodified to create a new chapter 9VAC20-81, which became effective March 16, 2011. It is now necessary to update the citations to the Solid Waste Management Regulations in the State Air Pollution Control Board's regulations.

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102) and not any provision of state law. Except as noted below, the proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit the provisions of the proposal relevant to Article 43 of 9VAC5-40 and 9VAC5-130 as revisions to the Commonwealth of Virginia SIP. The provisions of Article 5 of 9VAC5-50 are not part of the Commonwealth's SIP; those provisions will be provided for information only and not as part of the SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ by the last day of the comment period. Commenters submitting faxes are encouraged to provide the signed original by postal mail within one week. All testimony, exhibits, and documents received are part of the public record.

To review regulation documents: The proposal and any supporting documents are available on the DEQ Air Public Notices for Plans website (http://www.deq.state.va.us/air/permitting/planotes.html). The documents may also be obtained by contacting the DEQ representative named below. The public may review the documents between 8:30 a.m. and 4:30 p.m. of each business day until the close of the public comment period at the following DEQ locations:

1) Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,

2) Southwest Regional Office, 355 Deadmore Street, Abingdon, VA, telephone (540) 676-4800,

3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,

4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (804) 582-5120,

5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,

6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,

7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and

8) Tidewater Regional Office, 5636 Southern Blvd., Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Karen G. Sabasteanski, Department of Environmental Quality, 629 East Main Street,

P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4426, FAX (804) 698-4510, or mail karen.sabasteanski@deq.virginia.gov.

## Total Maximum Daily Loads for Several Tributaries to the Potomac River

Announcement of total maximum daily load (TMDL) studies to restore water quality in the bacteria impaired waters of Powells Creek, Quantico Creek, South Fork Quantico Creek, North Branch Chopawamsic Creek, Aquia Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the second Technical Advisory Committee (TAC) meeting to address the development of total maximum daily loads (TMDLs) for several tributaries to the Potomac River.

Technical advisory committee meeting: Monday, September 19, 2011, 9 a.m. to 11 a.m., Stafford County Administration Building Center, Conference Rooms A, B, and C, 1300 Courthouse Road, Stafford, VA 22554.

Meeting description: This is the second TAC meeting to address the bacteria TMDL studies for Powells Creek, Quantico Creek, South Fork Quantico Creek, North Branch Chopawamsic Creek, Aquia Creek, Austin Run, Accokeek Creek, Potomac Creek, Potomac Run, and an Unnamed Tributary to the Potomac River. The purpose of the TAC is to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: Portions of the following streams have been identified as impaired on the Clean Water Act § 303(d) list for not supporting Virginia's water quality recreational use standard due to exceedances of the bacteria criterion:

| Waterbody Name | Watershed Location | Segment Size | Cause | Segment Description |
|---|---|---|---|---|
| Powells Creek | Prince William County | 4.62 miles | Escherichia coli | Segment begins approximately 0.2 rivermiles below Lake Montclair and continues downstream until the end of the free-flowing waters of Powells Creek. |
| Quantico Creek | Prince William County<br>Town of Dumfries | 1.45 miles | Escherichia coli | Segment begins at the confluence with South Fork Quantico Creek, approximately 0.75 rivermile upstream from I-95, and continues downstream until the start of the tidal waters of Quantico Bay. |
| South Fork Quantico Creek | Prince William County<br>Town of Dumfries | 4.63 miles | Escherichia coli | Segment begins at the headwaters of the South Fork Quantico Creek and continues downstream until the start of the impounded waters, adjacent to what is labeled as Mawavi Camp No 2 on the Joplin quad. |
| North Branch Chopawamsic Creek | Stafford County<br>Prince William County | 6.9 miles | Escherichia coli | Segment begins at the headwaters of North Branch Chopawamsic Creek and continues downstream until the confluence with Middle Branch. |
| Aquia Creek | Fauquier County<br>Stafford County | 0.3638 $mi^2$ | Enterococcus | Segment extends from rivermile 4.28 to rivermile 3.28 in Aquia Creek encompassing a 0.5-mile radius around station 1aAUA003.71. Portion of CBP segment POTOH. |
| Austin Run | Fauquier County<br>Stafford County | 0.79 miles | Fecal Coliform | Segment begins at the confluence with an unnamed tributary to Austin Run (streamcode XGQ) and continues downstream until the confluence with Aquia Creek. |
| Accokeek Creek | Stafford County | 4.21 miles | Escherichia coli | Segment begins at the confluence with an unnamed tributary to Accokeek Creek (rivermile 8.62), approximately 0.33 rivermile downstream from Route 1, and continues downstream until the end of the free-flowing waters. |
| Potomac Creek | Stafford County | 2.18 miles | Escherichia coli | Segment begins at the railroad crossing at the west end of swamp, upstream from Route 608, and continues downstream until the east end of swamp. |
| Potomac Run | Stafford County | 6.13 miles | Escherichia coli | Segment begins at the headwaters of Potomac Run and continues downstream until the confluence with Long Branch. |
| Unnamed Tributary to the Potomac River | Stafford County | 2.9 miles | Escherichia coli | Segment begins at the headwaters of the unnamed tributary and continues downstream until its confluence with the Potomac River. |

