



VIRGINIA

REGISTER OF REGULATIONS

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Virginia Code Commission

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

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PUBLICATION SCHEDULE AND DEADLINES

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

May 2013 through June 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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 (Monday)	January 13, 2014
30:11	January 8, 2014	January 27, 2014
30:12	January 22, 2014	February 10, 2014
30:13	February 5, 2014	February 24, 2014
30:14	February 19, 2014	March 10, 2014
30:15	March 5, 2014	March 24, 2014
30:16	March 19, 2014	April 7, 2014
30:17	April 2, 2014	April 21, 2014
30:18	April 16, 2014	May 5, 2014
30:19	April 30, 2014	May 19, 2014
30:20	May 14, 2014	June 2, 2014
30:21	May 28, 2014	June 16, 2014
30:22	June 11, 2014	June 30, 2014

*Filing deadlines are Wednesdays unless otherwise specified.

PETITIONS FOR RULEMAKING

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD OF VETERINARY MEDICINE

Initial Agency Notice

Title of Regulation: **18VAC150-20. Regulations Governing the Practice of Veterinary Medicine.**

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

Name of Petitioner: Chelsea L. Mason.

Nature of Petitioner's Request: To amend 18VAC150-20-70 of the Board of Veterinary Medicine regulations to accept continuing education courses in business management and finance.

Agency Plan for Disposition of Request: In accordance with Virginia law, the petition has been filed with the Register of Regulations and will be published on May 20, 2013. Comment on the petition may be sent by email or regular mail or posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov. Following receipt of all comments on the petition to amend regulations, the board will decide whether to make any changes to the regulatory language. This matter will be on the board's agenda for its October 23, 2013 meeting, which is the next meeting scheduled after the close of the comment period.

Public Comment Deadline: June 19, 2013.

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. R13-26; Filed April 23, 2013, 2:07 p.m.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 12. HEALTH

STATE BOARD OF HEALTH

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 Health intends to consider amending **12VAC5-90, Regulations for Disease Reporting and Control**. The purpose of the proposed action is to bring the regulations into compliance with recent changes in the fields of communicable disease control and emergency preparedness that are needed to protect the health of the residents of Virginia.

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

Statutory Authority: § 32.1-35 of the Code of Virginia.

Public Comment Deadline: June 19, 2013.

Agency Contact: Diane Woolard, PhD, Director, Disease Surveillance, Department of Health, 109 Governor Street, Richmond, VA 23219, telephone (804) 864-8124, or email diane.woolard@vdh.virginia.gov.

VA.R. Doc. No. R13-3366; Filed April 18, 2013, 9:33 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the State Board of Health intends to consider amending **12VAC5-550, Board of Health Regulations Governing Vital Records**. The purpose of the proposed action is to (i) identify correct statutory authority; (ii) improve clarity of language; (iii) add necessary sections, such as regulations governing birth certificates created under the authority established in § 63.2-1200.1 B of the Code of Virginia for foreign born children; and (iv) add requirements for amending or correcting birth and death certificates. This Notice of Intended Regulatory Action serves as the report of the findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

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

Statutory Authority: §§ 32.1-12 and 32.1-250 of the Code of Virginia.

Public Comment Deadline: June 19, 2013.

Agency Contact: Janet Rainey, State Registrar, Department of Health, 2001 Maywill Street, Richmond, VA 23230, telephone (804) 662-6200, FAX (804) 662-6256, or email janet.rainey@vdh.virginia.gov.

VA.R. Doc. No. R13-3634; Filed April 19, 2013, 11:59 a.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-22, Board for Contractors Regulations**. The purpose of the proposed action is to promulgate requirements for the licensing of residential building energy analyst firms that meet specified criteria pursuant to Chapter 865 of the 2011 Acts of Assembly.

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

Statutory Authority: §§ 54.1-201 and 54.1-1146 of the Code of Virginia.

Public Comment Deadline: June 19, 2013.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R13-2849; Filed April 24, 2013, 8:49 a.m.

Notice of Intended Regulatory Action

Notice is hereby given in accordance with § 2.2-4007.01 of the Code of Virginia that the Board for Contractors intends to consider amending **18VAC50-30, Individual License and Certification Regulations**. The purpose of the proposed action is to create a new regulation for the licensing of residential building energy analysts for applicants who meet specified criteria pursuant to Chapter 865 of the 2011 Acts of Assembly. The proposed regulations include provisions that address residential building energy analyst licensing requirements, approval of accredited training programs, and standards for performing residential building energy analyses pursuant to Chapter 865.

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

Statutory Authority: §§ 54.1-201 and 54.1-1146 of the Code of Virginia.

Public Comment Deadline: June 19, 2013.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

VA.R. Doc. No. R13-2739; Filed April 24, 2013, 8:49 a.m.

REGULATIONS

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

Symbol Key

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

TITLE 3. ALCOHOLIC BEVERAGES

ALCOHOLIC BEVERAGE CONTROL BOARD

Proposed Regulation

Title of Regulation: **3VAC5-20. Advertising (amending 3VAC5-20-10, 3VAC5-20-60, 3VAC5-20-90, 3VAC5-20-100).**

Statutory Authority: §§ 4.1-111 and 4.1-320 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia provides that the board has the power to control the possession, transportation, sale, and delivery of alcoholic beverages within the Commonwealth, while § 4.1-111 of the Code of Virginia authorizes the board to promulgate reasonable regulations necessary to carry out the provisions of the Alcoholic Beverage Control Act. Section 4.1-320 of the Code of Virginia provides that there shall be no alcoholic beverage advertising in Virginia except as allowed by board regulations.

Purpose: The proposed regulatory action is necessary to clarify provisions and remove provisions that are vague and unenforceable. The streamlining and clarification of the provisions of this regulation should help promote the welfare of citizens by providing more definitive and reliable guidelines for advertising alcoholic beverages.

Substance: The proposed amendments to 3VAC5-20 eliminate antiquated, unenforceable language; prohibit the distribution of novelty and specialty items bearing alcoholic beverage advertising to persons younger than 21 years of age; and allow combination packaging for beer and distilled spirits products.

Issues: The clarification of the use of coupons benefits the regulated community and the agency by establishing more definitive guidelines. It is a benefit to the public for persons younger than 21 years of age not to be provided items bearing alcoholic beverage advertising.

The removal of vague and unenforceable provisions will ease the burden on the regulated community. The streamlining and

clarification of the provisions of this regulation should help promote the welfare of all citizens by providing more definitive and reliable guidelines for advertising alcoholic beverages. There are no known disadvantages to the public, the agency, or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its advertising regulations to clarify existing provisions of regulation, prohibit licensees from giving novelty and specialty items emblazoned with alcoholic beverage advertising to anyone under 21 and to allow manufacturers, importers, bottlers and brokers to provide mail-in rebate coupon pads to retailers as wholesalers are allowed to now.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. With this regulatory action, ABC proposes to change or move several sections of regulation so that regulatory requirements are clearer and easier to find. For example, ABC proposes to remove language that references specific federal agencies and replace it with more generic language so that interested parties are not directed to the wrong place to find out whether they are in compliance with federal alcoholic beverage advertising rules. No affected entity is likely to incur costs on account of these regulatory changes because no new requirements are being added. Affected entities will benefit from the additional clarity these changes bring to the regulation.

Current regulations have a list of specific advertising prohibitions that licensees must follow. ABC proposes to add a prohibition to this list so that licensees will not be able to give novelty or specialty merchandise that advertises alcoholic beverages to anyone under the legal drinking age. ABC reports that the scope of alcoholic beverage advertising has expanded in recent years and that this prohibition already exists in private advertising policies which most if not all licensees follow. This prohibition is also implied in other advertising rules that prohibit licensees from marketing alcohol to individuals under the legal drinking age. Because of already existing prohibitions, adding this language to these regulations will likely just clarify rules for licensees rather than imposing a new restriction on them. No licensee is likely to incur costs on account of this change.

Current regulations allow alcoholic beverage wholesalers to provide mail-in rebate coupons to retailers as part of their product marketing. ABC proposes to also allow manufacturers, importers, bottlers and brokers to provide

Regulations

coupon pads to retailers. This change will benefit all of these groups by giving them greater flexibility to use the marketing tools that they deem most efficient and useful.

