



VIRGINIA

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Virginia Code Commission

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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. **29:5 VA.R. 1075-1192 November 5, 2012**, refers to Volume 29, Issue 5, pages 1075 through 1192 of the *Virginia Register* issued on November 5, 2012.

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. Taverner**; **Christopher R. Nolen**; **J. Jasen Eige** or **Jeffrey S. Palmore**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **June T. Chandler**, Assistant Registrar; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant; **Karen Perrine**, Staff Attorney.

PUBLICATION SCHEDULE AND DEADLINES

This schedule is available on the *Register's* Internet home page (<http://register.dls.virginia.gov>).

December 2012 through January 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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
29:150	March 6, 2013	March 25, 2013
29:16	March 20, 2013	April 8, 2013
29:17	April 3, 2013	April 22, 2013
29:18	April 17, 2013	May 6, 2013
29:19	May 1, 2013	May 20, 2013
29:20	May 15, 2013	June 3, 2013
29:21	May 29, 2013	June 17, 2013
29:22	June 12, 2013	July 1, 2013
29:23	June 26, 2013	July 15, 2013
29:24	July 10, 2013	July 29, 2013
29:25	July 24, 2013	August 12, 2013
29:26	August 7, 2013	August 26, 2013
30:1	August 21, 2013	September 9, 2013
30:2	September 4, 2013	September 23, 2013
30:3	September 18, 2013	October 7, 2013
30:4	October 2, 2013	October 21, 2013
30:5	October 16, 2013	November 4, 2013
30:6	October 30, 2013	November 18, 2013
30:7	November 13, 2013	December 2, 2013
30:8	November 26, 2013 (Tuesday)	December 16, 2013
30:9	December 11, 2013	December 30, 2013
30:10	December 23, 2013 (Tuesday)	January 13, 2014
30:11	January 8, 2014	January 27, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF COUNSELING

Agency Decision

Title of Regulation: 18VAC115-20. Regulations Governing the Practice of Professional Counseling.

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

Name of Petitioner: Sandra Gedney Anderson.

Nature of Petitioner's Request: That the board provide the names of persons who have earned their supervisory qualifications in order for residents to find a supervisor.

Agency Decision: Request denied.

Statement of Reason for Decision: While members concurred in the value of a listing of qualified supervisors, it was concluded that there was no authority in the statute to register supervisors or maintain a list of qualified persons. Such authorization would require introduction of legislation in the General Assembly and a change in the law. Therefore, the board is unable to accomplish the request through an amendment to its regulations.

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. R12-30, November 19, 2012, 4:07 p.m.

BOARD OF PHYSICAL THERAPY

Agency Decision

Title of Regulation: 18VAC112-20. Regulations Governing the Practice of Physical Therapy.

Statutory Authority: §§ 54.1-2400 and 54.1-3473 through 54.1-3483 of the Code of Virginia.

Name of Petitioner: Pamela A. Plasberg.

Nature of Petitioner's Request: Change the requirement for reevaluation of the patient from: Not less than one of 12 visits made to the patient during a 30-day period or not less than once every 30 days (current regulation) to: Not less than every 12 visits made to the patient during a three-month period or not less than every three months.

Agency Decision: Request denied.

Statement of Reason for Decision: Following consideration of the comment and a discussion of the petition request to amend regulations, the board decided it would not make any changes to the regulatory language regarding reevaluations of patients by physical therapists. While the members were appreciative of the scenario presented, they believe that

involvement in patient care by the therapist should minimally remain at 30-day intervals for the protection of public health and safety.

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. R12-25; Filed November 19, 2012, 4:06 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Education intends to consider repealing **8VAC20-22, Licensure Regulations for School Personnel**, and promulgating **8VAC20-23, Licensure Regulations for School Personnel**. The purpose of the proposed action is to promulgate new standards for the licensure of school personnel. The new regulation will address (i) license types, (ii) professional studies requirements, (iii) alternate routes to licensure, (iv) specific areas of endorsement and possible additional endorsement areas, and (v) other areas of licensure as needed. The entire regulation will be examined.

The agency is seeking comments on this regulatory action, including, but not limited to (i) ideas to be considered in the development of this proposal, (ii) the costs and benefits of the alternatives stated in this background document or other alternatives, and (iii) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping, and other administrative costs; (ii) the probable effect of the regulation on affected small businesses; and (iii) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or FAX to Dr. Mark Allan, Director of Licensure and School Leadership, Virginia Department of Education, P.O. Box 2120, Richmond, Virginia 23218-2120, telephone (804) 371-2471, FAX (804) 530-4510. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register. Notice of the public hearing will also be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<http://www.virginia.gov>). Both oral and written comments may be submitted at that time.

Statutory Authority: § 22.1-298 of the Code of Virginia.

Public Comment Deadline: January 16, 2013.

Agency Contact: Patty S. Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

V.A.R. Doc. No. R13-3476; Filed November 28, 2012, 8:31 a.m.

TITLE 12. HEALTH

STATE BOARD OF BEHAVIORAL HEALTH AND DEVELOPMENTAL SERVICES

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Behavioral Health and Developmental Services intends to consider amending **12VAC35-115, Regulations to Assure the Rights of Individuals Receiving Services from Providers Licensed, Funded, or Operated by the Department of Behavioral Health and Development Services**. The purpose of the proposed action is to revise the regulations to be simpler, easier to understand, and more user friendly. Additionally, the revisions to the regulations will eliminate duplicate or redundant activities. These actions will result in enhanced individual protections for individuals receiving services including those under the U.S. Department of Justice settlement agreement.

The board is seeking comments on this regulatory action, including but not limited to (i) ideas to be considered in the development of this proposal, (ii) the costs and benefits of the alternatives stated in the agency background document or other alternatives, and (iii) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include (i) projected reporting, recordkeeping, and other administrative costs; (ii) the probable effect of the regulation on affected small businesses; and (iii) the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

Anyone wishing to submit comments may do so via the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>), or by mail, email, or fax to Margaret Walsh, State Human Rights Director. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by midnight on the last day of the public comment period.

The agency intends to hold a public hearing on the proposed action after publication in the Virginia Register and notice of the hearing will also be posted on the Virginia Regulatory Town Hall website and on the Commonwealth Calendar website (<http://www.virginia.gov>). Both oral and written comments may be submitted at that time.

Statutory Authority: §§ 37.2-203 and 37.2-400 of the Code of Virginia.

Public Comment Deadline: February 18, 2013.

Notices of Intended Regulatory Action

Agency Contact: Margaret Walsh, Director, Office of Human Rights, Department of Behavioral Health and Developmental Services, Jefferson Building, 1220 Bank Street, 13th Floor, Richmond, VA 23219, telephone (804) 786-2008, FAX (804) 371-2308, or email margaret.walsh@dbhds.virginia.gov.

VA.R. Doc. No. R13-3502; Filed November 28, 2012, 10:02 a.m.

telephone (804) 786-5895, FAX (804) 786-6286, or email cmotley.vasap@state.va.us.

VA.R. Doc. No. R09-1671; Filed November 15, 2012, 2:39 p.m.

◆ ————— ◆

TITLE 24. TRANSPORTATION AND MOTOR VEHICLES

COMMISSION ON THE VIRGINIA ALCOHOL SAFETY ACTION PROGRAM

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Commission on the Virginia Alcohol Safety Action Program has **WITHDRAWN** the Notice of Intended Regulatory Action to repeal **24VAC35-20, Policy and Procedure Manual**, and promulgate **24VAC35-21, Policy and Procedure Manual**, that was published in 25:9 VA.R. 1678 January 5, 2009.

Agency Contact: Charlene Motley, Field Services Supervisor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email cmotley.vasap@state.va.us.

VA.R. Doc. No. R08-733; Filed November 15, 2012, 2:34 p.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Commission on the Virginia Alcohol Safety Action Program has **WITHDRAWN** the Notice of Intended Regulatory Action to repeal **24VAC35-30, VASAP Case Management Policy and Procedure Manual**, and promulgate **24VAC35-31, VASAP Case Management Policy and Procedure Manual**, that was published in 25:9 VA.R. 1678 January 5, 2009.

Agency Contact: Charlene Motley, Field Services Supervisor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219, telephone (804) 786-5895, FAX (804) 786-6286, or email cmotley.vasap@state.va.us.

VA.R. Doc. No. R08-734; Filed November 15, 2012, 2:37 p.m.

Withdrawal of Notice of Intended Regulatory Action

Notice is hereby given that the Commission on the Virginia Alcohol Safety Action Program has **WITHDRAWN** the Notice of Intended Regulatory Action to repeal **24VAC35-40, Certification Requirements Manual**, and to promulgate **24VAC35-41, Certification Requirements Manual**, that was published in 25:9 VA.R. 1678 January 5, 2009.

Agency Contact: Charlene Motley, Field Services Supervisor, Commission on the Virginia Alcohol Safety Action Program, 701 East Franklin Street, Suite 1110, Richmond, VA 23219,

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 2. AGRICULTURE

BOARD OF AGRICULTURE AND CONSUMER SERVICES

Final Regulation

REGISTRAR'S NOTICE: The Board of Agriculture and Consumer Services is claiming an exemption from the Administrative Process Act in accordance with § 3.2-703 of the Code of Virginia, which authorizes the board to quarantine areas within the Commonwealth to prevent or retard the spread of a pest into, within, or from the Commonwealth and § 3.2-704 of the Code of Virginia, which provides that the Board of Agriculture and Consumer Services shall prohibit the importation of any regulated article from any locality of other states, territories, or countries, into the Commonwealth.

Title of Regulation: **2VAC5-318. Rules and Regulations for Enforcement of the Virginia Pest Law - Thousand Cankers Disease (amending 2VAC5-318-50).**

Statutory Authority: § 3.2-703 of the Code of Virginia.

Effective Date: November 30, 2012.

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

Summary:

The amendment adds the counties of King and Queen, King William, and New Kent to the Thousand Cankers Disease Quarantine.

2VAC5-318-50. Regulated areas.

The following areas in Virginia are quarantined for Thousand Cankers Disease:

1. The entire counties of:

Chesterfield
Fairfax
Goochland
Hanover
Henrico
King and Queen
King William
New Kent
Powhatan

Prince William

2. The entire cities of:

Colonial Heights
Fairfax
Falls Church
Manassas
Manassas Park
Richmond

VA.R. Doc. No. R13-3488; Filed November 30, 2012, 10:10 a.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

MARINE RESOURCES COMMISSION

Final Regulation

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.

Title of Regulation: **4VAC20-270. Pertaining to Crabbing (amending 4VAC20-270-30, 4VAC20-270-40, 4VAC20-270-55; adding 4VAC20-270-15, 4VAC20-270-51, 4VAC20-270-52).**

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

Effective Date: November 26, 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 (i) extend the 2012 male and female crab harvest season until December 15, 2012; (ii) amend the 2013 crab management dates to reflect a March 16, 2013, male and female blue crab harvest season opening, a November 20, 2013, female blue crab harvest closing, and a November 30, 2013, male blue crab harvest closing; (iii) amend bushel limits by crab pot license category; and (iv) amend gear restrictions specific to the Virginia portion of the Albemarle and Currituck watersheds. The amendments

replace bushel limit specifications in repealed 4VAC20-300.

