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REGISTER OF REGULATIONS

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THE VIRGINIA REGISTER INFORMATION PAGE

THE VIRGINIA REGISTER OF REGULATIONS is an official state publication issued every other week throughout the year. Indexes are published quarterly, and are cumulative for the year. The *Virginia Register* has several functions. The new and amended sections of regulations, both as proposed and as finally adopted, are required by law to be published in the *Virginia Register*. In addition, the *Virginia Register* is a source of other information about state government, including petitions for rulemaking, emergency regulations, executive orders issued by the Governor, 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. **28:2 VA.R. 47-141 September 26, 2011**, refers to Volume 28, Issue 2, pages 47 through 141 of the *Virginia Register* issued on September 26, 2011.

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; **Gregory D. Habeeb**; **James M. LeMunyon**; **Ryan T. McDougle**; **Robert L. Calhoun**; **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>).

May 2012 through April 2013

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
29:1	August 22, 2012	September 10, 2012
29:2	September 5, 2012	September 24, 2012
29:3	September 19, 2012	October 8, 2012
29:4	October 3, 2012	October 22, 2012
29:5	October 17, 2012	November 5, 2012
29:6	October 31, 2012	November 19, 2012
29:7	November 13, 2012 (Tuesday)	December 3, 2012
29:8	November 28, 2012	December 17, 2012
29:9	December 11, 2012 (Tuesday)	December 31, 2012
29:10	December 26, 2012	January 14, 2013
29:11	January 9, 2013	January 28, 2013
29:12	January 23, 2013	February 11, 2013
29:13	February 6, 2013	February 25, 2013
29:14	February 20, 2013	March 11, 2013
29:15	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF NURSING

Initial Agency Notice

Title of Regulation: **18VAC90-20. Regulations Governing the Practice of Nursing.**

Statutory Authority: § 54.1-3000 of the Code of Virginia.

Name of Petitioner: Timothy Jankiewicz.

Nature of Petitioner's Request: To amend regulations for nursing education programs to require coursework in organ donation.

Agency's Plan for Disposition of Request: In accordance with Virginia law, the petition to amend the curriculum requirements for nursing education programs has been posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. It has also been filed with the Register of Regulations for publication on May 21, 2012. Comment on the petition from interested parties is requested until June 15, 2012. Following receipt of all comments on the petition, the request will be considered by the Board of Nursing at its meeting scheduled for July 17, 2012, to decide whether to make any changes to the regulatory language.

Public Comment Deadline: June 15, 2012.

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. R12-22; Filed April 19, 2012, 12:05 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 4. CONSERVATION AND NATURAL RESOURCES

VIRGINIA SOIL AND WATER CONSERVATION BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Virginia Soil and Water Conservation Board intends to consider amending **4VAC50-60, Virginia Stormwater Management Program (VSMP) Permit Regulations**. The purpose of the proposed action is to consider amendments to reauthorize and amend Part XIV, the General Virginia Stormwater Management Program (VSMP) Permit for Discharges of Stormwater from Construction Activities (4VAC50-60-1100 et seq.) and other necessary related sections. VSMP permits are effective for a fixed term not to exceed five years. The existing five-year general permit became effective on July 1, 2009, thus necessitating the promulgation of a new general permit before the June 30, 2014, expiration date.

Changes may include, but are not limited to, incorporating water quality requirements for impaired waters and total maximum daily loads including monitoring requirements, consistency requirements with other regulations such as Erosion and Sediment Control, chemical application and handling requirements, and minimum prescriptive measures regarding public notification and reporting. Additionally, the permit will implement the federal Effluent Limitation Guidelines as found at 40 CFR Part 450. This permit will also coordinate implementation of the new stormwater management technical criteria for post development (including compliance with water quality and quantity standards set out in Part II of these regulations) authorized under state statute and regulations, as well as compliance with Part III local program technical criteria of these regulations.

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

Statutory Authority: §§ 10.1-107 and 10.1-603.4 of the Code of Virginia.

Public Comment Deadline: June 20, 2012.

Agency Contact: David C. Dowling, Policy and Planning Director, Department of Conservation and Recreation, 203 Governor Street, Suite 302, Richmond, VA 23219, telephone (804) 786-2291, FAX (804) 786-6141, or email david.dowling@dcr.virginia.gov.

VA.R. Doc. No. R12-3208; Filed May 1, 2012, 5:00 p.m.

TITLE 12. HEALTH

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board of Medical Assistance Services intends to consider amending **12VAC30-120, Waivered Services**. The purpose of the proposed action is to implement a pilot program with the City of Richmond to integrate foster care children into managed care. Only foster children under the jurisdiction of the Richmond City Department of Social Services shall be available for this program.

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

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

Public Comment Deadline: June 20, 2012.

Agency Contact: Adrienne Fegans, Administration/Director's Office, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 786-1680, or email adrienne.fegans@dmas.virginia.gov.

VA.R. Doc. No. R12-2787; Filed May 2, 2012, 3:03 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

REAL ESTATE APPRAISER BOARD

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Real Estate Appraiser Board intends to consider amending **18VAC130-20, Real Estate Appraiser Board Rules and Regulations**. The purpose of the proposed action is to adjust licensing fees for regulants of the Real Estate Appraiser Board. The board must establish fees adequate to support the costs of the board's operations and a proportionate share of the Department of Professional and Occupational Regulation's operations. By the close of the next biennium, fees will not provide adequate revenue for those costs. The Real Estate Appraiser Board has no other source of revenue from which to fund its operations.

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

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Public Comment Deadline: June 20, 2012.

Notices of Intended Regulatory Action

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

VA.R. Doc. No. R12-3187; Filed April 19, 2012, 9:16 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Real Estate Appraiser Board intends to consider amending **18VAC130-20, Real Estate Appraiser Board Rules and Regulations**. The purpose of the proposed action is to make clarifying changes, ensure consistency with state law, and make any other changes that may be considered necessary, including, but not limited to, (i) amending the definitions of certified residential appraiser and licensed residential appraiser in 18VAC130-20-10 to amplify the definition of transaction value to include market value; (ii) amending 18VAC130-20-20 to ensure all business entities providing appraisal services in Virginia are registered with the board and require a board licensee to serve as the contact person for a registered business entity providing appraisal services; (iii) amending 18VAC130-20-30 to ensure certified general appraiser applicants demonstrate adequate experience in the use of the income approach and appraiser license applicants have recent experience in performing appraisal reports; (iv) amending 18VAC130-20-60 to include provisions that the applicant must be 18 years old and allow for a licensing hearing before the board; (iv) amending 18VAC130-20-180 by changing the term evaluation to valuation; and (v) amending 18VAC130-20-190 to more efficiently take disciplinary action against a certified appraisal instructor who also holds an appraiser license which has been the subject of disciplinary action.

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

Statutory Authority: § 54.1-2013 of the Code of Virginia.

Public Comment Deadline: June 20, 2012.

Agency Contact: Christine Martine, Executive Director, Real Estate Appraiser Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4298, or email reappraisers@dpor.virginia.gov.

VA.R. Doc. No. R12-3192; Filed April 20, 2012, 9:12 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

REGISTRAR'S NOTICE: The Marine Resources Commission is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 11 of the Code of Virginia; however, the commission is required to publish the full text of final regulations.

Final Regulation

Title of Regulation: 4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-25).

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

Effective Date: April 28, 2012.

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

Summary:

The amendments establish that it is unlawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by (i) gears other than trawl that exceed 27.512% of the horseshoe crab quota and (ii) trawl gears that exceed 12.488% of the horseshoe crab quota.

4VAC20-900-25. Commercial fisheries management measures.

A. It shall be unlawful for any person to harvest horseshoe crabs from any shore or tidal waters of Virginia within 1,000 feet in any direction of the mean low water line from May 1 through June 7. The harvests of horseshoe crabs for biomedical use shall not be subject to this limitation.

B. From January 1 through June 7 of each year, it shall be unlawful for any person to land, in Virginia, any horseshoe crab harvested from federal waters.

C. Harvests for biomedical purposes shall require a special permit issued by the Commissioner of Marine Resources, and all crabs taken pursuant to such permit shall be returned to the same waters from which they were collected.

D. The commercial quota of horseshoe crab for 2012 shall be 152,495 horseshoe crabs. Additional quantities of

horseshoe crab may be transferred to Virginia by other jurisdictions in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

~~E. During each calendar year no more than 40% of the commercial horseshoe crab quota and any and all transfers of quota from other jurisdictions shall be harvested from waters east of the COLREGS Line. It shall be unlawful for any person to harvest horseshoe crabs from waters east of the COLREGS Line, or to land horseshoe crabs, in Virginia, that are harvested east of the COLREGS Line, after 40% of Virginia's horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.~~

E. It shall be unlawful for any person to harvest or land horseshoe crabs during any calendar year from waters east of the COLREGS line by any gear after 40% of Virginia's commercial horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such, to also include the following provisions:

1. It shall be lawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by any gear other than trawl until it has been projected that 27.512% of Virginia's commercial horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

2. It shall be lawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by trawl as described in subsection B of 4VAC20-900-36 until it has been projected that 12.488% of Virginia's commercial horseshoe crab quota and any and all transfers of quota have been attained for this designated area and announced as such.

F. It shall be unlawful for any person whose harvest of horseshoe crabs is from waters east of the COLREGS Line to possess aboard a vessel or to land in Virginia any quantity of horseshoe crabs that, in aggregate, is not comprised of at least a minimum ratio of two male horseshoe crabs to one female horseshoe crab. For the purposes of this regulation, no

horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.

G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:

1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-30 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 D and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.

2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-30 E, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-30 E and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.

3. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a valid horseshoe crab endorsement license to possess horseshoe crabs, without first obtaining a valid horseshoe crab bycatch permit from the Marine Resources Commission. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

5. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess a horseshoe crab endorsement license or a horseshoe crab bycatch permit to possess any horseshoe crabs.

6. It shall be unlawful for any person who possesses a horseshoe crab endorsement license or a horseshoe crab bycatch permit to harvest horseshoe crabs by gill net, except as described in this subdivision.

a. Horseshoe crabs shall only be harvested from a gill net, daily, between the hours of sunrise and sunset.

b. It shall be unlawful for any person to land horseshoe crabs caught by a gill net in excess of 250 horseshoe crabs per day.

H. It shall be unlawful for any fisherman issued a horseshoe crab endorsement license to offload any horseshoe crabs between the hours of 10 p.m. and 7 a.m.

I. When it is projected and announced that 32% of the commercial quota, as described in subsection D of this section, has been taken from waters east of the COLREGS line, the limitations on the possession and landing of horseshoe crabs are as follows:

1. It shall be unlawful for any person who possesses a valid unrestricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 1,250 horseshoe crabs per day.

2. It shall be unlawful for any person who possesses a valid restricted horseshoe crab endorsement license to possess aboard any vessel in waters east of the COLREGS Line or to land more than 500 horseshoe crabs per day.

3. It shall be unlawful for any person who possesses a valid horseshoe crab bycatch permit to possess aboard any vessel east of the COLREGS Line or to land more than 250 horseshoe crabs per day.

4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel, east of the COLREGS Line, to possess or land more than 500 horseshoe crabs per day.

VA.R. Doc. No. R12-3176; Filed April 27, 2012, 2:28 p.m.

Final Regulation

Title of Regulation: 4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-48).

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

Effective Date: April 28, 2012.

Agency Contact: Jane Warren, Agency Regulatory Coordinator, Marine Resources Commission, 2600 Washington Avenue, 3rd Floor, Newport News, VA 23607,

Regulations

telephone (757) 247-2248, FAX (757) 247-2002, or email betty.warren@mrc.virginia.gov.

Summary:

The amendment clarifies that the Virginia commercial fishery possession limit for black sea bass is the total of the allowable Virginia landing limit and the North Carolina landing limit or trip limit, all in pounds.

4VAC20-950-48. Individual fishery quotas; bycatch limit; at sea harvesters; exceptions.

A. Each person possessing a directed fishery permit shall be assigned an individual fishery quota, in pounds, for each calendar year. ~~Except as provided in subsection F of this section, a~~ A person's individual fishery quota shall be equal to that person's percentage of the total landings of black sea bass in Virginia from July 1, 1997, through December 31, 2001, multiplied by the directed commercial fishery black sea bass quota for the calendar year. Any directed fishery permittee shall be limited to landings in the amount of his individual fishery quota, in pounds, in any calendar year and it shall be unlawful for any permittee to exceed his individual fishery quota. In addition to the penalties prescribed by law, any overages of an individual's fishery quota shall be deducted from that permittee's individual fishery quota for the following year.

B. In the determination of a person's percentage of total landings, the commission shall use the greater amount of landings from either the National Marine Fisheries Service Dealer Weigh-out Reports or National Marine Fisheries Service Vessel Trip Reports that have been reported and filed as of November 26, 2002. If a person's percentage of the total landings of black sea bass is determined by using the Vessel Trip Reports as the greater amount, then the person shall provide documentation to the Marine Resources Commission to verify the Vessel Trip Reports as accurate. This documentation may include dealer receipts of sales or other pertinent documentation, and such documentation shall be submitted to the commission by December 1, 2004. In the event the commission is not able to verify the full amount of the person's Vessel Trip Reports for the qualifying period, the commission shall use the greater amount of landings, from either the Dealer Weigh-Out Reports or the verified portion of the Vessel Trip Reports to establish that person's share of the quota.

C. It shall be unlawful for any person harvesting black sea bass to possess aboard any vessel in Virginia waters any amount of black sea bass that exceeds the combined total of any portion of the Virginia permitted landing limit, as described in subsection A of this section, and the North Carolina legal landing limit.

~~C.~~ D. It shall be unlawful for any person permitted for the bycatch fishery to do any of the following:

1. Possess aboard a vessel or land in Virginia more than 200 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, except as provided in subdivision 2 of this subsection;

2. Possess aboard a vessel or land in Virginia more than 1,000 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, in any one day, provided that the total weight of black sea bass on board the vessel does not exceed 10%, by weight, of the total weight of summer flounder, scup, *Loligo* squid, and Atlantic mackerel on board the vessel; or

3. Possess aboard a vessel or land in Virginia more than 100 pounds of black sea bass in addition to the North Carolina legal landing limit or trip limit, when it is projected and announced that 75% of the bycatch fishery quota has been taken.

~~D.~~ E. It shall be unlawful for any person to transfer black sea bass from one vessel to another while at sea.

~~E.~~ F. Any hardship exception quota granted by the commission prior to October 27, 2009, shall be converted to a percentage of the directed fishery quota based on the year in which that hardship exception quota was originally granted. The hardship exception quota shall not be transferred for a period of five years from the date the commission granted that hardship exception quota.

~~F.~~ G. An individual fishery quota, as described in subsection A of this section, shall be equal to an individual's current percentage share of the directed fishery quota, as described in 4VAC20-950-47 A.

VA.R. Doc. No. R12-3177; Filed April 27, 2012, 2:37 p.m.

Final Regulation

Title of Regulation: **4VAC20-1120. Pertaining to Tilefish and Grouper (amending 4VAC20-1120-40).**

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

Effective Date: May 1, 2012.

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

Summary:

The amendment establishes commercial possession limits aboard any vessel in Virginia waters for tilefish species to be 500 pounds whole weight or 455 pounds gutted weight, and for blueline tilefish to be 300 pounds whole weight or 273 pounds gutted weight.

4VAC20-1120-40. Commercial limitations.

A. It shall be unlawful for any person harvesting tilefish when commercial fishing, as described in 4VAC20-1120-20, to do any of the following:

1. Possess aboard any vessel in Virginia waters any amount of tilefish, ~~in combination,~~ species in excess of 500 pounds whole weight or 455 pounds gutted weight.
2. Possess aboard any vessel in Virginia waters any amount of blueline tilefish in excess of ~~200~~ 300 pounds whole weight or 273 pounds gutted weight.
3. Possess aboard any vessel any amount of golden tilefish during any in-season closure announced by the National Marine Fisheries Service.

B. It shall be unlawful for any vessel to land in Virginia more than 175 pounds of grouper, as described in 4VAC20-1120-20, per day when commercial fishing.

C. It shall be unlawful for any person to transfer at sea to another person or vessel any harvest of tilefish or grouper.

VA.R. Doc. No. R12-3178; Filed April 27, 2012, 2:41 p.m.

TITLE 9. ENVIRONMENT

STATE WATER CONTROL BOARD

Forms

REGISTRAR'S NOTICE: Forms used in administering the following regulation have been filed by the State Water Control Board. The forms are not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name of the new or amended form to access it. The forms are also available from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

Title of Regulation: **9VAC25-32. Virginia Pollution Abatement (VPA) Permit Regulation.**

Agency Contact: Debra A. Miller, Policy Planning Specialist, Department of Environmental Quality, 629 East Main Street, Richmond, VA 23219, telephone (804) 698-4209, FAX (804) 698-4346, or email debra.miller@deq.virginia.gov.

FORMS (9VAC25-32)

[Virginia Pollution Abatement Permit Application, General Instructions \(rev. 4/09\).](#)

[Virginia Pollution Abatement Permit Application, Form A, All Applicants \(rev. 4/09\).](#)

[Virginia Pollution Abatement Permit Application, Form B, Animal Waste \(rev. 10/95\).](#)

[Virginia Pollution Abatement Permit Application, Form C, Industrial Waste \(rev. 10/95\).](#)

[Virginia Pollution Abatement Permit Application, Form D, Municipal Effluent and Biosolids \(rev. 4/09\).](#)

~~[Application for a Biosolids Use Permit, 2007.](#)~~

[Application for Land Application Supervisor Certification \(rev. 2/11\).](#)

[Application for Renewal of Land Application Supervisor Certification \(rev. 2/11\).](#)

VA.R. Doc. No. R12-3196; Filed April 23, 2012, 2:07 p.m.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Title of Regulation: **12VAC5-590. Waterworks Regulations (amending 12VAC5-590-10; adding 12VAC5-590-125).**

Statutory Authority: §§ 32.1-12, 32.1-170, and 32.1-174.4 of the Code of Virginia.

Effective Date: June 21, 2012.

Agency Contact: Robert A. K. Payne, Compliance Manager, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7498, or email rob.payne@vdh.virginia.gov.

Summary:

The amendments provide a regulatory definition of a chronically noncompliant waterworks and establish an enforcement procedure that allows the commissioner to take action against recalcitrant waterworks owners to compel compliance and protect the public health and welfare.

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

Part I

General Framework for Waterworks Regulations

Article 1

Definitions

12VAC5-590-10. Definitions.

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

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"Action level" means the concentration of lead or copper in water specified in 12VAC5-590-385, which determines, in some cases, the treatment requirements contained in 12VAC5-590-405 that an owner is required to complete.

"Air gap separation" means the unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying pure water to a tank, plumbing fixture, or other device and the rim of the receptacle.

"Annual daily water demand" means the average rate of daily water usage over at least the most recent three-year period.

"Applied water" means water that is ready for filtration.

"Approved" means material, equipment, workmanship, process or method that has been accepted by the commissioner as suitable for the proposed use.

"Auxiliary water system" means any water system on or available to the premises other than the waterworks. These auxiliary waters may include water from a source such as wells, lakes, or streams; or process fluids; or used water. They may be polluted or contaminated or objectionable, or constitute an unapproved water source or system over which the water purveyor does not have control.

"Backflow" means the flow of water or other liquids, mixtures, or substances into the distribution piping of a waterworks from any source or sources other than its intended source.

"Backflow prevention device" means any approved device, method, or type of construction intended to prevent backflow into a waterworks.

"Bag filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed of a nonrigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank filtration" means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best available technology (BAT)" means the best technology, treatment techniques, or other means ~~which that~~ the commissioner finds, after examination for efficacy under field conditions and not solely under laboratory conditions and in conformance with applicable EPA regulations, are available (taking cost into consideration).

"Board" means the State Board of Health.

"Breakpoint chlorination" means the addition of chlorine to water until the chlorine demand has been satisfied and further additions result in a residual that is directly proportional to the amount added.

"Cartridge filters" means pressure-driven separation devices that remove particulate matter larger than one micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"Chlorine" means dry chlorine.

"Chlorine gas" means dry chlorine in the gaseous state.

"Chlorine solution (chlorine water)" means a solution of chlorine in water.

"Chronically noncompliant waterworks" or "CNC" means a waterworks that is unable to provide pure water for any of the following reasons: (i) the waterworks' record of performance demonstrates that it can no longer be depended upon to furnish pure water to the persons served; (ii) the owner has inadequate technical, financial, or managerial capacity to furnish pure water to the people served; (iii) the owner has failed to comply with an order issued by the board or the commissioner; (iv) the owner has abandoned the waterworks and has discontinued supplying pure water to the persons served; or (v) the owner is subject to a forfeiture order pursuant to § 32.1-174.1 of the Code of Virginia.

"Coagulation" means a process using coagulant chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into floc.

"Coliform bacteria group" means a group of bacteria predominantly inhabiting the intestines of man or animal but also occasionally found elsewhere. It includes all aerobic and facultative anaerobic, gram-negative, non-sporeforming bacilli that ferment lactose with production of gas. Also included are all bacteria that produce a dark, purplish-green colony with metallic sheen by the membrane filter technique used for coliform identification.

"Combined distribution system" means the interconnected distribution system consisting of the distribution systems of wholesale waterworks and of the consecutive waterworks that receive finished water.

"Commissioner" means the State Health Commissioner.

"Community waterworks" means a waterworks ~~which that~~ serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which a waterworks shall monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle begins January 1, 1993, and ends December 31, 2001; the second begins January 1, 2002, and

ends December 31, 2010; the third begins January 1, 2011, and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period runs from January 1, 1993, to December 31, 1995; the second from January 1, 1996, to December 31, 1998; the third from January 1, 1999, to December 31, 2001.

"Comprehensive performance evaluation" or "(CPE)" means a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operational and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with 12VAC5-590-530 C 1 b (2), the comprehensive performance evaluation shall consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion thereof, in which bacterial colonies are not discrete.

"Consecutive waterworks" means a waterworks ~~which~~ that has no water production or source facility of its own and ~~which~~ that obtains all of its water from another permitted waterworks or receives some or all of its finished water from one or more wholesale waterworks. Delivery may be through a direct connection or through the distribution system of one or more consecutive waterworks.

"Consumer" means any person who drinks water from a waterworks.

"Consumer's water system" means any water system located on the consumer's premises, supplied by or in any manner connected to a waterworks.

"Contaminant" means any objectionable or hazardous physical, chemical, biological, or radiological substance or matter in water.

"Conventional filtration treatment" means a series of processes including coagulation, flocculation, sedimentation, and filtration resulting in substantial particulate removal.

"Corrosion inhibitor" means a substance capable of reducing the corrosivity of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"Cross connection" means any connection or structural arrangement, direct or indirect, to the waterworks whereby backflow can occur.

"CT" or "CT_{calc}" means the product of "residual disinfectant concentration" (C) in mg/L determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T".

"Daily fluid intake" means the daily intake of water for drinking and culinary use and is defined as two liters.

"Dechlorination" means the partial or complete reduction of residual chlorine in water by any chemical or physical process at a waterworks with a treatment facility.

"Degree of hazard" means the level of health hazard, as derived from an evaluation of the potential risk to health and the adverse effect upon the waterworks.

"Diatomaceous earth filtration" means a process resulting in substantial particulate removal in which (i) a precoat cake of diatomaceous earth filter media is deposited on a support membrane (septum), and (ii) while the water is filtered by passing through the cake on the septum, additional filter media known as body feed is continuously added to the feed water to maintain the permeability of the filter cake.

"Direct filtration" means a series of processes including coagulation and filtration but excluding sedimentation resulting in substantial particulate removal.

"Disinfectant" means any oxidant (including chlorine) that is added to water in any part of the treatment or distribution process for the purpose of killing or deactivating pathogenic organisms.

"Disinfectant contact time" ("T" in CT calculations) means the time in minutes that it takes for water to move from the point of disinfectant application to the point where residual disinfectant concentration ("C") is measured.

"Disinfection" means a process that inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Disinfection profile" means a summary of Giardia lamblia or virus inactivation through the treatment plant.

"Distribution main" means a water main whose primary purpose is to provide treated water to service connections.

"District Engineer" means the employee assigned by the Commonwealth of Virginia, Department of Health, Office of Drinking Water to manage its regulatory activities in a geographical area of the state consisting of a state planning district or subunit of a state planning district.

"Domestic or other nondistribution system plumbing problem" means a coliform contamination problem in a waterworks with more than one service connection that is limited to the specific service connection from which the coliform positive sample was taken.

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"Domestic use or usage" means normal family or household use, including drinking, laundering, bathing, cooking, heating, cleaning and flushing toilets (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Double gate-double check valve assembly" means an approved assembly composed of two single independently acting check valves including tightly closing shutoff valves located at each end of the assembly and petcocks and test gauges for testing the watertightness of each check valve.

"Dual sample set" means a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an initial distribution system evaluation (IDSE) under 12VAC5-590-370 B 3 e (2) and determining compliance with the TTHM and HAA5 MCLs under 12VAC5-590-370 B 3 e (3).

"Effective corrosion inhibitor residual," means, for the purpose of 12VAC5-590-405 A 1 only, a concentration sufficient to form a passivating film on the interior walls of a pipe.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Entry point" means the place where water from the source after application of any treatment is delivered to the distribution system.

"Equivalent residential connection" means a volume of water used equal to a residential connection ~~which that~~ is 400 gallons per day unless supportive data indicates otherwise.

"Exception" means an approved deviation from a "shall" criteria contained in Part III (12VAC5-590-640 et seq.) of this chapter.

"Exemption" means a conditional waiver of a specific PMCL or treatment technique requirement ~~which that~~ is granted to a specific waterworks for a limited period of time.

"Filter profile" means a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Finished water" means water that is introduced into the distribution system of a waterworks and is intended for distribution and consumption without further treatment,

except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion control chemicals).

"First draw sample" means a one-liter sample of tap water, collected in accordance with 12VAC5-590-375 B 2, that has been standing in plumbing pipes at least six hours and is collected without flushing the tap.