Businesses and Entities Affected. ABC reports that 1,000 businesses would be potentially affected by this proposed regulatory change; 60% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the

economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) clarify existing language, (ii) allow combination packaging for beer and distilled spirits, and (iii) prohibit the distribution of novelty and specialty items bearing alcoholic beverage advertising to persons younger than 21 years of age.

3VAC5-20-10. Advertising; generally; cooperative advertising; federal laws; cider; restrictions.

A. All alcoholic beverage advertising is permitted in this Commonwealth except that which is prohibited or otherwise limited or restricted by regulation of the board ~~and such advertising shall not be blatant or obtrusive.~~ Any editorial or other reading matter in any periodical, publication or newspaper for the publication of which no money or other valuable consideration is paid or promised, directly or indirectly, by or for the benefits of any permittee or licensee does not constitute advertising.

B. Advertising of cider, as defined in § 4.1-213 of the Code of Virginia, shall conform to the requirements for advertising beer.

C. The board may issue a permit authorizing a variance from any of its advertising regulations for good cause shown.

D. No advertising shall contain any statement, symbol, depiction or reference that:

1. Would tend to induce minors to drink, or would tend to induce persons to consume to excess;
2. Is obscene or is suggestive of any illegal activity;
3. Incorporates the use of any present or former athlete or athletic team or implies that the product enhances athletic prowess; except that, persons granted a license to sell wine or beer may display within their licensed premises point-of-sale advertising materials that incorporate the use of any present or former professional athlete or athletic team, provided that such advertising materials: (i) otherwise comply with the applicable regulations of the ~~Federal Bureau of Alcohol, Tobacco and Firearms~~ appropriate federal agency and (ii) do not depict any athlete consuming or about to consume alcohol prior to or while engaged in an athletic activity, do not depict an athlete consuming alcohol while the athlete is operating or about to operate a motor vehicle or other machinery, and do not imply that the alcoholic beverage so advertised enhances athletic prowess;
4. Is false or misleading in any material respect;
5. Implies or indicates, directly or indirectly, that the product is government endorsed by the use of flags, seals or other insignia or otherwise;
6. Makes any reference to the intoxicating effect of any alcoholic beverages;

7. Constitutes or contains a contest or sweepstakes where a purchase is required for participation; or

8. Constitutes or contains an offer to pay or provide anything of value conditioned on the purchase of alcoholic beverages, except for refund coupons and combination packaging ~~for wine~~. Any such combination packaging shall be limited to packaging provided by the manufacturer that is designed to be delivered intact to the consumer.

E. The board shall not regulate advertising of nonalcoholic beer or nonalcoholic wine so long as (i) a reasonable person by common observation would conclude that the advertising clearly does not represent any advertisement for alcoholic beverages and (ii) the advertising prominently states that the product is nonalcoholic.

3VAC5-20-60. Advertising; novelties and specialties.

Distribution of novelty and specialty items, including wearing apparel, bearing alcoholic beverage advertising, shall be subject to the following limitations and conditions:

1. Items not in excess of \$10 in wholesale value may be given away;
2. Manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give licensed retailers items not in excess of \$10 in wholesale value in quantities equal to the number of employees of the retail establishment present at the time the items are delivered. Thereafter, such employees may wear or display the items on the licensed premises. Neither manufacturers, importers, bottlers, brokers, wholesalers or their representatives may give such items to patrons on the premises of retail licensees; however, manufacturers or their authorized representatives other than wholesalers conducting tastings pursuant to the provisions of § 4.1-201.1 of the Code of Virginia may give no more than one such item to each consumer provided a sample of alcoholic beverages during the tasting event; and such items bearing moderation and responsible drinking messages may be displayed by the licensee and his employees on the licensed premises and given to patrons on such premises as long as any references to any alcoholic beverage manufacturer or its brands are subordinate in type size and quantity of text to such moderation message;
3. Items in excess of \$10 in wholesale value may be donated by distilleries, wineries and breweries only to participants or entrants in connection with the sponsorship of conservation and environmental programs, professional, semi-professional or amateur athletic and sporting events subject to the limitations of 3VAC5-20-100, and for events of a charitable or cultural nature;
4. Items may be sold by mail upon request or over-the-counter at retail establishments customarily engaged in the sale of novelties and specialties, provided they are sold at the reasonable open market price in the localities where sold;
5. Wearing apparel shall be in adult sizes; ~~and~~

6. Point-of-sale order blanks, relating to novelty and specialty items, may be provided by beer and wine wholesalers to retail licensees for use on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesalers may not be involved in the redemption process; ~~and~~

7. Novelty and specialty items bearing alcoholic beverage advertising may not be distributed to persons younger than the legal drinking age.

3VAC5-20-90. Advertising; coupons.

A. "Normal retail price" shall mean the average retail price of the brand and size of the product in a given market, and not a reduced or discounted price.

B. Coupons may be advertised in accordance with the following conditions and restrictions:

1. Manufacturers or importers of spirits, wine, and beer may use only consumer mail-in refund, not instantly redeemable discount, coupons. The coupons may not exceed 50% of the normal retail price and may not be honored at a retail outlet or state government store but shall be mailed directly to the manufacturer or importer or its designated agent. Such agent may not be a wholesaler or retailer of alcoholic beverages. Consumer proof of purchase (such as a dated, retail specific receipt) is required for redemption of all consumer coupons. Coupons are permitted in the print media, via the Internet, by direct mail or electronic mail to consumers, or as part of, or attached to, the package. ~~Beer and wine~~ Manufacturers, importers, bottlers, brokers, wholesalers, and their representatives may provide coupon pads to retailers for use by retailers on their premises, if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees may attach refund coupons to the package if done for all retail licensees equally and after obtaining the consent, which may be a continuing consent, for each retailer or his representative.
2. Manufacturers or importers offering refund coupons on spirits and wine sold in state government stores shall notify the board at least ~~45~~ 15 days in advance of the issuance of the coupons of its amount, its expiration date and the area of the Commonwealth in which it will be primarily used, if not used statewide.
3. Wholesale licensees are not permitted to offer coupons.
4. Retail licensees may offer coupons, including their own discount or refund coupons, on wine and beer sold for off-premises consumption only. Retail licensees may offer their own coupons in the print media, at the point-of-sale or by direct mail to consumers.
5. No retailer may be paid a fee by manufacturers or wholesalers of alcoholic beverages for display or use of coupons and the name of the retail establishment may not

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appear on any refund coupons offered by manufacturers. No manufacturer or wholesaler may furnish any coupons or materials regarding coupons to retailers which are customized or designed for discount or refund by the retailer.

6. Retail licensees or employees thereof may not receive refunds on coupons obtained from the packages before sale at retail.

7. No coupons may be honored for any individual below the legal age for purchase.

3VAC5-20-100. Advertising; sponsorship of public events; restrictions and conditions.

A. Generally. Alcoholic beverage advertising in connection with the sponsorship of public events shall be limited to sponsorship of conservation and environmental programs, professional, semi-professional, or amateur athletic and sporting events and events of a charitable or cultural nature by distilleries, wineries, ~~and~~ breweries, importers, and bottlers.

B. Restrictions and conditions.

1. Any sponsorship on a college, high school or younger age level is prohibited;

2. Cooperative advertising, as defined in 3VAC5-30-80, is prohibited;

3. ~~Awards or contributions~~ Contributions of alcoholic beverages are prohibited;

4. Advertising of alcoholic beverages shall conform in size and content to the other advertising concerning the event and advertising regarding charitable events shall place primary emphasis on the charitable fund raising nature of the event;

5. A charitable event is one held for the specific purpose of raising funds for a charitable organization which is exempt from federal and state taxes;

6. Advertising in connection with the sponsorship of an event may be ~~only in the any~~ media, including such as print media, the Internet or other electronic means, television, or radio; by direct mail or flyers to consumers; on programs, tickets, and schedules for the event; ~~on the inside of licensed or unlicensed retail establishments; and at the site of the event;~~

7. Advertising materials as defined in 3VAC5-30-60 G, table tents as defined in 3VAC5-30-60 H and canisters are permitted;

8. Prior written notice shall be submitted to the board describing the nature of the sponsorship and giving the date, time and place of it; and

9. Manufacturers may sponsor public events and wholesalers may only cosponsor charitable events.

VA.R. Doc. No. R12-3235; Filed April 30, 2013, 7:16 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-30. Tied-House (amending 3VAC5-30-10, 3VAC5-30-20, 3VAC5-30-30, 3VAC5-30-60, 3VAC5-30-70, 3VAC5-30-80; adding 3VAC5-30-90).**

Statutory Authority: § 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia or the general laws of the Commonwealth. Section 4.1-111 of the Code of Virginia also provides that the Alcoholic Beverage Control Board must maintain the reasonable separation of retailer interests from those of the manufacturers, bottlers, brokers, importers, and wholesalers in accordance with § 4.1-216 of the Code of Virginia and in consideration of the established trade customs, quantity, and value of the articles or services provided; prevent undue competitive domination of any person by any other person engaged in the manufacture, distribution, and sale at retail or wholesale of alcoholic beverages in the Commonwealth; and promote reasonable accommodation of arm's-length business transactions.