4VAC20-270-15. Definitions.

"Crab" or "crabs" as described in this chapter refers solely to the crustacean *Callinectes sapidus*.

4VAC20-270-30. Daily time limits.

A. It shall be unlawful for any person licensed to catch and sell crabs taken by crab pot or peeler pot to take and harvest crabs from any crab pot or peeler pot, or to retrieve, bait, or set any crab pot or peeler pot, except during the lawful daily time periods described in this subsection or subsection ~~B~~ C or ~~C~~ D of this section. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 6 a.m. to 2 p.m. from March 17 through April 30 and September 1 through ~~November 30~~ December 15, 2012, except as described in subsection ~~D~~ B and E of this section, and from 5 a.m. to 1 p.m. during the months of May, June, July, and August, except as specified in subsection ~~B~~ C or ~~C~~ D of this section. Crab pots or peeler pots already on board a boat at the end of the lawful daily time period, as defined in this subsection or subsection ~~B~~ C or ~~C~~ D of this section, may be set during the period starting immediately following the lawful daily time period and ending one hour after the lawful daily time period.

B. The lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot in 2013 shall begin March 16 and end November 30, with the lawful daily time periods described in subsection A of this section in effect for March 16 through November 30, 2013.

~~B. C.~~ Any licensed crab pot or peeler pot fisherman who provides an opinion and supporting documentation from an attending physician to the commissioner of an existing medical condition that prevents him from adhering to the daily time limit established in subsection A of this section may be permitted by the commissioner or his designee to take and harvest crabs from his crab pot or peeler pot, or to retrieve, bait, or set his crab pot or peeler pot during an alternate eight-hour daily time limit. That alternative eight-hour daily time limit will be prescribed by the commissioner or his designee in accordance with the medical condition that forms a basis for the exception to the daily time limit as described in subsection A of this section.

Nothing in this regulation shall prohibit any licensed crab pot or peeler pot fisherman, who has been granted an exception to the eight-hour work schedule, on a medical basis, from using another licensed crab pot or peeler pot fisherman as a mate; provided, however, during the designated alternate work hours, only the crab pots or peeler pots of the fisherman receiving the exception shall be fished. Further, it shall be unlawful for the licensed crab fisherman, who has been granted an exception, or his mate, who is a licensed crab pot or peeler pot fisherman, to fish, set, retrieve, or bait, during the alternate work hours, any crab pot or peeler

pot that is not owned and licensed by the fisherman granted the exception.

~~C. D.~~ Any licensed crab pot or peeler pot fisherman who requests and obtains an alternate eight-hour daily time limit permit shall be authorized to take and harvest crabs from his crab pot or peeler pot or to retrieve, bait, or set his crab pot or peeler pot one hour earlier than described in subsection A of this section, only for the months of June, July, August, and September. During the months of March, April, May, October, and November, and from December 1 through December 15, 2012, the lawful daily time period described in subsection A of this section applies to any crab pot or peeler pot licensee. The alternate lawful daily time periods for the commercial harvesting of crabs by crab pot or peeler pot shall be from 4 a.m. to 12 noon from June 1 through August 31 and from 5 a.m. to 1 p.m. from September 1 through September 30. Individuals must apply for this permit on an annual basis and shall adhere to the alternate daily time limit from the day the permit is issued through September 30, as well as subdivisions 1, 2, and 3 of this subsection.

1. It shall be unlawful for two or more licensed crab pot or peeler pot fishermen, or their agents, to crab aboard the same vessel if their authorized eight-hour daily time limits are not identical.

2. After January 1, 2012, requests for an alternate eight-hour time limit permit shall be submitted to the Marine Resources Commission annually and prior to May 15. Requests submitted on or after May 15 will not be considered.

3. Once any legal crab pot or peeler pot licensee obtains an alternate eight-hour daily time limit permit, that permittee shall be legally bound by the alternate eight-hour daily time limit as described in this subsection.

~~D. E.~~ The lawful daily time periods for the commercial harvest of crabs by crab pot or peeler pot may be rescinded by the Commissioner of Marine Resources when he determines that a pending weather event is sufficient cause for the removal of crab pots from the tidal waters of the Commonwealth.

4VAC20-270-40. Season limits.

A. The lawful season for the harvest of male crabs shall be March 17 through ~~November 30~~ December 15, 2012, and March 16 through November 30, 2013. The lawful season for the harvest of female crabs shall be March 17 through December 15, 2012, and March 16 through November 20, 2013.

B. It shall be unlawful for any person to harvest crabs or to possess crabs on board a vessel, except during the lawful season, as described in subsection A of this section.

C. It shall be unlawful for any person knowingly to place, set, fish or leave any hard crab pot or peeler crab pot in any tidal waters of Virginia from ~~December 1~~ December 16, 2012, through March 16 March 15, 2013.

Regulations

D. It shall be unlawful for any person knowingly to place, set, fish or leave any fish pot in any tidal waters from ~~March 12~~ March 11 through ~~March 16~~ March 15, 2013 except as provided in subdivisions 1 and 2 of this subsection.

1. It shall be lawful for any person to place, set, or fish any fish pot in those Virginia waters located upriver of the following boundary lines:

a. In the James River the boundary shall be a line connecting Hog Point and the downstream point at the mouth of College Creek.

b. In the York River the boundary lines shall be the Route 33 bridges at West Point.

c. In the Rappahannock River the boundary line shall be the Route 360 bridge at Tappahannock.

d. In the Potomac River the boundary line shall be the Route 301 bridge that extends from Newberg, Maryland to Dahlgren, Virginia.

2. This subsection shall not apply to lawful eel pots as described in 4VAC20-500-50.

4VAC20-270-51. Harvest limits.

A. The lawful harvest in bushels of crabs by crab pot license category is as follows:

From March 16, 2013, through November 30, 2013, it shall be unlawful for any person to harvest in any one day or to possess aboard any vessel any amount of crabs in excess of the following bushel limits as determined by that licensee's crab pot license category:

27 bushels for harvesters with a legal crab pot license allowing up to 85 crab pots.

32 bushels for harvesters with a legal crab pot license allowing up to 127 crab pots.

38 bushels for harvesters with a legal crab pot license allowing up to 170 crab pots.

45 bushels for harvesters with a legal crab pot license allowing up to 255 crab pots.

55 bushels for harvesters with a legal crab pot license allowing up to 425 crab pots.

B. When multiple harvesters are on board any vessel, that vessel harvest limit shall be equal to the sum of each licensee's crab pot license category bushel limit.

C. When transporting or selling one or more legal crab pot licensee's crab harvest in bushels, any agent shall possess either the crab pot license of that one or more crab pot licensees or a bill of lading indicating each crab pot licensee's name, address, Commercial Fisherman Registration License number, date, and amount of bushels of crabs to be sold.

D. If any police officer finds crabs in excess of any lawful bushel limit, as described in subsections A and B of this section, that excess quantity of crabs shall be returned immediately to the water by the licensee or licensees who possess that excess over any single or combined lawful

harvest limit. The refusal to return crabs in excess of any harvest limit to the water shall constitute a separate violation of this chapter.

E. The bushel limits described in this chapter replace any provisions for bushel limits described in previous 4VAC20-300.

4VAC20-270-52. Area restriction.

A. It shall be unlawful for any person to use any gear, except crab pots or peeler pots, to harvest crabs from the waters of Back Bay and North Landing River or within the jurisdiction of the Albemarle and Currituck watersheds as described in § 28.2-101 of the Code of Virginia.

B. It shall be unlawful to possess, sell, or offer for sale crabs taken by any means other than crab pot or peeler pot from the waters described in this section.

4VAC20-270-55. Minimum size limits.

A. From ~~March 17~~ March 16 through July 15, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes. From July 16 through ~~November 30~~ December 15, 2012, and July 16 through November 30, 2013, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that measure less than 3-1/2 inches across the shell from tip to tip of the longest spikes, except as described in subsections B and C of this section.

B. From July 16 through ~~November 30~~ December 15, 2012, and July 16 through November 30, 2013, it shall be unlawful for any person to harvest, possess, sell or offer for sale more than 10 peeler crabs, per United States standard bushel, or 5.0% of peeler crabs in any other container, that are harvested from waters on the ocean side of Accomack and Northampton counties and measure less than 3-1/4 inches across the shell from tip to tip of the longest spikes, except as described in subsection C of this section.

C. In the enforcement of these peeler crab minimum size limits aboard a vessel, the marine police officer shall select a single container of peeler crabs of his choosing to determine if the contents of that container violate the minimum size and tolerance described in this section. If the officer determines the contents of the container are in violation, then the officer shall return all peeler crabs on board the vessel to the water alive.

D. It shall be unlawful for any person to take, catch, harvest, possess, sell or offer for sale, or to destroy in any manner, any soft crab that measures less than 3-1/2 inches across the shell from tip to tip of the longest spikes.

V.A.R. Doc. No. R13-3457; Filed November 26, 2012, 4:58 p.m.

Final Regulation

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.

Title of Regulation: 4VAC20-300. **Pertaining to Crab Catch Limits (repealing 4VAC20-300-10, 4VAC20-300-20, 4VAC20-300-30).**

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

Effective Date: November 27, 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 crab catch limits are incorporated into 4VAC20-270; therefore, this regulation is repealed.

VA.R. Doc. No. R13-3455; Filed November 27, 2012, 1:58 p.m.

Final Regulation

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.

Title of Regulation: 4VAC20-752. **Pertaining to Blue Crab Sanctuaries (amending 4VAC20-752-20, 4VAC20-752-30).**

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

Effective Date: November 30, 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:

Amendments to this regulation redefine the Virginia Blue Crab Sanctuary as four distinct blue crab sanctuary areas and establish the closed commercial or recreational crab harvest seasons in the Virginia Blue Crab Sanctuary areas.

4VAC20-752-20. Definitions.

"COLREGS Line" means the COLREGS Demarcation lines, as specified in Coastal Pilot, 35th and 36th editions by Lighthouse Press Line, as defined in the Code of Federal Regulations (33 CFR 80.510 Chesapeake Bay Entrance, VA).

"Three Nautical Mile Limit Line" means the outer limit of the area extending three miles out to sea from the coast as depicted on NOAA nautical charts means the offshore limit of state waters within the belt three nautical miles wide that is

adjacent to Virginia's coast and seaward of the mean low-water mark.