"Flocculation" means a process to enhance agglomeration or collection of smaller floc particles into larger, more easily settleable particles through gentle stirring by hydraulic or mechanical means.

"Flowing stream" means a course of running water flowing in a definite channel.

"Free available chlorine" means that portion of the total residual chlorine remaining in water at the end of a specified contact period ~~which that~~ will react chemically and biologically as hypochlorous acid or hypochlorite ion.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with 12VAC5-590-410 C 2 b (1) (b) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Governmental entity" means the Commonwealth, a town, city, county, service authority, sanitary district or any other governmental body established under the Code of Virginia, including departments, divisions, boards or commissions.

"Gross alpha particle activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross beta particle activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"Groundwater" means all water obtained from sources not classified as surface water (or surface water sources).

"Groundwater system" means any waterworks that uses groundwater as its source of supply; however, a waterworks that combines all its groundwater with surface water or with groundwater under the direct influence of surface water prior to treatment is not a groundwater system. Groundwater systems include consecutive waterworks that receive finished groundwater from a wholesale waterworks.

"Groundwater under the direct influence of surface water" or "GUDI" means any water beneath the surface of the ground with significant occurrence of insects or other

macroorganisms, algae, or large-diameter pathogens such as *Giardia lamblia*, or *Cryptosporidium*. It also means significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH that closely correlate to climatological or surface water conditions. The commissioner in accordance with 12VAC5-590-430 will determine direct influence of surface water.

"Haloacetic acids (five)" or "(HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Halogen" means one of the chemical elements chlorine, bromine, fluorine, astatine or iodine.

"Health hazard" means any condition, device, or practice in a waterworks or its operation that creates, or may create, a danger to the health and well-being of the water consumer.

"Health regulations" means regulations ~~which~~ that include all primary maximum contaminant levels, treatment technique requirements, and all operational regulations, the violation of which would jeopardize the public health.

"Hypochlorite" means a solution of water and some form of chlorine, usually sodium hypochlorite.

"Initial compliance period" means for all regulated contaminants, the initial compliance period is the first full three-year compliance period beginning at least 18 months after promulgation with the exception of waterworks with 150 or more service connections for contaminants listed at Table 2.3, VOC 19-21; Table 2.3, SOC 19-33; and antimony, beryllium, cyanide (as free cyanide), nickel, and thallium ~~which~~ that shall begin January 1993.

"Interchangeable connection" means an arrangement or device that will allow alternate but not simultaneous use of two sources of water.

"Karst geology" means an area predominantly underlain by limestone, dolomite, or gypsum and characterized by rapid underground drainage. Such areas often feature sinkholes, caverns, and sinking or disappearing creeks. In Virginia, this generally includes all that area west of the Blue Ridge and, in Southwest Virginia, east of the Cumberland Plateau.

"Lake/reservoir" means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Large waterworks" means, for the purposes of 12VAC5-590-375, 12VAC5-590-405, 12VAC5-590-530 D, and 12VAC5-590-550 D only, a waterworks that serves more than 50,000 persons.

"Lead free" means the following:

1. When used with respect to solders and flux, refers to solders and flux containing not more than 0.2% lead;

2. When used with respect to pipes and pipe fittings, refers to pipes and pipe fittings containing not more than 8.0% lead;

3. When used with respect to plumbing fittings and fixtures intended by the plumbing manufacturer to dispense water for human ingestion, refers to fittings and fixtures that are in compliance with standards established in accordance with 42 USC § 300g-6(e).

"Lead service line" means a service line made of lead ~~which~~ that connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting that is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Liquid chlorine" means a liquefied, compressed chlorine gas as shipped in commerce.

"Locational running annual average" or "LRAA" means the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Log inactivation (log removal)" means that a 99% reduction is a 2-log inactivation; a 99.9% reduction is a 3-log inactivation; a 99.99% reduction is a 4-log inactivation.

"Man-made beta particle and photon emitters" means all radionuclides emitting beta particles and/or photons listed in the most current edition of "Maximum Permissible Body Burdens and Maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure," National Bureau of Standards Handbook 69, except the daughter products of thorium-232, uranium-235 and uranium-238.

"Maximum daily water demand" means the rate of water usage during the day of maximum water use.

"Maximum contaminant level (MCL)" means the maximum permissible level of a contaminant in pure water ~~which~~ that is delivered to any user of a waterworks. MCLs are set as close to the MCLGs as feasible using the best available treatment technology. MCLs may be either "primary" (PMCL), meaning based on health considerations or "secondary" (SMCL) meaning based on aesthetic considerations.

"Maximum residual disinfectant level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a waterworks is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly,

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is less than or equal to the MRDL. For chlorine dioxide, a waterworks is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as maximum contaminant levels. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in Table 2.12, operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal (MRDLG)" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and ~~which that~~ allows an adequate margin of safety. MRDLGs are nonenforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Maximum total trihalomethane potential (MTP)" means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25°C or above.

"Medium-size waterworks," means, for the purpose of 12VAC5-590-375, 12VAC5-590-405, 12VAC5-590-530, and 12VAC5-590-550 D only, a waterworks that serves greater than 3,300 and less than or equal to 50,000 persons.

"Membrane filtration" means a pressure or vacuum-driven separation process in which particulate matter larger than one micrometer is rejected by an engineered barrier, primarily through a size exclusion mechanism, and that has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Method detection limit" means the minimum concentration of a substance that can be measured and reported with 99% confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

"Most probable number (MPN)" means that number of organisms per unit volume that, in accordance with statistical theory, would be more likely than any other number to yield the observed test result or that would yield the observed test result with the greatest frequency, expressed as density of organisms per 100 milliliters. Results are computed from the

number of positive findings of coliform-group organisms resulting from multiple-portion decimal-dilution plantings.

"Noncommunity waterworks" means a waterworks that is not a community waterworks, but operates at least 60 days out of the year.

"Nonpotable water" means water not classified as pure water.

"Nontransient noncommunity waterworks (NTNC)" means a waterworks that is not a community waterworks and that regularly serves at least 25 of the same persons over six months out of the year.

"Office" or "ODW" means the Commonwealth of Virginia, Department of Health, Office of Drinking Water.

"One hundred year flood level" means the flood elevation ~~which that~~ will, over a long period of time, be equaled or exceeded on the average once every 100 years.

"Operator" means any individual employed or appointed by any owner, and who is designated by such owner to be the person in responsible charge, such as a supervisor, a shift operator, or a substitute in charge, and whose duties include testing or evaluation to control waterworks operations. Not included in this definition are superintendents or directors of public works, city engineers, or other municipal or industrial officials whose duties do not include the actual operation or direct supervision of waterworks.

"Optimal corrosion control treatment" means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while ensuring that the treatment does not cause the waterworks to violate any other section of this chapter.

"Owner" or "water purveyor" means an individual, group of individuals, partnership, firm, association, institution, corporation, governmental entity, or the federal government ~~which that~~ supplies or proposes to supply water to any person within this state from or by means of any waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Picocurie (pCi)" means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plant intake" means the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Point of disinfectant application" means the point where the disinfectant is applied and water downstream of that point is not subject to recontamination by surface water runoff.

"Point-of-entry treatment device (POE)" means a treatment device applied to the water entering a house or building for the purpose of reducing contaminants in the water distributed throughout the house or building.

"Point-of-use treatment device (POU)" means a treatment device applied to a single tap for the purpose of reducing contaminants in the water at that one tap.

"Pollution" means the presence of any foreign substance (chemical, physical, radiological, or biological) in water that tends to degrade its quality so as to constitute an unnecessary risk or impair the usefulness of the water.

"Pollution hazard" means a condition through which an aesthetically objectionable or degrading material may enter the waterworks or a consumer's water system.

"Post-chlorination" means the application of chlorine to water subsequent to treatment.

"Potable water" – see "Pure water."

"Practical quantitation level (PQL)" means the lowest level achievable by good laboratories within specified limits during routine laboratory operating conditions.

"Prechlorination" means the application of chlorine to water prior to filtration.

"Presedimentation" means a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Process fluids" means any fluid or solution ~~which that~~ may be chemically, biologically, or otherwise contaminated or polluted ~~which that~~ would constitute a health, pollutional, or system hazard if introduced into the waterworks. This includes, but is not limited to:

1. Polluted or contaminated water;
2. Process waters;
3. Used waters, originating from the waterworks ~~which that~~ may have deteriorated in sanitary quality;
4. Cooling waters;
5. Contaminated natural waters taken from wells, lakes, streams, or irrigation systems;
6. Chemicals in solution or suspension; and
7. Oils, gases, acids, alkalis, and other liquid and gaseous fluid used in industrial or other processes, or for fire fighting purposes.

"Pure water" means water fit for human consumption and domestic use ~~which that~~ is sanitary and normally free of minerals, organic substances, and toxic agents in excess of reasonable amounts for domestic usage in the area served and normally adequate in quantity and quality for the minimum health requirements of the persons served (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Raw water main" means a water main ~~which that~~ conveys untreated water from a source to a treatment facility.

"Reduced pressure principle backflow prevention device (RPZ device)" means a device containing a minimum of two independently acting check valves together with an automatically operated pressure differential relief valve located between the two check valves. During normal flow and at the cessation of normal flow, the pressure between these two checks shall be less than the supply pressure. In case of leakage of either check valve, the differential relief valve, by discharging to the atmosphere, shall operate to maintain the pressure between the check valves at less than the supply pressure. The unit shall include tightly closing shut-off valves located at each end of the device, and each device shall be fitted with properly located test cocks. These devices shall be of the approved type.

"REM" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (MREM) is 1/1000 of a REM.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Residual disinfectant concentration ("C" in CT Calculations)" means the concentration of disinfectant measured in mg/L in a representative sample of water.

"Responsible charge" means designation by the owner of any individual to have duty and authority to operate or modify the operation of waterworks processes.

"Sanitary facilities" means piping and fixtures, such as sinks, lavatories, showers, and toilets, supplied with potable water and drained by wastewater piping.

"Sanitary survey" means an evaluation conducted by ODW of a waterworks' water supply, facilities, equipment, operation, maintenance, monitoring records, and overall management of a waterworks to ensure the provision of pure water.

"Secondary water source" means any approved water source, other than a waterworks' primary source, connected to or available to that waterworks for emergency or other nonregular use.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Service connection" means the point of delivery of water to a customer's building service line as follows:

1. If a meter is installed, the service connection is the downstream side of the meter;
2. If a meter is not installed, the service connection is the point of connection to the waterworks;
3. When the water purveyor is also the building owner, the service connection is the entry point to the building.

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"Service line sample" means a one-liter sample of water, collected in accordance with 12VAC5-590-375 B 2 c, that has been standing for at least six hours in a service line.

"Sewer" means any pipe or conduit used to convey sewage or industrial waste streams.

"Significant deficiency" means any defect in a waterworks' design, operation, maintenance, or administration, as well as the failure or malfunction of any waterworks component, that may cause, or has the potential to cause, an unacceptable risk to health or could affect the reliable delivery of pure water to consumers.

"Single family structure," means, for the purpose of 12VAC5-590-375 B only, a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Slow sand filtration" means a process involving passage of raw water through a bed of sand at low velocity (generally less than 0.4 m/h) resulting in substantial particulate removal by physical and biological mechanisms.

"Small waterworks" means, for the purpose of 12VAC5-590-375, 12VAC5-590-405, 12VAC5-590-530 D and 12VAC5-590-550 D only, a waterworks that serves 3,300 persons or fewer.

"Standard sample" means that portion of finished drinking water that is examined for the presence of coliform bacteria.

"Surface water" means all water open to the atmosphere and subject to surface runoff.

"SUVA" means specific ultraviolet absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV₂₅₄) (in m-1) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"Synthetic organic chemicals (SOC)" means one of the family of organic man-made compounds generally utilized for agriculture or industrial purposes.

"System hazard" means a condition posing an actual, or threat of, damage to the physical properties of the waterworks or a consumer's water system.

"Terminal reservoir" means an impoundment providing end storage of water prior to treatment.

"Too numerous to count" means that the total number of bacterial colonies exceeds 200 on a 47-mm diameter membrane filter used for coliform detection.

"Total effective storage volume" means the volume available to store water in distribution reservoirs measured as the difference between the reservoir's overflow elevation and the minimum storage elevation. The minimum storage elevation is that elevation of water in the reservoir that can

provide a minimum pressure of 20 psi at a flow as determined in 12VAC5-590-690 C to the highest elevation served within that reservoir's service area under systemwide maximum daily water demand.

"Total organic carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total trihalomethanes (TTHM)" means the sum of the concentrations of the trihalomethanes expressed in milligrams per liter (mg/L) and rounded to two significant figures. For the purpose of these regulations, the TTHM's shall mean trichloromethane (chloroform), dibromochloromethane, bromodichloromethane, and tribromomethane (bromoform).

"Transmission main" means a water main whose primary purpose is to move significant quantities of treated water among service areas.

"Treatment technique requirement" means a requirement ~~which that~~ specifies for a contaminant a specific treatment technique(s) demonstrated to the satisfaction of the division to lead to a reduction in the level of such contaminant sufficient to comply with these regulations.

"Triggered source water monitoring" means monitoring required of any groundwater system as a result of a total coliform-positive sample in the distribution system.

"Trihalomethane (THM)" means one of the family of organic compounds, named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

"Two-stage lime softening" means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"Uncovered finished water storage facility" means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens (except residual disinfection) and is directly open to the atmosphere.

"Unregulated contaminant (UC)" means a contaminant for which a monitoring requirement has been established, but for which no MCL or treatment technique requirement has been established.

"Used water" means any water supplied by a water purveyor from the waterworks to a consumer's water system after it has passed through the service connection.

"Variance" means a conditional waiver of a specific regulation ~~which that~~ is granted to a specific waterworks. A PMCL Variance is a variance to a Primary Maximum Contaminant Level, or a treatment technique requirement. An

Operational Variance is a variance to an operational regulation or a Secondary Maximum Contaminant Level. Variances for monitoring, reporting and public notification requirements will not be granted.

"Virus" means a microbe that is infectious to humans by waterborne transmission.

"Volatile synthetic organic chemical (VOC)" means one of the family of manmade organic compounds generally characterized by low molecular weight and rapid vaporization at relatively low temperatures or pressures.

"Waterborne disease outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a waterworks ~~which~~ that is deficient in treatment, as determined by the commissioner or the State Epidemiologist.

"Water purveyor" (same as owner).

"Water supply" means water that shall have been taken into a waterworks from all wells, streams, springs, lakes, and other bodies of surface waters (natural or impounded), and the tributaries thereto, and all impounded groundwater, but the term "water supply" shall not include any waters above the point of intake of such waterworks (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Water supply main" or "main" means any water supply pipeline that is part of a waterworks distribution system.

"Water Well Completion Report" means a report form published by the State Water Control Board entitled "Water Well Completion Report," which requests specific information pertaining to the ownership, driller, location, geological formations penetrated, water quantity and quality encountered as well as construction of water wells. The form is to be completed by the well driller.

"Waterworks" means a system that serves piped water for drinking or domestic use to (i) the public, (ii) at least 15 connections, or (iii) an average of 25 individuals for at least 60 days out of the year. The term "waterworks" shall include all structures, equipment and appurtenances used in the storage, collection, purification, treatment and distribution of pure water except the piping and fixtures inside the building where such water is delivered (see Article 2 (§ 32.1-167 et seq.) of Chapter 6 of Title 32.1 of the Code of Virginia).

"Waterworks with a single service connection" means a waterworks ~~which~~ that supplies drinking water to consumers via a single service line.

"Wholesale waterworks" means a waterworks that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another waterworks. Delivery may be through a direct connection or

through the distribution system of one or more consecutive waterworks.

12VAC5-590-125. Chronically noncompliant waterworks.

A. The commissioner may identify a waterworks as chronically noncompliant (CNC) whenever he determines that:

1. The waterworks has a documented performance record that demonstrates the waterworks is not a dependable supplier of potable water;

2. The owner has shown inadequate technical, financial, or managerial capabilities to provide potable water;

3. The owner has failed to comply with an order issued by the commissioner;

4. The owner has abandoned the waterworks and has discontinued providing potable water to the consumers; or

5. The owner is subject to a forfeiture order pursuant to § 32.1-174.1 of the Code of Virginia.

B. Once the commissioner determines that a waterworks is CNC, he shall issue an order to the owner containing a schedule to bring the waterworks into compliance with this chapter and require the submission of a comprehensive business plan pursuant to § 32.1-172 B of the Code of Virginia. If capital improvements are necessary to bring the waterworks into compliance, and the owner does not possess sufficient assets to make the necessary improvements, the order shall require the owner to make annual, good faith applications for loans, grants, or both, to appropriate financial institutions to secure funding for such improvements, until such improvements are complete and operational. The owner shall provide a copy of the order to each consumer with a copy of the compliance schedule within 10 calendar days of issuance of the order.

C. The owner shall provide the commissioner a copy of the notice distributed and a signed certification of the distribution completion date within five calendar days of completing the notification required in subsection B of this section.

D. The commissioner shall send a copy of the order to the chief administrative officer of the locality in which the waterworks is located for appropriate action under § 15.2-2146 of the Code of Virginia.

E. In addition to the provisions of § 32.1-27 of the Code of Virginia, any owner who violates this chapter, an order of the board, or a statute governing public water supplies shall be subject to those civil penalties provided in §§ 32.1-167 through 32.1-176 of the Code of Virginia.

VA.R. Doc. No. R09-1136; Filed April 27, 2012, 2:31 p.m.

Regulations

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Final Regulation

Titles of Regulations: 12VAC30-50. Amount, Duration, and Scope of Medical and Remedial Care Services (amending 12VAC30-50-165).

12VAC30-60. Standards Established and Methods Used to Assure High Quality Care (amending 12VAC30-60-75).

12VAC30-80. Methods and Standards for Establishing Payment Rates; Other Types of Care (amending 12VAC30-80-30).

Statutory Authority: §§ 32.1-324 and 32.1-325 of the Code of Virginia; 42 USC § 1396.

Effective Date: July 1, 2012.

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

Summary:

The amendments modify the reimbursement rates for durable medical equipment and reduce the service authorization limit for incontinence supplies. The amendments discontinue the use of the Nutritional Status Evaluation form (DMAS-116), clarify that specific fields on the Certificate of Medical Necessity form (DMAS-352) must be completed for coverage and that providers may not bill for dates of service prior to delivery of the durable medical equipment, add coverage of enteral nutrition products in 12VAC30-50 for clarity, clarify that recovery of delivered durable medical equipment by providers is prohibited, and clarify that routine use of diapers for children is not covered.

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.

12VAC30-50-165. Durable medical equipment (DME) and supplies suitable for use in the home.

A. Definitions. The following ~~word and term~~ words and terms when used in these regulations shall have the following meaning meanings unless the context clearly indicates otherwise:

"Affirmative contact" means speaking, either face-to-face or by phone, with either the individual or caregiver in order to ascertain that the DME and supplies are still needed and appropriate. Such contacts shall be documented in the individual's medical record.

"Certificate of Medical Necessity" or "CMN" means the DMAS-352 form required to be completed and submitted in order for DMAS to provide reimbursement.

"Designated agent" means an entity with whom DMAS has contracted to perform contracted functions such as provider audits and prior authorizations of services.

"DME provider" means those entities enrolled with DMAS to render DME services.

"Durable medical equipment" or "DME" means medical equipment, supplies, and appliances suitable for use in the home consistent with 42 CFR 440.70(b)(3) that treat a diagnosed condition or assist the individual with functional limitations.

"Expendable supply" means an item that is used and then disposed of.

"Frequency of use" means the rate of use by the individual as documented by the number of times per day/week/month, as appropriate, a supply is used by the individual. Frequency of use must be recorded on the face of the CMN in such a way that reflects whether a supply is used by the individual on a daily, weekly, or monthly basis. Frequency of use may be documented on the CMN as a range of the rate of use. By way of example and not limitation, the frequency of use of a supply may be expressed as a range, such as four to six adult diapers per day. However, large ranges shall not be acceptable documentation of frequency of use (for example, the range of one to six adult diapers per day shall not be acceptable.) The frequency of use provides the justification for the total quantity of supplies ordered on the CMN.

"Functional limitation" means the inability to perform a normal activity.

"Practitioner" means a licensed provider of physician services as defined in 42 CFR 440.50 or a provider of nurse practitioner services as defined in 42 CFR 440.166.

"Prior authorization" or "PA" (also "service authorization") means the process of approving either by DMAS or its prior authorization (or service authorization) contractor for the purposes of DMAS reimbursement for the service for the individual before it is rendered or reimbursed.

"Quantity" means the total number of supplies ordered on a monthly basis as reflected on the CMN. The monthly quantity of supplies ordered for the individual shall be dependent upon the individual's frequency of use.

"Sole source of nutrition" means that the individual is unable to tolerate (swallow or absorb) any other form of oral nutrition in instances when more than 75% of the individual's daily caloric intake is received from nutritional supplements.

B. General requirements and conditions.

1. a. All medically necessary supplies and equipment shall be covered. Unusual amounts, types, and duration of usage must be authorized by DMAS in accordance with published policies and procedures. When determined to be cost effective by DMAS, payment may be made for rental of the equipment in lieu of purchase.

b. No provider shall have a claim of ownership on DME reimbursed by Virginia Medicaid once it has been delivered to the Medicaid individual. Providers shall only be permitted to recover DME, for example, when DMAS determines that it does not fulfill the required medically necessary purpose as set out in the Certificate of Medical Necessity, when there is an error in the ordering practitioner's CMN, or when the equipment was rented.

2. DME providers shall adhere to all applicable federal and state laws and regulations and DMAS policies, laws, and regulations for durable medical equipment DME and supplies. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations that are required by such licensing agency or agencies shall result in denial of coverage for durable medical equipment DME or supplies that are regulated by such licensing agency or agencies.

3. DME and products or supplies must be furnished pursuant to a properly completed Certificate of Medical Necessity (CMN) (DMAS-352). In order to obtain Medicaid reimbursement, specific fields of the DMAS-352 form shall be completed as specified in 12VAC30-60-75.

4. A CMN shall contain a practitioner's diagnosis of a recipient's medical condition and an order for the durable medical equipment and supplies that are medically necessary to treat the diagnosed condition and the recipient's functional limitation. The order for DME or supplies must be justified in the written documentation either on the CMN or attached thereto DME and supplies shall be ordered by the licensed practitioner and shall be related to medical treatment of the Medicaid individual. The complete DME order shall be recorded on the CMN for Medicaid individuals to receive such services. In the absence of a different effective period determined by DMAS or its designated agent, The the CMN shall be valid for a maximum period of six months for Medicaid recipients 21 years of age and younger individuals younger than 21 years of age. The In the absence of a different effective period determined by DMAS or its designated agent, the maximum valid time period for CMNs for Medicaid recipients older than individuals 21 years of age is and older shall be 12 months. The validity of the CMN shall terminate when the recipient's individual's medical need for the prescribed DME or supplies ends no longer exists as determined by the licensed practitioner.

5. DME must shall be furnished exactly as ordered by the attending licensed practitioner or who signed the CMN. The CMN and any supporting verifiable documentation must be complete (signed and dated by the practitioner) shall be fully completed, signed, and dated by the licensed practitioner, and in the DME provider's possession within 60 days from the time the ordered DME and supplies are initially furnished by the DME provider. Each component of the DME must items shall be specifically ordered on the CMN by the licensed practitioner.

6. The CMN shall not be changed, altered, or amended after the attending licensed practitioner has signed it. If changes are necessary, as indicated by the recipient's condition, in the ordered DME or supplies, the DME provider must obtain a new CMN. If the individual's condition indicates that changes in the ordered DME or supplies are necessary, the DME provider shall obtain a new CMN. New All new CMNs must shall be signed and dated by the attending licensed practitioner within 60 days from the time the ordered supplies are furnished by the DME provider.

7. DMAS or its designated agent shall have the authority to determine a different (from those specified above) length of time a CMN may be valid based on medical documentation submitted on the CMN. The CMN may be completed by the DME provider or other appropriate health care professionals, but it must shall be signed and dated by the attending licensed practitioner, as specified in subdivision 5 of this subsection. Supporting documentation may be attached to the CMN but the attending licensed practitioner's entire order must for DME and supplies shall be on the CMN.

8. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment audit review purposes. DME providers shall not create or revise CMNs or supporting documentation for this service after the initiation of the post payment review audit process. Attending Licensed practitioners shall not complete, or sign and, or date, CMNs once the post payment audit review has begun.

9. The DME provider shall be responsible for knowledge of items requiring prior authorization and the limitation on the provision of certain items as described in the Virginia Medicaid Durable Medical Equipment and Supplies Manual, Appendix B. The Appendix B shall be the official listing of all items covered through the Virginia Medicaid DME program and lists the service limits, items that require prior authorization, billing units, and reimbursement rates.

10. The DME provider shall be required to make affirmative contact with the individual or caregiver and document the interaction prior to the next month's delivery and prior to the recertification CMN to assure that the

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appropriate quantity, frequency, and product are provided to the individual.

11. Supporting documentation, added to a completed CMN, shall be allowed to further justify the medical need for DME. Supporting documentation shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation shall coincide with the dates of service on the CMN, and the supporting documentation shall be fully signed and dated by the licensed practitioner.

C. ~~Preauthorization is required for incontinence supplies provided in quantities greater than two cases per month.~~ Effective July 1, 2010, the billing unit for incontinence supplies (such as diapers, pull-ups, and panty liners) shall be by each product. For example, if the incontinence supply being provided is diapers, the billing unit would be by individual diaper, rather than a case of diapers. Prior authorization shall be required for incontinence supplies provided in quantities greater than the allowable service limit per month.