Purpose: The streamlining and clarification of the provisions of this regulation should help promote the welfare of citizens by providing more definitive and reliable guidance on the marketing of alcoholic beverages. The expansion of ordinary and commercial reasons for product return promotes product integrity for manufacturers and protects retailers when a product is discontinued.

Substance: The proposed amendments to 3VAC5-30 (i) expand and clarify the merchandising of alcoholic beverages; (ii) establish a new section that more appropriately incorporates into regulation the current provisions prohibiting price discrimination between wholesalers and retailers of alcoholic beverages; and (iii) expand ordinary and commercial reasons for product return.

Issues: The primary advantage associated with the proposed regulatory action is increased flexibility for alcoholic beverage manufacturers, importers, bottlers, brokers, and wholesalers in the marketing and merchandising of products. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend

its tied house regulations to rearrange existing provisions of regulation to improve clarity, allow manufacturers, importers, bottlers, brokers and wholesalers to all offer sales inducements and rotate and exchange alcoholic beverage stock at and to allow employment of manufacturers, wholesalers or bottlers by retail licensees so long as the employed individuals do not sell directly or indirectly to the employing retailer.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. With this regulatory action, ABC proposes to change or move several sections of regulation so that regulatory requirements are clearer and easier to find. For example, ABC proposes to move language that defines what dispensing accessories and tapping equipment are so that they are together and easier to locate. No affected entity is likely to incur costs on account of regulatory changes such as these because no new requirements are being added. Affected entities will benefit from the additional clarity these changes bring to the regulation.

Current regulations allow manufacturers, bottlers and wholesalers to offer sales inducements to retailers. Wholesalers are currently allowed to rotate and exchange stock at retail establishments. ABC proposes to amend these regulations so that manufacturers, importers, bottlers, brokers and wholesalers can offer inducements to retailers and rotate and exchange stock at retail establishments. All these regulated entities will likely benefit from the added flexibility to take part in marketing and stocking activities that these regulatory changes will afford them. As all these activities are allowed, but not required, no entity will likely incur any costs on account of these proposed changes.

Current regulations prohibit retailers from employing manufacturers, wholesalers or bottlers licensed by ABC. ABC now proposes to amend these regulations to allow such employment so long as the employed individuals do not sell directly or indirectly to the employing retailer. This regulatory change will benefit all affected entities by allowing them greater flexibility to make business and employment decisions.

Businesses and Entities Affected. ABC reports that 15,000 businesses would be potentially affected by this proposed regulatory change; 70% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) allow wine wholesalers to merchandise product on Sunday; (ii) transfer the prohibitions of price discrimination between wholesalers and retailers currently in 3VAC5-70 (Other Provisions) to 3VAC5-30 (Tied-House); and (iii) expand ordinary and commercial reasons for product return.

3VAC5-30-10. Rotation and exchange of stocks of retailers by wholesalers; permitted and prohibited acts.

A. Permitted acts. ~~For the purpose of maintaining the freshness of the stock and the integrity of the products sold by him, a wine wholesaler~~ Manufacturers, importers, bottlers, brokers, or wholesalers may perform, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of

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~~alcoholic beverages, and a beer wholesaler may perform, except on Sundays in jurisdictions where local ordinances restrict Sunday sales of alcoholic beverages,~~ the following services for a retailer upon consent, which may be a continuing consent, of the retailer:

1. Rotate, repack, and rearrange ~~wine or beer~~ alcoholic beverages in a display (shelves, coolers, cold boxes, and the like, and floor displays in a sales area);
2. Restock ~~wine and beer~~ alcoholic beverages;
3. Rotate, repack, rearrange, and add to his own stocks of ~~wine or beer~~ alcoholic beverages in a storeroom space assigned to him by the retailer;
4. Transfer ~~wine and beer~~ alcoholic beverages between storerooms, between displays, and between storerooms and displays; and
5. Create or build original displays using ~~wine or beer products~~ alcoholic beverages only.

B. Prohibited acts. A manufacturer, importer, bottler, broker, or wholesaler, or its representative, may not:

1. Alter or disturb in any way the merchandise sold by another manufacturer, importer, bottler, broker, or wholesaler, whether in a display, sales area, or storeroom except in the following cases:
 - a. When the products of one manufacturer, importer, bottler, broker, or wholesaler have been erroneously placed in the area previously assigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler; or
 - b. When a floor display area previously assigned by a retailer to one manufacturer, importer, bottler, broker, or wholesaler has been reassigned by the retailer to another manufacturer, importer, bottler, broker, or wholesaler;
2. Mark or affix retail prices to products other than those sold by the manufacturer, importer, bottler, broker, or wholesaler to the retailer; or
3. Sell or offer to sell alcoholic beverages to a retailer with the privilege of return, except for ordinary and usual commercial reasons as set forth below:
 - a. Products defective at the time of delivery may be replaced;
 - b. Products erroneously delivered may be replaced or money refunded;
 - c. Products ~~that of which~~ a manufacturer or importer discontinues nationally production or importation may be returned and money refunded if no lawful exchange under subdivision 3 g of this subsection is available and if prior written approval is provided by the board;
 - d. Resalable draft beer may be returned and money refunded;
 - e. Products in the possession of a retail licensee whose license is terminated by operation of law, voluntary

surrender or order of the board may be returned and money refunded upon permit issued by the board;

f. Products which have been condemned and are not permitted to be sold in this Commonwealth may be replaced or money refunded upon permit issued by the board; or

g. ~~Wine or beer~~ Alcoholic beverages may be exchanged on an identical quantity and brand basis for quality control purposes. Where production of the product has been discontinued, the distributor may exchange the product for a product from the same supplier on an identical quantity and comparable wholesale price basis. Any such exchange shall be documented by the word "exchange" on the proper invoice.

3VAC5-30-20. Restrictions upon employment; exceptions.

No retail licensee shall employ in any capacity in his licensed business any person engaged or employed in the manufacturing, bottling or wholesaling of alcoholic beverages; nor shall any licensed manufacturer, bottler or wholesaler employ in any capacity in his licensed business any person engaged or employed in the retailing of alcoholic beverages.

This section shall not apply to banquet licensees, farm winery licensees, or ~~to~~ off-premises winery licensees, nor shall this section apply in any situation in which the manufacturer, bottler, or wholesaler does not sell or otherwise furnish, directly or indirectly, alcoholic beverages or other merchandise to the retailer.

3VAC5-30-30. Certain transactions to be for cash; "cash" defined; checks and money orders; electronic fund transfers; records and reports by sellers; payments to the board.

A. Sales of wine or beer between wholesale and retail licensees of the board shall be for cash paid and collected at the time of or prior to delivery, except where payment is to be made by electronic fund transfer as hereinafter provided. Each invoice covering such a sale or any other sale shall be signed by the purchaser at the time of delivery and shall specify the manner of payment.

B. "Cash," as used in this section, shall include (i) legal tender of the United States, (ii) a money order issued by a duly licensed firm authorized to engage in such business in the Commonwealth (iii) a valid check drawn upon a bank account in the name of the licensee or permittee or in the trade name of the licensee or permittee making the purchase, or (iv) an electronic fund transfer, initiated by a wholesaler pursuant to subsection D of this section, from a bank account in the name, or trade name, of the retail licensee making a purchase from a wholesaler or the board.