~~"Virginia Blue Crab Sanctuary" means two distinct sanctuary areas, Area 1 and Area 2, with Area 1 consisting of all tidal waters that are bounded by a line beginning at a point, near the western shore of Fishermans Island, 37° 05' 57.57" N, 75° 58' 45.74" W, being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light; thence southwesterly to Thimble Shoal Light, 37° 00' 52.24" N, 76° 14' 23.82" W; thence southwesterly to the offshore end of Ocean View Fishing Pier (formerly Harrison's Fishing Pier), 36° 57' 50.25" N, 76° 15' 26.73" W; thence northerly to Flashing Green Buoy "9" on the York River Entrance Channel, 37° 11' 29.39" N, 76° 15' 42.57" W; thence northeasterly to Wolf Trap Light, 37° 23' 25.11" N, 76° 11' 22.04" W; thence northwesterly to a point, northeast of Windmill Point, 37° 38' 23.13" N, 76° 15' 59.54" W; thence northerly to a point, east of Great Wicomico Light at 37° 48' 15.72" N, 76° 14' 33.15" W; thence northeasterly to a point, 37° 49' 18.10" N, 76° 13' 06.00" W; thence northeasterly to Smith Point Lighthouse, 37° 52' 47.55" N, 76° 11' 01.50" W; thence northwesterly to a point on the Virginia Maryland state line, 37° 54' 04.99" N, 76° 11' 44.96" W; thence northeasterly following the Virginia Maryland state line to a point on that line, 37° 55' 43.79" N, 76° 07' 12.87" W; thence southeasterly to a point, southwest of Tangier Island, 37° 44' 59.85" N, 76° 01' 34.31" W; thence southeasterly to a point, southeast of Tangier Island, 37° 43' 41.05" N, 75° 57' 51.84" W; thence northeasterly to a point, south of Watts Island, 37° 45' 36.95" N, 75° 52' 53.87" W; thence southeasterly to a point, 37° 44' 56.15" N, 75° 51' 33.18" W; thence southwesterly to a point, west of Parkers Marsh, 37° 42' 41.49" N, 75° 55' 06.31" W; thence southwesterly to a point, west of Cape Charles Harbor, 37° 15' 37.23" N, 76° 04' 13.79" W; thence southeasterly to a point near the western shore of Fishermans Island, on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning; and a continuation of Area 1, consisting of all tidal waters that are bounded by a line beginning at Cape Charles Lighthouse, 37° 07' 22.46" N, 75° 54' 23.39" W; thence southwesterly along the COLREGS Line to Cape Henry Lighthouse, 36° 55' 34.86" N, 76° 00' 25.93" W; thence easterly to a point on the Three Nautical Mile Limit Line, 36° 55' 32.62" N, 75° 55' 54.09" W; thence northeasterly along the Three Nautical Mile Limit Line to a point, 37° 03' 11.49" N, 75° 53' 27.02" W; thence northeasterly to a point, east of Cape Charles Lighthouse, 37° 06' 45" N, 75° 52' 05" W; thence westerly to the Cape Charles Lighthouse, said point being the point of beginning; and a second area, Area 2, consisting of all tidal waters beginning at a point along the Three Nautical Mile Limit Line, 36° 55' 32.62" N, 75° 55' 54.09" W; thence southerly following the Three Nautical Mile Limit Line to an intersection point on the Virginia North Carolina state boundary, 36° 33' 02.59" N, 75° 48' 16.21" W; thence westerly to a point, along the~~

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Virginia—North Carolina state boundary to its intersection with the mean low water line, 36° 33' 01.34" N, 75° 52' 03.06" W; thence northerly, following the mean low water line to the Rudee Inlet weir; thence easterly along the weir to the stone breakwater; thence following the stone breakwater to its northernmost point; thence northerly to the mean low water line at the most northeastern point of the northern stone jetty; thence westerly along the mean low water line of said stone jetty to the mean low water line along the shore; thence northerly following the mean low water line to point, 36° 55' 34.75" N, 76° 00' 12.48" W; said point being the intersection of the mean low water line with the line from Cape Henry lighthouse easterly to a point on the Three Nautical Mile Limit Line, 36° 55' 32.62" N, 75° 55' 54.09" W; said point being the point of beginning of Area 2.

"Virginia Blue Crab Sanctuary" means four distinct blue crab sanctuary areas as described below:

"Virginia Blue Crab Sanctuary Area 1" shall consist of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at a point, near the western shore of Fishermans Island, Latitude 37° 05.9595000' N., Longitude 75° 58.7623333' W., being on a line from the Cape Charles Lighthouse to the Thimble Shoal Light; thence southwesterly to Thimble Shoal Light, Latitude 37° 00.8708333' N., Longitude 76° 14.3970000' W.; thence southwesterly to the Ocean View Fishing Pier (formerly Harrison's Fishing Pier) at a point 200 feet offshore of mean low water, Latitude 36° 57.6985477' N., Longitude 76° 15.5855211' W.; thence northerly to Flashing Green Buoy "9" on the York River Entrance Channel, Latitude 37° 11.4898333' N., Longitude 76° 15.7095000' W.; thence northeasterly to Wolf Trap Light, Latitude 37° 23.4185000' N., Longitude 76° 11.3673333' W.; thence northwesterly to a point, northeast of Windmill Point, Latitude 37° 38.3855000' N., Longitude 76° 15.9923333' W.; thence northerly to a point, east of Great Wicomico Light at Latitude 37° 48.2620000' N., Longitude 76° 14.5525000' W.; thence northeasterly to a point, Latitude 37° 49.3016667' N., Longitude 76° 13.1000000' W.; thence northeasterly to Smith Point Lighthouse, Latitude 37° 52.7925000' N., Longitude 76° 11.0250000' W.; thence northwesterly to a point on the Virginia – Maryland State Line, Latitude 37° 54.0831667' N., Longitude 76° 11.7493333' W.; thence northeasterly following the Virginia – Maryland State Line to a point on that line, Latitude 37° 55.7298333' N., Longitude 76° 17.2145000' W.; thence southeasterly to a point, southwest of Tangier Island, Latitude 37° 44.9975000' N., Longitude 76° 01.5718333' W.; thence southeasterly to a point, southeast of Tangier Island, Latitude 37° 43.6841667' N., Longitude 75° 57.8640000' W.; thence northeasterly to a point south of Watts Island, 37° 45.6158333' N., Longitude 75° 52.8978333' W.; thence southeasterly to a point, Latitude 37° 44.9358333' N., Longitude 75° 51.5530000' W.; thence southwesterly to a point west of Parkers Marsh, Latitude 37° 42.6915000' N., Longitude 75° 55.1051667' W.; thence southwesterly to a point west of

Cape Charles Harbor, Latitude 37° 15.6205000' N., Longitude 76° 04.2298333' W.; thence southeasterly to a point near the western shore of Fishermans Island, on the line from Cape Charles Lighthouse to Thimble Shoal Light, said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 2" shall consist of all tidal waters of the Chesapeake Bay that are bounded by a line beginning at the mean low water line of Willoughby Spit at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, Latitude 36° 58.0456514' N., Longitude 76° 17.8459721' W.; thence in a northwesterly direction to a point 200 feet offshore of mean low water, Latitude 36° 58.0637717' N., Longitude 76° 17.8812821' W.; thence and following a line in a general easterly direction, said line being 200 feet offshore of the mean low water line, to a point on Ocean View Fishing Pier (formerly Harrison's Fishing Pier), Latitude 36° 57.6985477' N., Longitude 76° 15.5855211' W.; thence northeasterly to Thimble Shoal Light, Latitude 37° 00.8708333' N., Longitude 76° 14.3970000' W.; thence northeasterly to Cape Charles Lighthouse, Latitude 37° 07.3743333' N., Longitude 75° 54.3898333' W.; thence southwesterly along the COLREGS Line to its intersection with the mean low water line of Cape Henry, Latitude 36° 55.6885268' N., Longitude 76° 00.3772955' W.; thence, in a general westerly direction, following the mean low water line of the Chesapeake Bay, crossing the mouth of the Lynnhaven River along the north side of the Lesner Bridge and the Mouth of Little Creek at the offshore ends of the stone breakwaters and continuing along said mean low water line to a point at its intersection with the center line of the Hampton Roads Bridge Tunnel facility, said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 3" shall consist of all tidal waters of the Atlantic Ocean that are bounded by a line beginning at Cape Charles Lighthouse, Latitude 37° 07.3743333' N., Longitude 75° 54.3898333' W.; thence southwesterly along the COLREGS Line to Cape Henry Lighthouse, Latitude 36° 55.5840000' N., Longitude 76° 00.4321667' W.; thence easterly to a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N., Longitude 75° 55.9015000' W.; thence northeasterly along the Three Nautical Mile Limit to a point, Latitude 37° 03.1915000' N., Longitude 75° 53.4503333' W.; thence northeasterly to a point, east of Cape Charles Lighthouse, Latitude 37° 06.7500000' N., Longitude 75° 52.0833333' W.; thence westerly to the Cape Charles Lighthouse, said point being the point of beginning.

"Virginia Blue Crab Sanctuary Area 4" shall consist of all tidal waters of the Atlantic Ocean that are bounded by a line beginning at a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N., Longitude 75° 55.9015000' W.; thence southerly following the Three Nautical Mile Limit to an intersection point on the Virginia – North Carolina State Line, Latitude 36° 33.0224955' N., Longitude 75° 48.2662043' W.; thence westerly to a point along the Virginia

– North Carolina State Line at its intersection with the mean low water line, Latitude 36° 33.0224003' N., Longitude 75° 52.0510498' W.; thence northerly, following the mean low water line to the Rudee Inlet weir; thence easterly along the weir to the stone breakwater; thence following the stone breakwater to its northernmost point; thence northerly to the mean low water line at the most northeastern point of the northern stone jetty; thence westerly along the mean low water line of said stone jetty to the mean low water line along the shore; thence northerly following the mean low water line to a point, Latitude 36° 55.5781102' N., Longitude 76° 00.1530758' W., said point being the intersection of the mean low water line with the line from Cape Henry Lighthouse easterly to a point on the Three Nautical Mile Limit, Latitude 36° 55.5436667' N., Longitude 75° 55.9015000' W., said point being the point of beginning.

4VAC20-752-30. Harvest restrictions.

A. It shall be unlawful for any person to conduct commercial or recreational crabbing within Area Virginia Blue Crab Sanctuary Areas 1 of the Virginia Blue Crab Sanctuary and 3, from May 16 through September 15.

B. It shall be unlawful for any person to take, harvest, or possess crabs for commercial purposes from Area Virginia Blue Crab Sanctuary Areas 2 and 4, from May 16 through September 15.

VA.R. Doc. No. R13-3468; Filed November 28, 2012, 10:12 a.m.

Emergency Regulation

Title of Regulation: 4VAC20-950. Pertaining to Black Sea Bass (amending 4VAC20-950-45).

Statutory Authority: §§ 28.2-201 and 28.2-210 of the Code of Virginia.

Effective Dates: November 20, 2012, through December 18, 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.

Preamble:

This emergency amendment sets the recreational season for the harvest of black sea bass from May 19 through October 14 and from November 1 through November 19.

4VAC20-950-45. Recreational possession limits and seasons.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than 25 black sea bass. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for that boat or vessel and shall be equal to the number of persons on board legally eligible to fish, multiplied by 25. The captain or operator of the boat or vessel shall be responsible for that boat

or vessel possession limit. Any black sea bass taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of black sea bass that exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The open recreational fishing season shall be from May 19 through October 14 and from November 1 through ~~December 31~~ November 19. Except during an open recreational season it shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass.