D. Supplies, equipment, or appliances that are not covered include, but ~~are~~ shall not be limited to, the following:

1. Space conditioning equipment, such as room humidifiers, air cleaners, and air conditioners;

2. ~~Durable medical equipment~~ DME and supplies for any hospital or nursing facility resident, except ventilators and associated supplies or specialty beds for the treatment of wounds consistent with DME criteria for nursing facility residents that have been prior approved by the DMAS central office or designated agent;

3. Furniture or appliances not defined as medical equipment (such as blenders, bedside tables, mattresses other than for a hospital bed, pillows, blankets or other bedding, special reading lamps, chairs with special lift seats, hand-held shower devices, exercise bicycles, and bathroom scales);

4. Items that are only for the ~~recipient's~~ individual's comfort and convenience or for the convenience of those caring for the ~~recipient~~ individual (e.g., a hospital bed or mattress because the ~~recipient~~ individual does not have a ~~decent~~ bed; wheelchair trays used as a desk surface); mobility items used in addition to primary assistive mobility aide for caregiver's or ~~recipient's~~ individual's convenience (e.g., electric wheelchair plus a manual chair); cleansing wipes;

5. Prosthesis, except for artificial arms, legs, and their supportive devices, which ~~must~~ shall be ~~preauthorized~~ prior authorized by the DMAS central office (~~effective July 1, 1989~~) or designated agent;

6. Items and services that are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member

(e.g., dentifrices; toilet articles; shampoos that do not require a licensed practitioner's prescription; dental adhesives; electric toothbrushes; cosmetic items, soaps, and lotions that do not require a licensed practitioner's prescription; sugar and salt substitutes; and support stockings);

7. Orthotics, including braces, diabetic shoe inserts, splints, and supports;

8. Home or vehicle modifications;

9. Items not suitable for or not used primarily in the home setting (e.g., car seats, equipment to be used while at school, etc.); ~~and~~

10. Equipment for which the primary function is vocationally or educationally related (e.g., computers, environmental control devices, speech devices, etc.);

11. Diapers for routine use by children younger than three years of age who have not yet been toilet trained;

12. Equipment or items that are not suitable for use in the home; and

13. Equipment or items that the Medicaid individual or caregiver is unwilling or unable to use in the home.

E. For coverage of blood glucose meters for pregnant women, refer to 12VAC30-50-510.

F. Coverage of home infusion therapy.

1. Home infusion therapy shall be defined as the intravenous (I.V.) administration of fluids, drugs, chemical agents, or nutritional substances to recipients in the home setting. DMAS shall reimburse for these services, supplies, and drugs on a service day rate methodology established in 12VAC30-80-30. The therapies to be covered under this policy shall be: hydration therapy, chemotherapy, pain management therapy, drug therapy, and total parenteral nutrition (TPN). All the therapies that meet criteria ~~will~~ shall be covered ~~for three months and do not require prior authorization. If any therapy service is required for longer than the original three months, prior authorization shall be required for the DME component for its continuation.~~ The established service day rate shall reimburse for all services delivered in a single day. There shall be no additional reimbursement for special or extraordinary services. In the event of incompatible drug administration, a separate HCPCS code shall be used to allow for rental of a second infusion pump and purchase of an extra administration tubing. When applicable, this code may be billed in addition to the other service day rate codes. There ~~must~~ shall be documentation to support the use of this code on the I.V. Implementation Form. Proper documentation shall include the need for pump administration of the medications ordered, frequency of administration to

support that they are ordered simultaneously, and indication of incompatibility.

2. The service day rate payment methodology shall be mandatory for reimbursement of all I.V. therapy services except for the recipient individual who is enrolled in the Technology Assisted ~~waiver program~~ Waiver.

3. The following limitations shall apply to this service:

~~1. a.~~ This service must be medically necessary to treat a ~~recipient's~~ an individual's medical condition. The service must be ordered and provided in accordance with accepted medical practice. The service must not be desired solely for the convenience of the ~~recipient individual~~ or the ~~recipient's~~ individual's caregiver.

~~2. b.~~ In order for Medicaid to reimburse for this service, the ~~recipient must~~ individual shall:

~~a. (1)~~ Reside in either a private home or a domiciliary care facility, such as an ~~adult care residence~~ assisted living facility. Because the reimbursement for DME is already provided under institutional reimbursement, ~~recipients individuals~~ in hospitals, nursing facilities, rehabilitation centers, and other institutional settings shall not be covered for this service;

~~b. (2)~~ Be under the care of a licensed practitioner who prescribes the home infusion therapy and monitors the progress of the therapy;

~~c. (3)~~ Have body sites available for peripheral intravenous catheter or needle placement or have a central venous access; and

~~d. (4)~~ Be capable of either self-administering such therapy or have a caregiver who can be adequately trained, is capable of administering the therapy, and is willing to safely and efficiently administer and monitor the home infusion therapy. The caregiver must be willing to and be capable of following appropriate teaching and adequate monitoring. In ~~those~~ cases where the ~~recipient individual~~ is incapable of administering or monitoring the prescribed therapy and there is no adequate or trained caregiver, it may be appropriate for a home health agency to administer the therapy.

G. The ~~medical equipment DME~~ and supply vendor ~~must~~ shall provide the equipment and supplies as prescribed by the licensed practitioner on the ~~certificate of medical necessity CMN~~. Orders shall not be changed unless the vendor obtains a new ~~certificate of medical necessity CMN~~, which includes the licensed practitioner's signature, prior to ordering the equipment or supplies or providing the equipment or supplies to the ~~patient individual~~.

H. Medicaid shall not provide reimbursement to the ~~medical equipment DME~~ and supply vendor for services that are provided either: (i) prior to the date prescribed by the licensed

practitioner; ~~or (ii)~~ prior to the date of the delivery; or ~~(iii)~~ when services are not provided in accordance with DMAS' published policies and procedures regulations and guidance documents. If reimbursement is denied for one or all of these reasons, the ~~medical equipment DME~~ and supply vendor ~~may~~ shall not bill the Medicaid ~~recipient individual~~ for the service that was provided.

I. The following criteria ~~must~~ shall be satisfied through the submission of adequate and verifiable documentation on the CMN satisfactory to ~~the department~~ DMAS. Medically necessary DME and supplies shall be:

1. Ordered by the licensed practitioner on the CMN;
2. A reasonable and necessary part of the ~~recipient's~~ individual's treatment plan;
3. Consistent with the ~~recipient's~~ individual's diagnosis and medical condition, particularly the functional limitations and symptoms exhibited by the ~~recipient individual~~;
4. Not furnished solely for the convenience, safety, or restraint of the ~~recipient individual~~, the family or caregiver, attending the licensed practitioner, or other licensed practitioner or supplier;
5. Consistent with generally accepted professional medical standards (i.e., not experimental or investigational); and
6. Furnished at a safe, effective, and cost-effective level suitable for use in the ~~recipient's~~ individual's home environment.

J. ~~Coverage of enteral nutrition (EN) which does not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN shall not include the provision of routine infant formula. A nutritional assessment shall be required for all recipients receiving nutritional supplements. Medical documentation shall provide DMAS or the designated agent with evidence of the individual's DME needs. Medical documentation may be recorded on the CMN or evidenced in the supporting documentation attached to the CMN. The following applies to the medical justification necessary for all DME services regardless of whether prior authorization is required. The documentation is necessary to identify:~~

1. The medical need for the requested DME;
2. The diagnosis related to the reason for the DME request;
3. The individual's functional limitation and its relationship to the requested DME;
4. How the DME service will treat the individual's medical condition;
5. For expendable supplies, the quantity needed and the medical reason the requested amount is needed;

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6. The frequency of use to describe how often the DME is used by the individual;

7. The estimated duration of use of the equipment (rental and purchased);

8. Any other treatment being rendered to the individual relative to the use of DME or supplies;

9. How the needs were previously met identifying changes that have occurred that necessitate the DME;

10. Other alternatives tried or explored and a description of the success or failure of these alternatives;

11. How the DME service is required in the individual's home environment; and

12. The individual's or caregiver's ability, willingness, and motivation to use the DME.

K. DME provider responsibilities. To receive reimbursement, the DME provider shall, at a minimum, perform the following:

1. Verify the individual's current Medicaid eligibility;

2. Determine whether the ordered item or items are a covered service and require prior authorization;

3. Deliver all of the item or items ordered by the licensed practitioner;

4. Deliver only the quantities ordered by the licensed practitioner on the CMN and prior authorized by DMAS if required;

5. Deliver only the item or items for the periods of service covered by the licensed practitioner's order and prior authorized, if required, by DMAS;

6. Maintain a copy of the licensed practitioner's signed CMN and all verifiable supporting documentation for all DME and supplies ordered;

7. Document and justify the description of services (i.e., labor, repairs, maintenance of equipment);

8. Document and justify the medical necessity, frequency and duration for all items and supplies as set out in the Medicaid DME guidance documents;

9. Document all DME and supplies provided to an individual in accordance with the licensed practitioner's orders. The delivery ticket/proof of delivery shall document the requirements as stated in subsection L of this section.

10. Documentation requirements for the use of DME billing codes that have Individual Consideration (IC) indicated as the reimbursement fee shall include a complete description of the item or items, a copy of the supply invoice or supplies invoices or the manufacturer's cost information, and all discounts that were received by

the DME provider. Additional information regarding requirements for the IC reimbursement process can be found in the relevant agency guidance document.

L. Proof of delivery.

1. The delivery ticket shall contain the following information:

a. The Medicaid individual's name and Medicaid number or date of birth;

b. A detailed description of the item or items being delivered, including the product name or names and brand or brands;

c. The serial number or numbers or the product numbers of the DME or supplies;

d. The quantity delivered; and

e. The dated signature of either the individual or caregiver.

2. If a commercial shipping service is used, the DME provider's records shall reference, in addition to the information required in subdivision 1 of this subsection, the delivery service's package identification number or numbers with a copy of the delivery service's delivery ticket, which may be printed from the online record on the delivery service's website.

a. The delivery service's ticket identification number or numbers shall be recorded on the DME provider's delivery documentation.

b. The service delivery documentation may be substituted for the individual's signature as proof of delivery.

c. In the absence of a delivery service's ticket, the DME provider shall obtain the individual's or caregiver's dated signature on the DME provider's delivery ticket as proof of delivery.

3. Providers may use a postage-paid delivery invoice from the individual or caregiver as a form of proof of delivery. The descriptive information concerning the item or items delivered, as described in subdivisions 1 and 2 of this subsection, as well as the required signature and date from either the individual or caregiver shall be included on this invoice.

4. DME providers shall make affirmative contact with the individual or caregiver and document the interaction prior to dispensing repeat orders or refills to ensure that:

a. The item is still needed;

b. The quantity, frequency, and product are still appropriate; and

c. The individual still resides at the address in the provider's records.

5. The DME provider shall contact the individual prior to each delivery. This contact shall not occur any sooner than seven days prior to the delivery or shipping date and shall be documented in the individual's record.

6. DME providers shall not deliver refill orders sooner than five days prior to the end of the usage period.

7. Providers shall not bill for dates of service prior to delivery. The provider shall confirm receipt of the DME or supplies via the shipping service record showing the item was delivered prior to billing. Claims for refill orders shall be the start of the new usage period and shall not overlap with the previous usage period.

8. The purchase prices listed in the Virginia Medicaid Durable Medical Equipment and Supplies Manual, Appendix B, represent the amount DMAS shall pay for newly purchased equipment. Unless otherwise approved by DMAS or its designated agent, documentation on the delivery ticket shall reflect that the purchased equipment is new upon the date of the service billed. Any warranties associated with new equipment shall be effective from the date of the service billed. Since Medicaid is the payer of last resort, the DME provider shall explore coverage available under the warranty prior to requesting coverage of repairs from DMAS.

9. DME and supplies for home use for an individual being discharged from a hospital or nursing facility may be delivered to the hospital or nursing facility one day prior to the discharge. However, the DME provider's claim date of service shall not begin prior to the date of the individual's discharge from the hospital or nursing facility.

M. Enteral nutrition products. Coverage of enteral nutrition (EN) that does not include a legend drug shall be limited to when the nutritional supplement is the sole source form of nutrition, is administered orally or through a nasogastric or gastrostomy tube, and is necessary to treat a medical condition. Coverage of EN shall not include the provision of routine infant formula. A nutritional assessment shall be required for all recipients for whom nutritional supplements are ordered.

1. General requirements and conditions.

a. Enteral nutrition products shall only be provided by enrolled DME providers.

b. DME providers shall adhere to all applicable DMAS policies, laws, and regulations. DME providers shall also comply with all other applicable Virginia laws and regulations requiring licensing, registration, or permitting. Failure to comply with such laws and regulations shall result in denial of coverage for enteral nutrition that is regulated by such licensing agency or agencies.

2. Service units and service limitations.

a. DME and supplies shall be furnished pursuant to the Certificate of Medical Necessity (CMN) (DMAS-352).

b. The DME provider shall include documentation related to the nutritional evaluation findings on the CMN and may include supplemental information on any supportive documentation submitted with the CMN.

c. DMAS shall reimburse for medically necessary formulae and medical foods when used under a licensed practitioner's direction to augment dietary limitations or provide primary nutrition to individuals via enteral or oral feeding methods.

d. The CMN shall contain a licensed practitioner's order for the enteral nutrition products that are medically necessary to treat the diagnosed condition and the individual's functional limitation. The justification for enteral nutrition products shall be demonstrated in the written documentation either on the CMN or on the attached supporting documentation. The CMN shall be valid for a maximum period of six months.

e. Regardless of the amount of time that may be left on a six-month approval period, the validity of the CMN shall terminate when the individual's medical need for the prescribed enteral nutrition products either ends, as determined by the licensed practitioner, or when the enteral nutrition products are no longer the primary source of nutrition.

f. A face-to-face nutritional assessment completed by trained clinicians (e.g., physician, physician assistant, nurse practitioner, registered nurse, or a registered dietitian) shall be completed as required documentation of the need for enteral nutrition products.

g. The CMN shall not be changed, altered, or amended after the licensed practitioner has signed it. As indicated by the individual's condition, if changes are necessary in the ordered enteral nutrition products, the DME provider shall obtain a new CMN.

(1) New CMNs shall be signed and dated by the licensed practitioner within 60 days from the time the ordered enteral nutrition products are furnished by the DME provider.

(2) The order shall not be backdated to cover prior dispensing of enteral nutrition products. If the order is not signed within 60 days of the service initiation, then the date the order is signed becomes the effective date.

h. Prior authorization of enteral nutrition products shall not be required. The DME provider shall assure that there is a valid CMN (i) completed every six months in accordance with subsection B of this section and (ii) on file for all Medicaid individuals for whom enteral nutrition products are provided.

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(1) The DME provider is further responsible for assuring that enteral nutrition products are provided in accordance with DMAS reimbursement criteria in 12VAC30-80-30 A 6.

(2) Upon post payment review, DMAS or its designated contractor may deny reimbursement for any enteral nutrition products that have not been provided and billed in accordance with these regulations and DMAS policies.

i. DMAS shall have the authority to determine that the CMN is valid for less than six months based on medical documentation submitted.

3. Provider responsibilities.

a. The DME provider shall provide the enteral nutrition products as prescribed by the licensed practitioner on the CMN. Physician orders shall not be changed unless the DME provider obtains a new CMN prior to ordering or providing the enteral nutrition products to the individual.

b. The licensed practitioner's order (CMN) shall state that the enteral nutrition products are the sole source of nutrition for the individual and specify either a brand name of the enteral nutrition product being ordered or the category of enteral nutrition products that must be provided. If a licensed practitioner orders a specific brand of enteral nutrition product, the DME provider shall supply the brand prescribed. The licensed practitioner order shall include the daily caloric intake and the route of administration for the enteral nutrition product. Additional supporting documentation may be attached to the CMN, but the entire licensed practitioner's order shall be on the CMN.

c. The CMN shall be signed and dated by the licensed practitioner within 60 days of the CMN begin service date. If the CMN is not signed and dated by the licensed practitioner within 60 days of the CMN begin service date, the CMN shall not become valid until the date of the licensed practitioner's signature.

d. The CMN shall include all of the following elements:

- (1) Height of individual (or length for pediatric patients);
- (2) Weight of individual. For initial assessments, indicate the individual's weight loss over time;
- (3) Tolerance of enteral nutrition product (e.g., is the individual experiencing diarrhea, vomiting, constipation). This element is only required if the individual is already receiving enteral nutrition products;
- (4) Indication of whether or not the enteral nutrition product is the primary or sole source of nutrition;
- (5) Route of administration;
- (6) The daily caloric order and the number of calories per package or can; and

(7) Extent to which the quantity of the enteral nutrition product is available through WIC, the Special Supplemental Nutrition Program for Women, Infants and Children.

e. The DME provider shall retain a copy of the CMN and all supporting verifiable documentation on file for DMAS' post payment review purposes. DME providers shall not create or revise CMNs or supporting documentation for this service after the initiation of the post payment review process. Licensed practitioners shall not complete or sign and date CMNs once the post payment review has begun.

f. Medicaid reimbursement shall be recovered when the enteral nutrition products have not been ordered on the CMN. Supporting documentation is allowed to justify the medical need for enteral nutrition products. Supporting documentation shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation shall coincide with the dates of service on the CMN, and the supporting documentation shall be fully signed and dated by the licensed practitioner.

g. To receive reimbursement, the DME provider shall:

(1) Deliver only the item or items and quantity or quantities ordered by the licensed practitioner and approved by DMAS or the designated prior or service authorization contractor;

(2) Deliver only the item or items for the periods of service covered by the licensed practitioner's order and approved by DMAS or the designated prior or service authorization contractor;

(3) Maintain a copy of the licensed practitioner's order and all verifiable supporting documentation for all DME ordered; and

(4) Document all supplies provided to an individual in accordance with the licensed practitioner's orders. The delivery ticket must document the individual's name and Medicaid number, the date of delivery, the item or items that were delivered, and the quantity delivered.

h. DMAS shall deny payment to the DME provider if any of the following occur:

(1) Absence of a current, fully completed CMN appropriately signed and dated by the licensed practitioner;

(2) Documentation does not verify that the item was provided to the individual;

(3) Lack of medical documentation, signed by the licensed practitioner to justify the enteral nutrition products; or

(4) Item is noncovered or does not meet DMAS criteria for reimbursement.

i. If reimbursement is denied by Medicaid, the DME provider shall not bill the Medicaid individual for the service that was provided.

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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (12VAC30-50)

Virginia Uniform Assessment Instrument, UAI, Virginia Long-Term Care Council (1994).

I.V. Therapy Implementation Form, DMAS-354 (eff. 6/98).

Health Insurance Claim Form, Form HCFA-1500 (12/90).

~~Certificate of Medical Necessity Durable Medical Equipment and Supplies, DMAS-352 (rev. 8/95).~~

[Certificate of Medical Necessity-Durable Medical Equipment and Supplies, DMAS-352 \(rev. 7/10\).](#)

Questionnaire to Assess an Applicant's Ability to Independently Manage Personal Attendant Services in the CD-PAS Waiver or DD Waiver, DMAS-95 Addendum (eff. 8/00).

DD Waiver Enrollment Request, DMAS-453 (eff. 1/01).

DD Waiver Consumer Service Plan, DMAS-456 (eff. 1/01).

DD Medicaid Waiver -- Level of Functioning Survey -- Summary Sheet, DMAS-458 (eff. 1/01).

Documentation of Recipient Choice between Institutional Care or Home and Community-Based Services (eff. 8/00).

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-50)

Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition DSM-IV-TR, copyright 2000, American Psychiatric Association.

Length of Stay by Diagnosis and Operation, Southern Region, 1996, HCIA, Inc.

Guidelines for Perinatal Care, 4th Edition, August 1997, American Academy of Pediatrics and the American College of Obstetricians and Gynecologists.

Virginia Supplemental Drug Rebate Agreement Contract and Addenda.

Office Reference Manual (Smiles for Children), prepared by DMAS' Dental Benefits Administrator, copyright 2005 (www.dmas.virginia.gov/downloads/pdfs/dental-office_reference_manual_06-09-05.pdf).

Patient Placement Criteria for the Treatment of Substance-Related Disorders ASAM PPC-2R, Second Edition, copyright 2001, American Society of Addiction Medicine.

[Virginia Medicaid Durable Medical Equipment and Supplies Provider Manual, Appendix B \(rev. 1/11\), Department of Medical Assistance Services.](#)

12VAC30-60-75. Durable medical equipment (DME) and supplies.

A. No provider shall have a claim of ownership on DME reimbursed by Virginia Medicaid once it has been delivered to the Medicaid individual. Providers shall only be permitted to recover DME, for example, when DMAS determines that it does not fulfill the required medically necessary purpose as set out in the Certificate of Medical Necessity (CMN), when there is an error in the ordering practitioner's CMN, or when the equipment was rented. DMAS shall not reimburse the DME and supply provider for services that are provided either: (i) prior to the date prescribed by the licensed practitioner; (ii) prior to the date of the delivery; or (iii) when services are not provided in accordance with DMAS' published regulations and guidance documents. In instances when the DME or supply is shipped directly to the Medicaid individual, the DME provider shall confirm that the DME or supplies have been received by the individual before submitting his claim for payment to DMAS.

~~A. B. DME providers, as defined in 12VAC30-50-165, shall retain copies on file of the CMN fully completed CMN and all applicable supporting documentation on file for post payment audit reviews. Durable medical equipment and supplies that are not ordered on the CMN for which reimbursement has been made by Medicaid will be retracted. Reimbursement that has been made by Medicaid shall be retracted if the DME and supplies have not been ordered on the CMN. Supporting Additional supporting documentation is allowed to justify the medical need for durable medical equipment and supplies. Supporting documentation does shall not replace the requirement for a properly completed CMN. The dates of the supporting documentation must shall coincide with the dates of service on the CMN, and the The medical licensed practitioner providing the supporting documentation must shall be identified by name and title. DME providers shall not create or revise CMNs or supporting documentation for durable medical equipment and supplies that have been provided after once the post payment audit review has been initiated.~~

~~B. Persons needing~~ C. Individuals requiring only DME/supplies DME or supplies may obtain such services directly from the DME provider without having to consult or

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obtain services from a home health service or home health provider. ~~DME/supplies must be ordered by the practitioner (physician or nurse practitioner) be related to the medical treatment of the patient, and the complete order must be on the CMN for persons receiving DME/supplies.~~ Supplies used for treatment during ~~the a home health visit are~~ shall be included in the visit rate of the home health provider. Treatment supplies left in the home to maintain treatment after the visits shall be charged separately.

D. CMN requirements. The CMN shall have two required components: (i) the licensed practitioner's order and (ii) the clinical diagnosis. Failure to have a complete CMN may result in nonpayment of services rendered or retraction of payments made subsequent to post payment audits.

1. Licensed practitioner's order.

a. The licensed practitioners' complete order shall appear on the face of the CMN. A complete order on the CMN shall consist of the item's complete description, the quantity ordered, the frequency of use, and the licensed practitioner's signature and complete date of signing as defined in 12VAC30-50-165. If the DME provider determines that the prescribing licensed practitioner's signature and complete date of signing are missing, he shall consider the CMN to be invalid and he shall request a new CMN.

b. The following CMN fields (as indicated by an asterisk on the CMN) shall be required for reimbursement:

(1) The ordered item's description. If the item is an E1399 (miscellaneous), the description of the item shall not be "miscellaneous DME," but the provider shall specify the DME item or supply.

(2) The quantity ordered as found in the licensed practitioner's order. For expendable supplies the provider shall designate supplies needed for one month. If an item is not needed every month, the provider may designate an alternate time frame.

(3) The frequency of use of the DME item or supply.

(4) The licensed practitioner's signature and full date. If either the licensed practitioner's signature or full date, or both, are missing, then the entire CMN shall be deemed to be invalid and a new CMN shall be obtained. The licensed practitioner's signature certifies that the ordered DME and supplies are a part of the treatment plan and are medically necessary for the Medicaid individual.

c. The begin service date on the CMN is optional.

(1) If the provider enters a begin service date, the CMN must be signed and dated by the licensed practitioner within 60 days of the begin service date in order for the CMN to start from the begin date.

(2) If no begin service date is documented on the CMN, the date of the practitioner's signature shall be the start date of the CMN.

2. The clinical diagnosis.

a. The narrative description of the clinical diagnosis shall be recorded on the face of the CMN.

b. The recording on the face of the CMN of the relevant ICD-9 diagnosis code shall be optional.

3. Supporting documentation.

a. Supporting documentation may be included in the additional information attached to the CMN.

b. The attachment of supporting documentation shall not replace the requirement for a properly completed CMN.

12VAC30-80-30. Fee-for-service providers.

A. Payment for the following services, except for physician services, shall be the lower of the state agency fee schedule (12VAC30-80-190 has information about the state agency fee schedule) or actual charge (charge to the general public):

1. Physicians' services. Payment for physician services shall be the lower of the state agency fee schedule or actual charge (charge to the general public). The following limitations shall apply to emergency physician services.

a. Definitions. The following words and terms, when used in this subdivision 1 shall have the following meanings when applied to emergency services unless the context clearly indicates otherwise:

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

"DMAS" means the Department of Medical Assistance Services consistent with Chapter 10 (§ 32.1-323 et seq.) of Title 32.1 of the Code of Virginia.

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

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

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

(1) DMAS shall reimburse at a reduced and all-inclusive reimbursement rate for all physician services, including those obstetric and pediatric procedures contained in 12VAC30-80-160, rendered in emergency departments that DMAS determines are nonemergency care.

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

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

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

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

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

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

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

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

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

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

2. Dentists' services.

3. Mental health services including: (i) community mental health services; (ii) services of a licensed clinical psychologist; or (iii) mental health services provided by a physician.

a. Services provided by licensed clinical psychologists shall be reimbursed at 90% of the reimbursement rate for psychiatrists.

b. Services provided by independently enrolled licensed clinical social workers, licensed professional counselors or licensed clinical nurse specialists-psychiatric shall be reimbursed at 75% of the reimbursement rate for licensed clinical psychologists.

4. Podiatry.

5. Nurse-midwife services.

6. Durable medical equipment (DME) and supplies.

~~a. For those items that have a national Healthcare Common Procedure Coding System (HCPCS) code, the rate for durable medical equipment shall be set at the Durable Medical Equipment Regional Carrier (DMERC) reimbursement level.~~

~~b. The rate paid for all items of durable medical equipment except nutritional supplements shall be the lower of the state agency fee schedule that existed prior to July 1, 1996, less 4.5%, or the actual charge.~~

~~c. The rate paid for nutritional supplements shall be the lower of the state agency fee schedule or the actual charge.~~

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

"DMERC" means the Durable Medical Equipment Regional Carrier rate as published by the Centers for Medicare and Medicaid Services at <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html>.