C. If a check, money order or electronic fund transfer is used, the following provisions apply:

1. If only alcoholic beverage merchandise is being sold, the amount of the checks, money orders or electronic fund

transfers shall be no larger than the purchase price of the alcoholic beverages; and

2. If nonalcoholic merchandise is also sold to the retailer, the check, money order or electronic fund transfer may be in an amount no larger than the total purchase price of the alcoholic beverages and nonalcoholic beverage merchandise. If a separate invoice is used for the nonalcoholic merchandise, a copy of it shall be attached to the copies of the alcoholic beverage invoices which are retained in the records of the wholesaler and the retailer. If a single invoice is used for both the alcoholic beverages and nonalcoholic beverage merchandise, the alcoholic beverage items shall be separately identified and totaled.

D. If an electronic fund transfer is used for payment by a licensed retailer or a permittee for any purchase from a wholesaler or the board, the following provisions shall apply:

1. Prior to an electronic fund transfer, the retail licensee shall enter into a written agreement with the wholesaler specifying the terms and conditions for an electronic fund transfer in payment for the delivery of wine or beer to that retail licensee. The electronic fund transfer shall be initiated by the wholesaler no later than one business day after delivery and the wholesaler's account shall be credited by the retailer's bank no later than the following business day. The electronic fund transfer agreement shall incorporate the requirements of this subdivision, but this subdivision shall not preclude an agreement with more restrictive provisions. For purposes of this subdivision, the term "business day" shall mean a business day of the respective bank;
2. The wholesaler must generate an invoice covering the sale of wine or beer, and shall specify that payment is to be made by electronic fund transfer. Each invoice must be signed by the purchaser at the time of delivery; and
3. Nothing in this subsection shall be construed to require that any licensee must accept payment by electronic fund transfer.

E. Wholesalers shall maintain on their licensed premises records of all invalid checks received from retail licensees for the payment of wine or beer, as well as any stop payment order, insufficient fund report or any other incomplete electronic fund transfer reported by the retailer's bank in response to a wholesaler initiated electronic fund transfer from the retailer's bank account. Further, wholesalers shall report to the board any invalid checks or incomplete electronic fund transfer reports received in payment of wine or beer when either (i) any such invalid check or incomplete electronic fund transfer is not satisfied by the retailer within seven days after notice of the invalid check or a report of the incomplete electronic fund transfer is received by the wholesaler, or (ii) the wholesaler has received, whether satisfied or not, either more than one such invalid check from any single retail licensee or received more than one incomplete electronic fund transfer report from the bank of

any single retail licensee, or any combination of the two, within a period of 180 days. Such reports shall be upon a form provided by the board and in accordance with the instructions set forth in such form.

F. Payments to the board for the following items shall be for cash, as defined in subsection B of this section:

1. State license taxes and application fees;
- ~~2. Purchases of alcoholic beverages from the board by mixed beverage licensees;~~
- ~~3. 2.~~ Wine taxes and excise taxes on beer and wine coolers;
- ~~4. 3.~~ Solicitors' permit fees and temporary permit fees;
- ~~5. 4.~~ Registration and certification fees, and the markup or profit on cider, collected pursuant to these regulations;
- ~~6. 5.~~ Civil penalties or charges and costs imposed on licensees and permittees by the board; and
- ~~7. 6.~~ Forms provided to licensees and permittees at cost by the board.

3VAC5-30-60. Inducements to retailers; beer and wine tapping equipment; bottle or can openers; spirits back-bar pedestals; banquet licensees; paper, cardboard or plastic advertising materials; clip-ons and table tents; sanctions and penalties.

A. Any manufacturer, importer, bottler, broker, or wholesaler, or its representative, may sell, rent, lend, buy for, or give to any retailer, without regard to the value thereof, the following:

1. Draft beer knobs, containing advertising matter which shall include the brand name and may further include only trademarks, housemarks and slogans and shall not include any illuminating devices or be otherwise adorned with mechanical devices which are not essential in the dispensing of draft beer; and
2. Tapping equipment, defined as all the parts of the mechanical system required for dispensing draft beer in a normal manner from the carbon dioxide tank through the beer faucet, excluding the following:
 - a. The carbonic acid gas in containers, except that such gas may be sold only at the reasonable open market price in the locality where sold;
 - b. Gas pressure gauges (may be sold at cost);
 - c. Draft arms or standards;
 - d. Draft boxes; and
 - e. Refrigeration equipment or components thereof.

Further, a manufacturer, bottler or wholesaler may sell, rent or lend to any retailer, for use only by a purchaser of draft beer in kegs or barrels from such retailer, whatever tapping equipment may be necessary for the purchaser to extract such draft beer from its container.

B. Any manufacturer, importer, bottler, broker, or wholesaler may sell to any retailer and install in the retailer's establishment tapping dispensing accessories ~~such as~~

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(including but not limited to standards, faucets, rods, vents, taps, tap standards, hoses, cold plates, washers, couplings, gas gauges, vent tongues, shanks, and check valves, ~~if the tapping accessories are sold~~ valves) and carbon dioxide (and other gases used in dispensing equipment) at a price not less than the cost of the industry member who initially purchased them, and if the price is collected within 30 days of the date of sale.

~~Wine tapping equipment shall not include the following:~~

- ~~1. Draft wine knobs, which may be given to a retailer;~~
- ~~2. Carbonic acid gas, nitrogen gas, or compressed air in containers, except that such gases may be sold in accordance with the reasonable open market prices in the locality where sold and if the price is collected within 30 days of the date of the sales; or~~
- ~~3. Mechanical refrigeration equipment.~~

C. Any beer tapping equipment may be converted for wine tapping by the beer wholesaler who originally placed the equipment on the premises of the retail licensee, provided that such beer wholesaler is also a wine wholesaler licensee. Moreover, at the time such equipment is converted for wine tapping, it shall be sold, or have previously been sold, to the retail licensee at a price not less than the initial purchase price paid by such wholesaler.

D. Any manufacturer, bottler or wholesaler of wine or beer may sell or give to any retailer, bottle or can openers upon which advertising matter regarding alcoholic beverages may appear, provided the wholesale value of any such openers given to a retailer by any individual manufacturer, bottler or wholesaler does not exceed \$20. Openers in excess of \$20 in wholesale value may be sold, provided the reasonable open market price is charged therefor.

E. Any manufacturer of spirits may sell, lend, buy for or give to any retail licensee, without regard to the value thereof, back-bar pedestals to be used on the retail premises and upon which advertising matter regarding spirits may appear.

F. Manufacturers of alcoholic beverages and their authorized vendors or wholesalers of wine or beer may sell at the reasonable wholesale price to banquet licensees glasses or paper or plastic cups upon which advertising matter regarding alcoholic beverages may appear.

G. Manufacturers, importers, bottlers, brokers, or wholesalers of alcoholic beverages, or their representatives, may not provide point-of-sale advertising for any alcoholic beverage or any nonalcoholic beer or nonalcoholic wine to retail licensees except in accordance with 3VAC5-30-80. Manufacturers, importers, bottlers, brokers, and wholesalers may provide advertising materials to any retail licensee that have been customized for that retail licensee (including the name, logo, address, and website of the retail licensee) provided that such advertising materials must:

1. Comply with all other applicable regulations of the board;
2. Be for interior use only;

3. Contain references to the alcoholic beverage products or brands offered for sale by the manufacturer, bottler, or wholesaler providing such materials and to no other products; and

4. Be made available to all retail licensees.

H. Any manufacturer, importer, bottler, broker, or wholesaler of wine, beer, or spirits, or its representatives, may sell, lend, buy for, or give to any retail licensee clip-ons and table tents.

I. Any manufacturer, importer, bottler, broker, or wholesaler of alcoholic beverages may clean and service, either free or for compensation, coils and other like equipment used in dispensing wine and beer alcoholic beverages, and may sell solutions or compounds for cleaning wine and beer alcoholic beverage glasses, provided the reasonable open market price is charged.

J. Any manufacturer, importer, bottler, or wholesaler of alcoholic beverages licensed in this Commonwealth may sell ice to retail licensees provided the reasonable open market price is charged.