VA.R. Doc. No. R13-3475; Filed November 20, 2012, 12:41 p.m.

Final Regulation

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.

Title of Regulation: 4VAC20-960. Pertaining to Tautog (amending 4VAC20-960-45, 4VAC20-960-47).

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

Effective Date: January 1, 2013.

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 (i) a closed commercial fishing season from January 22 through the last day of February and from May 1 through October 31 and (ii) a closed recreational fishing season from May 1 through September 19.

4VAC20-960-45. Recreational fishing season and possession limits.

A. It shall be unlawful for any person fishing with hook and line, rod and reel, spear, gig or other recreational gear to possess more than ~~four~~ three tautog. When fishing is from a boat or vessel where the entire catch is held in a common hold or container, the possession limit shall be for the boat or vessel and shall be equal to the number of persons on board legally eligible to fish multiplied by ~~four~~ three. The captain or operator of the boat or vessel shall be responsible for any boat or vessel possession limit. Any tautog taken after the possession limit has been reached shall be returned to the water immediately.

B. Possession of any quantity of tautog which exceeds the possession limit described in subsection A of this section shall be presumed to be for commercial purposes.

C. The ~~2012~~ recreational fishing season shall be closed from ~~April 16 through July 31~~ May 1 through September 19.

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D. It shall be unlawful for any person fishing recreationally to take, catch, or possess any tautog during any closed recreational fishing season.

4VAC20-960-47. Commercial fishing season and possession limits.

The ~~2012~~ commercial fishing season shall be closed from ~~January 18 through March 15~~ January 22 through the last day of February and May 1 through ~~August 31~~ October 31, and it shall be unlawful for any person to possess tautog for commercial purposes during this period.

V.A.R. Doc. No. R13-3464; Filed November 27, 2012, 2:29 p.m.

Final Regulation

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.

Title of Regulation: 4VAC20-1140. Prohibition of Crab Dredging in Virginia Waters (amending 4VAC20-1140-20).

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

Effective Date: November 30, 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 continue the prohibition of the use of crab dredge gear in Virginia waters for the 2012/2013 crab dredge season.

4VAC20-1140-20. Crab dredging prohibited.

~~A.~~ In accordance with the provisions of § 28.2-707 of the Code of Virginia, the crab dredging season of December 1, ~~2011~~ 2012, through March 31, ~~2012~~ 2013, is closed, and it shall be unlawful to use a dredge for catching crabs from the waters of the Commonwealth during that season.

~~B. The following regulations that pertain to the crab dredge fishery or activities associated with crab dredging are repealed:~~

~~4VAC20-40, "Pertaining to Crab Catch Limits"~~

~~4VAC20-90, "Pertaining to Dredging for Crabs"~~

~~4VAC20-270-30 C, Daily Time Limits, "Pertaining to Crabbing"~~

~~4VAC20-750, "Pertaining to Crab Dredge Sales"~~

~~4VAC20-752-30 A, Harvest Restrictions. "Pertaining to Blue Crab Sanctuaries"~~

~~4VAC20-1090-30 1, Commercial Licenses: Blue Crab Harvesting and Shedding Licenses For each boat used for~~

~~taking or catching hard crabs with dredges. "Pertaining to Licensing Requirements and License Fees"~~

V.A.R. Doc. No. R13-3474; Filed November 27, 2012, 2:01 p.m.

Final Regulation

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.

Title of Regulation: 4VAC20-1210. Pertaining to a Blue Crab Sanctuary (repealing 4VAC20-1210-10, 4VAC20-1210-20, 4VAC20-1210-30).

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

Effective Date: November 30, 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 regulations pertaining to blue crab sanctuaries are incorporated into 4VAC20-270; therefore, this regulation is repealed.

V.A.R. Doc. No. R13-3456; Filed November 27, 2012, 2:06 p.m.

TITLE 8. EDUCATION

STATE BOARD OF EDUCATION

Final Regulation

REGISTRAR'S NOTICE: The State Board of Education 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 or the appropriation act where no agency discretion is involved. The State Board of Education will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 8VAC20-22. Licensure Regulations for School Personnel (amending 8VAC20-22-110).

Statutory Authority: § 22.1-298.1 of the Code of Virginia.

Effective Date: January 16, 2013.

Agency Contact: Patty S. Pitts, Assistant Superintendent for Teacher Education and Licensure, Department of Education, P.O. Box 2120, Richmond, VA 23218, telephone (804) 371-2522, or email patty.pitts@doe.virginia.gov.

Summary:

Pursuant to Chapters 805 and 836 of the 2012 Acts of Assembly, the amendment repeals the requirement for civics training for teachers to renew a license.

8VAC20-22-110. Requirements for renewing a license.

A. The Division Superintendent, Postgraduate Professional, Collegiate Professional, Technical Professional, Pupil Personnel Services, and School Manager Licenses may be renewed upon the completion of 180 professional development points within a five-year validity period based on an individualized professional development plan that includes ongoing, sustained, and high-quality professional development.

B. Virginia public school divisions and public education agencies must report annually to the Department of Education that instructional personnel have completed high quality professional development each year as set forth by the Virginia Department of Education.

~~C. Any individual seeking renewal of a license with an endorsement in early/primary preK-3, elementary education preK-6, middle education 6-8, history and social sciences, history, or political science must complete study of the structures, function, and powers of state and local government of Virginia and the importance of citizen participation in the political process in state and local government of Virginia. The study may be satisfactorily completed using any applicable option described in the Virginia Licensure Renewal Manual, effective September 21, 2007. This requirement shall be met one time for the individual's next renewal after July 1, 2012.~~

~~D. C.~~ Professional development points may be accrued by the completion of professional development activities to improve and increase instructional personnel's knowledge of the academic subjects the teachers teach or the area assigned from one or more of the following eight options.

1. College credit. Acceptable coursework offers content that provides new information and is offered on-campus, off-campus, or through extension by any regionally accredited two- or four-year college or university. College coursework must develop further experiences in subject content taught, teaching strategies, uses of technologies, leadership, and other essential elements in teaching to high standards and increasing student learning. At least 90 points for each five-year renewal shall be in the content area(s) currently being taught if the license holder does not hold a graduate degree. Instructional personnel must complete coursework to improve and increase the knowledge of the academic subjects or endorsement areas in which they are assigned.

2. Professional conference. A professional conference is a workshop, institute, or seminar of four or more hours that contributes to ongoing, sustained, and high-quality professional development.

3. Curriculum development. Curriculum development is a group activity in which the license holder contributes to the improvement of the curriculum of a school, a school division, or an education institution in the teaching area assigned. This includes the alignment of curriculum frameworks, instructional materials, and assessments to provide a system with clear expectations of what is to be taught and learned.

4. Publication of article. The article must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. Grant reports that present the results of educational research are acceptable provided the license holder had an active role in planning, analyzing, interpreting, demonstrating, disseminating, or evaluating the study or innovation. The article must be published in a recognized professional journal.

5. Publication of book. Books must be published for purchase and must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. The published book must increase the field of content knowledge, planning and assessment for evaluating and providing students with feedback that encourages student progress and measures student achievement, instruction, safety and learning environment, communication and community relations working with students, parents, and members of the community to promote broad support for student learning. Points will not be awarded for books self-published.

6. Mentorship. Mentoring is the process by which an experienced professional, who has received mentorship training, provides assistance to one or more persons for the purpose of improving their performance. Assistance may involve role modeling, direct instruction, demonstration, observation with feedback, developing of plans, and consultation to promote instructional excellence and increased student achievement. Mentoring may include the supervision of a field experience of a preservice student teacher or an intern in an approved teacher/principal preparation program, as well as mentoring as part of the induction process for a beginning teacher or a first-year administrator. Individuals serving in this role and submitting documentation for license renewal based on the mentorship option shall receive training as a mentor prior to the assignment and at least once during the five-year renewal cycle.

7. Educational project. Educational projects must be planned, focused projects based on high standards of teaching and learning. Projects must result in a written report or other tangible product. Projects must contribute to the education profession or to the body of knowledge of the license holder's teaching area or instructional position. A project could include participation in new professional

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responsibilities, such as leading a school improvement initiative.

8. Professional development activity. Professional development activities must focus on student learning and achievement, schoolwide educational improvement, leadership, subject content, teaching strategies, and use of technologies and other essential elements in teaching to high standards. Activities must be planned, rigorous, systematic, and promote continuous inquiry and reflection. Local employing educational agencies are encouraged to design professional development activities that are conducted in school settings and linked to student learning and achievement.

~~E. D.~~ A minimum of 90 points (three semester hours in a content area) at the undergraduate (two-year or four-year institution) or graduate level in the license holder's endorsement areas shall be required of license holders without a master's degree and may be satisfied at the undergraduate (two-year or four-year institution) or graduate level. Special education coursework designed to assist classroom teachers and other school personnel in working with students with disabilities, a course in gifted education, a course in educational technology, or a course in English as a second language may be completed to satisfy the content course requirement for one cycle of the renewal process. Professional development activities designed to support the Virginia Standards of Learning, Standards of Accreditation, and Assessments may be accepted in lieu of the content course for one renewal cycle. The substance of the activities must clearly support these initiatives and address one or more of the following areas: (i) new content knowledge to implement the Virginia Standards of Learning; (ii) curriculum development initiative designed to translate the standards from standards to classroom objectives; (iii) teaching beginning reading skills including phonemic awareness and the structure of language (phonics); (iv) staff development activities in assessment to assist classroom teachers in the utilization of test results to improve classroom instruction; and (v) professional development designed to implement the technology standards in the schools. Technical Professional License holders without baccalaureate degrees may satisfy the requirement through career and technical education workshops, career and technical education institutes, or through undergraduate coursework at two-year or four-year institutions.

~~F. E.~~ Content area courses are courses at the undergraduate level (two-year or four-year institution) or at the graduate level that will not duplicate previous courses taken in the humanities, history and social sciences, the sciences, mathematics, health and physical education, and the fine arts. These courses are usually available through the college or department of arts and sciences. License holders with elementary education, middle education, special education, or reading endorsements must satisfy the 90-point requirement through reading coursework or content coursework in one of

the areas listed above. Courses available through a regionally accredited college's or institution's department of education may be used to satisfy the content requirement for those license holders with endorsements in health and physical education, career and technical education, and library science education.

~~G. F.~~ With prior approval of the division superintendent, the 90 points in a content area also may be satisfied through coursework taken to obtain a new teaching endorsement or coursework taken because of a particular need of a particular teacher.

~~H. G.~~ The remaining 90 points may be accrued by activities drawn from one or more of the eight renewal options. Renewal work is designed to provide licensed personnel with opportunities for professional development relative to the grade levels or teaching fields to which they are assigned or for which they seek an added endorsement. Such professional development encompasses (i) responsible remediation of any area of an individual's knowledge or skills that fail to meet the standards of competency and (ii) responsible efforts to increase the individual's knowledge of new developments in his field and to respond to new curricular demands within the person's area of professional competence.