"HCPCS" means the Healthcare Common Procedure Coding System, Medicare's National Level II Codes, HCPCS 2006 (Eighteenth edition), as published by Ingenix, as may be periodically updated.

a. Obtaining prior authorization shall not guarantee Medicaid reimbursement for DME.

b. The following shall be the reimbursement method used for DME services:

(1) If the DME item has a DMERC rate, the reimbursement rate shall be the DMERC rate minus 10%.

(2) For DME items with no DMERC rate, the agency shall use the agency fee schedule amount. The reimbursement rates for DME and supplies shall be listed in the DMAS Medicaid Durable Medical Equipment (DME) and Supplies Listing and updated periodically.

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The agency fee schedule shall be available on the agency website at www.dmas.virginia.gov.

(3) If a DME item has no DMERC rate or agency fee schedule rate, the reimbursement rate shall be the manufacturer's net charge to the provider, less shipping and handling, plus 30%. The manufacturer's net charge to the provider shall be the cost to the provider minus all available discounts to the provider. Additional information specific to how DME providers, including manufacturers who are enrolled as providers, establish and document their cost or costs for DME codes that do not have established rates can be found in the relevant agency guidance document.

c. DMAS shall have the authority to amend the agency fee schedule as it deems appropriate and with notice to providers. DMAS shall have the authority to determine alternate pricing, based on agency research, for any code that does not have a rate.

d. The reimbursement for incontinence supplies shall be by selective contract. Pursuant to § 1915(a)(1)(B) of the Social Security Act and 42 CFR 431.54(d), the Commonwealth assures that adequate services/devices shall be available under such arrangements.

e. Certain durable medical equipment used for intravenous therapy and oxygen therapy shall be bundled under specified procedure codes and reimbursed as determined by the agency. Certain services/durable medical equipment such as service maintenance agreements shall be bundled under specified procedure codes and reimbursed as determined by the agency.

(1) Intravenous therapies. The DME for a single therapy, administered in one day, shall be reimbursed at the established service day rate for the bundled durable medical equipment and the standard pharmacy payment, consistent with the ingredient cost as described in 12VAC30-80-40, plus the pharmacy service day and dispensing fee. Multiple applications of the same therapy shall be included in one service day rate of reimbursement. Multiple applications of different therapies administered in one day shall be reimbursed for the bundled durable medical equipment service day rate as follows: the most expensive therapy shall be reimbursed at 100% of cost; the second and all subsequent most expensive therapies shall be reimbursed at 50% of cost. Multiple therapies administered in one day shall be reimbursed at the pharmacy service day rate plus 100% of every active therapeutic ingredient in the compound (at the lowest ingredient cost methodology) plus the appropriate pharmacy dispensing fee.

(2) Respiratory therapies. The DME for oxygen therapy shall have supplies or components bundled under a service day rate based on oxygen liter flow rate or blood

gas levels. Equipment associated with respiratory therapy may have ancillary components bundled with the main component for reimbursement. The reimbursement shall be a service day per diem rate for rental of equipment or a total amount of purchase for the purchase of equipment. Such respiratory equipment shall include, but not be limited to, oxygen tanks and tubing, ventilators, noncontinuous ventilators, and suction machines. Ventilators, noncontinuous ventilators, and suction machines may be purchased based on the individual patient's medical necessity and length of need.

(3) Service maintenance agreements. Provision shall be made for a combination of services, routine maintenance, and supplies, to be known as agreements, under a single reimbursement code only for equipment that is recipient owned. Such bundled agreements shall be reimbursed either monthly or in units per year based on the individual agreement between the DME provider and DMAS. Such bundled agreements may apply to, but not necessarily be limited to, either respiratory equipment or apnea monitors.

7. Local health services.

8. Laboratory services (other than inpatient hospital).

9. Payments to physicians who handle laboratory specimens, but do not perform laboratory analysis (limited to payment for handling).

10. X-Ray services.

11. Optometry services.

12. Medical supplies and equipment.

13. Home health services. Effective June 30, 1991, cost reimbursement for home health services is eliminated. A rate per visit by discipline shall be established as set forth by 12VAC30-80-180.

14. Physical therapy; occupational therapy; and speech, hearing, language disorders services when rendered to noninstitutionalized recipients.

15. Clinic services, as defined under 42 CFR 440.90.

16. Supplemental payments for services provided by Type I physicians.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Type I physicians for furnished services provided on or after July 2, 2002. A Type I physician is a member of a practice group organized by or under the control of a state academic health system or an academic health system that operates under a state authority and includes a hospital, who has entered into contractual agreements for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 2, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for Type I physician services and Medicare rates. Effective August 13, 2002, the supplemental payment amount for Type I physician services shall be the difference between the Medicaid payments otherwise made for physician services and 143% of Medicare rates. This percentage was determined by dividing the total commercial allowed amounts for Type I physicians for at least the top five commercial insurers in CY 2004 by what Medicare would have allowed. The average commercial allowed amount was determined by multiplying the relative value units times the conversion factor for RBRVS procedures and by multiplying the unit cost times anesthesia units for anesthesia procedures for each insurer and practice group with Type I physicians and summing for all insurers and practice groups. The Medicare equivalent amount was determined by multiplying the total commercial relative value units for Type I physicians times the Medicare conversion factor for RBRVS procedures and by multiplying the Medicare unit cost times total commercial anesthesia units for anesthesia procedures for all Type I physicians and summing.

c. Supplemental payments shall be made quarterly.

d. Payment will not be made to the extent that this would duplicate payments based on physician costs covered by the supplemental payments.

17. Supplemental payments for services provided by physicians at Virginia freestanding children's hospitals.

a. In addition to payments for physician services specified elsewhere in this State Plan, DMAS provides supplemental payments to Virginia freestanding children's hospital physicians providing services at freestanding children's hospitals with greater than 50% Medicaid inpatient utilization in state fiscal year 2009 for furnished services provided on or after July 1, 2011. A freestanding children's hospital physician is a member of a practice group (i) organized by or under control of a qualifying Virginia freestanding children's hospital, or (ii) who has entered into contractual agreements for provision of physician services at the qualifying Virginia freestanding children's hospital and that is designated in writing by the Virginia freestanding children's hospital as a practice plan for the quarter for which the supplemental payment is made subject to DMAS approval. The freestanding children's hospital physicians also must have entered into contractual agreements with the practice plan for the assignment of payments in accordance with 42 CFR 447.10.

b. Effective July 1, 2011, the supplemental payment amount for freestanding children's hospital physician

services shall be the difference between the Medicaid payments otherwise made for freestanding children's hospital physician services and 143% of Medicare rates as defined in the supplemental payment calculation for Type I physician services subject to the following reduction. Final payments shall be reduced on a pro-rated basis so that total payments for freestanding children's hospital physician services are \$400,000 less annually than would be calculated based on the formula in the previous sentence. Payments shall be made on the same schedule as Type I physicians.

18. Supplemental payments to nonstate government-owned or operated clinics.

a. In addition to payments for clinic services specified elsewhere in the regulations, DMAS provides supplemental payments to qualifying nonstate government-owned or operated clinics for outpatient services provided to Medicaid patients on or after July 2, 2002. Clinic means a facility that is not part of a hospital but is organized and operated to provide medical care to outpatients. Outpatient services include those furnished by or under the direction of a physician, dentist or other medical professional acting within the scope of his license to an eligible individual. Effective July 1, 2005, a qualifying clinic is a clinic operated by a community services board. The state share for supplemental clinic payments will be funded by general fund appropriations.

b. The amount of the supplemental payment made to each qualifying nonstate government-owned or operated clinic is determined by:

(1) Calculating for each clinic the annual difference between the upper payment limit attributed to each clinic according to subdivision 18 d and the amount otherwise actually paid for the services by the Medicaid program;

(2) Dividing the difference determined in subdivision 18 b (1) for each qualifying clinic by the aggregate difference for all such qualifying clinics; and

(3) Multiplying the proportion determined in subdivision 18 b (2) by the aggregate upper payment limit amount for all such clinics as determined in accordance with 42 CFR 447.321 less all payments made to such clinics other than under this section.

c. Payments for furnished services made under this section may be made in one or more installments at such times, within the fiscal year or thereafter, as is determined by DMAS.

d. To determine the aggregate upper payment limit referred to in subdivision 18 b (3), Medicaid payments to nonstate government-owned or operated clinics will be divided by the "additional factor" whose calculation is described in Attachment 4.19-B, Supplement 4

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(12VAC30-80-190 B 2) in regard to the state agency fee schedule for RBRVS. Medicaid payments will be estimated using payments for dates of service from the prior fiscal year adjusted for expected claim payments. Additional adjustments will be made for any program changes in Medicare or Medicaid payments.

19. Personal Assistance Services (PAS) for individuals enrolled in the Medicaid Buy-In program described in 12VAC30-60-200. These services are reimbursed in accordance with the state agency fee schedule described in 12VAC30-80-190. The state agency fee schedule is published on the Single State Agency Website.

B. Hospice services payments must be no lower than the amounts using the same methodology used under Part A of Title XVIII, and take into account the room and board furnished by the facility, equal to at least 95% of the rate that would have been paid by the state under the plan for facility services in that facility for that individual. Hospice services shall be paid according to the location of the service delivery and not the location of the agency's home office.

DOCUMENTS INCORPORATED BY REFERENCE (12VAC30-80)

Approved Drug Products with Therapeutic Equivalence Evaluations, 25th Edition, 2005, U.S. Department of Health and Human Services.

~~Healthcare Common Procedure Coding System (HCPCS), National Level II Codes, 2001, Medicare.~~

International Classification of Diseases, ICD-9-CM 2007, Physician, Volumes 1 and 2, 9th Revision-Clinical Modification, American Medical Association.

Durable Medical Equipment, Prosthetics/Orthotics & Supplies Fee Schedules, <http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/DMEPOSFeeSched/DMEPOS-Fee-Schedule.html>, Jan. 2012, Centers for Medicare & Medicaid Services, U.S. Department of Health and Human Services.

Virginia Medicaid Durable Medical Equipment and Supplies Provider Manual, Appendix B (rev. 1/11), Department of Medical Assistance Services.

VA.R. Doc. No. R10-2333; Filed April 27, 2012, 2:08 p.m.

BOARD OF MEDICAL ASSISTANCE SERVICES Emergency Regulation

Title of Regulation: **12VAC30-120. Waivered Services (amending 12VAC30-120-370).**

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

Effective Dates: May 2, 2012, through May 1, 2013.

Agency Contact: Adrienne Fegans, Administration/Director's Office, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 786-4112, FAX (804) 786-1680, or email adrienne.fegans@dmas.virginia.gov.

Preamble:

This emergency regulatory action conforms the regulations to Item 297 MMMM 1 of the 2011 Virginia Appropriation Act. Item 297 MMMM 1 requires the department to seek federal authority through the necessary waiver(s) and/or State Plan authorization under Titles XIX and XXI of the Social Security Act to expand principles of care coordination to all geographic areas, populations, and services under programs administered by the department. The department may seek federal authority through amendments to the State Plan under Title XIX and XXI of the Social Security Act and appropriate waivers to such to allow, on a pilot basis, foster care children under the custody of the City of Richmond Department of Social Services to be enrolled in Medicaid managed care (Medallion II) effective July 1, 2011. Item 297 MMMM 1 b authorizes the department to promulgate emergency regulations to implement this amendment within 280 days or less from the enactment date of the act.

Virginia includes most Medicaid recipients in risk-based managed care; however, children in foster care are specifically excluded from participating in managed care within the Medallion II program. This exclusion is found in 12VAC30-120-370 B 5 (Medallion II enrollees), which excludes "Individuals who are participating in foster care or subsidized adoption programs." The amendment establishes a pilot program with the City of Richmond to move the approximately 300 foster care children in that locality into managed care. The Department of Medical Assistance Services has realized numerous health care and budgetary benefits from covering traditional acute care services through a risk-based capitated managed care program. Expanding the managed care population to include foster care children is consistent with the Department of Medical Assistance Services' effort to improve access and treatment, reduce inappropriate utilization, and provide budget stability with tangible quality goals. This locality pilot program is supported by the City of Richmond Department of Social Services.

12VAC30-120-370. Medallion II enrollees.

A. DMAS shall determine enrollment in Medallion II. Enrollment in Medallion II is not a guarantee of continuing eligibility for services and benefits under the Virginia Medical Assistance Services Program. DMAS reserves the right to exclude from participation in the Medallion II managed care program any recipient who has been consistently noncompliant with the policies and procedures of managed care or who is threatening to providers, MCOs, or

DMAS. There must be sufficient documentation from various providers, the MCO, and DMAS of these noncompliance issues and any attempts at resolution. Recipients excluded from Medallion II through this provision may appeal the decision to DMAS.

B. The following individuals shall be excluded (as defined in 12VAC30-120-360) from participating in Medallion II or will be disenrolled from Medallion II if any of the following apply. Individuals not meeting the exclusion criteria must participate in the Medallion II program.

1. Individuals who are inpatients in state mental hospitals;
2. Individuals who are approved by DMAS as inpatients in long-stay hospitals, nursing facilities, or intermediate care facilities for the mentally retarded;
3. Individuals who are placed on spend-down;
4. Individuals who are participating in the family planning waiver, or in federal waiver programs for home-based and community-based Medicaid coverage prior to managed care enrollment;
5. Individuals who are participating in foster care, except those foster care children under the custody of the City of Richmond Department of Social Services on or after July 1, 2011, or those in subsidized adoption programs;
6. Individuals under age 21 who are either enrolled in DMAS authorized treatment foster care programs as defined in 12VAC30-60-170 A, or who are approved for DMAS residential facility Level C programs as defined in 12VAC30-130-860;
7. Newly eligible individuals who are in the third trimester of pregnancy and who request exclusion within a department-specified timeframe of the effective date of their MCO enrollment. Exclusion may be granted only if the member's obstetrical provider (e.g., physician, hospital, midwife) does not participate with the enrollee's assigned MCO. Exclusion requests made during the third trimester may be made by the recipient, MCO, or provider. DMAS shall determine if the request meets the criteria for exclusion. Following the end of the pregnancy, these individuals shall be required to enroll to the extent they remain eligible for Medicaid;
8. Individuals, other than students, who permanently live outside their area of residence for greater than 60 consecutive days except those individuals placed there for medically necessary services funded by the MCO;
9. Individuals who receive hospice services in accordance with DMAS criteria;
10. Individuals with other comprehensive group or individual health insurance coverage, including Medicare, insurance provided to military dependents, and any other

insurance purchased through the Health Insurance Premium Payment Program (HIPP);

11. Individuals requesting exclusion who are inpatients in hospitals, other than those listed in subdivisions 1 and 2 of this subsection, at the scheduled time of MCO enrollment or who are scheduled for inpatient hospital stay or surgery within 30 calendar days of the MCO enrollment effective date. The exclusion shall remain effective until the first day of the month following discharge. This exclusion reason shall not apply to recipients admitted to the hospital while already enrolled in a department-contracted MCO;

12. Individuals who request exclusion during preassignment to an MCO or within a time set by DMAS from the effective date of their MCO enrollment, who have been diagnosed with a terminal condition and who have a life expectancy of six months or less. The client's physician must certify the life expectancy;

13. Certain individuals between birth and age three certified by the Department of Mental Health, Mental Retardation and Substance Abuse Services as eligible for services pursuant to Part C of the Individuals with Disabilities Education Act (20 USC § 1471 et seq.) who are granted an exception by DMAS to the mandatory Medallion II enrollment;

14. Individuals who have an eligibility period that is less than three months;

15. Individuals who are enrolled in the Commonwealth's Title XXI SCHIP program;

16. Individuals who have an eligibility period that is only retroactive; and

17. Children enrolled in the Virginia Birth-Related Neurological Injury Compensation Program established pursuant to Chapter 50 (§ 38.2-5000 et seq.) of Title 38.2 of the Code of Virginia.

C. Individuals enrolled with a MCO who subsequently meet one or more of the aforementioned criteria during MCO enrollment shall be excluded from MCO participation as determined by DMAS, with the exception of those who subsequently become recipients in the federal long-term care waiver programs, as otherwise defined elsewhere in this chapter, for home-based and community-based Medicaid coverage (AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimers, or as may be amended from time to time). These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the

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criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

D. Medallion II managed care plans shall be offered to recipients, and recipients shall be enrolled in those plans, exclusively through an independent enrollment broker under contract to DMAS.

E. Clients shall be enrolled as follows:

1. All eligible persons, except those meeting one of the exclusions of subsection B of this section, shall be enrolled in Medallion II.

2. Clients shall receive a Medicaid card from DMAS, and shall be provided authorized medical care in accordance with DMAS' procedures after Medicaid eligibility has been determined to exist.

3. Once individuals are enrolled in Medicaid, they will receive a letter indicating that they may select one of the contracted MCOs. These letters shall indicate a preassigned MCO, determined as provided in subsection F of this section, in which the client will be enrolled if he does not make a selection within a period specified by DMAS of not less than 30 days. Recipients who are enrolled in one mandatory MCO program who immediately become eligible for another mandatory MCO program are able to maintain consistent enrollment with their currently assigned MCO, if available. These recipients will receive a notification letter including information regarding their ability to change health plans under the new program.

4. Any newborn whose mother is enrolled with an MCO at the time of birth shall be considered an enrollee of that same MCO for the newborn enrollment period. The newborn enrollment period is defined as the birth month plus two months following the birth month. This requirement does not preclude the enrollee, once he is assigned a Medicaid identification number, from disenrolling from one MCO to another in accordance with subdivision G 1 of this section.

The newborn's continued enrollment with the MCO is not contingent upon the mother's enrollment. Additionally, if the MCO's contract is terminated in whole or in part, the MCO shall continue newborn coverage if the child is born while the contract is active, until the newborn receives a Medicaid number or for the newborn enrollment period, whichever timeframe is earlier. Infants who do not receive a Medicaid identification number prior to the end of the newborn enrollment period will be disenrolled. Newborns who remain eligible for participation in Medallion II will be reenrolled in an MCO through the preassignment process upon receiving a Medicaid identification number.

5. Individuals who lose then regain eligibility for Medallion II within 60 days will be reenrolled into their

previous MCO without going through preassignment and selection.

F. Clients who do not select an MCO as described in subdivision E 3 of this section shall be assigned to an MCO as follows:

1. Clients are assigned through a system algorithm based upon the client's history with a contracted MCO.

2. Clients not assigned pursuant to subdivision 1 of this subsection shall be assigned to the MCO of another family member, if applicable.

3. All other clients shall be assigned to an MCO on a basis of approximately equal number by MCO in each locality.

4. In areas where there is only one contracted MCO, recipients have a choice of enrolling with the contracted MCO or the PCCM program. All eligible recipients in areas where one contracted MCO exists, however, are automatically assigned to the contracted MCO. Individuals are allowed 90 days after the effective date of new or initial enrollment to change from either the contracted MCO to the PCCM program or vice versa.

5. DMAS shall have the discretion to utilize an alternate strategy for enrollment or transition of enrollment from the method described in this section for expansions to new client populations, new geographical areas, expansion through procurement, or any or all of these; such alternate strategy shall comply with federal waiver requirements.

G. Following their initial enrollment into an MCO or PCCM program, recipients shall be restricted to the MCO or PCCM program until the next open enrollment period, unless appropriately disenrolled or excluded by the department (as defined in 12VAC30-120-360).

1. During the first 90 calendar days of enrollment in a new or initial MCO, a client may disenroll from that MCO to enroll into another MCO or into PCCM, if applicable, for any reason. Such disenrollment shall be effective no later than the first day of the second month after the month in which the client requests disenrollment.

2. During the remainder of the enrollment period, the client may only disenroll from one MCO into another MCO or PCCM, if applicable, upon determination by DMAS that good cause exists as determined under subsection I of this section.

H. The department shall conduct an annual open enrollment for all Medallion II participants. The open enrollment period shall be the 60 calendar days before the end of the enrollment period. Prior to the open enrollment period, DMAS will inform the recipient of the opportunity to remain with the current MCO or change to another MCO, without cause, for the following year. In areas with only one contracted MCO, recipients will be given the opportunity to select either the

MCO or the PCCM program. Enrollment selections will be effective on the first day of the next month following the open enrollment period. Recipients who do not make a choice during the open enrollment period will remain with their current MCO selection.

I. Disenrollment for cause may be requested at any time.

1. After the first 90 days of enrollment in an MCO, clients must request disenrollment from DMAS based on cause. The request may be made orally or in writing to DMAS and must cite the reasons why the client wishes to disenroll. Cause for disenrollment shall include the following:

- a. A recipient's desire to seek services from a federally qualified health center which is not under contract with the recipient's current MCO, and the recipient (i) requests a change to another MCO that subcontracts with the desired federally qualified health center or (ii) requests a change to the PCCM, if the federally qualified health center is contracting directly with DMAS as a PCCM;
- b. Performance or nonperformance of service to the recipient by an MCO or one or more of its providers which is deemed by the department's external quality review organizations to be below the generally accepted community practice of health care. This may include poor quality care;
- c. Lack of access to a PCP or necessary specialty services covered under the State Plan or lack of access to providers experienced in dealing with the enrollee's health care needs;
- d. A client has a combination of complex medical factors that, in the sole discretion of DMAS, would be better served under another contracted MCO or PCCM program, if applicable, or provider;
- e. The enrollee moves out of the MCO's service area;
- f. The MCO does not, because of moral or religious objections, cover the service the enrollee seeks;
- g. The enrollee needs related services to be performed at the same time; not all related services are available within the network, and the enrollee's primary care provider or another provider determines that receiving the services separately would subject the enrollee to unnecessary risk; or
- h. Other reasons as determined by DMAS through written policy directives.

2. DMAS shall determine whether cause exists for disenrollment. Written responses shall be provided within a timeframe set by department policy; however, the effective date of an approved disenrollment shall be no later than the first day of the second month following the month in which

the enrollee files the request, in compliance with 42 CFR 438.56.

3. Cause for disenrollment shall be deemed to exist and the disenrollment shall be granted if DMAS fails to take final action on a valid request prior to the first day of the second month after the request.

4. The DMAS determination concerning cause for disenrollment may be appealed by the client in accordance with the department's client appeals process at 12VAC30-110-10 through 12VAC30-110-380.

5. The current MCO shall provide, within two working days of a request from DMAS, information necessary to determine cause.

6. Individuals enrolled with a MCO who subsequently meet one or more of the exclusions in subsection B of this section during MCO enrollment shall be disenrolled as appropriate by DMAS, with the exception of those who subsequently become recipients into the AIDS, IFDDS, MR, EDCD, Day Support, or Alzheimer's federal waiver programs for home-based and community-based Medicaid coverage. These individuals shall receive acute and primary medical services via the MCO and shall receive waiver services and related transportation to waiver services via the fee-for-service program.

Individuals excluded from mandatory managed care enrollment shall receive Medicaid services under the current fee-for-service system. When enrollees no longer meet the criteria for exclusion, they shall be required to enroll in the appropriate managed care program.

VA.R. Doc. No. R12-2787; Filed May 2, 2012, 3:03 p.m.



TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

COMMON INTEREST COMMUNITY BOARD

Final Regulation

Title of Regulation: **18VAC48-70. Common Interest Community Ombudsman Regulations (adding 18VAC48-70-10 through 18VAC48-70-130).**

Statutory Authority: §§ 54.1-2349 and 55-530 of the Code of Virginia.

Effective Date: July 1, 2012.

Agency Contact: Trisha Henshaw, Executive Director, Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8510, FAX (866) 490-2723, or email cic@dpor.virginia.gov.

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Summary:

The regulation requires that common interest community (CIC) associations set rules for receiving and considering complaints from members and other citizens. Specifically, the regulation (i) requires CIC associations to distribute their complaint policies and procedures to members, (ii) requires the maintenance of association complaint records, (iii) sets time frames in which CIC associations must complete certain actions, (iv) indicates the consequences for failure of an association to establish and utilize a complaint procedure, and (v) establishes procedures and forms for filing a notice of final adverse decision.

Amendments made since publication of the proposed regulation (i) allow the appeal process to be set out in an association's complaint procedures rather than the association's governing documents, (ii) clarify that complaint procedures must be readily available upon request, (iii) remove redundant language, and (iv) add a new section to clarify the board's authority regarding violations of laws or regulations applicable to 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 70 COMMON INTEREST COMMUNITY OMBUDSMAN REGULATIONS

Part I General

18VAC48-70-10. Definitions.

Section 55-528 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Association

Board

Common interest community

Declaration

Director

Governing board

Lot

Section 55-79.41 of the Code of Virginia provides definition of the following term as used in this chapter:

Condominium instruments

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

"Adverse decision" or "final adverse decision" means the final determination issued by an association pursuant to an association complaint procedure that is opposite of, or does not provide for, either wholly or in part, the cure or corrective action sought by the complainant. Such decision means all avenues for internal appeal under the association complaint procedure have been exhausted. The date of the final adverse decision shall be the date of the notice issued pursuant to subdivisions 8 and 9 of 18VAC48-70-50.

"Association complaint" means a written complaint filed by a member of the association or citizen pursuant to an association complaint procedure. An association complaint shall concern a matter regarding the action, inaction, or decision by the governing board, managing agent, or association inconsistent with applicable laws and regulations.

"Association complaint procedure" means the written process adopted by an association to receive and consider association complaints from members and citizens. The complaint procedure shall include contact information for the Office of the Common Interest Community Ombudsman in accordance with § 55-530 of the Code of Virginia. An appeal process, if applicable, shall be set out in [~~the association governing documents or in a~~ an association] complaint procedure adopted by the association, including relevant timeframes for filing the request for appeal. If no appeal process is available, the association complaint procedure shall indicate that no appeal process is available and that the rendered decision is final.

"Association governing documents" means collectively the applicable organizational documents, including but not limited to the current and effective (i) articles of incorporation, declaration, and bylaws of a property owners' association, (ii) condominium instruments of a condominium, and (iii) declaration and bylaws of a real estate cooperative, all as may be amended from time to time. Association governing documents also include, to the extent in existence, resolutions, rules and regulations, or other guidelines governing association member conduct and association governance.