K. Any licensee of the board, including any manufacturer, bottler, importer, broker as defined in § 4.1-216 A of the Code of Virginia, wholesaler, or retailer who violates, attempts to violate, solicits any person to violate or consents to any violation of this section shall be subject to the sanctions and penalties as provided in § 4.1-328 of the Code of Virginia.

3VAC5-30-70. Routine business entertainment; definition; permitted activities; conditions.

A. Nothing in this ~~regulation~~ chapter shall prohibit a wholesaler ~~or~~ manufacturer, importer, or broker of alcoholic beverages licensed in the Commonwealth from providing a retail licensee "routine business entertainment" which is defined as those activities enumerated in subsection B of this section.

B. Permitted activities are:

1. Meals and beverages;
2. Concerts, theatre and arts entertainment;
3. Sports participation and entertainment;
4. Entertainment at charitable events; ~~and~~
5. Private parties; and

6. Local transportation in order to attend one or more of the activities permitted by this subsection.

C. The following conditions apply:

1. Such routine business entertainment shall be provided without a corresponding obligation on the part of the retail licensee to purchase alcoholic beverages or to provide any other benefit to such wholesaler or manufacturer or to exclude from sale the products of any other wholesaler or manufacturer;

2. Wholesaler or manufacturer personnel shall accompany the personnel of the retail licensee during such business entertainment;
3. Except as is inherent in the definition of routine business entertainment as contained herein, nothing in this regulation shall be construed to authorize the providing of property or any other thing of value to retail licensees;
4. No more than \$400 may be spent per 24-hour period on any employee of any retail licensee, including a self-employed sole proprietor, or, if the licensee is a partnership, or any partner or employee thereof, or if the licensee is a corporation, on any corporate officer, director, shareholder of 10% or more of the stock or other employee, such as a buyer. Expenditures attributable to the spouse of any such employee, partnership or stockholder, and the like, shall not be included within the foregoing restrictions;
5. No person enumerated in subdivision 4 of this subsection may be entertained more than six times by a wholesaler and six times by a manufacturer per calendar year;
6. Wholesale licensees and manufacturers shall keep complete and accurate records for a period of three years of all expenses incurred in the entertainment of retail licensees. These records shall indicate the date and amount of each expenditure, the type of entertainment activity and retail licensee entertained; and
7. This ~~regulation~~ section shall not apply to personal friends of manufacturers, importers, bottlers, brokers, or wholesalers as provided for in 3VAC5-70-100.

3VAC5-30-80. Advertising materials that may be provided to retailers by manufacturers, importers, bottlers, or wholesalers.

A. There shall be no cooperative advertising as between a producer, manufacturer, bottler, importer, or wholesaler and a retailer of alcoholic beverages, except as may be authorized by regulation pursuant to § 4.1-216 of the Code of Virginia. The term "cooperative advertising" shall mean the payment or credit, directly or indirectly, by any manufacturer, bottler, importer, or wholesaler whether licensed in this Commonwealth or not to a retailer for all or any portion of advertising done by the retailer.

B. Manufacturers or their authorized vendors as defined in § 4.1-216.1 of the Code of Virginia and wholesalers of alcoholic beverages may sell, lend, buy for, or give to retailers any nonilluminated advertising materials made of paper, cardboard, canvas, rubber, foam, or plastic, provided the advertising materials have a wholesale value of \$40 or less per item. Advertising material referring to any brand or manufacturer of spirits may only be provided to mixed beverage licensees and may not be provided by beer and wine wholesalers, or their employees, unless they hold a spirits solicitor's permit.

C. Manufacturers, bottlers, or wholesalers may supply to retailers napkins, placemats, and coasters that contain (i) a reference to the name of a brand of nonalcoholic beer or nonalcoholic wine, or (ii) a message relating solely to and promoting moderation and responsible drinking, which message may contain the name, logo, and address of the sponsoring manufacturer, bottler, or wholesaler, provided such recognition is subordinate to the message.

D. Any manufacturer, including any vendor authorized by any such manufacturer, whether or not licensed in the Commonwealth, may sell service items bearing alcoholic brand references to on-premises retail licensees. Such retail licensee may display the service items on the premises of his licensed establishment. Each such retail licensee purchasing such service items shall retain a copy of the evidence of his payment to the manufacturer or authorized vendor for a period of not less than two years from the date of each sale of the service items. As used in this subdivision, "service items" means articles of tangible personal property normally used by the employees of on-premises licensees to serve alcoholic beverages to customers including, but not limited to, glasses, napkins, buckets, and coasters.

E. ~~Beer and wine~~ Alcoholic beverage "neckers," recipe booklets, brochures relating to the wine manufacturing process, vineyard, brewery, and distillery geography, and history of ~~a wine~~ an alcoholic beverage manufacturing area, and point-of-sale entry blanks relating to contests and sweepstakes may be provided by ~~beer and wine manufacturers, importers, bottlers, brokers, or~~ wholesalers to retail licensees for use on retail premises, if such items are offered to all retail licensees equally, and the manufacturer, importer, bottler, broker, or wholesaler has obtained the consent, which may be a continuing consent, of each retailer or his representative. Wholesale licensees in the Commonwealth may not put entry blanks on the package. Solicitors holding permits under the provisions of 3VAC5-60-80 may provide point-of-sale entry blanks relating to contests and sweepstakes to mixed beverage licensees for use on the premises if such items are offered to all mixed beverage licensees equally, and the solicitor has obtained the consent, which may be a continuous consent, of each mixed beverage licensee or his representative.

F. Manufacturers, importers, bottlers, brokers, or wholesalers may supply refund coupons; if they are supplied, displayed, and used in accordance with 3VAC5-20-90.

G. No manufacturer, bottler, wholesaler, or importer of alcoholic beverages, whether licensed in this Commonwealth or not, may directly or indirectly sell, rent, lend, buy for, or give to any retailer any advertising materials, decorations, or furnishings under any circumstances otherwise prohibited by law, nor may any retailer induce, attempt to induce, or consent to any such supplier of alcoholic beverages furnishing such retailer any such advertising.

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H. Any advertising materials provided for herein, which may have been obtained by any retail licensee from any manufacturer, bottler, broker, importer, or wholesaler of alcoholic beverages, may be installed in the interior of the licensed establishment by any such ~~manufacturer, bottler, or wholesaler~~ industry member using any normal and customary installation materials. With the consent of the retail licensee, which consent may be a continuing consent, manufacturers, importers, bottlers, brokers, or wholesalers, or their representatives, may mark or affix retail prices on these materials.

I. Every retail licensee who obtains any point-of-sale advertising shall keep a complete, accurate, and separate record of all such material obtained. Such records shall show (i) the name and address of the person from whom obtained; (ii) the date furnished; (iii) the item furnished; and (iv) the price charged therefore. All such records, invoices and accounts shall be kept by each such licensee at the place designated in the license for a period of two years and shall be available for inspection and copying by any member of the board or its special agents during reasonable hours.

3VAC5-30-90. Price discrimination; inducements.

A. No wholesale wine or beer licensee shall discriminate in price of alcoholic beverages between different retail purchasers except where the difference in price charged by such wholesale licensee is due to:

1. Acceptance or rejection by a retail purchaser of terms or conditions affecting a price offer, including a quantity discount, as long as such terms or conditions are offered on an equal basis to all retailers;
2. A bona fide difference in the cost of sale or delivery;
3. The status of the purchaser as an on-premises or off-premises licensee; or
4. The wholesale licensee charging a lower price in good faith to meet an equally low price charged by a competing wholesale licensee on a brand and package of like grade and quality.

Where such difference in price charged to any such retail purchaser does occur, the board may ask for and the wholesale licensee shall furnish written substantiation for the price difference.

B. No person holding a license authorizing the sale of alcoholic beverages at retail shall knowingly induce or receive a discrimination in price prohibited by this section.

VA.R. Doc. No. R12-3236; Filed April 30, 2013, 7:17 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-40. Requirements for Product Approval (amending 3VAC5-40-10, 3VAC5-40-20, 3VAC5-40-30; repealing 3VAC5-40-40, 3VAC5-40-50).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia or the general laws of the Commonwealth. Section 4.1-103 of the Code of Virginia also compels the Alcoholic Beverage Control Board to determine the nature, form, and capacity of all containers used for holding alcoholic beverages to be kept or sold under Title 4.1 and prescribe the form and content of all labels and seals to be placed thereon.