~~I. H.~~ The proposed work toward renewal in certain options must be approved in advance by the chief executive officer or designee of the employing educational agency. Persons who are not employed by an educational agency may renew or reinstate their license by submitting to the Office of Professional Licensure, Department of Education, their individualized renewal record and verification of points, including official student transcripts of coursework taken at an accredited two-year or four-year college or university.

~~J. I.~~ Accrual of professional development points shall be determined by criteria set forth by the Virginia Department of Education.

~~K. J.~~ Persons seeking license renewal as teachers must demonstrate proficiency in the use of educational technology for instruction.

~~L. K.~~ Virginia school divisions and nonpublic schools will recommend renewal of licenses using the renewal point system. The renewal recommendation must include verification of demonstrated proficiency in the use of educational technology for instruction.

~~M. L.~~ Training in instructional methods tailored to promote academic progress and effective preparation for the Standards of Learning tests and end-of-grade assessments is required for licensure renewal.

~~N. M.~~ If they have not already met the requirement, persons seeking licensure renewal as teachers must complete study in child abuse recognition and intervention in accordance with curriculum guidelines developed by the Board of Education in consultation with the Department of Social Services that are relevant to the specific teacher licensure routes.

TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

REGISTRAR'S NOTICE: The State Board of Health 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 or the appropriation act where no agency discretion is involved. The State Board of Health will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: 12VAC5-381. **Regulations for the Licensure of Home Care Organizations (amending 12VAC5-381-20).**

Statutory Authority: §§ 32.1-12 and 32.1-162.12 of the Code of Virginia.

Effective Date: January 17, 2013.

Agency Contact: Carrie Eddy, Senior Policy Analyst, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2157, FAX (804) 527-4502, or email carrie.eddy@vdh.virginia.gov.

Summary:

The Office of the Inspector General of the U.S Department of Health and Human Services actively enforces 42 USC § 1320a-7b, which holds persons violating the laws and regulations of the Social Security Act (specifically Titles 18 and 19) accountable and prohibits them from participating in Medicare and Medicaid. Chapter 139 of the 2012 Acts of Assembly (House Bill 220) extended that prohibition to any person who has been sanctioned pursuant to 42 USC § 1320a-7b to obtain or renew a license to establish or operate a home care organization. Therefore, an amendment is made to 12VAC5-381-20.

12VAC5-381-20. License.

A. A license to operate a home care organization is issued to a person. However, no license shall be issued to a person who has been sanctioned pursuant to 42 USC § 1320a-7b. Persons planning to seek federal certification or national accreditation pursuant to § 32.1-162.8 of the Code of Virginia must first obtain state licensure.

B. The commissioner shall issue or renew a license to establish or operate a home care organization if the commissioner finds that the home care organization is in compliance with the law and this regulation.

C. A separate license shall be required for home care organizations maintained at separate locations, even though they are owned or are operated under the same management.

D. Every home care organization shall be designated by an appropriate name. The name shall not be changed without first notifying the OLC.

E. Licenses shall not be transferred or assigned.

F. Any person establishing, conducting, maintaining, or operating a home care organization without a license shall be guilty of a Class 6 felony according to § 32.1-162.15 of the Code of Virginia.

TITLE 21. SECURITIES AND RETAIL FRANCHISING

STATE CORPORATION COMMISSION

Proposed Regulation

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

Title of Regulation: 21VAC5-110. **Retail Franchising Act Rules (amending 21VAC5-110-30, 21VAC5-110-40, 21VAC5-110-50, 21VAC5-110-75, 21VAC5-110-80).**

Statutory Authority: §§ 12.1-13 and 13.1-572 of the Code of Virginia.

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

Public Comment Deadline: January 15, 2013.

Agency Contact: Timothy O'Brien, Chief Examiner, Division of Securities and Retail Franchising, State Corporation Commission, Tyler Building, 9th Floor, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9415, FAX (804) 371-9911, or email tim.obrien@scc.virginia.gov.

Summary:

The proposed regulations address ongoing concerns with inconsistent disclosure documents filed by franchise applicants. The proposed amendments (i) require a franchisor to file a copy of its disclosure document on a CD-Rom or on other electronic media, (ii) require a franchisor to amend an effective registration within 30 days of a material change, (iii) add an exemption for seasoned franchisors regarding the offer or sale of a franchise, and (iv) add a new subsection requiring a franchisor to retain specific documents for three years. In

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addition, the Guarantee of Performance form is amended to conform to the approved North American Securities Administrators Association, Inc. form.

AT RICHMOND, NOVEMBER 16, 2012

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. SEC-2012-00040

Ex Parte: In the matter of Adopting
a Revision to the Rules Governing the
Virginia Retail Franchising Act

ORDER TO TAKE NOTICE

Section 12.1-13 of the Code of Virginia provides that the State Corporation Commission ("Commission") shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction. Section 13.1-572 of the Virginia Retail Franchising Act ("Act"), § 13.1-557 et seq. of the Code of Virginia provides that the Commission may issue any rules and regulations necessary or appropriate for the administration and enforcement of the Act.

The rules and regulations issued by the Commission pursuant to the Act are set forth in Title 21 of the Virginia Administrative Code. A copy also may be found at the Commission's website: www.scc.virginia.gov/case.

The Division of Securities and Retail Franchising ("Division") has submitted to the Commission a number of revisions to Chapter 110 of Title 21 of the Virginia Administrative Code entitled "Retail Franchising Act Rules" ("Rules"). Most of the changes are minor, but add clarification in some instances. In addition, the Division is requesting that the Commission require franchisors to provide electronic copies of their disclosure document and retain certain records for regulatory compliance.

Rules 21 VAC 5-110-30, 21 VAC 5-110-40, and 21 VAC 5-110-50 have each been amended to require a franchisor to file a copy of its disclosure document on a CD-Rom or on other electronic media approved by the Division, in addition to the filed paper version for application for registration, amendment and renewal, respectively. The current regulation under each section allows the franchisor, at the franchisor's option, to file an electronic version of the disclosure document.

Rule 21 VAC 5-110-40 proposes to add an amendment to require a franchisor to amend its effective registration within thirty (30) days after the occurrence of a material change.

Rule 21 VAC 5-110-75 4 a (exemption for seasoned franchisor) proposes to add another subparagraph that requires the franchisor to provide an auditor's report that has not been modified with a going concern paragraph, when the franchisor claims an exemption from registration under this section.

Rule 21 VAC 5-110-80 proposes to add a new subsection B requiring a franchisor to retain and make available to the Commission upon request, a sample copy of each materially different version of the franchisor's disclosure document for three years from the close of the fiscal year in which the disclosure document was last provided to a prospective franchisee.

The Division also proposes to adopt the Guarantee of Performance Form adopted by the North American Securities Administrators Association, Inc., by substituting it for the current Guarantee of Performance Form. This substitution will conform the form with the other states' franchise forms.

The Division has recommended to the Commission that the proposed revisions should be considered for adoption with an effective date of March 1, 2013. The Division also has recommended to the Commission that a hearing should be held only if requested by those interested parties who specifically indicate that a hearing is necessary and the reasons therefore.

A copy of the proposed revisions may be requested by interested parties from the Division by telephone, by mail or e-mail request and also can be found at the Division's website: www.scc.virginia.gov/srf. Any comments to the proposed rules must be received by January 15, 2013.

IT IS THEREFORE ORDERED THAT:

- (1) The proposed revisions are appended hereto and made a part of the record herein.
- (2) Comments or requests for hearing on the proposed revisions must be submitted in writing to Joel H. Peck, Clerk of the Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218, on or before January 15, 2013. Any request for hearing shall state why a hearing is necessary and why the issues cannot be adequately addressed in written comments. All correspondence shall contain reference to Case No. SEC-2012-00040. Interested persons desiring to submit comments electronically may do so by following the instructions available at the Commission's website: <http://www.scc.virginia.gov/case>.
- (3) The proposed revisions shall be posted on the Commission's website at <http://www.scc.virginia.gov/case> and on the Division's website at <http://www.scc.virginia.gov/srf>. Interested persons may also request a copy of the proposed revisions from the Division by telephone, mail, or e-mail.

AN ATTESTED COPY HEREOF, together with a copy of the proposed revisions, shall be sent to the Registrar of Regulations for publication in the Virginia Register.

AN ATTESTED COPY HEREOF shall be sent to the Division's Director, who shall forthwith mail or e-mail a copy of this Order to any interested persons as he may designate.

21VAC5-110-30. Registration application; documents to file; interim financial statements.

A. An application for registration of a franchise is made by filing with the commission the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. Total Costs and Sources of Funds for Establishing New Franchises, Form B;
3. Uniform Consent to Service of Process, Form C;
4. If the applicant is a corporation or partnership, an authorizing resolution if the application is verified by a person other than applicant's officer or general partner;
5. Franchise Disclosure Document;
6. Application fee (payable to the "Treasurer of Virginia"); and
7. Auditor's consent (or a photocopy of the consent) to the use of the latest audited financial statements in the Franchise Disclosure Document.

B. An application for registration shall contain:

1. One copy of a complete franchise registration application, including the Franchise Disclosure Document, on paper;
2. One copy of a complete franchise registration application, including the Franchise Disclosure Document, on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and
3. A cover letter containing a representation that all of the information contained in the electronic file is identical to the paper documents.

C. If the commission's review of the application results in any revision to the documents submitted, the franchisor shall file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the commission directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor shall include copies on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising. The revised electronic file shall be accompanied by a transmittal letter as described in subdivision B 3 of this section.

D. The electronic version of the Franchise Disclosure Document shall be text searchable.

~~B.~~ E. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and
2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

~~E.~~ F. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the registration application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the registration application.

~~D.~~ In addition to paper copies of the materials required by subsection A of this section, the franchisor may file one copy of the complete franchise registration application, including the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;
2. The electronic version of the Franchise Disclosure Document must be text searchable; and
3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~E.~~ G. Examples of Forms A through C are printed at the end of this chapter.

21VAC5-110-40. Pre-effective and post-effective amendments to the registration.

~~A.~~ Upon Within 30 days after the occurrence of a material change, the franchisor shall amend the effective registration filed at the commission. An amendment to an application filed either before or after the effective date of registration may include only the pages containing the information being amended if pagination is not disturbed. The amended pages must be black-lined to show all additions, deletions, and other changes from the franchisor's previous submission. The franchisor may not use margin balloons or color highlights to show changes.

B. An application to amend a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;
2. One complete clean copy of the amended Franchise Disclosure Document;

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3. One complete copy of the amended Franchise Disclosure Document black-lined to show all additions, deletions, and other changes; and

4. Application fee (payable to the "Treasurer of Virginia"). The fee shall accompany all post-effective amendments unless submitted in connection with an application for renewal.

C. An application to amend a registration shall contain:

1. One copy of a complete franchise amendment application, including the amended Franchise Disclosure Document, on paper;

2. One copy of a complete franchise amendment application, including the amended Franchise Disclosure Document, on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and

3. A cover letter containing a representation that all of the information contained in the electronic file is identical to the paper documents.