"Complainant" means an association member or citizen who makes a written complaint pursuant to an association complaint procedure.

"Record of complaint" means all documents, correspondence, and other materials related to a decision made pursuant to an association complaint procedure.

18VAC48-70-20. Submission of documentation.

Any documentation required to be filed with or provided to the board, director, or Office of the Common Interest Community Ombudsman pursuant to this chapter and Chapter 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia shall be filed with or provided to the Department of Professional and Occupational Regulation.

Part II
Association Complaint Procedure

18VAC48-70-30. Requirement for association to develop an association complaint procedure.

In accordance with § 55-530 E of the Code of Virginia, each association shall have a written process for resolving association complaints from members and citizens. The association complaint procedure or form shall conform with the requirements set forth in § 55-530 of the Code of Virginia and this chapter, as well as the association governing documents, which shall not be in conflict with § 55-530 of the Code of Virginia or this chapter.

18VAC48-70-40. Establishment and adoption of written association complaint procedure.

A. Associations registered with the board before [~~the effective date of this chapter~~ July 1, 2012,] shall establish and adopt an association complaint procedure within 90 days of [~~the effective date of this chapter~~ July 1, 2012].

B. Associations filing an initial application for registration must certify that an association complaint procedure has been or will be established and adopted by the governing board within 90 days of such filing.

C. The association shall certify with each annual report filing that the association complaint procedure has been adopted and is in effect.

18VAC48-70-50. Association complaint procedure requirements.

The association complaint procedure shall be in writing and shall include the following provisions in addition to any specific requirements contained in the association's governing documents that do not conflict with § 55-530 of the Code of Virginia or the requirements of this chapter.

1. The association complaint must be in writing.
2. A sample of the form, if any, on which the association complaint must be filed shall be provided upon request.
3. The association complaint procedure shall include the process by which complaints shall be delivered to the association.
4. The association shall provide written acknowledgment of receipt of the association complaint to the complainant within seven days of receipt. Such acknowledgment shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided, or if consistent with established association procedure, by electronic means provided the sender retains sufficient proof of the electronic delivery.

[~~5. The association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to~~

~~provide in order to continue processing the association complaint. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.~~

~~6- 5.] Any specific documentation that must be provided with the association complaint shall be clearly described in the association complaint procedure. In addition, to the extent the complainant has knowledge of the law or regulation applicable to the complaint, the complainant shall provide that reference, as well as the requested action or resolution.~~

[~~6. The association shall have a reasonable, efficient, and timely method for identifying and requesting additional information that is necessary for the complainant to provide in order to continue processing the association complaint. The association shall establish a reasonable timeframe for responding to and for the disposition of the association complaint if the request for information is not received within the required timeframe.]~~

7. Notice of the date, time, and location that the matter will be considered shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within a reasonable time prior to consideration as established by the association complaint procedure.

8. After the final determination is made, the written notice of final determination shall be hand delivered or mailed by registered or certified mail, return receipt requested, to the complainant at the address provided or, if consistent with established association procedure, delivered by electronic means, provided the sender retains sufficient proof of the electronic delivery, within seven days.

9. The notice of final determination shall be dated as of the date of issuance and include specific citations to applicable association governing documents, laws, or regulations that led to the final determination, as well as the registration number of the association. If applicable, the name and license number of the common interest community manager shall also be provided.

10. The notice of final determination shall include the complainant's right to file a Notice of Final Adverse Decision with the Common Interest Community Board via the Common Interest Community Ombudsman and the applicable contact information.

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18VAC48-70-60. Distribution of association complaint procedure.

A. The association complaint procedure must be readily available [upon request] to all members of the association and citizens.

~~[B. The association complaint procedure shall be distributed using the association's established reasonable, effective, and free method, appropriate to the size and nature of the association, for communication with the governing board pursuant to §§ 55-79.75:1 and 55-510.2 of the Code of Virginia.~~

~~C. B.] The association complaint procedure shall be included as an attachment to the resale certificate or the association disclosure packet.~~

~~[D. Members of the association shall be reminded by the association annually of the availability of the association complaint procedure by using the method of communication established pursuant to §§ 55-79.75:1 and 55-510.2 of the Code of Virginia.]~~

18VAC48-70-70. Maintenance of association record of complaint.

A. A record of each association complaint filed with the association shall be maintained in accordance with § 55-530 E 1 of the Code of Virginia.

B. Unless otherwise specified by the director or his designee, the association shall provide to the director or his designee, within 14 days of receipt of the request, any document, book, or record concerning the association complaint. The director or his designee may extend such timeframe upon a showing of extenuating circumstances prohibiting delivery within 14 days of receiving the request.

18VAC48-70-80. Failure of association to establish and utilize association complaint procedure.

Failure of an association to establish and utilize an association complaint procedure in accordance with this chapter may result in the board seeking any of the remedies available pursuant to Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1 of the Code of Virginia.

Part III

Final Adverse Decision

18VAC48-70-90. Filing of notice of final adverse decision.

A complainant may file a notice of final adverse decision in accordance with § 55-530 F of the Code of Virginia concerning any final adverse decision that has been issued by an association in accordance with this chapter [~~and for which all avenues for appeal, if applicable, within the association have been exhausted~~].

1. The notice shall be filed within 30 days of the date of the final adverse decision.

2. The notice shall be in writing on forms provided by the Office of the Common Interest Community Ombudsman. Such forms shall request the following information:

a. Name and contact information of complainant;

b. Name, address, and contact information of association;

c. Applicable association governing documents; and

d. Date of final adverse decision.

3. The notice shall include a copy of the association complaint, the final adverse decision, reference to the laws and regulations the final adverse decision may have violated, any supporting documentation related to the final adverse decision, and a copy of the association complaint procedure.

4. The notice shall be accompanied by a \$25 filing fee or a request for waiver pursuant to 18VAC48-70-100.

18VAC48-70-100. Waiver of filing fee.

In accordance with § 55-530 F of the Code of Virginia, the board may, for good cause shown, waive or refund the filing fee upon a finding that payment of the filing fee will cause undue financial hardship for the complainant.

18VAC48-70-110. Review of final adverse decision.

Upon receipt of the notice of final adverse decision from the complainant, along with the filing fee or a board-approved waiver of filing fee, the Office of the Common Interest Community Ombudsman shall provide written acknowledgment of receipt of the notice to the complainant and shall provide a copy of the written notice to the association that made the final adverse decision. The notice of adverse decision will not be reviewed until the filing fee has been received or a waiver of filing fee has been granted by the board.

In accordance with § 55-530 G of the Code of Virginia, additional information may be requested from the association that made the final adverse decision. Upon request, the association shall provide such information to the Office of the Common Interest Community Ombudsman within a reasonable time.

18VAC48-70-120. Decision from the notice of final adverse decision.

Upon review of the notice of final adverse decision in accordance with § 55-530 G of the Code of Virginia, if the director determines that the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board, the director may, in his sole discretion, provide the complainant and the association with information concerning such laws or regulations governing common interest communities or interpretations thereof by the board.

The determination of whether the final adverse decision may be in conflict with laws or regulations governing common interest communities or interpretations thereof by the board shall be a matter within the sole discretion of the director. Such decision is final and not subject to further review. The determination of the director shall not be binding upon the complainant or the association that made the final adverse decision.

[18VAC48-70-125. Referral for further action.

In addition to the provisions of this chapter, any matter involving a violation of applicable laws or regulations of the board may be referred for further action by the board in accordance with the provisions of Chapter 23.3 (§ 54.1-2345 et seq.) of Title 54.1; Chapters 4.2 (§ 55-79.39 et seq.), 26 (§ 55-508 et et seq.), and 29 (§ 55-528 et seq.) of Title 55 of the Code of Virginia; and the board's regulations.]

Part IV

Office of the Common Interest Community Ombudsman

18VAC48-70-130. Purpose, responsibilities, and limitations.

The Office of the Common Interest Community Ombudsman shall carry out those activities as enumerated in subsection C of § 55-530 of the Code of Virginia.

NOTICE: The following forms used in administering the regulation have been filed by the Common Interest Community Board. The forms are not being published; however, the names of the forms are listed below. Online users of this issue of the Virginia Register of Regulations may access the forms by clicking on the names of the forms. The forms are also available for public inspection at the Common Interest Community Board, 9960 Mayland Drive, Suite 400, Richmond, Virginia 23233, or at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC48-70)

[Association Complaint Form \(10/09\).](#)

[Request for Waiver of Filing Fee. \(10/09\).](#)

[Notice of Final Adverse Decision. \(10/09\).](#)

VA.R. Doc. No. R09-1873; Filed May 1, 2012, 9:59 a.m.

BOARD OF PSYCHOLOGY

Final Regulation

Title of Regulation: 18VAC125-20. Regulations Governing the Practice of Psychology (amending 18VAC125-20-10, 18VAC125-20-30, 18VAC125-20-41, 18VAC125-20-42, 18VAC125-20-43, 18VAC125-20-54, 18VAC125-20-65, 18VAC125-20-80, 18VAC125-20-120, 18VAC125-20-150).

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

Effective Date: June 20, 2012.

Agency Contact: Catherine Chappell, Acting Executive Director, Board of Psychology, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4406, FAX (804) 327-4435, or email catherine.chappell@dhp.virginia.gov.

Summary:

The amendments (i) reduce the required experience in another state to 10 years for licensure by endorsement, (ii) permit acceptance of pre-internship supervised professional experience in lieu of all or part of the post-doctoral residency currently required for licensure by examination, (iii) provide for consistency in requirements for a jurisprudence examination, (iv) extend the prohibition on sexual intimacies with clients from two years to five years following termination of professional services and expand such prohibition to include romantic relationships, (v) require malpractice and disciplinary history reports for licensure by endorsement, and (vi) clarify existing regulations.

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

Part I

General Provisions

18VAC125-20-10. Definitions.

The following words and terms, in addition to the words and terms defined in § 54.1-3600 of the Code of Virginia, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

"APA" means the American Psychological Association.

"APPIC" means the Association of Psychology Postdoctoral and Internship Centers.

~~"Applicant" means a person who submits a complete application for licensure with the appropriate fees.~~

"Board" means the Virginia Board of Psychology.

"Candidate for licensure" means a person who has satisfactorily completed the appropriate educational and experience requirements for licensure and has been deemed eligible by the board to sit for the required examinations.

"Demonstrable areas of competence" means those therapeutic and assessment methods and techniques, and populations served, for which one can document adequate graduate training, workshops, or appropriate supervised experience.

"Internship" means an ongoing, supervised and organized practical experience obtained in an integrated training program identified as a psychology internship. Other

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supervised experience or on-the-job training does not constitute an internship.

"NASP" means the National Association of School Psychologists.

"NCATE" means the National Council for the Accreditation of Teacher Education.

"Practicum" means the pre-internship clinical experience that is part of a graduate educational program.

"Professional psychology program" means an integrated program of doctoral study designed to train professional psychologists to deliver services in psychology.

"Regional accrediting agency" means one of the six regional accrediting agencies recognized by the United States Secretary of Education established to accredit senior institutions of higher education.

"Residency" means a post-internship, post-terminal degree, supervised experience approved by the board.

"School psychologist-limited" means a person licensed pursuant to § 54.1-3606 of the Code of Virginia to provide school psychology services solely in public school divisions.

"Supervision" means the ongoing process performed by a supervisor who monitors the performance of the person supervised and provides regular, documented individual consultation, guidance and instruction with respect to the skills and competencies of the person supervised.

"Supervisor" means an individual who assumes full responsibility for the education and training activities of a person and provides the supervision required by such a person.

18VAC125-20-30. Fees required by the board.

A. The board has established fees for the following:

	Applied psychologists, Clinical psychologists, School psychologists	School psychologists- limited
1. Registration of residency (per residency request)	\$50	
2. Add or change supervisor	\$25	
3. Application processing and initial licensure	\$200	\$85
4. Annual renewal of active license	\$140	\$70
5. Annual renewal of inactive license	\$70	\$35
6. Late renewal	\$50	\$25

7. Verification of license to another jurisdiction	\$25	\$25
8. Duplicate license	\$5	\$5
9. Additional or replacement wall certificate	\$15	\$15
10. Returned check	\$35	\$35
11. Reinstatement of a lapsed license	\$270	\$125
12. Reinstatement following revocation or suspension	\$500	\$500
13. One time reduction in fee for annual renewal due on June 30, 2010, for holders of an active license	\$70	\$35
14. One time reduction in fee for annual renewal due on June 30, 2010, for holders of an inactive license	\$35	\$17

~~B. The fee for review of a continuing education provider seeking board approval shall be \$200.~~

~~C. B.~~ Fees shall be paid by check or money order made payable to the Treasurer of Virginia and forwarded to the board. All fees are nonrefundable.

~~D. Examination fees shall be established and made payable as determined by the board.~~

18VAC125-20-41. Requirements for licensure by examination.

A. Every applicant for examination for licensure by the board shall:

1. Meet the education requirements prescribed in 18VAC125-20-54, 18VAC125-20-55, or 18VAC125-20-56 and the experience requirement prescribed in 18VAC125-20-65 as applicable for the particular license sought; and
2. Submit the following:
 - a. A completed application on forms provided by the board;
 - b. A completed residency agreement or documentation of having fulfilled the experience requirements of 18VAC125-20-65;
 - c. The application processing fee prescribed by the board;
 - d. Official transcripts documenting the graduate work completed and the degree awarded. Applicants who are graduates of institutions that are not regionally accredited

shall submit documentation from an accrediting agency acceptable to the board that their education meets the requirements set forth in 18VAC125-20-54, 18VAC125-20-55 or 18VAC125-20-56; and

e. Verification of any other professional license or certificate ever held in another jurisdiction.

B. In addition to fulfillment of the education and experience requirements, each applicant for licensure by examination must achieve a passing score on the ~~required examinations for each category of licensure sought:~~ Examination for Professional Practice of Psychology.

~~1. Clinical psychologist: State Practice Examination for Clinical Psychology, Jurisprudence and Examination for Professional Practice in Psychology;~~

~~2. School psychologist: State Practice Examination for School Psychology, Jurisprudence and Examination for Professional Practice in Psychology; or~~

~~3. Applied psychologist: State Practice Examination in Applied Psychology, Jurisprudence and Examination for Professional Practice in Psychology.~~

C. Every applicant shall submit an affidavit of having read and agreed to comply with the current standards of practice and laws governing the practice of psychology in Virginia.

18VAC125-20-42. Prerequisites for licensure by endorsement.

A. Every applicant for licensure by endorsement shall submit:

1. A completed application;
2. The application processing fee prescribed by the board;
3. An affidavit of having read and agreed to comply with the current Standards of Practice and laws governing the practice of psychology in Virginia;
4. Verification of all other professional licenses or certificates ever held in any jurisdiction. In order to qualify for endorsement, the applicant ~~shall have no history of disciplinary action,~~ shall not have surrendered a license or certificate while under investigation and shall have no unresolved action against a license or certificate; ~~and~~

5. A current report from the Healthcare Integrity and Protection Data Bank (HIPDB) and a current report from the National Practitioner Data Bank; and

~~5.~~ 6. Further documentation of one of the following:

- a. A current listing in the National Register of Health Services Providers in Psychology;
- b. Current diplomate status in good standing with the American Board of Professional Psychology in a

category comparable to the one in which licensure is sought;

c. ~~Twenty~~ Ten years of active licensure in a category comparable to the one in which licensure is sought, with an appropriate degree as required in this chapter documented by an official transcript; or

d. If less than ~~20~~ 10 years of active licensure, documentation of current psychologist licensure in good standing obtained by standards substantially equivalent to the education, experience and examination requirements set forth in this chapter for the category in which licensure is sought as verified by a certified copy of the original application submitted directly from the out-of-state licensing agency or a copy of the regulations in effect at the time of initial licensure and the following:

(1) Documentation of post-licensure active practice for at least five of the last six years immediately preceding licensure application;

(2) Verification of a passing score on the Examination for Professional Practice of Psychology as established in Virginia for the year of that administration; and

~~(3) Verification of a passing score on other written and oral examinations or both as required by the jurisdiction which granted the license; and~~

~~(4)~~ (3) Official transcripts documenting the graduate work completed and the degree awarded in the category in which licensure is sought.

~~B. Notwithstanding the provisions of this section, the board may issue a license to any individual who qualifies for such a license pursuant to an agreement of reciprocity entered into by this board with a board of another jurisdiction or multiple jurisdictions.~~

18VAC125-20-43. Requirements for licensure as a school psychologist-limited.

A. Every applicant for licensure as a school psychologist-limited shall submit to the board:

1. A copy of a current license issued by the Board of Education showing an endorsement in psychology.
2. An official transcript showing completion of a master's degree in psychology.
3. A completed Employment Verification Form of current employment by a school system under the Virginia Department of Education.
4. The application fee.

B. At the time of licensure renewal, school psychologists-limited shall be required to submit an updated Employment Verification Form if there has been a change in school district in which the licensee is currently employed.

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18VAC125-20-54. Education requirements for clinical psychologists.

A. The applicant shall hold a doctorate from a professional psychology program in a regionally accredited university, which was accredited by the APA within four years after the applicant graduated from the program, or shall meet the requirements of subsection B of this section.

B. If the applicant does not hold a doctorate from an APA accredited program, the applicant shall hold a doctorate from a professional psychology program which documents that it offers education and training which prepares individuals for the practice of clinical psychology as defined in § 54.1-3600 of the Code of Virginia and which meets the following criteria:

1. The program is within an institution of higher education accredited by an accrediting agency recognized by the United States Department of Education or publicly recognized by the Association of Universities and Colleges of Canada as a member in good standing. Graduates of programs that are not within the United States or Canada must provide documentation from an acceptable credential evaluation service which provides information that allows the board to determine if the program meets the requirements set forth in this chapter.
2. The program shall be recognizable as an organized entity within the institution.
3. The program shall be an integrated, organized sequence of study with an identifiable psychology faculty and a psychologist directly responsible for the program, and shall have an identifiable body of students who are matriculated in that program for a degree. The faculty shall be accessible to students and provide them with guidance and supervision. The faculty shall provide appropriate professional role models and engage in actions that promote the student's acquisition of knowledge, skills and competencies consistent with the program's training goals.
4. The program shall encompass a minimum of three academic years of full-time graduate study or the equivalent thereof.
5. The program shall include a general core curriculum containing a minimum of three or more graduate semester hours or five or more graduate quarter hours in each of the following substantive content areas.
 - a. Biological bases of behavior (e.g., physiological psychology, comparative psychology, neuropsychology, sensation and perception, health psychology, pharmacology, neuroanatomy).
 - b. Cognitive-affective bases of behavior (e.g., learning theory, cognition, motivation, emotion).

- c. Social bases of behavior (e.g., social psychology, group processes, organizational and systems theory, community and preventive psychology, multicultural issues).
- d. Psychological measurement.
- e. Research methodology.
- f. Techniques of data analysis.
- g. Professional standards and ethics.

6. The program shall include a minimum of at least three or more graduate semester credit hours or five or more graduate quarter hours in each of the following clinical psychology content areas:

- a. Individual differences in behavior (e.g., personality theory, cultural difference and diversity).
- b. Human development (e.g., child, adolescent, geriatric psychology).
- c. Dysfunctional behavior, abnormal behavior or psychopathology.
- d. Theories and methods of intellectual assessment and diagnosis.
- e. Theories and methods of personality assessment and diagnosis including its practical application.
- f. Effective interventions and evaluating the efficacy of interventions.
- ~~g. Consultation and supervision (e.g., community mental health, organizational behavior, consultation liaison).~~

C. Applicants who graduated from programs which meet the criteria set forth under subsection A or B of this section shall submit documentation of having successfully completed practicum experiences in assessment and diagnosis, psychotherapy, consultation and supervision. The practicum shall include a minimum of nine graduate semester hours or 15 or more graduate quarter hours or equivalent in appropriate settings to ensure a wide range of supervised training and educational experiences.

D. An applicant for a clinical license may fulfill the residency requirement of 1,500 hours, or some part thereof, as required for licensure in 18VAC125-20-65 B, in the pre-doctoral practicum supervised experience that meets the following standards:

1. The supervised professional experience shall be part of an organized sequence of training within the applicant's doctoral program, which meets the criteria specified in subsections A or B of this section.
2. The supervised experience shall include face-to-face direct client services, service-related activities, and supporting activities.

a. "Face-to-face direct client services" means treatment/intervention, assessment, and interviewing of clients.

b. "Service-related activities" means scoring, reporting or treatment note writing, and consultation related to face-to-face direct services.

c. "Supporting activities" means time spent under supervision of face-to-face direct services and service-related activities provided on-site or in the trainee's academic department, as well as didactic experiences, such as laboratories or seminars, directly related to such services or activities.

3. In order for pre-doctoral practicum hours to fulfill the all or part of the residency requirement, the following shall apply:

a. Not less than one-quarter of the hours shall be spent in providing face-to-face direct client services;

b. Not less than one-half of the hours shall be in a combination of face-to-face direct service hours and hours spent in service-related activities; and

c. The remainder of the hours may be spent in a combination of face-to-face direct services, service-related activities, and supporting activities.

4. A minimum of one hour of individual face-to-face supervision shall be provided for every eight hours of supervised professional experience spent in direct client contact and service-related activities.

5. The hours of pre-doctoral supervised experience reported by an applicant shall be certified by the program's director of clinical training on a form provided by the board.

18VAC125-20-65. Supervised experience.

A. Internship requirement.

1. Candidates for clinical psychologist licensure shall have successfully completed an internship that is either accredited by APA, APPIC or the National Register of Health Service Providers in Psychology, or one that meets equivalent standards.

2. Candidates for school psychologist licensure shall have successfully completed an internship accredited by the APA, APPIC or NASP or one that meets equivalent standards.

B. Residency requirement.

1. Candidates for clinical or school psychologist licensure shall have successfully completed a ~~one year, full time~~ residency, ~~or its equivalent in part-time experience for a period not to exceed three years,~~ consisting of a minimum of 1,500 hours in a period of not less than 12 months and

~~not to exceed three years~~ of supervised experience in the delivery of clinical or school psychology services acceptable to the board, or the applicant may request approval to begin a residency.

2. Supervised experience obtained in Virginia without prior written board approval will not be accepted toward licensure. Candidates shall not begin the residency until after completion of the required degree as set forth in 18VAC125-20-54 or 18VAC125-20-56. An individual who proposes to obtain supervised post-degree experience in Virginia shall, prior to the onset of such supervision, submit a supervisory contract along with the application package and pay the registration of supervision fee set forth in 18VAC125-20-30.

3. There shall be a minimum of two hours of individual supervision per week. Group supervision of up to five residents may be substituted for one of the two hours per week on the basis that two hours of group supervision equals one hour of individual supervision, but in no case shall the resident receive less than one hour of individual supervision per week.

4. Residents may not refer to or identify themselves as applied psychologists, clinical psychologists, or school psychologists; independently solicit clients; bill for services; or in any way represent themselves as licensed psychologists. Notwithstanding the above, this does not preclude supervisors or employing institutions for billing for the services of an appropriately identified resident. During the residency period they shall use their names, the initials of their degree, and the title, "Resident in Psychology," in the licensure category in which licensure is sought.

5. Supervision shall be provided by a psychologist licensed to practice in the licensure category in which the resident is seeking licensure.

6. The supervisor shall not provide supervision for activities beyond the supervisor's demonstrable areas of competence, nor for activities for which the applicant has not had appropriate education and training.

7. At the end of the residency training period, the supervisor or supervisors shall submit to the board a written evaluation of the applicant's performance.

8. The board may consider special requests in the event that the regulations create an undue burden in regard to geography or disability that limits the resident's access to qualified supervisors.

C. For a clinical psychologist license, a candidate may submit evidence of having met the supervised experience requirements in a pre-doctoral practicum as specified in 18VAC125-20-54 D in substitution for all or part of the 1,500 residency hours specified in this section. If the supervised

Regulations

experience hours completed in a practicum do not total 1,500 hours, a person may fulfill the remainder of the hours by meeting requirements specified in subsection B of this section.

D. Candidates for clinical psychologist licensure shall provide documentation that the internship and residency included appropriate emphasis and experience in the diagnosis and treatment of persons with moderate to severe mental disorders.

Part III Examinations

18VAC125-20-80. General examination requirements.

A. An applicant for clinical or school psychologist licensure enrolled in an approved residency training program required in 18VAC125-20-65 who has met all requirements for licensure except completion of that program shall be eligible to take ~~both the national and state~~ written ~~examinations~~ examination.

B. A candidate approved by the board to sit for an examination shall take that examination within two years of the date of the initial board approval. If the candidate has not taken the examination by the end of the two-year period here prescribed, the applicant shall reapply according to the requirements of the regulations in effect at that time.

C. The board shall establish passing scores on the ~~examinations~~ examination.

D. Candidates who fail an examination may be reexamined once within a 12-month period without reapplying.

E. Candidates who fail any examination twice shall wait at least one year between the second failure and the next reexamination.

Part V Licensure Renewal; Reinstatement

18VAC125-20-120. Annual renewal of licensure.

~~Effective January 1, 2004, every~~ Every license issued by the board shall expire each year on June 30.

1. Every licensee who intends to continue to practice shall, on or before the expiration date of the license, submit to the board a license renewal form supplied by the board and the renewal fee prescribed in 18VAC125-20-30.

2. ~~Beginning with the 2004 renewal, licensees~~ Licensees who wish to maintain an active license shall pay the appropriate fee and verify on the renewal form compliance with the continuing education requirements prescribed in 18VAC125-20-121. First-time licensees by examination are not required to verify continuing education on the first renewal date following initial licensure.

3. A licensee who wishes to place his license in inactive status may do so upon payment of the fee prescribed in 18VAC125-20-30. No person shall practice psychology in Virginia unless he holds a current active license. An inactive licensee may activate his license by fulfilling the reactivation requirements set forth in 18VAC125-20-130.