Purpose: The proposed regulatory action is necessary to streamline and consolidate the label and container requirements for wine and beer and to remove vague and unenforceable language pertaining to lewd or indecent labels.

Alcoholic beverage regulation is essential to protect the health, safety, and welfare of citizens by encouraging temperance and maintaining an orderly market. In promulgating regulations, the board must balance the need to protect the public safety with the legitimate interests of industry participants to be free of unnecessary restrictions. Each of the proposed amendments maintains essential public safety controls, while providing more flexibility for alcoholic beverage sellers.

Substance: The proposed amendments consolidate existing provisions for approval of wine and beer labels and containers; eliminate antiquated, unenforceable language; and provide for previously approved individual items to be offered in a combination pack.

Issues: The removal of vague and unenforceable provisions will ease the burden on the regulated community. The streamlining and clarification of the provisions of this regulation should help promote the welfare of citizens by providing more definitive and reliable guidance on the labeling and product approval of alcoholic beverages. There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations to 1) consolidate product approval regulations for wine and beer, 2) remove the requirement that applicants provide a certified copy of federal label approval, 3) allow wine tasting at farm wineries of wine drawn directly from the barrel, 4) allow sale of wine and hard cider growlers for off

premises consumption and 5) set the maximum allowable volume of beer pitchers at 64 fluid ounces.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Currently, ABC splits rules for product approval for wine and beer so that there are two, nearly duplicative parts to current regulations. ABC proposes to consolidate these two parts so that the length of these regulations is cut and to clarify for affected entities that wine and beer are subject to the same rules in these regulations. No affected entity is likely to incur any costs on account of this change but affected entities are likely to get some small benefit from the additional clarity that this change will likely bring.

Current regulations require entities seeking approval to sell a new beer or wine in the Commonwealth to provide, as a part of the approval process, a certified copy of label approval from the appropriate federal agency. ABC proposes to only require a copy of such label approval since the federal agency no longer provides certified copies. Affected entities will benefit from this change as current regulation requires them to provide something that they cannot procure. No entity is likely to incur any costs on account of this change.

Current regulations require wine to be bottled before it can be sold even at the originating winery. ABC proposes to allow wineries to sell samples of wine taken directly from barrels so long as they keep track of the volume of wine sold in such a manner and comply with Virginia's tax code. No entity is likely to incur any net cost increases on account of this change; wineries are likely to benefit from this change because they will not have to incur the costs of bottling the wine they intend to serve at wine tastings on premises.

Current regulations allow the sale for off premises consumption of beer in reusable, resealable containers of not more than 64 fluid ounces that are known as growlers. Wine and hard cider for off premises consumption may currently only be sold in non-resealable bottles with the original seal unbroken. ABC proposes to change its regulations so that wine and hard cider may also be sold in growlers. This change will benefit sellers of wine and hard cider as it allows them greater flexibility to bottle their product in the most efficient, least costly manner possible.

Current regulations allow the sale of beer in pitchers for onsite consumption but do not specify the size of such pitchers. ABC now proposes to amend these regulations so that beer for onsite consumption may be served in pitchers of up to 64 fluid ounces. ABC set this standard with input from licensees who serve beer onsite (bars, etc.) who reported to ABC that 64 ounces was the usual size for beer pitchers.

Businesses and Entities Affected. ABC reports that approximately 1,000 businesses would be potentially affected by these proposed regulatory changes; 60% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) consolidate and standardize product approval requirements for wine and beer; (ii) remove vague and unenforceable language relating to lewd or indecent labels on wine or beer; (iii) allow for combining previously approved items into a gift package;

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and (iv) provide standards and definition for certain beer containers.

3VAC5-40-10. Spirits; labels, definitions and standards of identity.

Spirits sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions ~~and~~ standards of identity, and standards of fill. In addition, the prior approval of the board must be obtained as to the spirits, containers and labels. Applicants shall furnish the board a certified copy of the approval of the label by such federal agency.

Subsequent sales under an approved label shall conform to the analysis of the spirits originally approved by the board, and be packaged in approved types and sizes of containers.

3VAC5-40-20. Wines Wine and beer; qualifying procedures; disqualifying factors; samples; exceptions.

A. Except as provided in subsection F of this section, all ~~wines~~ wine and beer sold in the Commonwealth shall be first approved by the board as to content, container, and label.

~~1. An application acceptable to the board or on a form prescribed by the board describing the merchandise shall be submitted for each new brand and type of wine offered for sale in the Commonwealth. A registration fee in such amounts as may be established by the board shall be included with each application.~~

~~2.~~ 1. All wine and beer sold in this Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. An application acceptable to the board or on a form prescribed by the board describing the merchandise shall be submitted for each new brand and type of wine or beer offered for sale in the Commonwealth. Applicants shall submit a certified copy of the approval of the label by such federal agency. A registration fee in such amount as may be established by the board shall be included with each application.

2. A gift package containing wine or beer for which label approval has been granted may be sold without additional approval by the board.

B. While not limited thereto, the board shall withhold approval of any wine if the alcoholic content exceeds 21% by volume.

C. While not limited thereto, the board may withhold approval of any label:

1. Which implies or indicates that the product contains spirits;
2. Which contains the word "fortified" or implies that the contents contain spirits, except that the composition and alcoholic content may be shown if required by regulations of an appropriate federal agency;
3. Which contains any obscene subject matter or illustration ~~of a lewd, obscene or indecent nature~~;

4. Which contains subject matter designed to induce minors to drink, or is suggestive of the intoxicating effect of wine or beer;

5. Which contains any design or statement which is likely to mislead the consumer;

6. Which implies or indicates that the product is government (federal, state, or local) endorsed; or

7. Which implies the product enhances athletic prowess or includes any reference to any athlete, former athlete, or athletic team except that references to athletes or athletic teams shall be allowed to the extent such references are permitted in point-of-sale advertising pursuant to 3VAC5-20-10.

D. A person holding a license as a winery, farm winery, brewery, or a wine or beer wholesaler shall upon request furnish the board without compensation a reasonable quantity of such brand sold by him for chemical analysis.

E. ~~Any wine whose content, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such wine was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container.~~ Any wine or beer sold only by direct shipment to consumers by holders of wine or beer shippers' licenses shall be approved upon compliance with subdivision A ~~2~~ 1 of this section.

F. If the board has not approved a wine or beer for sale within 30 days after receipt by the board of a complete application and registration fee, the wine or beer may be sold in the Commonwealth pending a decision from the board on the application. If the application for approval is rejected, the manufacturer or importer shall discontinue sales of the rejected product upon notice from the board. Any wholesale or retail licensee may continue sales until any inventory on hand at the time of notice from the board is depleted.

3VAC5-40-30. Wine and beer containers; sizes and types; on-premises and off-premises limitations; cooler-dispensers; novel containers; carafes and decanters.

A. Wine ~~may be sold at retail only in or from the original containers of the sizes of 1.7 ounces (50 ml. if in a metric-sized package) or above which have been approved by the appropriate federal agency~~ and beer may be sold at retail only in or from the original containers of the sizes that have been approved by the appropriate federal agency, except that farm winery licensees may conduct barrel tastings at the winery, at which samples of wine not yet bottled may be sold to visitors to the winery. Each farm winery conducting a barrel tasting shall measure the wine withdrawn for the tasting, maintain full and complete records, and remit the taxes imposed by § 4.1-234 of the Code of Virginia.

B. Wine sold for on-premises consumption shall not be removed from the licensed premises except in the original container with closure. Beer dispensed for on-premises consumption shall not be removed from authorized areas

upon the premises. No wine or beer shall be sold for off-premises consumption in any container upon which the original closure has been broken, except for a growler. A "growler" is defined as a reusable glass, ceramic, or metal container having a capacity of not more than 64 fluid ounces that has a resealable closure and is labeled with (i) the manufacturer's name or trade name; (ii) the place of production; (iii) the net contents in fluid ounces; and (iv) if sold by a retailer other than the manufacturer, the name and address of the retailer. Growlers may only be used by persons licensed to sell beer or wine for both on-premises and off-premises consumption, or by gourmet shop licensees.