D. If the commission's review of the application results in any revision to the documents submitted, the franchisor shall file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the commission directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor shall include copies on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising. The revised electronic file shall be accompanied by a transmittal letter as described in subdivision C 3 of this section.

E. The electronic version of the Franchise Disclosure Document shall be text searchable.

~~⊖~~ F. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the amendment application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the amendment application.

~~D. In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise amendment application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:~~

~~1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;~~

~~2. The electronic version of the Franchise Disclosure Document must be text searchable; and~~

~~3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.~~

~~E. G.~~ An example of Form A is printed at the end of this chapter.

21VAC5-110-50. Expiration; application to renew the registration; interim financial statements.

A. A franchise registration expires at midnight on the annual date of the registration's effectiveness. An application to renew the franchise registration should be filed 30 days prior to the expiration date in order to prevent a lapse of registration under the Virginia statute.

B. An application for renewal of a franchise registration is made by submitting the following completed forms and other material:

1. Uniform Franchise Registration Application page, Form A;

2. Updated Franchise Disclosure Document;

3. One complete copy of the amended Franchise Disclosure Document black-lined to show all additions, deletions, and other changes, using no margin balloons or color highlights; and

4. Application fee (payable to the "Treasurer of Virginia").

C. An application for renewal of a franchise registration shall contain:

1. One copy of a complete franchise renewal application, including the updated Franchise Disclosure Document, on paper;

2. One copy of a complete franchise renewal application, including the updated Franchise Disclosure Document, on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising; and

3. A cover letter containing a representation that all of the information contained in the electronic file is identical to the paper documents.

D. If the commission's review of the application results in any revision to the documents submitted, the franchisor shall file a complete clean copy of the revised Franchise Disclosure Document and any other revised documents, and a black-lined copy of all revised pages, unless the commission directs otherwise. In addition to filing the complete clean Franchise Disclosure Document and black-lined pages on paper, a franchisor shall include copies on a CD-ROM in PDF format or on other electronic media approved by the Division of Securities and Retail Franchising. The revised electronic file shall be accompanied by a transmittal letter as described in subdivision C 3 of this section.

E. The electronic version of the Franchise Disclosure Document shall be text searchable.

~~C.~~ F. If the date of the most recent audited financial statements in the Franchise Disclosure Document precedes the date of the application by more than 120 days, the Franchise Disclosure Document shall also include the following financial statements prepared in accordance with generally accepted accounting principles:

1. An unaudited interim balance sheet as of a date within 120 days of the date of the application; and
2. An unaudited interim statement of income or operations for the period from the most recent audited financial statements to the date of the interim balance sheet.

~~D.~~ G. The certifications made by or on behalf of the franchisor in Form A shall extend and apply to all documents and materials filed in connection with the renewal application, including any documents or materials submitted to the commission subsequent to the initial filing that may be required to complete the renewal application.

~~E.~~ In addition to paper copies of the materials required by subsection B of this section, the franchisor may file one copy of the complete franchise renewal application, including a marked and unmarked copy of the Franchise Disclosure Document, on a CD-ROM in PDF format, subject to the following conditions:

1. The transmittal letter submitting the application must contain a representation that all of the information contained in the electronic file is identical to the paper documents;
2. The electronic version of the Franchise Disclosure Document must be text searchable; and
3. If the commission's review of the application results in any revision to the documents, the franchisor must submit a revised CD-ROM containing a marked and unmarked final copy of the Franchise Disclosure Document, and final copies of all other application documents. The revised CD-ROM must be accompanied by a transmittal letter as described in subdivision 1 of this subsection.

~~F.~~ H. An example of Form A is printed at the end of this chapter.

21VAC5-110-75. Exemptions.

Any offer or sale of a franchise in a transaction that meets the requirements of this section is exempt from the registration requirement of § 13.1-560 of the Act.

1. Sale or transfer by existing franchisee. The sale or transfer of a franchise by a franchisee who is not an affiliate of the franchisor for the franchisee's own account is exempt if:
 - a. The franchisee's entire franchise is sold or transferred and the sale or transfer is not effected by or through the franchisor.

b. The sale or transfer is not effected by or through a franchisor merely because a franchisor has a right to approve or disapprove the sale or transfer or requires payment of a reasonable transfer fee.

2. Renewal or extension of existing franchise. The offer or sale of a franchise involving a renewal or extension of an existing franchise where there is no interruption in the operation of the franchised business, and there is no material change in the franchise relationship, is exempt. For purposes of this subdivision, an interruption in the franchised business solely for the purpose of renovating or relocating that business is not a material change in the franchise relationship or an interruption in the operation of the franchised business.

3. Offers and sales to existing franchisees. The offer or sale of an additional franchise to an existing franchisee of the franchisor for the franchisee's own account is exempt if the franchise being sold is substantially the same as the franchise that the franchisee has operated for at least two years at the time of the offer or sale of the franchise, provided the prior sale to the franchisee was pursuant to a franchise offering that was registered or exempt pursuant to the requirements of the Act.

4. Seasoned franchisor.

a. The offer or sale of a franchise by a franchisor is exempt if:

(1) The franchisor has a net equity, according to its most recently audited financial statements, of not less than \$15,000,000 on a consolidated basis, or \$1,000,000 on an unaudited basis and is at least 80% owned by a corporation or entity that has a net equity, on a consolidated basis, according to its most recently audited financial statements, of not less than \$15,000,000, and the 80% owner guarantees the performance of the franchisor's obligations; and

(2) The auditor's report accompanying the audited financial statements described in subdivision 4 a (1) of this section does not contain an explanatory paragraph expressing doubt as to the entity's ability to continue as a going concern; and

~~(2)~~ (3) The franchisor or any 80% owner of the franchisor or the franchisor's predecessor, or any combination thereof, has had at least 25 franchisees conducting the same franchise business to be offered or sold for the entire five-year period immediately preceding the offer or sale;

b. The exemption set forth in subdivision 4 of this section may be claimed only if the franchisor:

(1) Files a Form H Notice of Claim of Exemption and other material as set forth in subdivision 7 of this section no later than 10 business days before the offer or sale of any franchise; and

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(2) Submits financial statements demonstrating compliance with the conditions set forth in subdivision 4 a (1) of this section.

c. An initial exemption filing and any renewal filing shall expire after a period of one year. The franchisor shall file for a renewal by making an exemption filing if it intends to offer or sell franchises for any additional period annually, at least 10 business days before the expiration of the previously filed Notice of Claim of Exemption.

5. Institutional franchisee.

a. The offer or sale of a franchise to a bank, savings bank, savings and loan association, trust company, insurance company, investment company, or other financial institution, or to a broker-dealer is exempt when the:

(1) Purchaser is acting for itself or in a fiduciary capacity; and

(2) Franchise is not being purchased for the purpose of resale to an individual not exempt under this regulation.

b. The exemption set forth in subdivision 5 a of this section may be claimed only if the franchisor files an initial filing Form H, Notice of Claim of Exemption, and other material as set forth in subdivision 7 a of this section, at least 10 business days before each offer or sale of each franchise.

6. Disclosure requirements.

a. If a franchisor relies upon any of the exemptions set forth in subdivision 3, 4 or 5 of this section, the franchisor shall provide a disclosure document complying with 21VAC5-110-55 and 21VAC5-110-95 together with all proposed agreements relating to the sale of the franchise to a prospective franchisee 14 calendar days before the signing of the agreement or the payment of any consideration.

b. Franchisors filing a claim of exemption under subdivisions 4 or 5 of this section shall include a self-addressed stamped envelope by which the commission may return to the franchisor a confirmation of receipt of the filing and the exemption file number assigned. Correspondence shall refer to the assigned file number in all subsequent related filings and correspondence with the commission.

7. Filing requirements for exemptions set forth in subdivisions 4 and 5 of this section.

a. Initial exemption filing.

(1) The initial exemption period shall expire after a period of one year.

(2) Franchisor files an application for exemption of a franchise by filing with the commission no later than 10 business days before the offer or sale of any franchise, the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) Uniform Consent to Service of Process, Form C;

(c) If the applicant is a corporation or partnership, an authorizing resolution is required if the application is verified by a person other than applicant's officer or general partner;

(d) Franchise Disclosure Document;

(e) Files an undertaking by which it agrees to supply any additional information the commission may reasonably request; and

(f) Application fee of \$500 (payable to the Treasurer of Virginia).

b. Amendment to exemption filing.

(1) Upon the occurrence of a material change, the franchisor shall amend the effective exemption filed at the commission.

(2) An application to amend a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the amended Franchise Disclosure Document; and

(c) Application fee of \$100 (payable to the Treasurer of Virginia).

c. Renewal exemption filing.

(1) A franchise exemption expires at midnight on the annual exemption effective date. An application to renew the franchise exemption shall be filed 10 days prior to the expiration date in order to prevent a lapse of exemption under the Act.

(2) An application for renewal of a franchise exemption is made by submitting the following completed forms and other material:

(a) Notice of Claim of Exemption, Form H;

(b) One clean copy of the Franchise Disclosure Document; and

(c) Application fee of \$250 (payable to the Treasurer of Virginia).

21VAC5-110-80. General requirements for preparation of disclosure documents; record retention; master franchises; electronic disclosure.

A. Disclosure instructions.

1. Disclose all required information clearly, legibly, and concisely in a single document using plain English.

2. The disclosure for each FDD item shall be separately titled and in the required order. Do not repeat the question in the FDD. Respond to each question fully. If the disclosure is not applicable, respond in the negative, but if an answer is required "if applicable," respond only if the requested information applies. Do not qualify a response

with a reference to another document unless permitted by the instructions to that Item.

3. For each Item in the FDD, type the requirement's Arabic number and item title. Exhibits should be identified by a letter of the alphabet.

4. The disclosure must be in a form that permits each prospective franchisee to store, download, print, or otherwise maintain the disclosure document for future reference.

5. Separate documents (for example, a confidential operations manual) must not make representations or impose terms that contradict or are materially different from the disclosure in the FDD.

6. Use 8-1/2 by 11 inch paper for the FDD and other forms. All documents and disclosures must be readable, using not less than 11-point type.

7. Franchisors may prepare multistate disclosure documents by including nonpreempted, state-specific information in the text of the FDD or in a Virginia Addendum attached to the FDD. The Virginia Addendum may be included in an exhibit to the FDD. Any amendments to the franchise agreement may be included in the Virginia Addendum or in a separate exhibit immediately following the franchise agreement.

8. The two copies of the Item 23 receipt pages should be the last two pages of the FDD and should be attached after all exhibits.

9. Before furnishing a FDD, the franchisor must advise the prospective franchisee of the formats in which the FDD is made available, any prerequisites for obtaining the FDD in a particular format, and any conditions necessary for reviewing the FDD in a particular format.

10. Grossly deficient applications may be rejected summarily by the commission as incomplete for filing.

B. Retention of records.

1. Franchisors shall retain, and make available to the commission upon request, a sample copy of each materially different version of their disclosure documents for a period of three years after the close of the fiscal year in which the disclosure document was last provided to a franchisee or prospective franchisee.