4. Licensees shall notify the board office in writing of any change of address of record or of the public address, if different from the address of record. Failure of a licensee to receive a renewal notice and application forms from the board shall not excuse the licensee from the renewal requirement.

Part VI

Standards of Practice; Unprofessional Conduct; Disciplinary Actions; Reinstatement

18VAC125-20-150. Standards of practice.

A. The protection of the public health, safety, and welfare and the best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the board. Psychologists respect the rights, dignity and worth of all people, and are mindful of individual differences.

B. Persons licensed by the board shall:

1. Provide and supervise only those services and use only those techniques for which they are qualified by training and appropriate experience. Delegate to their employees, supervisees, residents and research assistants only those responsibilities such persons can be expected to perform competently by education, training and experience. Take ongoing steps to maintain competence in the skills they use;

2. When making public statements regarding credentials, published findings, directory listings, curriculum vitae, etc., ensure that such statements are neither fraudulent nor misleading;

3. Neither accept nor give commissions, rebates or other forms of remuneration for referral of clients for professional services. Make appropriate consultations and referrals consistent with the law and based on the interest of patients or clients;

4. Refrain from undertaking any activity in which their personal problems are likely to lead to inadequate or harmful services;

5. Avoid harming patients or clients, research participants, students and others for whom they provide professional services and minimize harm when it is foreseeable and unavoidable. Not exploit or mislead people for whom they provide professional services. Be alert to and guard against misuse of influence;

6. Avoid dual relationships with patients, clients, residents or supervisees that could impair professional judgment or compromise their well-being (to include but not limited to treatment of close friends, relatives, employees);

7. Withdraw from, adjust or clarify conflicting roles with due regard for the best interest of the affected party or parties and maximal compliance with these standards;

8. Not engage in sexual intimacies or a romantic relationship with a student, supervisee, resident, therapy patient, client, or those included in collateral therapeutic services (such as a parent, spouse, or significant other) while providing professional services. For at least ~~two~~ five years after cessation or termination of professional services, not engage in sexual intimacies or a romantic relationship with a therapy patient, client, or those included in collateral therapeutic services. Consent to, initiation of, or participation in sexual behavior or romantic involvement with a psychologist does not change the exploitative nature of the conduct nor lift the prohibition. Since sexual or romantic relationships are potentially exploitative, psychologists shall bear the burden of demonstrating that there has been no exploitation;

9. Keep confidential their professional relationships with patients or clients and disclose client records to others only with written consent except: (i) when a patient or client is a danger to self or others, (ii) as required under § 32.1-127.1:03 of the Code of Virginia, or (iii) as permitted by law for a valid purpose;

10. Make reasonable efforts to provide for continuity of care when services must be interrupted or terminated;

11. Inform clients of professional services, fees, billing arrangements and limits of confidentiality before rendering services. Inform the consumer prior to the use of collection agencies or legal measures to collect fees and provide opportunity for prompt payment. Avoid bartering goods and services. Participate in bartering only if it is not clinically contraindicated and is not exploitative;

12. Construct, maintain, administer, interpret and report testing and diagnostic services in a manner and for purposes which are appropriate;

13. Keep pertinent, confidential records for at least five years after termination of services to any consumer;

14. Design, conduct and report research in accordance with recognized standards of scientific competence and research ethics; and

15. Report to the board known or suspected violations of the laws and regulations governing the practice of psychology.

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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC125-20)

~~[Instructions—Virginia Board of Psychology Application for Licensure by Examination \(rev. 2/10\).](#)~~

[Virginia Board of Psychology Application Instructions - Licensure by Examination \(rev. 5/12\).](#)

[Instructions - Virginia Board of Psychology Application of Licensure by Endorsement \(rev. 2/10\).](#)

[Psychologist Application for Licensure by Examination, Form 1 \(rev. 8/07\).](#)

[Application for Licensure as a School Psychologist-Limited \(rev. 8/07\).](#)

[Employment Verification Form \(rev. 8/07\).](#)

[Registration of Residency -- Post-Graduate Degree Supervised Experience, Form 2 \(rev. 8/07\).](#)

~~[Psychologist Application for Licensure by Endorsement, Form 1 \(rev. 8/07\).](#)~~

[Virginia Board of Psychology Application for Licensure by Endorsement \(rev. 5/12\).](#)

[Psychologist Application for Reinstatement of a Lapsed License, PSYREIN \(rev. 8/07\).](#)

[School Psychologist-Limited Application for Reinstatement of a Lapsed License, PSYREIN \(rev. 8/07\).](#)

[Psychologist Application for Reinstatement Following Disciplinary Action, PSYREDISC \(rev. 8/07\).](#)

[Verification of Post-Degree Supervision, Form 3 \(rev. 8/07\).](#)

[Internship Verification, Form 4 \(rev. 8/07\).](#)

[Licensure/Certification Verification, Form 5 \(rev. 8/07\).](#)

[Areas of Graduate Study, Form 6 \(rev. 2/10\).](#)

~~[Continuing Education Audit Summary Form \(rev. 4/09\).](#)~~

[Continuing Education Summary Form \(rev. 12/11\).](#)

[Verification of Pre-Doctoral Supervised Practicum Hours \(eff. 5/12\).](#)

VA.R. Doc. No. R10-2226; Filed May 1, 2012, 8:28 a.m.

Regulations

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Final Regulation

REGISTRAR'S NOTICE: The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to conform to changes in Virginia statutory law where no agency discretion is involved. The Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (amending 18VAC160-20-97).

Statutory Authority: §§ 54.1-113 and 54.1-201 of the Code of Virginia.

Effective Date: July 1, 2012.

Agency Contact: David E. Dick, Executive Director, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8595, FAX (866) 350-5354, or email waterwasteoper@dpor.virginia.gov.

Summary:

Chapters 677 and 704 of the 2012 Acts of Assembly require the board to amend the regulation by suspending the examination requirement for applicants seeking initial licensure as conventional onsite sewage system installers provided that the applicants satisfactorily demonstrate to the board that they have been actively engaged in performing the duties of a conventional onsite sewage system installer for at least eight years within the 12-year period immediately preceding the date of application for licensure. Suspension of the examination requirement applies to applications received July 1, 2012, through June 30, 2016.

18VAC160-20-97. Qualifications for licensure - onsite sewage system installers.

A. Each applicant shall make application in accordance with 18VAC160-20-76 and shall meet the specific entry requirements provided for in this section for the license desired.

B. Each applicant holding a valid interim onsite sewage system installer license shall submit documentation of compliance with the continuing professional education requirements of this chapter at the time of application.

C. Specific entry requirements.

1. Conventional onsite sewage system installer. Each individual applying for an initial conventional onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years under the direct supervision of a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or

b. Have two years of full-time experience installing alternative or conventional onsite sewage systems during the last four years as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors; or

c. Have documentation certifying that the applicant is competent to install conventional onsite sewage systems. Certification must be provided by any combination of three of the following individuals:

(1) VDH Authorized Onsite Soil Evaluators (AOSE) for work performed prior to July 1, 2009;

(2) Licensed interim onsite soil evaluators;

(3) Licensed conventional or alternative onsite soil evaluators;

(4) Licensed conventional or alternative onsite sewage system installers; or

(5) Virginia licensed professional engineers.

2. Conventional onsite sewage system installer. The examination requirement provided for in subdivision 1 of this subsection shall not apply to applicants seeking initial licensure as a conventional onsite sewage system installer provided that:

a. The applicant is able to satisfactorily demonstrate that he has been actively engaged in performing the duties of a conventional onsite sewage system installer, as defined in this chapter, for at least eight years within the 12-year period immediately preceding the date of application. Documentation of being actively engaged in performing the duties of a conventional onsite sewage system installer, as defined in this chapter, for at least eight years within the 12-year period immediately preceding the date of application shall be provided by one or more of the following:

(1) VDH Authorized Onsite Soil Evaluator (AOSE) for work performed prior to July 1, 2009;

(2) Licensed interim onsite soil evaluator;

(3) Licensed conventional or alternative onsite soil evaluator;

(4) Licensed conventional or alternative onsite sewage system installer; or

(5) Virginia licensed professional engineer; and

b. The department receives a completed application no later than June 30, 2016. An individual who fails to have his application in the department's possession by June 30, 2016, shall be required to pass the board-approved examination provided for in subdivision 1 of this subsection.

2. 3. Alternative onsite sewage system installer. Each individual applying for an initial alternative onsite sewage system installer license shall pass a board-approved examination and shall meet one of the following requirements:

a. Provide contractor completion statements and associated operation permits issued by the VDH for work performed after June 30, 2009. The statements and permits must verify that the applicant had successfully installed 36 onsite sewage systems during the preceding three years, six of which must be alternative systems. All contractor completion statements and associated VDH operation permits shall be certified by either a licensed alternative onsite soil evaluator, a licensed conventional or alternative onsite sewage system installer, or a Virginia licensed professional engineer;

b. Provide contractor completion statements and associated operation permits issued by the VDH for work performed on or before June 30, 2009. The statements and permits must verify that the applicant successfully installed 12 alternative onsite sewage systems during the past three years. All contractor completion statements and associated VDH operation permits shall be certified by either an authorized onsite soil evaluator or a Virginia licensed professional engineer;

c. Have two years of full-time experience installing sewage systems as a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems;

d. Have two years of full-time experience installing sewage systems under the direct supervision a properly licensed contractor holding a sewage disposal system (SDS) specialty issued by the Virginia Board for Contractors and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any

combination thereof, that the applicant is competent to install alternative onsite sewage systems; or

e. Have two years of full-time experience as a licensed or interim licensed conventional onsite sewage system installer and provide certification by at least three interim or alternative onsite soil evaluator licensees, Virginia-licensed professional engineers, or any combination thereof, that the applicant is competent to install alternative onsite sewage systems.

If the applicant is not listed on the completion statement but did perform the installation, then the individual named on the contractor's completion statement and associated operation permit issued by the VDH may certify the applicant's work performed on an alternative onsite sewage system that was installed prior to June 30, 2009, provided that the application is received by the department no later than June 30, 2010.

D. Education and training substitution. Each individual applying for a conventional or an alternative onsite sewage system installer license may receive credit for up to half of the experience required by this section for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system installer training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

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 from the agency contact or may be viewed at the Office of the Registrar of Regulations, General Assembly Building, 2nd Floor, Richmond, Virginia 23219.

FORMS (18VAC160-20)

Continuing Professional Education (CPE) Certificate of Completion, 19CPE (rev. 05/09).

Application for Training Course Approval, 19CRS (rev. 05/09).

Experience Verification Form, 19EXP (eff. 07/09).

Education & Training Substitution Form, 19ET_SUB (eff. 07/09).

Licensure Fee Notice, 19FEE (eff. 07/09).

Regulations

Interim Onsite Soil Evaluator - VDH Employees Only License Application, 1930LIC (eff. 07/09).

Interim Onsite Sewage System Installer License Application, 1931_32LIC (eff. 07/09).

Interim Onsite Sewage System Operator License Application, 1933_34LIC (eff. 07/09).

Onsite Soil Evaluator Exam & License Application, 1940_41EXLIC (eff. 07/09).

Onsite Sewage System Installer Exam & License Application, 1944_45EXLIC (eff. 07/09).

Onsite Sewage System Operator Exam & License Application, 1942_43EXLIC (eff. 07/09).

[Suspension of Examination – Conventional Onsite Sewage System Installer License Application, 1944WAIV \(eff. 07/12\)](#)

VA.R. Doc. No. R12-3199; Filed May 2, 2012, 10:57 a.m.



TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Final Regulation

<p>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.</p>

Title of Regulation: 21VAC5-80. Investment Advisors (amending 21VAC5-80-215).

Statutory Authority: §§ 12.1-13, 13.1-523 and 13.1-523.1 of the Code of Virginia.

Effective Date: May 7, 2012.

Agency Contact: Timothy O'Brien, Chief Examiner, Securities Division, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email timothy.o'brien@scc.virginia.gov.

Summary:

The State Corporation Commission has adopted substantial changes to 21VAC5-80-215, which formerly exempted investment advisors to certain private funds from registration as an investment advisor under the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia. The final regulation effectively repeals the stopgap provisions of the regulation and adopts in substantial part

the model regulation developed by the members of the North American Securities Administrators Association, Inc. (the trade association of state securities regulators) to comply with the statutory requirements of the Dodd-Frank Wall Street Reform and Consumer Protections Act. 21VAC5-80-215 generally exempts an investment advisor from state registration requirements if the advisor is (i) not subject to disqualification for registration based upon the advisor's prior disciplinary history, and (ii) solely advises certain types of funds that meet the definition of a qualifying private fund under the provisions of 17 CFR 275.203(m)-1. The exemption covers advisors to venture capital funds and, in specific circumstances, advisors to funds that are eligible for exclusion from the definition of an investment company under § 3(c)(1) of the Investment Company Act of 1940. The regulation also contains a grandfather clause that allows currently exempt private fund advisors to remain exempt provided the advisor meets certain specified conditions. Private fund advisors registered with the Securities and Exchange Commission are not eligible. In addition, to qualify for the exemption, advisors must make certain notice filings and pay a notice filing fee. The only change from the proposed version of the regulation is a change in date from May 1, 2012, to May 7, 2012, in three places in 21VAC5-80-215 H.

AT RICHMOND, MAY 4, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2012-00009

Ex Parte: In the matter of
Adopting a Revision to the Rules
Governing the Virginia Securities Act

ORDER ADOPTING AMENDED RULES

By Order entered on February 14, 2012, all interested persons were ordered to take notice that the State Corporation Commission ("Commission") would consider the adoption of a revision to Chapter 80 of Title 21 of the Virginia Administrative Code ("Regulations") entitled "Rules and Forms Governing Virginia Securities Act" ("Order to Take Notice"). On February 16, 2012, the Division of Securities and Retail Franchising ("Division") mailed the Order to Take Notice of the proposed Regulations to all interested parties pursuant to the Virginia Securities Act, § 13.1-501 et seq. of the Code of Virginia. The Order to Take Notice described the proposed regulation and afforded interested parties an opportunity to file comments.

The proposed amendment to Commission Rule ("Rule") 21 VAC 5-80-215 replaces the temporary registration exemption for investment advisors created by the Commission in 2011. The temporary registration exemption was necessitated by the adoption of federal law known as the

Dodd Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"). When the bill became law, a portion of Dodd-Frank increased regulation over private fund advisors that were previously unregulated under state and federal law by eliminating the private advisor exemption under Section 203 (b) (3) of the Investment Advisors Act of 1940. Dodd-Frank instructed the Securities and Exchange Commission ("SEC") to promulgate rules to implement the new legislation, and while the SEC was crafting a new exemption for federal covered advisors, it granted an extension to private fund advisors formerly exempt prior to the adoption of Dodd-Frank.

The adoption of the SEC extension necessitated that Virginia address that portion of its regulations. The Commission addressed the gap in 2011 by amending Rule 21 VAC 5-80-210 A 7, to remove the old exclusion for investment advisors that were exempt from registration under prior federal law and adopting an interim exemption, Rule 21 VAC 5-80-215, to comport with the interim SEC exemption. This interim exemption expired on March 30, 2012.

The North American Securities Administrators Association, Inc. ("NASAA"), the trade association for the state securities regulators, assisted the states with the drafting of a model uniform exemption for state covered advisors. The proposed exemption allows certain specifically defined private fund advisors to be exempt from registration if the advisors provide specific disclosures and financial information to their customers. The proposed exemption was substantially vetted nationwide before being adopted by state regulators as the model rule. The model rule is a uniform approach to the exemption of certain private fund advisors who meet the express criteria in the proposed amended Rule 21 VAC 5-80-215. Adoption of this exemption provides the investment advisory industry the ability to be uniformly regulated from state to state.

The Division received timely filed comments from three law firms and one investment advisory trade association. None of those commenting requested a hearing.

The California law firm of Gunderson Dettmer ("Gunderson") requested that: (1) the Commission clarify that the definition of "3 (c) (1) fund"¹ in Paragraph A. 4 of the proposed Rule does not include a § 3 (c) (7) fund; the Commission replace the definition of "qualified client" in Paragraph C. 1 of the proposed Rule with the definition of accredited investor found in 17 C.F.R. § 230.501 of the Securities Act of 1933 that is used for defining investors qualified for private offerings under the federal law; the Commission revise the proposed disclosure requirements of Paragraph C. 2 of the proposed Rule to only apply to non-accredited investors;² and the Commission should revise the proposed Rule, Paragraph H, a grandfathering provision to be effective on May 1, 2013.

The Virginia law firm of Hirschler Fleischer ("Hirschler") filed comments. Hirschler also requested that the "qualified client" definition be replaced with "accredited investor." The firm further requested that separate entities and accounts that follow a "private fund strategy" but do not qualify for the exemption be allowed to claim the exemption. In addition, Hirschler requested that "fund of funds" or feeder funds³ not be required to provide audited financial statements unless the funds that the feeder fund invests in also produced audited financial statements.

The third comment was from the Virginia law firm of Hunton and Williams ("Hunton"). The firm's comments also included a request that the "qualified client" definition be replaced with the "accredited investor" definition. In addition, Hunton commented that the proposed exemption was different from that proposed by the SEC and that venture capital funds appear to have distinguishing treatment. Further, Hunton stated that the mandated disclosures in Paragraph C. 2 are vague. Finally, Hunton requested that the grandfathering provision in Paragraph H. 4 be extended.

On April 26, 2012, the Division filed a response to the comments filed with the Commission in which it addressed each of the commenter's suggested revisions. The Division recommended that the Commission adopt the Rule as proposed, primarily because the changes requested would be detrimental to private fund advisors claiming the exemptions. The Division states that non-uniformity among states could cause confusion and difficulty with compliance for private fund advisors.

NOW THE COMMISSION, upon consideration of the proposed amendment to the Rule, the filed comments, the Division's response, and the record in this case, is of the opinion and finds that the proposed amendment to the Rule should be adopted.

Accordingly, IT IS ORDERED THAT:

(1) The proposed Rule is attached hereto, made a part hereof, and is hereby ADOPTED effective May 7, 2012.

(2) This matter is dismissed from the Commission's docket, and the papers herein shall be placed in the file for ended causes.

AN ATTESTED COPY of this Order shall be sent to each of the following by regular mail by the Division to: S. Brian Farmer, Esquire, Hirschler Fleischer, P.O. Box 500, Richmond, Virginia 23218-0500; David T. Bellaire, General Counsel, Financial Services Institute, 607 14th Street, N.W., Washington, D.C. 20005; Cyane B. Crump, Esquire, Hunton & Williams, LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219; and Sean Caplice, Esquire, Gunderson Dettmer, 1200 Seaport Boulevard, Redwood City, California 94063; the North American Securities Administrators Association, Inc., 750 First Street, N.E., Suite 1140, Washington, D.C. 20002; the Commission's

Regulations

Division of Information Resources; the Commission's Office of General Counsel; and such other persons as the Division deems appropriate.

¹ A 3 (c) (1) fund is a fund that is eligible for the exclusion from the definition of an investment company under § 3 (c) (a) of the Investment Company Act of 1940.

² This request assumes that the Commission would replace the definition of "qualified client" with "accredited investor."

³ Fund of funds or feeder funds are companies that invest in other fund companies and make no direct investments.

21VAC5-80-215. Exemption for certain private advisors.

~~Registration under the Act shall not be required of any investment advisor or its investment advisor representative whose only client is or clients are a corporation, general partnership, limited partnership, limited liability company, trust, or other legal organization that:~~

- ~~1. Has assets of not less than \$5,000,000 and~~
- ~~2. Receives investment advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries, provided the investment advisor was exempt from registration pursuant to § 203(b)(3) of the Investment Advisors Act of 1940 immediately prior to July 21, 2011, and the investment advisor is subject to SEC Rule 203-1(e) granting an extension to investment advisors formerly exempt from registration under § 203(b)(3) of the Investment Advisors Act of 1940 until March 30, 2012, who would otherwise have been required to register with the SEC by July 21, 2011.~~

A. For purposes of this section, the following definitions shall apply:

1. "Value of primary residence" means the fair market value of a person's primary residence, subtracted by the amount of debt secured by the property up to its fair market value.
2. "Private fund advisor" means an investment advisor who provides advice solely to one or more qualifying private funds.
3. "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, 17 CFR 275.203(m)-1.
4. "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under § 3(c)(1) of the Investment Company Act of 1940, 15 USC § 80a-3(c)(1).
5. "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(l)-1, 17 CFR 275.203(l)-1.

B. Subject to the additional requirements of subsection C of this section, a private fund advisor shall be exempt from the

registration requirements of § 13.1-504 of the Act if the private fund advisor satisfies each of the following conditions:

1. Neither the private fund advisor nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, 17 CFR 230.262;
2. The private fund advisor files with the commission each report and amendment thereto that an exempt reporting advisor is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, 17 CFR 275.204-4; and
3. The private fund advisor pays a notice fee in the amount of \$250.

C. In order to qualify for the exemption described in subsection B of this section, a private fund advisor who advises at least one (3)(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in subsection B of this section, comply with the following requirements:

1. The private fund advisor shall advise only those 3(c)(1) funds (other than venture capital funds) whose outstanding securities (other than short-term paper) are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, 17 CFR 275.205-3, at the time the securities are purchased from the issuer;

2. At the time of purchase, the private fund advisor shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

- a. All services, if any, to be provided to individual beneficial owners;
- b. All duties, if any, the investment advisor owes to the beneficial owners; and
- c. Any other material information affecting the rights or responsibilities of the beneficial owners; and

3. The private fund advisor shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund, and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

D. If a private fund advisor is registered with the Securities and Exchange Commission, the advisor shall not be eligible for this exemption and shall comply with the notice filing requirements applicable to federal covered investment advisors in § 13.1-504 of the Act.

E. A person is exempt from the registration requirements of § 13.1-504 of the Act if he is employed by or associated with an investment advisor that is exempt from registration in this

Commonwealth pursuant to this section and does not otherwise act as an investment advisor representative.

F. The report filings described in subdivision B 2 of this section shall be made electronically through the IARD system. A report shall be deemed filed when the report and the notice fee required by subdivision B 3 of this section are filed and accepted by the IARD system on the commission's behalf.

G. An investment advisor who becomes ineligible for the exemption provided by this section must comply with all applicable laws and regulations requiring registration or notice filing within 90 days from the date the investment advisor's eligibility for this exemption ceases.

H. An investment advisor to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in subdivision C 1 of this section is eligible for the exemption contained in subsection B of this section if the following conditions are satisfied:

1. The subject fund existed prior to May [± 7], 2012;
2. As of May [± 7], 2012, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in subdivision C 1 of this section;
3. The investment advisor discloses in writing the information described in subdivision C 2 of this section to all beneficial owners of the fund; and
4. As of May [± 7], 2012, the investment advisor delivers audited financial statements as required by subdivision C 3 of this section.

VA.R. Doc. No. R12-3113; Filed May 4, 2012, 3:45 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 44 (2011)

Continuing the Domestic Violence Prevention and Response Advisory Board

Importance of the Issue

The preservation of peace in our communities and the protection of all citizens of the Commonwealth from violence are fundamental priorities of government. Unfortunately, every year, thousands of Virginians suffer the indignity of domestic violence and experience emotional, physical, psychological and financial harm as a result of these crimes. Victimization strikes people of all ages and abilities, as well as all economic, racial, and social backgrounds. Furthermore, the physical and emotional trauma suffered by victims of domestic and sexual violence, often compounded by silence and stigma surrounding the crime, calls for special attention in our prevention and response efforts.

According to the Virginia Department of State Police, 4,758 violent sex offenses, including rape, sodomy, and sexual assault with an object, were reported in 2011 in jurisdictions throughout the Commonwealth. These acts of violence resulted in 3,133 victims aged seventeen and under. Unfortunately, these numbers do not reflect the complete picture relating to acts of sexual and domestic violence in Virginia because many victims do not report the incident to law enforcement.

Domestic and sexual violence impacts all segments of our society, and as long as instances of these acts of violence exist, Virginia must continue the fight against these heinous crimes.

In April 2010, the U.S. Department of Education, the Federal Bureau of Investigation, and the U.S. Secret Service released a report indicating that the incidents of college campus violence have drastically increased in the past 20 years. One in five women who attend college will be the victim of a sexual assault during her four years on campus. The Commonwealth's institutions of higher education, as demonstrated by events over the last several years, are not immune from these acts of campus violence.

To make Virginia's citizens, families, and communities safer, it is appropriate that the Commonwealth dedicate resources to prevent, combat and reduce domestic violence in Virginia.

Establishment of the Domestic Violence Prevention and Response Advisory Board

While many localities have taken necessary steps to address domestic violence in their communities, public policymakers must continuously strive to improve the services and support for Virginia's domestic violence victims and survivors. Statewide collaboration is essential in order to provide services to victims; to create programs aimed at preventing

and responding to such tragedies; and to hold offenders accountable.

The Domestic Violence Prevention and Response Advisory Board, established on October 1, 2010, considered and endorsed nineteen recommendations. The recommendations are intended to provide an initial conceptual framework for improving services to children exposed to domestic violence, clarifying protective order processes, enhancing services and community response to traditionally underserved victims, and making Virginia's college campuses safer. The full report can be found at <http://www.publicsafety.virginia.gov/Initiatives/DV/DVPrevention-Response-2011-Report.pdf>.

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 Section 2.2-134 of the *Code of Virginia*, and subject always to my continuing and ultimate authority and responsibility to act in such matters, I hereby continue the Governor's Domestic Violence Prevention and Response Advisory Board. This Board will continue to work with state agencies, local agencies, and stakeholders to consider ways to implement the 2011 recommendations and where appropriate, make any other findings and recommendations for Improvement to our laws, policies and procedures to enhance Virginia's response to domestic violence at all levels.

This Advisory Board will continue to promote ongoing collaboration among relevant state and local agencies, as well as private sector and community partners involved in domestic violence prevention, enforcement, response and recovery efforts.