~~C. Wine shall not be sold for off premises consumption in any container upon which the original closure has been broken.~~

~~D. The sale of wine from cooler dispensers is prohibited unless the device is designed so that the original container becomes a part of the equipment, except that frozen drink dispensers or containers used in automatic dispensing may be used if approved by the board.~~

~~E. C. Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual, the board may consider, but is not limited to, the following factors: (i) nature and composition of the container; (ii) length of time it has been employed for the purpose; (iii) the extent to which it is designed or suitable for those uses; (iv) the extent to which the container is a humorous representation; and (v) whether the container is dutiable for any other purpose under customs laws and regulations.~~

~~F. D. Wine may be served for on-premises consumption in carafes or decanters not exceeding 52 fluid ounces (1.5 liters) in capacity. Beer may be served for on-premises consumption in pitchers not exceeding 64 fluid ounces in capacity.~~

3VAC5-40-40. Beer containers; sizes; off and on-premises limitations; novel containers; opening devices. (Repealed.)

~~A. Beer may be sold at retail only in or from the original containers of the sizes which have been approved by the appropriate federal agency.~~

~~B. No beer shall be sold by licensees for off premises consumption in any container upon which the original closure has been broken, except for a growler or reusable container that is federally approved to hold a malt beverage, has a resealable closure and is properly labeled. Growlers may only be used by persons licensed to sell beer for both on and off-premises consumption. Further, licensees shall not allow beer dispensed for on-premises consumption to be removed from authorized areas upon the premises.~~

~~C. Novel or unusual containers are prohibited except upon special permit issued by the board. In determining whether a container is novel or unusual the board may consider, but is not limited to, the factors set forth in 3VAC5-40-30.~~

~~D. No retail beer licensee shall sell at retail any beer packaged in a metal container designed and constructed with an opening device that detaches from the container when the container is opened in a manner normally used to empty the contents of the container.~~

3VAC5-40-50. Beer; qualifying procedures; samples; exceptions; disqualifying label factors. (Repealed.)

~~A. Except as provided in subsection E of this section, beer sold in the Commonwealth shall be first approved by the board as to content, container and label.~~

~~1. An application acceptable to the board or on a form prescribed by the board describing the merchandise shall be submitted for each new brand and type of beer offered for sale in the Commonwealth. A registration fee in such amounts as may be established by the board shall be included with each application.~~

~~2. All beer sold in the Commonwealth shall conform with regulations adopted by the appropriate federal agency, relating to labels, definitions and standards of identity. Applicants shall submit a certified copy of the approval of the label by such federal agency.~~

~~B. A brewery licensee or a wholesale beer licensee shall upon request furnish the board without compensation a reasonable quantity of each brand of beer sold by him for chemical analysis.~~

~~C. Any beer whose contents, label or container does not comply with all requirements of this section shall be exempt therefrom provided that such beer was sold at retail in this Commonwealth as of December 1, 1960, and remains the same in content, label and container. Any beer sold only by direct shipment to consumers by holders of beer shippers' licenses shall be approved upon compliance with subdivision A 2 of this section.~~

~~D. While not limited thereto, the board may withhold approval of any label which contains any statement, depiction or reference that:~~

- ~~1. Implies or indicates that the product contains wine or spirits;~~
- ~~2. Implies the product contains above average alcohol for beer;~~
- ~~3. Is suggestive of intoxicating effects;~~
- ~~4. Would tend to induce minors to drink;~~
- ~~5. Would tend to induce persons to consume to excess;~~
- ~~6. Is obscene, lewd or indecent;~~
- ~~7. Implies or indicates that the product is government (federal, state or local) endorsed;~~
- ~~8. Implies the product enhances athletic prowess or implies such by any reference to any athlete, former athlete or athletic team except that references to athletes or athletic teams shall be allowed to the extent such references are permitted in point of sale advertising pursuant to 3VAC5-20-10.~~

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~~E. If the board has not approved a beer for sale within 30 days after receipt by the board of a complete application and registration fee, the beer may be sold in the Commonwealth pending a decision from the board on the application. If the application for approval is rejected, the manufacturer or importer shall discontinue sales of the rejected product upon notice from the board. Any wholesale or retail licensee may continue sales until any inventory on hand at the time of notice from the board is depleted.~~

VA.R. Doc. No. R12-3237; Filed April 30, 2013, 2:12 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-60).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-111 of the Code of Virginia was amended by Chapter 481 of the 2010 Acts of Assembly by adding subdivision B 11, which requires the board to promulgate regulations that prescribe the terms and conditions under which mixed beverage licensees may infuse, store, and sell flavored distilled spirits.

Purpose: The proposed regulatory action is essential to protect the health, safety, or welfare of citizens by ensuring that licensees that infuse distilled spirits with flavoring agents comply with food safety regulations and encouraging temperance by maintaining the food-to-beverage sale ratio required of mixed beverage licensees.

Substance: A new subdivision F will be added to 3VAC5-50-60 allowing mixed beverage restaurants to infuse spirits either in the original container or in another container of up to two liters. The mixed beverage stamp must remain affixed to spirits infused in the original container, and those placed in another container must be appropriately labeled. Accurate records must be maintained of all spirits used in infusions. Restaurants creating infusions must comply with food safety regulations.

Issues: The primary advantage of this action is to allow mixed beverage restaurants the flexibility to produce their own flavor-infused distilled spirits for the production of cocktails. It poses no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend

its regulations so mixed beverage restaurants that are licensed by ABC may infuse, store and sell flavored distilled spirits.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Currently, ABC does not allow restaurants that serve mixed alcoholic beverages to infuse flavor into spirits on premises. ABC now proposes to allow restaurants to infuse, store and sell flavored distilled spirits so long as the flavored spirits are either infused in the original spirits container (the mixed beverage stamp must remain affixed to the bottle in this case) or infused in a container not larger than two liters in volume. If the spirits are infused in a container other than the original spirits container, the container must be labeled with the date of the infusion and the brand and amount of spirits used. Restaurants that infuse spirits will have to comply with all applicable state and federal food safety regulations.

Because this regulation does not require restaurants to do anything new, no affected entity is likely to incur any costs on account of this proposed regulatory action. Affected businesses will benefit from being able to infuse their own spirits should they choose to do so.

Businesses and Entities Affected. ABC reports that 4,789 businesses would be potentially affected by this proposed regulatory change; 90% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected,

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

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

This proposed regulatory action amends the general procedures for mixed beverage restaurants by (i) prescribing the labeling, container size, and recordkeeping requirements for infusing, storing, and selling flavored distilled spirits and (ii) requiring compliance with all applicable state and federal food safety requirements.

3VAC5-50-60. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers.

A. No mixed beverage restaurant or carrier licensee shall:

1. Prepare, other than in frozen drink dispensers of types approved by the board, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.
2. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C, D₂ and E.
3. Sell any mixed beverage to which alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license that does not bear the required mixed beverage stamp imprinted with his license number and purchase report number.
2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.
3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Allow any patron to possess more than two drinks of mixed beverages at any one time.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-210 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;
2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;
3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and
4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.
2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

F. A mixed beverage restaurant licensee may infuse, store, and sell flavored distilled spirits under the following circumstances:

1. If infused in the original spirits container, the mixed beverage stamp must remain affixed to the bottle.
2. If infused in a container other than the original spirits container, the substitute container, which shall not exceed two liters in volume, will be labeled with the following information:

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a. Date of infusion;

b. Brand of spirits; and

c. Amount of spirits used.

3. Accurate records must be kept by the mixed beverage licensee as to the spirits used in any spirits infusion process.

4. Licensees infusing distilled spirits shall comply with all applicable state and federal food safety regulations.

VA.R. Doc. No. R12-2426; Filed April 30, 2013, 2:14 p.m.

Proposed Regulation

Title of Regulation: **3VAC5-50. Retail Operations (amending 3VAC5-50-110).**

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-209 A 12 of the Code of Virginia, enacted by Chapter 626 of the 2011 Acts of Assembly, requires that the board establish a minimum monthly food sale requirement for gourmet oyster house licenses, but leaves the details of such a requirement to the board's discretion.

Purpose: The proposed regulatory action is essential to protect the health, safety, or welfare of citizens by encouraging temperance through ensuring that alcoholic beverages sold and served for on-premises consumption are sold by businesses that serve a substantial amount of food in addition to beverage offerings.