2. For each completed franchise sale, franchisors shall retain a copy of the signed receipt for at least three years.

~~B.~~ C. Master franchises.

1. When the applicant is a master franchisor seeking to sell master franchises (subfranchises), references in these regulations to "franchisee" include the master franchisee (subfranchisor).

2. The offer of master franchises (subfranchises) is an offer separate from the offer of franchises and usually requires a separate registration or exemption. A single application

may register the sale of a single unit and multiunit franchises if the FDD is not confusing.

3. In an offering by a master franchisee (subfranchisor), "franchisor" means both the master franchisor and master franchisee.

4. Master franchisees (subfranchisors) must disclose the required information about the master franchisor, and to the extent applicable, the same information concerning the master franchisee.

~~C.~~ D. Electronic disclosure.

1. A franchisor may deliver a franchise disclosure document over the Internet or by other electronic means, or in machine-readable media, provided:

a. The disclosure document is delivered as a single, integrated document or file;

b. The disclosure document has no extraneous content beyond what is required or permitted by law or regulation, but which may include customary devices for manipulating electronic documents in machine-readable form and tools or access to tools that may be necessary or convenient to enable the recipient to receive and view the disclosure document;

c. The disclosure document has no links to or from external documents or content;

d. The disclosure document is delivered in a form that intrinsically enables the recipient to store, retrieve, and print the disclosure document;

e. The disclosure document conforms as to its content and format to the requirements of applicable law or regulation;

f. The franchisor can prove that it delivered the disclosure document electronically in compliance with this subsection, and that it did so at or before the time required by applicable law or regulation; and

g. The franchisor keeps records of its electronic delivery of disclosure documents and makes those records available on demand by the commission.

2. For the sole purpose of enhancing the prospective franchisee's ability to maneuver through an electronic version of a disclosure document, the franchisor may include scroll bars, internal links, and search features. All other features such as audio, video, animation, pop-up screens or links to external information are prohibited.

3. "Delivery" requires that the disclosure document be conveyed to and received by the prospective franchisee, or that the storage media in which the disclosure is stored be physically delivered to the prospective franchisee in accordance with subdivision 1 a of this subsection.

4. This subsection does not change or waive any other requirement of law or regulation concerning registration or presale disclosure of franchise offerings.

~~D.~~ E. Other requirements.

Regulations

1. If the franchise agreement requires a franchisee to sign a release or waiver as a condition of consenting to some future action, such as a transfer or assignment of the franchise, include a sample copy of the document the franchisee will be asked to sign. This requirement does not apply to negotiated releases or waivers that a franchisee may sign to resolve a dispute with the franchisor.
2. The commission may modify or waive the provisions of this chapter or may require additional documentation or information.

NOTICE: The following forms used in administering the regulation have been 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 of a form with a hyperlink 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.

FORMS (21VAC5-110)

FORM A, Uniform Franchise Registration Application (~~eff. 7/1/95;~~ (rev. 7/08).

FORM B, Franchisor's Costs and Sources of Funds (~~eff. 7/1/95;~~ (rev. 7/08).

FORM C, Uniform Consent to Service of Process (rev. 7/08).

FORM E, Affidavit of Compliance -- Franchise Amendment/Renewal (rev. 7/08).

~~FORM F, Guarantee of Performance (rev. 7/08).~~

[FORM F, Guarantee of Performance \(rev. 3/13\).](#)

FORM G, Franchisor's Surety Bond (rev. 7/99).

FORM H, Notice of Claim of Exemption (~~eff. 7/07;~~ (rev. 7/08).

FORM K, Escrow Agreement (eff. 7/07).

VA.R. Doc. No. R13-3077; Filed November 16, 2012, 3:43 p.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 55 (2012)

Supporting Virginians with Disabilities in the Commonwealth's Workforce Importance of Employment for Virginians with Disabilities

Importance of the Issue

The last United States Census concluded that out of 3.6 million Virginia residents who were employed, 154,985 Virginians with disabilities were included in that total. These numbers indicate an under representation of people with disabilities among the gainfully employed. The Commonwealth of Virginia should work to provide a Commonwealth of Opportunity for all Virginians; therefore it is appropriate to initiate steps in order to expand employment opportunities for its citizens who are disabled.

Directives for the Employment of Virginians with Disabilities

By virtue of the authority vested in me as Governor by Article V of the Constitution of Virginia and under the laws of the Commonwealth, including, but not limited to, Section 2.2-103 of the Code of Virginia, and in conjunction with Section 51.5-1 of the Code of Virginia which states that it is the policy of the Commonwealth to encourage and enable persons with disabilities, including our wounded soldiers, to participate fully and equally in the social and economic life of the Commonwealth and to engage in remunerative employment, with the goal of enhancing the employment opportunities for Virginians with disabilities.

I hereby call upon the Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired to increase coordination in the provision of information and support to both public and private sector employers particularly in efforts to use assistive technology to support individuals with disabilities in the Commonwealth's workforce.

I hereby call upon relevant agencies to work together in order to better promote the value and benefit of employing individuals with disabilities.

I hereby call upon the Departments of Education, Medical Assistance Services, and Behavioral Health and Developmental Services to review all of their programs to assure that vocational opportunities are supported in addition to non-vocational programs.

I hereby call upon all state agencies to work with the Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired vocational rehabilitation programs to provide a range of career building opportunities for these clients to include, but not be limited to: internships, mentoring opportunities, unpaid work experiences, and situational assessments.

I hereby call upon the Department for Behavioral Health and Developmental Services to build on the findings of the annual Employment First Summits promoting Employment First Initiatives which will lead to increased employment opportunities for individuals with disabilities, resulting in immeasurable benefits for individuals, families, employers, and communities across the Commonwealth.

I hereby call upon all state agencies to collaborate with the Virginia Values Veterans Initiative of the Department of Veterans Services in developing and supporting additional employers committed to hiring veterans with disabilities. Veteran specific resources, such as the Virginia Wounded Warrior Program and the DVS Jobs Board, should be utilized to the fullest extent possible.

I hereby call upon the Department of Human Resource Management to publicly disseminate on a periodic basis the guidelines for hiring veterans with a service-connected disability rating. This information should also be displayed on the Department of Human Resource Management website and listing of state job openings.

Within 120 days of the signing of this order, I call upon the Virginia Workforce Council to work in conjunction with the Virginia Employment Commission and with the Workforce Development Services Division of the Virginia Community College system in order to convene a workgroup to identify and develop strategies for expanding the employment of individuals with disabilities in the private sector in the Commonwealth. The workgroup should include representatives of the Departments for Aging and Rehabilitative Services, Blind and Vision Impaired, Veterans Services, and Behavioral Health and Developmental Services, and other experts in the employment of persons with disabilities along with decision makers from large, small and mid-sized businesses from throughout the Commonwealth.

Effective Date of the Executive Order

This Executive Order shall be effective November 16, 2012, and shall remain in force and effect unless amended or rescinded by further executive order.

Given under my hand and under the seal of the Commonwealth of Virginia this 16th day of November, 2012.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

APPRENTICESHIP COUNCIL

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Apprenticeship Council conducted a small business impact review of **16VAC20-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Apprenticeship Council is publishing its report of findings dated November 20, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

There is a continued need for this regulation because it is required by state law. The regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation has not undergone a prior periodic review because it first became effective in December 2008. Since that time, there have not been any significant changes in technology, economic conditions, or other factors in the area affected by the regulation. The agency received no comments during the public comment period for the periodic review. The Department of Labor and Industry has determined that, consistent with the stated objectives of applicable law, this regulation does not have an adverse economic impact on small businesses, and recommended that the regulation should be retained with no changes. The council approved the agency's recommendation.

Contact Information: Reba O'Connor, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email reba.oconnor@doli.virginia.gov.

BOARD OF CORRECTIONS

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Corrections has conducted a small business impact review of **6VAC15-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Board of Corrections is publishing its report of findings dated November 26, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The substance of this regulation will not have a direct impact on small businesses. This regulation ensures that interested entities have the opportunity to review and comment on regulations being considered by the Virginia Board of Corrections.

Contact Information: James G. Bruce, Jr., Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3303, FAX (804) 674-3017, or email james.bruce@vadoc.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Corrections has conducted a small business impact review of **6VAC15-70, Standards for Community Residential Programs**, and determined that this regulation should be retained in its current form. The Board of Corrections is publishing its report of findings dated November 26, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The substance of this regulation will have a direct impact only on small businesses operating community residential programs. These regulations are necessary to protect public safety and provide safe conditions for offenders housed in these facilities.

Contact Information: James G. Bruce, Jr., Regulatory Coordinator, Department of Corrections, 6900 Atmore Drive, Richmond, VA 23225, telephone (804) 674-3303, FAX (804) 674-3017, or email james.bruce@vadoc.virginia.gov.

CRIMINAL JUSTICE SERVICES BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Criminal Justice Services Board conducted a small business impact review of **6VAC20-180, Crime Prevention Specialists**, and determined that this regulation should be retained in its current form. The Criminal Justice Services Board is publishing its report of findings dated July 26, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The continued need for this regulation is to ensure compliance of the certification of crime prevention specialists, as required in § 9.1-161 of the Code of Virginia. The comment(s) received would cause concern for constituents, as we do not feel we can mandate anyone carrying out crime prevention tasks be certified as a specialist. Also, there are times when we do not know which specialists have changed employers until they are notified that they are due for recertification.

This regulation was written as simply as possible. This regulation does not overlap, duplicate, or conflict with federal or state law. This regulation was last reviewed in 2005. There have been no changes in technology, economic conditions, or other factors that would necessitate an amendment or repeal of this regulation.

The agency has determined that this regulation does not need to be amended or repealed, consistent with the stated objectives of applicable law, to minimize the economic impact of regulations on small businesses.

Contact Information: Lisa McGee, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond,

VA 23219, telephone (804) 371-2419, FAX (804) 786-6040, or email lisa.mcgee@dcjs.virginia.gov.

STATE BOARD OF HEALTH

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the State Board of Health conducted a small business impact review of **12VAC5-542, Rules and Regulations Governing the Virginia Nurse Practitioner/Nurse Midwife Scholarship Program**, and determined that this regulation should be retained in its current form. The State Board of Health is publishing its report of findings dated April 12, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This regulation is necessary in order to increase access to quality primary care for Virginia residents in medically underserved areas. Public comments were not received regarding this regulation. The regulation is very straight forward and does not overlap or duplicate other regulations. This regulation was last evaluated in 2009. This regulation is not burdensome to small businesses, and, in fact, may be of benefit to the establishment of clinical practices (many of which are small businesses) in Virginia.

Contact Information: Joe Hilbert, Director of Governmental and Regulatory Affairs, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-7006, or email joe.hilbert@vdh.virginia.gov.