Virginia agencies are working to identify sources of bacteria contamination in these stream segments. During this study, amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from September 19, 2011, to October 19, 2011. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Jennifer Carlson, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3859, or email jennifer.carlson@deq.virginia.gov.

### Total Maximum Daily Load Studies for Sugarland Run, Mine Run, and Pimmit Run

Announcement of total maximum daily load (TMDL) studies to restore water quality in the bacteria impaired waters of Sugarland Run, Mine Run, and Pimmit Run.

DEQ will develop a total maximum daily load (TMDL) for each of the impaired stream segments. A TMDL is the total

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce the second Technical Advisory Committee (TAC) meeting to address the development of total maximum daily loads (TMDLs) for several tributaries to the Potomac River.

Technical advisory committee meeting: Wednesday, September 14, 2011, 1:30 p.m. to 3:30 p.m., Great Falls Library, 9830 Georgetown Pike, Meeting Room, Great Falls, VA 22066.

Meeting description: This is the second TAC meeting to address the bacteria TMDL studies for Sugarland Run, Mine Run, and Pimmit Run. The purpose of the TAC is to provide technical input and insight for the project, and to assist with stakeholder and public participation.

Description of study: Portions of the following streams have been identified as impaired on the Clean Water Act § 303(d) list for not supporting Virginia's water quality recreational use standard due to exceedances of the bacteria criterion:

| Waterbody Name | Watershed Location | Segment Size | Cause | Segment Description |
|---|---|---|---|---|
| Sugarland Run | Fairfax County<br>Loudoun County<br>Town of Herndon | 0.95 miles | Escherichia coli | Segment begins at the confluence with Folly Lick Branch, at approximately rivermile 5.75, and continues downstream until the boundary of the PWS designation area, at rivermile 4.82. |
| Sugarland Run | Fairfax County<br>Loudoun County<br>Town of Herndon | 4.77 miles | Escherichia coli | Segment begins at the boundary of the PWS designation area, at rivermile 4.82, and continues downstream until the confluence with the Potomac River. |
| Mine Run | Fairfax County | 0.93 miles | Escherichia coli | Segment begins at the confluence with an unnamed tributary to Mine Run, approximately 0.5 rivermile upstream from River Bend Road, and continues downstream until the confluence with the Potomac River. |
| Pimmit Run | Arlington County<br>Fairfax County | 1.62 miles | Escherichia coli | Segment begins at the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695, and continues downstream until the confluence with the Potomac River. |

| | | | | |
|---|---|---|---|---|
| Pimmit Run | Arlington County Fairfax County | 2.46 miles | Escherichia coli | Segment begins at the Route 309 bridge crossing, at rivermile 4.16, and continues downstream until the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695. |
| Pimmit Run | Arlington County Fairfax County | 3.29 miles | Escherichia coli | Segment begins at the headwaters of Pimmit Run, approximately 0.12 rivermile upstream from Route 7, and continues downstream until the Route 309 bridge crossing, at rivermile 4.16. |

Virginia agencies are working to identify sources of bacteria contamination in these stream segments. During this study, DEQ will develop a total maximum daily load (TMDL) for each of the impaired stream segments. A TMDL is the total amount of a pollutant a water body can receive and still meet water quality standards. To restore water quality, pollutant levels have to be reduced to the TMDL allocated amount.

How to comment: The public comment period on the materials presented at the TAC meeting will extend from September 14, 2011, to October 14, 2011. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

Contact for additional information: Jennifer Carlson, Virginia Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3859, or email jennifer.carlson@deq.virginia.gov.

## BOARD FOR GEOLOGY

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Board for Geology is conducting a periodic review of 18VAC70-11, Public Participation Guidelines.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) (http://www.governor.virginia.gov/Issues/ExecutiveOrders/2010/EO-14.cfm) and § 2.2-4007.1 of the Code of Virginia (http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+2.2-4007.1).

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

The comment period begins September 12, 2011, and ends on October 3, 2011.

Comments may be submitted online to the Virginia Regulatory Town Hall at http://www.townhall.virginia.gov/L/Forums.cfm. Comments may also be sent to David E. Dick, Executive Director, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, email geology@dpor.virginia.gov.

Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

### Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2.-4017 of the Code of Virginia, the Board for Geology is conducting a periodic review of 18VAC70-20, Rules and Regulations for the Virginia Board for Geology.

The review of this regulation will be guided by the principles in Executive Order 14 (2010) (http://www.governor.virginia.gov/Issues/ExecutiveOrders/2010/EO-14.cfm) and § 2.2-4007.1 of the Code of Virginia (http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+2.2-4007.1).

The purpose of this review is to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

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Comments must include the commenter's name and address (physical or email) information in order to receive a response to the comment from the agency. Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

## 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 August 16, 2011, August 17, 2011, and August 23, 2011. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Seventy-Five (11)

Virginia's Instant Game Lottery 1228; "King of Cash" Final Rules for Game Operation (effective on August 15, 2011)

Director's Order Number Seventy-Seven (11)

Virginia Lottery's "Lottery Match Monthly Raffle" Final Rules for Game Operation (effective on August 23, 2011)

Director's Order Number Seventy-Eight (11)

"Hess Double Play Retailer Incentive Promotion" Virginia Lottery Retailer Incentive Program Rules (effective on August 15, 2011, and remain in full force and effect until ninety (90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director. Upon the effective date, the rules supersede and replace any and all prior Virginia Lottery "Hess Double Play Retailer Incentive Promotion" game rules)

Director's Order Number Seventy-Nine (11)

Virginia Lottery's "Hail to the Redskins Sweepstakes" Final Rules for Game Operation (effective on August 17, 2011, and remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, the rules supersede and replace any and all prior Virginia Lottery "Hail to the Redskins Sweepstakes" game rules)

## DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

### Non-Payment for Provider-Preventable Conditions

**Notice of Intent to Amend the Virginia State Plan for Medical Assistance (Pursuant to § 1902(a)(13) of the Act (U.S.C. 1396a(a)(13))**

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to amend the Virginia State Plan for Medical Assistance to provide for changes to payment for provider-preventable conditions, including health care acquired conditions, as required by Section 2702 of the Affordable Care Act and the implementing federal rule published on June 6, 2011.

DMAS intends to adopt the minimum requirements under the federal rule (FR 76:108, 6/6/2011, p 32816) prohibiting payment for health care acquired conditions in inpatient hospital settings and the following other provider-preventable conditions occurring in any health care setting: (i) wrong surgical or other invasive procedure performed on a patient; (ii) surgical or other invasive procedure performed on the wrong body part; or (iii) surgical or other invasive procedure performed on the wrong patient. DMAS expects only a minimal reduction in annual aggregate expenditures and has therefore not estimated a fiscal impact. The agency is making changes required by the federal rule to protect Medicaid beneficiaries and the Medicaid program by prohibiting payments for services related to provider-preventable conditions. Comments can be mailed to or copies of proposed changes can be requested from Carla Russell, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219.

Contact Information: Brian McCormick, Regulatory Supervisor, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, VA 23219, telephone (804) 371-8856, FAX (804) 786-1680, TDD (800) 343-0634, or email brian.mccormick@dmas.virginia.gov.

## STATE WATER CONTROL BOARD

### Notice of Opportunity to Serve on a Regulatory Advisory Panel

Purpose of notice: The Department of Environmental Quality is announcing the establishment of a Regulatory Advisory Panel (Panel or RAP) to assist the department in revision of the Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). Included in this revision will be changes to implement Chapter 884 of the Acts of Assembly (2011 SB 843), but other changes will be considered as well. The department is seeking persons interested in serving on the Panel.

Deadline for submittal of requests: September 6, 2011.

Background: During the 2011 legislative session, the Virginia General Assembly passed SB 843 (Chapter 884 of the Acts of Assembly), which requires the department to revise regulations to include performance standards for operators of aboveground storage tanks at facilities with an aggregate capacity of one million gallons or greater existing prior to January 29, 1992, located in the City of Fairfax. Operators are required to meet performance standards no later than July 1, 2021.

Purpose of panel: The department is establishing this panel to review the subject legislation and make recommendations to the department on how to implement the law's provisions. It is anticipated that the department will also review and revise other portions of the existing Facility and Aboveground Storage Tank (AST) Regulation (9VAC25-91). The department will publish a Notice of Intended Regulatory Action in the near future to begin the rulemaking process to implement this legislation and other changes to the existing regulations. However, the panel established in response to this notice will be the panel used to assist the department in the development of the revised regulations.

Contact for additional information or submittal of requests to serve on the committee: Melissa S. Porterfield, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4238, FAX (804) 698-4346, or email melissa.porterfield@deq.virginia.gov.