Composition of the Advisory Board

The Governor's Domestic Violence Prevention and Response Advisory Board shall operate under the direction of the Secretary of Public Safety. Recognizing that these efforts will require the work of individuals across a broad spectrum of professions and with varying expertise, the Advisory Board shall consist of designees from the following agencies and organizations:

- Office of the Attorney General;
- Supreme Court of Virginia;
- Commonwealth's Attorneys' Services Council;
- Virginia Association of Commonwealth's Attorneys;
- Virginia Association of Chiefs of Police;
- Virginia Sheriffs' Association;
- Virginia Department for the Aging;
- Virginia Department of Behavioral Health and Developmental Services;
- Virginia Department of Corrections;
- Virginia Department of Criminal Justice Services;
- Virginia Department of Education;
- Virginia Department of Health;

Virginia Department of Housing and Community Development;
Virginia Department of Juvenile Justice;
Virginia Department of Social Services;
Virginia Department of State Police;
Virginia State Crime Commission;
Family and Children's Trust Fund of Virginia;
Virginia Center on Aging;
Virginia Poverty Law Center;
Criminal Injuries Compensation Fund;
Virginia Sexual and Domestic Violence Action Alliance;
Virginia Association of Campus Law Enforcement Administrators, Inc.;
Virginia Chapter of the International Association of Forensic Nurses;
Virginia Network for Victims and Witnesses of Crime, Inc.; and
Representatives from the Virginia Senate and House of Delegates.

Other members may be added at the discretion of the Secretary of Public Safety.

Staff support to the Advisory Board shall be provided by the Office of the Governor, the Office of the Secretary of Public Safety, the Virginia Department of Criminal Justice Services, the Virginia Department of Social Services, and such other agencies as the Governor may designate. All Cabinet Secretariats and executive branch agencies shall cooperate fully with the Advisory Board and render such assistance as may be requested.

Duties of the Advisory Board

The Advisory Board's responsibilities shall include:

- Assisting with the implementation of adopted recommendations in the Board's 2011 Report;
- Recommending strategies for improving services to children who have experienced, witnessed, or been exposed to the effects of domestic violence;
- Continuing to make recommendations as necessary to improve Virginia's protective order process and providing input regarding how to further enhance the enforcement of protective orders;
- Working with community partners and state agencies to enhance services and community response to victims of domestic violence who are traditionally underserved; and
- Continuing to investigate ways to make Virginia's college campuses safer and reduce incidents of violence of all kinds, to include sexual assault on campuses.

The Advisory Board shall submit to the Governor its report regarding implementation activities relating to the 2011 recommendations and any additional findings and recommendations on matters potentially impacting the

development of the Executive Budget no later than September 15, 2012. The Board shall submit a final report of its activities, no later than December 1, 2012. Should the Advisory Board be extended beyond a year, this pattern of reporting shall continue for the duration of the Board.

An estimated 200 hours of staff time will be required to support the work of the Commission.

Necessary funding to support the Commission and its staff shall be provided from federal funds, private contributions, and state funds appropriated for the same purposes as the Advisory Board, as authorized by Section 2.2-135 of the Code of Virginia, as well as any other private sources of funding that may be identified. Estimated direct costs for this Commission are \$5,000.00 per year.

This Executive Order shall be effective April 25, 2012, and shall remain in full force and effect until one year from its signing, unless amended or rescinded by further executive order.

Given under my hand and under Seal of the Commonwealth of Virginia this 25th day of April 2012.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Air Pollution Control Board has conducted a small business impact review of **9VAC5-220, Variance for Rocket Motor Test Operations at Atlantic Research Corporation Orange County Facility**, and determined that this regulation should be retained in its current form. The State Air Pollution Control Board is publishing its report of findings dated April 13, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides the source with the most cost-effective means of fulfilling ongoing state and federal requirements that protect air quality. The regulation's level of complexity is appropriate to ensure that the regulated entity is able to meet its legal mandates as efficiently and cost effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was last reviewed in 2002. In that time, it has gotten generally less expensive to characterize, measure, and mitigate the regulated pollutants that contribute to poor air quality. This regulation continues to provide the most efficient and cost-effective means to determine the level and impact of excess emissions and to control those excess emissions. The department, through examination of the regulation, has determined that the regulatory requirements currently minimize the economic impact of emission control regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

BOARD FOR ARCHITECTS, PROFESSIONAL ENGINEERS, LAND SURVEYORS, CERTIFIED INTERIOR DESIGNERS AND LANDSCAPE ARCHITECTS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects conducted a small business impact review of **18VAC10-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects is publishing its report of findings dated December 30, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations are necessary for the board to comply with § 2.2-4007.02 of the Code of Virginia and Chapter 321 of the 2008 Acts of Assembly.
2. No public comments were received.
3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations.
5. The regulations were last effective on August 8, 2008, with the adoption of the Model Public Participation Guidelines pursuant to Chapter 321 of the 2008 Acts of Assembly.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects conducted a small business impact review of **18VAC10-20, Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects Regulations**, and determined that this regulation should be retained in its current form. The Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects is publishing its report of findings dated December 30, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations establish minimum licensing requirements for architects, professional engineers, land surveyors, and landscape architects. Minimum standards are necessary for these professions because these individuals design the very infrastructure of the country including buildings, bridges, and other important structures. Ensuring that these professionals meet minimum education, training, experience, and examination standards is crucial for the protection of the public health, safety, and welfare.

2. Only one public comment was received. The comment recommends allowing professionals, who originally authored plans, to be allowed to come back at any time and amend those plans. This is not consistent with the board's responsibility to ensure that only minimally qualified professionals edit plans. Minimal qualifications are, in part, established through a 16-hour continuing education requirement, along with requiring that an individual is currently licensed.

3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations but instead work in concert with them.
5. Apart from this periodic review, the regulations are currently under general review to amend the language to ensure that it is written clearly and is easily understandable. In the current general regulatory review, each profession-specific requirement was evaluated and the regulations were studied on a macro level to ensure consistent language in similarly themed areas of the regulations by implementing the simplest form of text to achieve the most clarity for all affected members of the public. The current proposed regulations were approved by the Secretary of Commerce and Trade on August 15, 2011, and are now being reviewed by the Governor.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

VIRGINIA BOARD FOR ASBESTOS, LEAD, MOLD, AND HOME INSPECTORS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Board for Asbestos, Lead, Mold, and Home Inspectors conducted a small business impact review of **18VAC15-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Virginia Board for Asbestos, Lead, Mold, and Home Inspectors is publishing its report of findings dated November 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure that individuals licensed as asbestos, lead, mold, and home inspectors in Virginia have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or

regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC15-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC15-11, model Public Participation Guidelines. The board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Board for Asbestos, Lead, Mold, and Home Inspectors conducted a small business impact review of **18VAC15-20, Virginia Asbestos Licensing Regulations**, and determined that this regulation should be retained in its current form. The Virginia Board for Asbestos, Lead, Mold, and Home Inspectors is publishing its report of findings dated November 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-501 of the Code of Virginia mandates the board to promulgate regulations and standards for the training and licensing of asbestos workers, supervisors, inspectors, management planners, project designers, and project monitors. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare and ensure that individuals licensed as asbestos workers, supervisors, inspectors, management planners, project designers, and project monitors have met minimum competencies. No complaints and only two comments were received during the public comment period. One comment was in support of the regulation and a mechanism is already in place to address the concern in the second comment received. Therefore, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008, which amended the asbestos contractor responsibilities section and established project monitor responsibilities. The board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in their current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Board for Asbestos, Lead, Mold, and Home Inspectors conducted a small business impact review of **18VAC15-30, Virginia Lead-Based Paint Activities Regulations**, and determined that this regulation should be retained in its current form. The Virginia Board for Asbestos, Lead, Mold, and Home Inspectors is publishing its report of findings dated November 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-501 mandates the board to promulgate regulations and standards for the training and licensing of lead-abatement workers, supervisors, inspectors, project designers, and risk assessors. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare and ensure that individuals licensed as lead-abatement workers, supervisors, inspectors, project designers, and risk assessors in Virginia have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2010 that resulted in proposed amendments to the regulation, including the sections regarding qualifications for individual licensure; renewal required; qualifications for renewal; professional responsibility; and grounds for denial of application, denial of renewal, or discipline. This is being done to clarify training requirements upon entry and renewal and to reiterate that training must be kept current as well as the license. Currently the proposed amendments are undergoing Executive Branch Review. The board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in their current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Board for Asbestos, Lead, Mold, and Home Inspectors conducted a small business impact review of **18VAC15-40, Virginia Certified Home Inspectors Regulations**, and determined that this regulation should be retained in its current form. The Virginia Board for Asbestos, Lead, Mold, and Home Inspectors is publishing its report of findings dated November 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-501 of the Code of Virginia mandates the board to promulgate regulations and standards for the training and licensing of certified home inspectors. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety and welfare and ensure that individuals licensed as certified home inspectors in Virginia have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2007 which resulted in amendments to the regulation. Those amendments were to the definitions, the qualifications for certification, the certified home inspection contract provisions, the certified home inspection report provisions, the conflict of interest provisions, and the unworthiness and incompetence provisions. A continuing professional education requirement was added. Several sections were amended to conform to DPOR's Model Regulations and had no substantive impact. In addition, a fast-track amendment is currently undergoing executive branch review that removes the requirement that training courses have to be taken in a classroom setting to be accepted as meeting the Certified Home Inspector entry requirements. The current regulations allow Continuing Professional Education to be taken outside of a classroom setting, such as online courses, and this amendment will make the regulations regarding pre-certification training and continuing professional education requirements to be more consistent with each other. The Board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Board for Asbestos, Lead, Mold, and Home Inspectors conducted a small business impact review of **18VAC15-60, Mold Inspector and Mold Remediation Licensing Regulations**, and determined that this regulation should be retained in its current form. The Virginia Board for Asbestos, Lead, Mold, and Home Inspectors is publishing its report of findings dated November 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-501 mandates the board to promulgate regulations and standards for the training and licensing of mold remediation workers, remediation supervisors, and

inspectors. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare and ensure that individuals licensed as mold remediator workers, remediator supervisors, and inspectors in Virginia have met minimum competencies. Ten comments were received during the public comment period. Comments included support of the regulation as well as support for the repeal of the regulation. Given that licensure of mold inspectors and mold remediators is required by the Code of Virginia, rescission of the regulation would cause the board to be out of compliance with the enabling statute. Other comments received are addressed by the current regulations or are outside of the board's authority. A number of the comments were general and did not provide a specific way to address the expressed concern through regulation. Therefore, the board did not find a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The regulation was first effective July 1, 2011, and this periodic and small business review is the only periodic review of the regulation. The board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in their current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

AUCTIONEERS BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Auctioneers Board conducted a small business impact review of **18VAC25-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Auctioneers Board is publishing its report of findings dated January 19, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations are necessary for the board to comply with § 2.2-4007.02 of the Code of Virginia and Chapter 321 of the 2008 Acts of Assembly.
2. No public comments were received.
3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations.
5. The regulations were last effective on December 24, 2008, with the adoption of the Model Public Participation Guidelines pursuant to Chapter 321 of the 2008 Acts of Assembly. No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Auctioneers Board conducted a small business impact review of **18VAC25-21, Regulations of the Virginia Auctioneers Board**, and determined that this regulation should be retained in its current form. The Auctioneers Board is publishing its report of findings dated January 19, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations establish minimum licensing requirements for auctioneers and auction firms. Ensuring that these individuals meet minimum education, training, and examination standards is crucial for the protection of the public health, safety, and welfare.
2. No public comments were received. Minimal qualifications are, in part, established through a 6-hour continuing education requirement, along with requiring that an individual is currently licensed.
3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations but instead work in concert with them.
5. Apart from this periodic review, the regulations are currently under general review to amend the language to ensure that it is written clearly and is easily understandable. The current proposed regulations were approved by the Secretary of Commerce and Trade on November 11, 2010, and are now being reviewed by the Governor.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

BOARD FOR BARBERS AND COSMETOLOGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated

General Notices/Errata

December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure individuals and businesses licensed or certified by the board have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 which resulted in the repeal of 18VAC41-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC41-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-30, Hair Braiding Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a hair braiding, hair braider salon, or hair braider school license or temporary license. The board is also tasked with ensuring that its regulants meet standards of practice that

are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2006. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-40, Wax Technician Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a wax technician, wax technician instructor, waxing salon, or waxing school license or temporary license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2004. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-50, Tattooing Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a tattooer, tattooer apprentice, limited term tattooer, permanent cosmetic tattooer, master permanent cosmetic tattooer, tattooing instructor, permanent cosmetic tattooing instructor, tattoo parlor, limited term tattoo parlor, permanent cosmetic tattoo salon, tattooing school, or permanent cosmetic tattooing school license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Comments received during the public comment period revolved around a select few points, mainly (i) the perceived lack of enforcement of the unlicensed practice of tattooing and (ii) the differentiation of permanent cosmetic tattooing from tattooing. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2006. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology conducted a small business impact review of **18VAC41-60, Body-Piercing Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate

regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a body piercer, body piercer salon, body piercer apprentice, body piercer ear only, or body piercer ear only salon license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Comments received during the public comment period revolved around a select few points, mainly (i) the perceived lack of enforcement of safety and sanitation procedures and (ii) the differentiation of ear only body piercing from body piercing. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2007. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Barbers and Cosmetology has conducted a small business impact review of **18VAC41-70, Esthetics Regulations**, and determined that this regulation should be retained in its current form. The Board for Barbers and Cosmetology is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Barbers and Cosmetology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Barbers and Cosmetology provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive an esthetician, master esthetician, esthetics instructor, master esthetics instructor, esthetics spa, or esthetics school license or temporary license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. Comments received during the public comment period revolved around a select few points, mainly (i) the master esthetics practical exam and (ii) the

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desire for the board to require continuing education. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2007. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

BOARD FOR BRANCH PILOTS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Branch Pilots conducted a small business impact review of **18VAC45-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Branch Pilots is publishing its report of findings dated December 30, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations are necessary for the board to comply with § 2.2-4007.02 of the Code of Virginia and Chapter 321 of the 2008 Acts of Assembly.
2. No public comments were received.
3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations.
5. The regulations were last effective on August 8, 2008, with the adoption of the model Public Participation Guidelines pursuant to Chapter 321 of the 2008 Acts of Assembly.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Branch Pilots conducted a small business impact review of **18VAC45-20, Board for Branch Pilots Regulations**, and determined that this regulation should be retained in its current form. The Board for Branch Pilots is publishing its report of findings dated December 30, 2011, to support this

decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations are necessary to ensure that only minimally qualified individuals operate large vessels in Virginia's waterways, which is crucial for the protection to the public health, safety, and welfare.
2. No public comments were received.
3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations.
5. Apart from this periodic review, the regulations are currently in the final stage of general review. The final regulations were approved by the Secretary of Commerce and Trade on October 3, 2011, and are currently being reviewed by the Governor.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

CEMETERY BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Cemetery Board conducted a small business impact review of **18VAC47-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Cemetery Board is publishing its report of findings dated March 1, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure licensed cemetery companies and registered sales personnel have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC47-10, the existing Public Participation Guidelines at that time, and adoption of

18VAC47-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Cemetery Board conducted a small business impact review of **18VAC47-20, Cemetery Board Rules and Regulations**, and determined that this regulation should be retained in its current form. The Cemetery Board is publishing its report of findings dated March 7, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Cemetery Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Cemetery Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a cemetery company license and sales personnel registration. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2007. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

COMMON INTEREST COMMUNITY BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Common Interest Community Board conducted a small business impact review of **18VAC48-10, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Common Interest Community Board is publishing its report of findings dated

December 8, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to effectively regulate common interest communities. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or contravene federal or state law or regulation. This is the first periodic review of the regulation since becoming effective in 2008. At its December 1, 2011, meeting, the board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Common Interest Community Board conducted a small business impact review of **18VAC48-20, Condominium Regulations**, and determined that this regulation should be retained in its current form. The Common Interest Community Board is publishing its report of findings dated December 8, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 55-79.98 of the Code of Virginia mandates the Common Interest Community Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or contravene federal or state law or regulation.

Through emergency and final regulations, which became effective on July 9, 2009, the regulations were transferred from the Real Estate Board to the Common Interest Community Board. The most recent action taken was through the fast-track process to promulgate regulations governing the

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return of bonds and letters of credit as authorized by § 55-79.84:1 of the Code of Virginia. This action became effective April 1, 2011. The regulation is currently undergoing a general review. At its December 1, 2011, meeting, the board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Common Interest Community Board conducted a small business impact review of **18VAC48-40, Time-share Regulations**, and determined that this regulation should be retained in its current form. The Common Interest Community Board is publishing its report of findings dated December 8, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 55-396 of the Code of Virginia authorizes the Common Interest Community Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or contravene federal or state law or regulation.

Through final regulations, which became effective on November 27, 2008, the regulations were transferred from the Real Estate Board to the Common Interest Community Board.

At its December 1, 2011, meeting, the board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Common Interest Community Board conducted a small business impact review of **18VAC48-50, Common Interest Community Manager Regulations**, and determined that this regulation should be retained in its current form. The

Common Interest Community Board is publishing its report of findings dated December 8, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-2349 A of the Code of Virginia mandates the Common Interest Community Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or contravene federal or state law or regulation.

The initial regulations became effective on April 1, 2010. The regulation is currently undergoing executive branch review and is in the final stage of that process.

At its December 1, 2011, meeting, the board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form. Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Common Interest Community Board conducted a small business impact review of **18VAC48-60, Common Interest Community Board Management Information Fund Regulations**, and determined that this regulation should be retained in its current form. The Common Interest Community Board is publishing its report of findings dated December 8, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 55-530.1 of the Code of Virginia authorizes the Common Interest Community Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or contravene federal or state law or regulation.

Through final regulations, which became effective on November 27, 2008, the regulations were transferred from the Real Estate Board to the Common Interest Community Board. A subsequent fast-track regulation amendment, effective May 15, 2009, standardized the renewal dates for association registrations.

At its December 1, 2011, meeting, the board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

BOARD FOR CONTRACTORS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated December 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure contracting businesses and individuals certified or licensed as a tradesman, gas fitter, certified elevator mechanic, backflow prevention device worker, or water well systems provider have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC50-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC50-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-22, Board for Contractors Regulations**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated December 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. Sections 54.1-201.5 and 54.1-1102 of the Code of Virginia mandate that the Board for Contractors promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The regulation does not have an adverse economic impact on small businesses. Rather, the regulation allows businesses that meet specific minimum competencies to become Virginia licensed contractors.
2. One comment was received during the public comment period that suggested changing the license term for tradesman.
3. The regulation is clearly written and easily understandable.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. The most recent evaluation occurred in 2010 that resulted in amendments to increase fees in order to ensure that the Board for Contractors remains in compliance with § 54.1-113 of the Code of Virginia. The fee amendment went into effect April 1, 2010. A subsequent emergency regulation amendment, effective 2010, changed the existing regulation to include a provision to address temporary license requirements pursuant to an act of the 2010 General Assembly. Currently, an emergency amendment is pending executive branch review. The emergency amendment creates residential building energy analyst firm licensure for firms pursuant to the 2011 Acts of Assembly. No changes, including changes in technology and economic conditions, have been identified that would affect licensed contractors or firms seeking licensure as a contractor. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Contractors conducted a small business impact review of **18VAC50-30, Individual License and Certification Regulations**, and determined that this regulation should be retained in its current form. The Board for Contractors is publishing its report of findings dated December 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. Sections 54.1-201.5 and 54.1-1102 of the Code of Virginia mandate that the Board for Contractors promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The regulation does not have an adverse economic impact on small businesses nor individual licensure or certification. Rather, the regulation allows individuals who meet specific minimum competencies to become licensed or certified in Virginia.
2. One comment was received during the public comment period that suggested changing the license term for tradesman.
3. The regulation is clearly written and easily understandable.
4. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.
5. The most recent evaluation occurred in 2010 that resulted in amendments to increase fees in order to ensure that the Board for Contractors remains in compliance with § 54.1-113 of the Code of Virginia. The fee amendment went into effect April 1, 2010. Currently, a proposed amendment to the regulation is pending executive branch review to include "Certified Accessibility Mechanics" among its regulant population pursuant to the 2010 Acts of Assembly. The proposed amendment also includes an endorsement for "limited use/limited application" elevators. There is also a fast-track amendment that is pending executive branch review. The emergency amendment creates residential building energy analysts licensure for individuals pursuant to the 2010 Acts of Assembly. No changes, including changes in technology and economic conditions, have been identified that would affect licensed individuals seeking licensure as a building energy analyst or certified accessibility mechanic.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Environmental Quality conducted a small business impact review of **9VAC15-30, Regulations for the Certification of Recycling Machinery and Equipment for Local Tax Exemption Purposes**, and determined that this regulation should be retained in its current form. The Department of Environmental Quality is publishing its report of findings dated April 2, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides recycling facilities with criteria concerning equipment that is eligible for reduced tax rates. No complaints or comments were received concerning the regulation from the public during the comment period. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation provides a means for persons (businesses) to claim a unique tax exemption for costs incurred for recycling equipment. This regulation was last reviewed in 2005. Technology, economic conditions, and other factors have not changed in ways that would make this regulation less efficient and cost-effective in terms of protecting human health and the environment or meeting legal mandates.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth. If small businesses purchase eligible recycling equipment, their tax rates may be reduced.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Water Quality Restoration Study (TMDL) for the Chickahominy River - Headwaters to Rt. 33 Impaired for Aquatic Life Use in Hanover and Henrico Counties

Public meeting: Twin Hickory Branch Library, 5001 Twin Hickory Road, Glen Allen, Virginia 23059. Thursday, June 7, 2012, at 2 p.m. and 6 p.m. Both meetings are open to the public.

Purpose of notice: The Virginia Department of Environmental Quality and consultant, MapTech Inc, are presenting

preliminary data for the initiation of a total maximum daily load (TMDL) study to restore water quality at two public meetings (same content), an opportunity for the public to share their knowledge of the watershed, and a public comment period following the meetings (June 8, 2012, through July 9, 2012).

Meeting description: Public meetings on a study to restore water quality along the Chickahominy River's headwaters to Rt. 33 in Hanover and Henrico counties. The watershed includes the communities of Wyndham, a portion of Short Pump (North of Broad Street), Meredith Woods, Twin Hickory, and Broad Meadows. Meeting will feature information gathered for the watershed including land use, water quality monitoring, and suspected cause(s) of impairment. Those attending are invited to ask questions and to contribute their knowledge of the watershed. Presentations will be posted following the meetings at: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLDevelopment/DocumentationforSelectTMDLs.aspx>.

Description of study: Virginia agencies have been working to identify the potential cause(s) of the aquatic life use impairment in the waters of the Chickahominy River and in the following waterway:

Stream	County/City	Length (mi.)	Impairment
Chickahominy River	Hanover & Henrico	7.06	Aquatic Life Use

Biologists assess the presence, absence, and prevalence of aquatic species, and evaluate stream habitat and water quality to determine a score of overall stream health. The headwaters of the Chickahominy River are impaired for the aquatic life use based on assessments of the aquatic community that scored poorly. The study will report on the most probable stressor(s) of the aquatic community and will recommend TMDLs for the impaired waters based on the determination of most probable stressor(s). A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards (AKA "pollution diet"). In order to meet standards, pollutants should be reduced to the TMDL amount. DEQ must develop TMDLs for all impaired waterways per the Clean Water Act.

How a decision is made: The development of a TMDL includes two sets of public meetings and comment periods; one to initiate the study and another to present the final draft TMDL report. This meeting is the first for the Chickahominy River headwaters project for aquatic life use. After the final public meeting and all public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency and the State Water Control Board for approval.

How to comment: DEQ accepts written comments by email, fax or postal mail. Written comments should include the

name, address and telephone number and be received by DEQ during the comment period, which will begin on Friday, June 8, 2012, and end on Monday, July 9, 2012.

Contact for additional information: Margaret Smigo, TMDL Coordinator, Department of Environmental Quality, Piedmont Regional Office, 4949 A Cox Road, Glen Allen, VA 23060, telephone (804) 527-5124, FAX (804) 527-5106, or email margaret.smigo@deq.virginia.gov.

**DEPARTMENT OF ENVIRONMENTAL QUALITY AND
DEPARTMENT OF CONSERVATION AND
RECREATION**

Water Quality Restoration in the Clinch River

Announcement of an effort to restore water quality in the Clinch River from the Big Cedar Creek confluence downstream to the Dumps Creek confluence and the following tributaries: Maiden Spring Creek and Little River in Tazewell County, Virginia, and Indian Creek, Weaver Creek, Swords Creek, Lewis Creek, and Big Cedar Creek in Russell County, Virginia.

Public meeting location: Lebanon Town Hall, 405 West Main Street, Lebanon, Virginia, on May 24, 2012, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality and the Department of Conservation and Recreation are announcing the final study report to restore water quality, a public comment opportunity, and public meeting.

Meeting description: Final public meeting on a study to restore water quality and first public meeting to develop an implementation plan.

Description of study: DEQ has been working to identify sources of bacterial contamination in the Clinch River and tributaries including Maiden Spring Creek and Little River in Tazewell County, Virginia, and Indian Creek, Weaver Creek, Swords Creek, Lewis Creek, and Big Cedar Creek in Russell County, Virginia. The streams are impaired for failure to meet the recreational use because of fecal coliform bacteria violations and violation of the E. coli standard.

During the study, the sources of bacterial contamination have been identified and total maximum daily load (TMDL) developed for the impaired waters. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, FAX, or postal mail. Written comments should include the

General Notices/Errata

name, address, and telephone number of the person commenting and be received by DEQ during the comment period, May 24, 2012, to June 25, 2012. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website at www.deq.virginia.gov/tmdl.

Contact for additional information: Martha Chapman, TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355 A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov.

Total Maximum Daily Load Studies to Restore Water Quality in Portions of Holmes Run and Tripps Run

Purpose of notice: The Department of Environmental Quality (DEQ) and the Virginia Department of Conservation and Recreation (DCR) announce a public meeting to introduce the Holmes Run and Tripps Run benthic total maximum daily load (TMDL) studies to members of the community.

Public meeting: Thursday, May 31, 2012, 6:30 p.m. to 8:30 p.m., Woodrow Wilson Library, Meeting Room 1, 6101 Knollwood Drive, Falls Church, VA 22041.