BOARD OF HOUSING AND COMMUNITY DEVELOPMENT

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Board of Housing and Community Development conducted a small business impact review of **13VAC5-200, Solar Energy Criteria for Tax Exemption**, and determined that this regulation should be retained in its current form. The Board of Housing and Community Development is publishing its report of findings dated September 30, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The board has determined that there is a need to continue the current regulation and that the regulation can provide a benefit to small business. The provisions of the regulation are not complex and are written to assist in having solar energy equipment certified for tax credits. The board has received no complaint about the regulation and no public comment was received during the periodic review comment period. There is no overlap, duplication, or conflict with any other law. Statute provides that localities may allow solar energy equipment, facilities, and devices to be exempt from taxation. The regulations adopted by the Board of Housing and Community Development provides the needed definitions

and clarity to have equipment and facilities certified as solar equipment to receive the tax exemption.

Contact Information: Steve Calhoun, Policy Officer, Department of Housing and Community Development, Main Street Centre, 600 East Main Street, Suite 300, Richmond, VA 23219, telephone (804) 371-7015, FAX (804) 371-7090, or email steve.calhoun@dhd.virginia.gov.

DEPARTMENT OF LABOR AND INDUSTRY

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Department of Labor and Industry conducted a small business impact review of **16VAC15-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Department of Labor and Industry is publishing its report of findings dated November 20, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

There is a continued need for this regulation because it is required by state law. The regulation is not overly complex and does not overlap, duplicate, or conflict with federal or state law or regulation. This regulation has not undergone a prior periodic review because it first became effective in December 2008. Since that time, there have not been any significant changes in technology, economic conditions, or other factors in the area affected by the regulation. The agency received no comments during the public comment period for the periodic review. The department has determined that, consistent with the stated objectives of applicable law, this regulation does not have an adverse economic impact on small businesses, and that the regulation should be retained with no changes.

Contact Information: Reba O'Connor, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email reba.oconnor@doli.virginia.gov.

BOARD OF LONG-TERM CARE ADMINISTRATORS

Notice of Periodic Review

Pursuant to Executive Order 14 (2010) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, the Board of Long Term Care is conducting a periodic review of 18VAC95-30, Regulations Governing the Practice of Assisted Living Facility Administrators.

The review is part of the Governor's Regulatory Reform Project with the goal of:

- a. Repealing regulations that are unnecessary or no longer in use;
- b. Reducing unnecessary regulatory burdens on individuals, businesses, and other regulated groups; and

General Notices/Errata

c. Identifying statutes that require unnecessary or overly burdensome regulations.

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

The comment period begins December 17, 2012, and ends on January 16, 2013.

Comments may be submitted online to the Virginia Regulatory Town Hall at <http://www.townhall.virginia.gov/L/Forums.cfm>.

Comments may also be sent to Elaine J. Yeatts, Agency Regulatory Coordinator, Department of Health Professions, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, FAX (804) 527-4434, or email elaine.yeatts@dhp.virginia.gov.

Following the close of the public comment period, a report of the periodic review will be posted on the Town Hall and published in the Virginia Register of Regulations.

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on November 20, 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 Ninety-Nine (12)

Virginia Lottery's "New Year Bonus" Final Requirements for Promotion Operation (effective nunc pro tunc to October 30, 2012)

Director's Order Number One Hundred One (12)

Virginia Lottery's "HASBRO™ Holiday Arcade" Official Sweepstakes Requirements (effective November 16, 2012)

Director's Order Number One Hundred Twelve (12)

Virginia's On-Line Game "Virginia's New Year Millionaire Raffle" Final Rules for Game Operation (effective nunc pro tunc to October 30, 2012)

Director's Order Number One Hundred Fourteen (12)

Holiday Ticket Dispenser Virginia Lottery Retailer Incentive Program Requirements (effective October 22, 2012)

Director's Order Number One Hundred Fifteen (12)

Virginia's Instant Game Lottery 1374 "Millionaire Mania" Final Rules for Game Operation (effective November 14, 2012)

Director's Order Number One Hundred Nineteen (12)

Virginia's Instant Game Lottery 1419 "Blackjack" Final Rules for Game Operation (effective November 16, 2012)

Director's Order Number One Hundred Twenty (12)

Virginia's Instant Game Lottery 1382 "Electric 7'S" Final Rules for Game Operation (effective November 16, 2012)

Director's Order Number One Hundred Twenty-Two (12)

Virginia's Instant Game Lottery 1398 "Jeep®" Final Rules for Game Operation (effective November 16, 2012)

Director's Order Number One Hundred Thirty-Four (12)

Virginia's Instant Game Lottery 1392 "Cash Whirlwind" Final Rules for Game Operation (effective November 16, 2012)

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on November 20, 2012.

Director's Order Number One Hundred Thirteen (12)

Certain Virginia Instant Game Lotteries; End of Games.

In accordance with the authority granted by §§ 2.2-4002 B 15 and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery instant games will officially end at midnight on October 26, 2012.

Game 1090	Stacks of Cash (TOP)
Game 1105	Platinum Payout
Game 1254	Slots of Fun
Game 1259	Summer Bucks
Game 1261	Black Pearl Doubler
Game 1268	Big Money
Game 1271	Serious Folding Money
Game 1274	Lucky Cherries Doubler
Game 1275	Lady Bucks
Game 1307	Red Hot 5's Doubler (TOP)
Game 1310	Golden 7 (TOP)
Game 1311	9's In a Line (TOP)
Game 1321	Virginia Lottery Black
Game 1323	10 X the Money

Game 1324	Jewel 7's
Game 1331	Hang 10
Game 1336	Grills Gone Wild
Game 1337	7-11-21
Game 1346	5 X the Money (TOP)
Game 1354	Monopoly (TOP)

The last day for lottery retailers to return for credit unsold tickets from any of these games will be November 30, 2012. The last day to redeem winning tickets for any of these games will be April 24, 2013, 180 days from the declared official end of the game. Claims for winning tickets from any of these games will not be accepted after that date. Claims that are mailed and received in an envelope bearing a postmark of the United States Postal Service or another sovereign nation of April 24, 2013, or earlier, will be deemed to have been received on time. This notice amplifies and conforms to the duly adopted State Lottery Board regulations for the conduct of lottery games.

This order is available for inspection and copying during normal business hours at the Virginia Lottery headquarters, 900 East Main Street, Richmond, Virginia; and at any Virginia Lottery regional office. A copy may be requested by mail by writing to Director's Office, Virginia Lottery, 900 East Main Street, Richmond, Virginia 23219.

This Director's Order is effective nunc pro tunc to October 26, 2012, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

/s/ Paula I. Otto
Executive Director
October 31, 2012

SAFETY AND HEALTH CODES BOARD

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-11, Public Participation Guidelines**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated September 13, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

This periodic review is the first evaluation of this regulation since it was promulgated in December 2008. The purpose of this regulation is to establish a means by which interested persons shall be afforded an opportunity to submit data, views, and arguments as part of the regulatory process. There is a continuing need for this regulation because:

- It provides procedures that are designed to involve the public in the formation of regulations and to solicit public comments and suggestions; and
- It is mandated by the Administrative Process Act, § 2.2-4007.02 of the Code of Virginia, which states that the board will have Public Participation Guidelines and defines the policies that are to be included.

No comments were received on this regulation during the public comment period, which began August 13, 2012, and concluded September 3, 2012.

This regulation is not overly complex. It has no negative impact on the regulated community and does not overlap, duplicate, or conflict with federal or state law or regulation. Since the date when this regulation became effective, technology, economic conditions, and other factors have not changed in the area affected by the regulation.

As a result of this periodic review, the agency has determined that this regulation has no negative economic impact on small businesses. Consistent with the stated objectives of applicable law, the Department of Labor and Industry and the Safety and Health Codes Board have concluded that this regulation should be retained with no changes.

Contact Information: Reba O'Connor, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email reba.oconnor@doli.virginia.gov.

Small Business Impact Review - Report of Findings

Pursuant to § 2.2-4007.1 of the Code of Virginia, the Safety and Health Codes Board conducted a small business impact review of **16VAC25-20, Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees**, and determined that this regulation should be retained in its current form. The Safety and Health Codes Board is publishing its report of findings dated September 13, 2012, to support this decision in accordance with § 2.2-4007.1 G of the Code of Virginia.

The purpose of this regulation is to establish the notification requirements for certain asbestos projects and provide for the payment of permit fees based on the size of the asbestos project. There is a continuing need for this regulation because it protects and promotes the safety and health of employees in places of employment.

This periodic review is the first evaluation of the regulation since it was amended in December 2008. In that time, technology, economic conditions, and other factors have not changed in the area affected by this regulation.

No comments were received on this regulation during the public comment period, which began August 13, 2012, and concluded September 3, 2012.

General Notices/Errata

This regulation is required by state law, and is not overly complex. Consistent with the stated objectives of applicable law, it has no negative impact on the regulated community or on small businesses, and does not overlap, duplicate, or conflict with federal or state law or regulation.

As a result of this periodic review, the Department of Labor and Industry and the Safety and Health Codes Board recommend retention of the existing regulation with no changes.

Contact Information: Reba O'Connor, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Suite 207, Richmond, VA 23219, telephone (804) 371-2631, FAX (804) 786-8418, or email reba.oconnor@doli.virginia.gov.

STATE WATER CONTROL BOARD

Proposed Consent Order for Gauge Works, LLC

An enforcement action has been proposed for Gauge Works, LLC, for violations of the State Water Control Law and Regulations in Loudoun County. The consent order describes a settlement to resolve the unauthorized discharge of oil to state waters. A description of the proposed action is available at the Department of Environmental Quality office named below or online at www.deq.virginia.gov. Stephanie Bellotti will accept comments by email at stephanie.bellotti@deq.virginia.gov, FAX at (703) 583-3821, or postal mail at Department of Environmental Quality, Northern Regional Office, 13901 Crown Court, Woodbridge, VA 22193, from December 18, 2012, through January 17, 2013.

VIRGINIA CODE COMMISSION

Notice to State Agencies

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

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

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/cumulstab.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.

ERRATA

STATE BOARD OF HEALTH

Title of Regulation: **12VAC5-600. Waterworks Operation Fee.**

Publication: 29:4 VA.R. 987-988 October 22, 2012.

Change to Final Regulation:

Page 988, FORMS list, in the name of the second form, change "more than \$400" to "\$400 or more"

VA.R. Doc. No. R13-3258; Filed November 20, 2012, 9:44 a.m.

VIRGINIA SOIL AND WATER CONSERVATION BOARD

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

Publication: 29:4 VA.R. 683-788 October 22, 2012.

Change to Final Regulation:

Page 691, 4VAC50-60-10, in the definition of "proposed state permit", at the end of the last sentence, insert "permit" after "draft state"

Page 716, 4VAC50-60-330 A 2, insert "permit" after "a new state"

VA.R. Doc. No. R13-3319; Filed November 27, 2012, 10:00 a.m.

Title of Regulation: **4VAC50-90. Chesapeake Bay Preservation Area Designation and Management Regulations.**

Publication: 29:4 VA.R. 788-804 October 22, 2012.

Change to Final Regulation:

Page 789, change section numbered 4VAC5-90-10 to 4VAC50-90-10

VA.R. Doc. No. R13-3317; Filed November 29, 2012, 9:10 a.m.