### DEPARTMENT OF REHABILITATIVE SERVICES

#### Notice of Review of Regulations to Assess their Economic Impact on Small Businesses

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Rehabilitative Services will review 22VAC30-11, Public Participation Guidelines; 22VAC30-20, Provision of Vocational Rehabilitation Services; 22VAC30-30, Provision of Independent Living Services; 22VAC30-40, Protection of Participants in Human Research; and 22VAC30-50, Policies and Procedures for Administering Commonwealth Neurotrauma Initiative Trust Fund to determine whether the regulations should be continued without change, amended, or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses. The deadline for public comment is October 3, 2011.

Contact Information: Vanessa S. Rakestraw, Policy Analyst, Department of Rehabilitative Services, 8004 Franklin Farms Drive, Richmond, VA 23229, telephone (804) 662-7612, FAX (804) 662-7663, TDD (800) 464-9950, or email vanessa.rakestraw@drs.virginia.gov.

### VIRGINIA CODE COMMISSION

#### Notice to State Agencies

**Contact Information:** *Mailing Address:* Virginia Code Commission, 910 Capitol Street, General Assembly Building, 2nd Floor, Richmond, VA 23219; *Telephone:* Voice (804) 786-3591; FAX (804) 692-0625; *Email:* varegs@dls.virginia.gov.

**Meeting Notices:** Section 2.2-3707 C of the Code of Virginia requires state agencies to post meeting notices on their websites and on the Commonwealth Calendar at http://www.virginia.gov/cmsportal3/cgi-bin/calendar.cgi.

**Cumulative Table of Virginia Administrative Code Sections Adopted, Amended, or Repealed:** A table listing regulation sections that have been amended, added, or repealed in the *Virginia Register of Regulations* since the regulations were originally published or last supplemented in the print version of the Virginia Administrative Code is available at http://register.dls.virginia.gov/cumultab.htm.

**Filing Material for Publication in the Virginia Register of Regulations:** Agencies are required to use the Regulation Information System (RIS) when filing regulations for publication in the *Virginia Register of Regulations*. The Office of the Virginia Register of Regulations implemented a web-based application called RIS for filing regulations and related items for publication in the Virginia Register. The Registrar's office has worked closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

## ERRATA

### VIRGINIA SOIL AND WATER CONSERVATION BOARD

Title of Regulation: **4VAC50-60. Virginia Stormwater Management Program (VSMP) Permit Regulations.**

Publication: 27:26 VA.R. 2738-2790 August 29, 2011.

Correction to Final Regulation:

Page 2742, second column, definition of "Flood-prone area," line 5, insert a comma after "buffers"

Page 2757, second column, 4VAC50-60-55 B 9, line 2, remove "4VAC50-60-60" and insert "4VAC50-60-63"

Page 2760, second column, 4VAC50-60-65 A, line 2, insert "A" before "1" and "2"

Page 2772, second column, 4VAC50-60-95 D, line 3, insert a comma after "laws"

VA.R. Doc. No. R08-587; Filed August 23, 2011, 10:54 a.m.

## VIRGINIA WASTE MANAGEMENT BOARD

Title of Regulation: **9VAC20-81. Solid Waste Management Regulations (amending 9VAC20-81-10, 9VAC20-81-35, 9VAC20-81-95, 9VAC20-81-140, 9VAC20-81-160, 9VAC20-81-250, 9VAC20-81-260, 9VAC20-81-300, 9VAC20-81-397, 9VAC20-81-470, 9VAC20-81-485, 9VAC20-81-490, 9VAC20-81-530, 9VAC20-81-600).**

Publication: 27:22 VA.R. 2303-2401 July 4, 2011.

Correction to Final Regulation:

Page 2365, 9VAC20-81-260 C 1, first column, line 7, after "9VAC20-81-250 C 3" replace "c" with "e"

VA.R. Doc. No. R11-2731; Filed August 26, 2011, 2:11 p.m.

## STATE BOARD OF SOCIAL SERVICES

Titles of Regulations: **22VAC40-130. Minimum Standards for Licensed Private Child Placing Agencies (repealing 22VAC40-130-10 through 22VAC40-130-550).**

**22VAC40-131. Standards for Licensed Child-Placing Agencies (adding 22VAC40-131-10 through 22VAC40-131-610).**

Publication: 27:25 VA.R. 2675-2717 August 15, 2011.

Correction to Final Regulation:

Page 2698, 22VAC40-131-270 D, line 6, insert "[ in ]" after "maintained"

Page 2708, 22VAC40-131-400, catchline, change "Childen" to "Children"