Meeting description: This is the first public meeting for these TMDL projects. The purpose of the meeting is to introduce the projects and discuss the studies with community members.

Description of study: Portions of Holmes Run and Tripps Run have been identified as impaired on the Clean Water Act § 303(d) list for not supporting Virginia's water quality aquatic life use standard due to poor health of the benthic macroinvertebrate communities. Virginia agencies are working to identify the benthic stressors causing the aquatic life use impairments in Holmes Run and Tripps Run. Below is a description of the impaired portions of Holmes Run and Tripps Run that will be addressed in this study:

Stream Name	Location	Impairment	Area (miles)	Upstream Limit	Downstream Limit
Holmes Run	Fairfax County	Aquatic Life Use Benthic Macroinvertebrates	5.78	Headwaters of Holmes Run	Start of Lake Barcroft
Tripps Run	Falls Church Fairfax County	Aquatic Life Use Benthic Macroinvertebrates	2.24	Headwaters of Tripps Run	Start of Lake Barcroft

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 public meeting will extend from May 31, 2012, to June 30, 2012. 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, Department of Environmental Quality, 13901 Crown Court, Woodbridge, VA 22193, telephone (703) 583-3859, or email jennifer.carlson@deq.virginia.gov.

FAIR HOUSING BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Fair Housing Board conducted a small business impact review of **18VAC62-10, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Fair Housing Board is publishing its report of findings dated March 1, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure that individuals certified by the board have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the adoption of 18VAC62-10, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Fair Housing Board conducted a small business impact review of **18VAC62-20, Fair Board Certification Regulations**, and determined that this regulation should be retained in its current form. The Fair Housing Board is publishing its report of findings dated March 8, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Fair Housing Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. Moreover, fair housing certification is voluntary, not mandatory. The regulation does not preclude uncertified individuals from being in the business of selling or renting dwellings as defined in the chapter nor does it have an adverse economic impact on small businesses. Rather, the regulation allows individuals who meet specific minimum competencies to receive fair housing certification. No complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2005. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

BOARD FOR GEOLOGY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Geology conducted a small business impact review of **18VAC70-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Geology is publishing its report of findings dated November 9, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure individuals certified as professional geologists have met

minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC70-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC70-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Geology conducted a small business impact review of **18VAC70-20, Rules and Regulations for the Virginia Board for Geology**, and determined that this regulation should be retained in its current form. The Board for Geology is publishing its report of findings dated November 18, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Geology to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. Moreover, certification as a Virginia professional geologist is voluntary, not mandatory. The regulation does not preclude uncertified individuals from the practice of geology in Virginia nor does it have an adverse economic impact on small businesses. Rather, the regulation allows individuals who meet specific minimum competencies to become Virginia certified professional geologists. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent evaluation occurred in 2006 that resulted in amendments that went into effect August 1, 2006. A subsequent fast-track regulation amendment, effective November 1, 2006, reduced fees for initial and renewal certifications. Currently, a fast-track amendment is pending executive branch review. The fast-track amendment extends the eligibility to take the Fundamentals of Geology exam to qualifying individuals and creates a Geologist-in-Training designation.

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No changes, including changes in technology and economic conditions, have been identified that would affect certified professional geologists or individuals seeking certification as professional geologists. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

BOARD OF HEALTH PROFESSIONS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Health Professions conducted a small business impact review of **18VAC75-20, Regulations Governing Practitioner Self-Referral**, and determined that this regulation should be retained in its current form. The Board of Health Professions is publishing its report of findings dated February 28, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The prohibitions on practitioner self-referral are set forth in Chapter 24.1 of Title 54.1 of the Code of Virginia. Regulations in Chapter 20 provide a process by which an entity can receive an advisory opinion on whether a business arrangement would constitute a violation of the law. Regulations also provide a process by which a violation can be found and a disciplinary action imposed. No such actions have been taken since passage of the law in 1993. Therefore, there is no economic impact of regulations on small businesses.

Contact Information: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Health Professions conducted a small business impact review of **18VAC75-30, Regulations Governing Standards for Dietitians and Nutritionists**, and determined that this regulation should be retained in its current form. The Board of Health Professions is publishing its report of findings dated February 22, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

There is no impact on small businesses, since the regulation is permissive and only applies to persons who are working for a federal agency or under contract with a federal agency and

who need to be able to use the protected titles of dietitian or nutritionist.

Contact Information: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Health Professions conducted a small business impact review of **18VAC75-40, Regulations Governing the Criteria for Certification of Dialysis Technicians**, and determined that this regulation should be retained in its current form. The Board of Health Professions is publishing its report of findings dated February 22, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Since certification is a requirement of law in order for dialysis care technicians to practice and since the regulation is inclusive of all credentialing organizations available for certification, there is no impact on small businesses. Renal dialysis facilities would not be able to function without dialysis technicians, and technicians are not able to practice unless they are certified in accordance with board regulations.

Contact Information: Elaine J. Yeatts, Senior Policy Analyst, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4688, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

BOARD FOR HEARING AID SPECIALISTS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Hearing Aid Specialists conducted a small business impact review of **18VAC80-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Hearing Aid Specialists is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure individuals licensed as hearing aid specialists have met

minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC80-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC80-11, model Public Participation Guidelines. The board discussed the

regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

COMMISSION ON LOCAL GOVERNMENT

Schedule for the Assessment of State and Federal Mandates on Local Governments

Pursuant to the provisions of §§ 2.2-613 and 15.2-2903(6) of the Code of Virginia, the following schedule, established by the Commission on Local Government and approved by the Secretary of Commerce and Trade and Governor McDonnell, represents the timetable that the listed executive agencies will follow in conducting their assessments of certain state and federal mandates that they administer that are imposed on local governments. Such mandates are either new (in effect for at least 24 months) or newly identified. In conducting these assessments, agencies will follow the process established by Executive Order 58 which became effective October 11, 2007. These mandates are abstracted in the Catalog of State and Federal Mandates on Local Governments published by the Commission on Local Government.

For further information contact Zachary Robbins, Senior Policy Analyst, Commission on Local Government (email zachary.robbs@dhcd.virginia.gov or telephone (804) 371-8010) or visit the Commission's website at www.dhcd.virginia.gov.

STATE AND FEDERAL MANDATES ON LOCAL GOVERNMENTS

Approved Schedule of Assessment Periods

July 2012 through June 2013 for Executive Agency Assessment of Cataloged Mandates

AGENCY	CATALOG NUMBER	ASSESSMENT PERIOD
Mandate Short Title		
CRIMINAL JUSTICE SERVICES, DEPARTMENT OF		
Residential Substance Abuse Treatment Program	SPS.DCJS031	7/1/12 to 9/30/12
EDUCATION, DEPARTMENT OF		
Classroom Placement of Twins and Other Multiples	SOE.DOE128	7/1/12 to 8/31/12
Single-Sex Education	SOE.DOE130	7/1/12 to 8/31/12
School Year to begin after Labor Day	SOE.DOE132	8/1/12 to 9/30/12
Pesticide Application Reporting	SOE.DOE136	10/1/12 to 11/30/12
Absences to Observe a Religious Holiday	SOE.DOE137	10/1/12 to 11/30/12
ELECTIONS, STATE BOARD OF		
Vacancies to be Filled by Special Election	SOA.SBE004	4/1/13 to 6/30/13
EMERGENCY MANAGEMENT, DEPARTMENT OF		
State Homeland Security Grant Program	SPS.VDEM014	10/1/12 to 11/30/12
HEALTH, DEPARTMENT OF		
Virginia Indoor Clean Air Act	SHHR.VDH029	9/1/12 to 10/31/12
Disposition of Dead Bodies	SHHR.VDH030	7/1/12 to 9/30/12
SOCIAL SERVICES, DEPARTMENT OF		
Child Abuse Records Retention	SHHR.DSS073	8/1/12 to 10/31/12
TRANSPORTATION PUBLIC-PRIVATE PARTNERSHIPS		
Public-Private Transportation Act (PPTA)	STO.VDOT039	7/1/12 to 9/30/12

General Notices/Errata

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on April 26, 2012, and April 30, 2012. 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 Thirty-Two (12)

Virginia Lottery's "\$50,000 Summer Escape Promotion" Final Rules for Game Operation (effective April 18, 2012, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Fifty-Three (12)

Virginia Lottery's "Grilling Season Text To Win Promotion" Official Rules (effective April 25, 2012, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

Director's Order Number Fifty-Four (12)

Virginia Lottery's "Grilling Season Text Sign Up Promotion" Official Rules (effective April 25, 2012, and shall remain in full force and effect unless amended or rescinded by further Director's Order)

BOARD FOR OPTICIANS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Opticians conducted a small business impact review of **18VAC100-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Opticians is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure individuals licensed as opticians have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The

regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC100-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC100-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Opticians conducted a small business impact review of **18VAC100-20, Board for Opticians Regulations**, and determined that this regulation should be retained in its current form. The Board for Opticians is publishing its report of findings dated December 27, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Board for Opticians to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Board for Opticians provides protection for the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive an optician license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2005. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL REGULATION

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Professional and Occupational Regulation conducted a small business impact review of **18VAC120-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Department of Professional and Occupational Regulation is publishing its report of findings dated December 9, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the department to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the department is better equipped to ensure individuals regulated by the department have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC120-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC120-11, model Public Participation Guidelines. The director of the department reviewed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Professional and Occupational Regulation conducted a small business impact review of **18VAC120-30, Regulations Governing Polygraph Examiners**, and determined that this regulation should be retained in its current form. The Department of Professional and Occupational Regulation is publishing its report of findings dated March 19, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. Sections 54.1-201.5 and 54.1-1802 of the Code of Virginia mandate the Director of the Department of Professional and Occupational Regulation to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The regulation does not have an adverse economic impact on small businesses nor individual licensure or registration. Rather, the regulation allows individuals who meet specific minimum competencies to become licensed or obtain intern registration in Virginia.

2. The regulation is clearly written and is easily understandable.

3. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation.

4. The most recent evaluation occurred in 2005 that resulted in amendments to increase fees to comply with § 54.1-113 of the Code of Virginia. The fee amendment went into effect August 1, 2007. Currently, a proposed amendment to the regulation is pending executive branch review. The proposed amendments (i) change the size of the Polygraph Examiners Advisory Board, (ii) allow an applicant to take portions of the examination at different dates within a one year period, (iii) clarify renewal and reinstatement requirements, and (iv) provide for a procedure to be used in the event that an examiner supervising an intern is unable to provide verification of experience. No changes, including changes in technology and economic conditions, have been identified that would affect licensed individuals seeking registration as a polygraph examiner intern or licensure as a polygraph examiner. The director, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Professional and Occupational Regulation conducted a small business impact review of **18VAC120-40, Virginia Professional Boxing and Wrestling Event Regulations**, and determined that this regulation should be retained in its current form. The Department of Professional and Occupational Regulation is publishing its report of findings dated December 9, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

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Sections 54.1-201.5 and 54.1-831 of the Code of Virginia mandate the department to promulgate regulations that implement the federal Professional Boxing Safety Act of 1996 (15 USC § 6301 et seq.) and protect the public against incompetent, unqualified, unscrupulous, or unfit persons engaging in the activities regulated by this chapter. The regulations must include requirements for (i) initial and renewal licensure; (ii) licensure and conduct of events; (iii) standards of practice for persons arranging, promoting, conducting, supervising, and participating in events; (iv) grounds for disciplinary actions against licensees; (v) records to be kept and maintained by licensees; (vi) manner in which fees are to be accounted for and submitted to the department; and (vii) minimum health coverage for injuries sustained in a boxing match. The department has direct oversight of events to assure the safety and well-being of boxers and wrestlers.

The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. Moreover, this licensure program is mandatory per the Code of Virginia. Nor does it have an adverse economic impact on small businesses. Rather, the regulation allows individuals who meet specific minimum competencies to become a promoter or participant in the professional boxing or wrestling industry.

No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation.

The most recent evaluation occurred in 2007 that resulted in amendments that went into effect September 5, 2007. A subsequent fast-track regulation amendment was promulgated, effective May 14, 2009, which added a blood testing requirement, with negative results, for hepatitis and HIV for boxers. No changes, including changes in technology and economic conditions, have been identified that would affect this regulatory program.

The director reviewed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS AND WETLAND PROFESSIONALS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Professional Soil Scientists and Wetland Professionals

conducted a small business impact review of **18VAC145-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Professional Soil Scientists and Wetland Professionals is publishing its report of findings dated January 19, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations are necessary for the board to comply with § 2.2-4007.02 of the Code of Virginia and Chapter 321 of the 2008 Acts of Assembly.
2. No public comments were received.
3. The regulations are not complex in nature.
4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulations.
5. The regulations were last effective on December 24, 2008, with the adoption of the model Public Participation Guidelines pursuant to Chapter 321 of the 2008 Acts of Assembly.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Professional Soil Scientists and Wetland Professionals conducted a small business impact review of **18VAC145-20, Professional Soil Scientists Regulations**, and determined that this regulation should be retained in its current form. The Board for Professional Soil Scientists and Wetland Professionals is publishing its report of findings dated January 19, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The current regulations establish minimum requirements for the certification of soil scientists. However, because the regulations establish requirements for a certificate program (not a licensure program), the regulations do not affect the practice of soil science by noncertified individuals.
2. Only one public comment was received. The comment did not offer any specific recommendations aside from supporting the transition of the soil scientists program from certification to licensure, a change resulting from the 2011 session of the Virginia General Assembly. The program will transition from certification to licensure on July 1, 2013.
3. The regulations are not complex in nature.

4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulation.

5. The regulations were last reviewed in 2009 to conform them to HB 2759 of the 2003 Session of the Virginia General Assembly.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Professional Soil Scientists and Wetland Professionals conducted a small business impact review of **18VAC145-30, Regulations Governing Certified Professional Wetland Delineators**, and determined that this regulation should be retained in its current form. The Board for Professional Soil Scientists and Wetland Professionals is publishing its report of findings dated January 19, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

1. The regulations establish minimum requirements for the practice of wetland delineation by certified individuals. However, because the regulations establish requirements for a certificate program (not a licensure program), the regulations do not affect the practice of wetland delineation by noncertified individuals.

2. No public comments were received.

3. The regulations are not complex in nature.

4. The regulations do not overlap, duplicate, or conflict with federal or state laws or regulation.

5. The regulations were last reviewed in 2007 to conform to HB 2839 of the 2007 Session of the Virginia General Assembly.

No small business impact has been identified.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

REAL ESTATE APPRAISER BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Appraiser Board conducted a small business impact review of **18VAC130-11, Public Participation Guidelines**, and determined that this regulation should be retained in its

current form. The Real Estate Appraiser Board is publishing its report of findings dated March 1, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure that individuals licensed as appraisers have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC135-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC135-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Appraiser Board conducted a small business impact review of **18VAC130-20, Real Estate Appraiser Board Rules and Regulations**, and determined that this regulation should be retained in its current form. The Real Estate Appraiser Board is publishing its report of findings dated March 1, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Real Estate Appraiser Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Real Estate Appraiser Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals that meet specific criteria set forth in the statutes and regulations are eligible to receive a real estate appraiser trainee license, licensed residential real estate appraiser license, certified residential real estate appraiser

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license, and certified general real estate appraiser license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2011. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

REAL ESTATE BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Board conducted a small business impact review of **18VAC135-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Real Estate Board is publishing its report of findings dated March 1, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure that individuals licensed as real estate salespersons and brokers have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC135-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC135-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and

Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Board conducted a small business impact review of **18VAC135-20, Virginia Real Estate Board Licensing Regulations**, and determined that this regulation should be retained in its current form. The Real Estate Board is publishing its report of findings dated March 7, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Real Estate Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Real Estate Board provides protection to the safety and welfare of the citizens of the Commonwealth by ensuring that only those individuals who meet specific criteria set forth in the statutes and regulations are eligible to receive a real estate license. The board is also tasked with ensuring that its regulants meet standards of practice that are set forth in the regulations. No complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2008. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Real Estate Board conducted a small business impact review of **18VAC135-50, Fair Housing Regulations**, and determined that this regulation should be retained in its current form. The Real Estate Board is publishing its report of findings dated March 6, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-201.5 of the Code of Virginia mandates the Real Estate Board to promulgate regulations. The continued need for the regulation is established in statute. Repeal of the regulation would remove the current public protections provided by the regulation. The Real Estate Board and the Fair Housing Board provide protection to the safety and welfare of the citizens of the Commonwealth by ensuring

enforcement of the Fair Housing Law. The boards are also tasked with ensuring that their regulants meet standards of practice that are set forth in the regulations. No comments or complaints were received during the public comment period. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation occurred in 2009. As a result of this evaluation, the board filed a Notice of Intended Regulatory Action and the proposed regulations are under review in the Governor's office. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

STATE BOARD OF SOCIAL SERVICES

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a small business impact review of **22VAC40-470, Exemptions Applicable to Public Assistance Programs**, and determined that this regulation should be retained in its current form. The State Board of Social Services is publishing its report of findings dated December 14, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

There is no impact on small businesses. Small businesses may benefit from this regulation as the disposable income of the individual receiving these payments will be increased, giving the individual more money to spend in the local economy. There were no comments received during the comment period. The regulation does not duplicate or overlap other regulations promulgated by the department. The regulation was last reviewed in 2007. It provides instructions for local eligibility staff relative to income to disregard in the determination of eligibility for federally funded, need-based public assistance programs. There is no emerging technology that could alone determine if income should be counted or disregarded; the eligibility worker must enter the correct coding so the system will know if the income will be disregarded. Because the federal statute has not been repealed, this regulation should not be amended or repealed.

Contact Information: Karin Clark, Agency Policy Advisor, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Social Services conducted a small business impact review of **22VAC40-685, Virginia Energy Assistance Program - Home Energy Assistance Program**, and determined that this regulation should be retained in its current form. The State Board of Social Services is publishing its report of findings dated December 14, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The regulation grants authority to the department to receive and disburse Home Energy Assistance Program (HEAP) funds. Since the inception of the fund, total contributions including interest is just over \$350,000. These funds are used to supplement the Low-Income Home Energy Assistance Program (LIHEAP) federal funding used to administer the Energy Assistance Program (EAP). In addition, HEAP funds are used to leverage additional federal funds. The regulation makes additional revenue available to over 700 vendors; as such, the impact of this regulation on small businesses is positive. The regulation is not complex and does not overlap, duplicate, or conflict with other federal or state laws or regulations. The regulation was last evaluated in 2007. In 2009, the regulation was amended in response to action taken by the General Assembly to change the time frame for reporting to the General Assembly on the overall effectiveness of energy assistance programs in the Commonwealth from an annual to biennial reporting cycle. Business entities that provide EAP goods and services are eligible to participate in the EAP. Payments to vendors are determined by their respective products, self designated service areas, and customer selection. Since the last review of this regulation, enhancements in technology have provided a more streamlined automated payment process for participating vendors. There is no need to amend or repeal the regulation to minimize the impact on small businesses.

Contact Information: Karin Clark, Agency Policy Advisor, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, or email karin.clark@dss.virginia.gov.

VIRGINIA WASTE MANAGEMENT BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-20, Schedule of Fees for Hazardous Waste Facility Site Certification**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated February 6, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

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This regulation continues to be needed. It provides regulated entities with the most cost-effective means of fulfilling ongoing state and federal requirements that protect human health and the environment. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. This regulation was last reviewed in 2005. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-30, Technical Assistance Fund Administrative Procedures**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated February 6, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides regulated entities with the most cost-effective means of fulfilling ongoing state and federal requirements that protect human health and the environment. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible.

This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process.

This regulation was last reviewed in 2005. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The department, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-40, Administrative Procedures for Hazardous Waste Facility Site Certification**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated February 6, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides regulated entities with the most cost-effective means of fulfilling ongoing state and federal requirements that protect human health and the environment. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. It amplifies and supplements Article 6 (§ 10.1-1433 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. This regulation was last reviewed in 2005. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The board, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-50, Hazardous Waste Facility Siting Criteria**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated February 6, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides regulated entities with the most cost-effective means of fulfilling ongoing state and federal requirements that protect human health and the environment. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation is part of a set of four related regulations mandated by Virginia statutes that establish a procedure for siting of hazardous waste management facilities including certification of the site, investigation of the site, resolution of issues between the applicant and the host community, and funding the process. This regulation was last reviewed in 2005. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The board, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-190, Litter Receptacle Regulations**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated April 2, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state requirements that protect human health and the environment. No complaints or comments were received from the public during the comment period. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation was last reviewed in 2006. Technology, economic conditions, and other factors have not changed in ways that would make this regulation less efficient and cost effective in terms of protecting human health and the environment or meeting legal mandates.

The board, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Virginia Waste Management Board conducted a small business impact review of **9VAC20-200, Mercury Switch Regulations**, and determined that this regulation should be retained in its current form. The Virginia Waste Management Board is publishing its report of findings dated April 2, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation continues to be needed. It provides sources with the most cost-effective means of fulfilling ongoing state requirements that protect human health and the environment. No complaints or comments were received from the public during the comment period. The regulation's level of complexity is appropriate to ensure that the regulated entities are able to meet their legal mandates as efficiently and cost effectively as possible. This regulation does not overlap, duplicate, or conflict with any state law or other state regulation. This regulation became effective in 2007 after the final regulation was adopted by the board on January 8, 2007. This regulation continues to provide the most efficient and cost-effective means to protect human health and the environment.

The board, through examination of the regulation and relevant public comments, has determined that the regulatory requirements currently minimize the economic impact of these regulations on small businesses and thereby minimize

General Notices/Errata

the impact on existing and potential Virginia employers and their ability to maintain and increase the number of jobs in the Commonwealth.

Contact Information: Cindy Berndt, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4378, FAX (804) 698-4346, or email cindy.berndt@deq.virginia.gov.

BOARD FOR WASTE MANAGEMENT FACILITY OPERATORS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Waste Management Facility Operators conducted a small business impact review of **18VAC155-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board for Waste Management Facility Operators is publishing its report of findings dated January 11, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure individuals licensed as waterworks operators, waste waterworks operators, onsite soil evaluators, onsite sewage system installers, or onsite sewage system installers in Virginia have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC155-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC155-11, model Public Participation Guidelines. The board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Waste Management Facility Operators conducted a small business impact review of **18VAC155-20, Waste Management Facility Operators Regulations**, and determined that this regulation should be retained in its current form. The Board for Waste Management Facility Operators is publishing its report of findings dated November 21, 2011, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 54.1-2211 of the Code of Virginia mandates the board to promulgate regulations and standards for the training and licensing of waste management facility operators. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare and ensure that individuals licensed as waste management facility operators in Virginia have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2010 that resulted in no change to the regulation. In addition, fast-track amendments became effective April 1, 2011, which included the removal of language referencing the bad check and examination fees as well as correcting two citations. The fees are still required, but established by § 2.2-614.1 C of the Code of Virginia and in compliance with the Virginia Public Procurement Act, § 2.2-4300 et seq. of the Code of Virginia. The board discussed and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in their current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Mr. David LeSeur

An enforcement action has been proposed for Mr. David LeSeur for violations in Buckingham County. A proposed consent order describes a settlement to resolve unpermitted discharge of fill material to a wetland. 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. Robert Steele will accept comments by email at robert.steele@deq.virginia.gov, FAX at (540) 562-6725, or postal mail at Department of Environmental

Quality, 3019 Peters Creek Road, Roanoke, VA 24019, from May 22, 2012, to June 21, 2012.

BOARD FOR WATERWORKS AND WASTEWATER WORKS OPERATORS AND ONSITE SEWAGE SYSTEM PROFESSIONALS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals conducted a small business impact review of **18VAC160-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is publishing its report of findings dated January 11, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

Section 2.2-4007.02 of the Code of Virginia mandates the board to solicit the input of interested parties in the formation and development of its regulations. Therefore, the continued need for the regulation is established in statute. The regulation is necessary to protect public health, safety, and welfare by establishing Public Participation Guidelines that promote public involvement in the development, amendment, or repeal of an agency's regulation. By soliciting the input of interested parties, the board is better equipped to ensure individuals licensed as waterworks operators, wastewater works operators, onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators in Virginia have met minimum competencies. Since no complaints or comments were received during the public comment period, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written and easily understandable. The regulation does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent periodic review of the regulation occurred in 2008 that resulted in the repeal of 18VAC160-10, the existing Public Participation Guidelines at that time, and adoption of 18VAC160-11, model Public Participation Guidelines. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board for Waterworks and Wastewater Works Operators and Onsite

Sewage System Professionals conducted a small business impact review of **18VAC160-20, Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations**, and determined that this regulation should be retained in its current form. The Virginia Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals is publishing its report of findings dated January 11, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The continued need for the regulation is established in §§ 54.1-201 and 54.1-2301 of the Code of Virginia. The regulation is necessary to protect the health, safety, and welfare of the public and to ensure that individuals licensed as waterworks operators, wastewater works operators, onsite soil evaluators, onsite sewage system installers, and onsite sewage system operators have met minimum competencies. No comments or complaints were received during the public comment period. Consequently, there does not appear to be a reason to amend or repeal the regulation. The regulation is clearly written, easily understandable, and does not overlap, duplicate, or conflict with federal or state law or regulation. The most recent evaluation of the regulation resulted in amendments, effective January 1, 2010, that (i) reduced redundancy in the regulation, (ii) clarified language regarding license entry and renewal requirements, (iii) initiated continuing professional education requirements for wastewater works operators, and (iv) repealed the restricted Class 6 waterworks operator license. Currently, fast-track amendments are pending executive branch review. The proposed amendments modify the definitions of "direct supervisor" and "direct supervision;" the experience requirements for licensure as an onsite sewage system installer; and documentary evidence required to satisfy onsite sewage system installer entry experience requirements. The board discussed the regulation and, for the reasons stated in this section, determined that the regulation should not be amended or repealed, but should be retained in its current form.

Contact Information: Mark N. Courtney, Deputy Director for Licensing and Regulation, Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8537, FAX (804) 527-4403, or email mark.courtney@dpor.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.

General Notices/Errata

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 use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.