Substance: The proposed action will add a subdivision to 3VAC5-50-110 B, which sets forth the minimum food sales requirements for wine and beer on-premises or on-premises and off-premises licensees, to require gourmet oyster houses to sell a minimum of \$1,000 per month of oysters and other seafood.

Issues: The primary advantage to the public associated with the proposed regulatory action will be to ensure that wine and beer are sold for on-premises consumption in establishments also selling a substantial quantity of food, which encourages temperance. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations to institute a new category of licensure for Gourmet Oyster Houses.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. ABC proposes to add a new category of business licensure for establishments that are located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on premises. These businesses will be able to get a liquor license so long as they sell at least \$1,000 of oysters or other seafood per month. These establishments will not have to meet ABC's requirements that meals with entrees and other food be served. The licensure fee for Gourmet Oyster Houses will be \$230 per license year.

Because this regulation does not require restaurants to do anything new, no affected entity is likely to incur any costs on account of this proposed regulatory action. Affected businesses will benefit from being able to serve beer and other alcoholic beverages to accompany their seafood dishes.

Businesses and Entities Affected. ABC reports that there is currently only one seafood establishment in the Commonwealth that would be eligible for this license.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include

(i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendment establishes a \$1,000 minimum monthly food sale requirement of oysters and other seafood for gourmet oyster house licensees. This action is required by Chapter 626 of the 2011 Acts of Assembly.

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees and mixed beverage licensees where appropriate:

1. "Designated area." A room or area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. The seating capacity of such room or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.
2. "Dining car, buffet car or club car." A vehicle operated by a common carrier of passengers by rail, in interstate or intrastate commerce and in which food and refreshments are sold.
3. "Meals." In determining what constitutes a "meal" as the term is used in this section, the board may consider the following factors, among others:
 - a. The assortment of foods commonly offered for sale;
 - b. The method and extent of preparation and service required; and
 - c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.
4. "Habitual sales." In determining what constitutes "habitual sales" of specific foods, the board may consider the following factors, among others:

- a. The business hours observed as compared with similar type businesses;
 - b. The extent to which such food or other merchandise is regularly sold; and
 - c. Present and anticipated sales volume in such food or other merchandise.
5. "Sale" and "sell." The definition of "sale" and "sell" as defined in 3VAC5-70-90 shall apply to this section.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales\$2,000

2. "Restaurant." A bona fide dining establishment habitually selling meals with entrees and other foods prepared on the premises:

Monthly sales\$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals with entrees and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals with entrees.

4. "Gourmet Oyster House." Any duly licensed establishment, located on the premises of a commercial marina and permitted by the Department of Health to serve oysters and other fresh seafood for consumption on the premises, where the licensee also offers to the public events for the purpose of featuring oysters and other seafood products:

Monthly sales of oysters and other seafood.....\$1,000

C. Beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that food is regularly sold at substantially all hours that beer is offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on-premises only). See subdivision B 1:
Monthly sales\$2,000

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2. "Restaurant." An establishment habitually selling food prepared on the premises:

Monthly sales\$2,000

3. "Hotel." See subdivision B 3:

Monthly sales\$2,000

D. Mixed beverage licenses. The following shall apply to mixed beverage licenses where appropriate:

1. "Bona fide, full-service restaurant." An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining areas on the premises. In determining the qualifications of such restaurant, the board may consider the assortment of entrees and other food sold. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

2. "Monetary sales requirements." The monthly sale of food prepared on the premises shall not be less than \$4,000 of which at least \$2,000 shall be in the form of meals with entrees.

3. "Dining area." A public room or area in which meals are regularly sold at substantially all hours that mixed beverages are offered for sale therein.

4. "Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining area" or as a "designated area" in the discretion of the board. A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well-defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.

5. "Tables and counters."

a. A "table" shall include any article of furniture, fixture or counter generally having a flat top surface supported by legs, a pedestal or a solid base, designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together), and to provide seating for customers. If any table is located between two-backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein. In no event, shall the number of individual seats at free standing tables and in booths be less than the number of individual seats at counters.

b. This subdivision shall not be applicable to a room otherwise lawfully in use for private meetings and private

parties limited in attendance to members and guests of a particular group.

E. The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

F. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

VA.R. Doc. No. R12-3012; Filed April 30, 2013, 2:13 p.m.

Proposed Regulation

Title of Regulation: 3VAC5-50. Retail Operations (amending 3VAC5-50-10, 3VAC5-50-20, 3VAC5-50-40, 3VAC5-50-60, 3VAC5-50-100, 3VAC5-50-110, 3VAC5-50-160).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-111 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia or the general laws of the Commonwealth. Section 4.1-103 of the Code of Virginia compels the Alcoholic Beverage Control Board to establish minimum food sale requirements for all retail licensees.

Purpose: The board wishes to clarify the types of restaurants that are eligible for a wine and beer license, as well as those restaurants that qualify for a mixed beverage license. This proposal expands current statutory provisions for licensees (ability to read, write, speak, and understand the English

language) to managers. It further simplifies the regulation by describing the criminal offenses that disqualify an employee of the business rather than citing specific sections of the Code of Virginia. Finally, the proposal will expand a restaurant's ability to advertise the fact that drink specials are offered during specific times.

Alcoholic beverage regulation is essential to protect the health, safety, and welfare of citizens by encouraging temperance and maintaining an orderly market. In promulgating regulations, the board must balance the need to protect the public safety with the legitimate interests of industry participants to be free of unnecessary restrictions. Each of the proposed amendments maintains essential public safety controls, while providing more flexibility for alcoholic beverage sellers.

Substance: The proposed amendments are intended to provide the regulated industry a better understanding of the types of restaurants eligible for licensure and give further guidance concerning the responsibility of licensees in conducting and advertising happy hours. The amendments simplify the regulation by identifying the specific criminal conduct that disqualifies an individual as opposed to the section of the Code of Virginia.

Issues: This proposed action will benefit the regulated community by clarifying the types of restaurants that are eligible for a wine and beer license, as well as those restaurants that qualify for a mixed beverage license. The proposed amendments expand current statutory provisions for licensees (ability to read, write, speak, and understand the English language) to managers. The industry will benefit from expanding a restaurant's ability to advertise drink specials offered during specific times. The public will be protected by continuing the limitation of any practice associated with happy hour, such as extending the time frame beyond 9 p.m. There are no disadvantages to the public or the Commonwealth.

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

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations to clarify existing provisions of regulation, change the dollar amount of food that must be sold at gourmet shops in order for them to be licensed by ABC and to prohibit licensees (in most cases) from allowing individuals under the age of 21 to possess alcohol on licensed premises.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. With this regulatory action, ABC proposes to change or move several sections of regulation so that regulatory requirements are clearer and easier to find. For example, ABC proposes to remove Code of Virginia citations for crimes that would preclude employment in a position that involves the selling or serving of alcoholic

beverages and instead list the actual crimes. No affected entity is likely to incur costs on account of these regulatory changes because no new requirements are being added. Affected entities will benefit from the additional clarity these changes bring to the regulation.

Current regulations require gourmet shops that are licensed to sell alcohol to have at least \$2,000 in monthly food sales. Several years ago, the General Assembly lowered the required amount for minimum monthly food sales for gourmet shops who are licensed by ABC to \$1,000 per month. ABC has not enforced the \$2,000 sales requirement since the General Assembly action and now seeks to amend regulations so they conform to the Code of Virginia (COV). No affected entity is likely to incur costs on account of this regulatory change because no new requirement is being added. Affected entities will benefit from the additional clarity of having the same rule in both the COV and regulations.

Current regulations prohibit licensees from selling alcohol to anyone under the age of 21 and from allowing the consumption of alcohol on their licenses premises by anyone under the age of 21. ABC proposes to also prohibit the possession of alcohol on licensed premises by individuals under the legal drinking age except when such possession is by individuals in the process of fulfilling employment duties or is at the order of a parent or a law enforcement officer. This regulatory change will likely make it easier for law enforcement officers and ABC inspectors to cite licensees who are serving underage drinkers since these entities would no longer have to catch underage drinkers in the process of actually drinking alcohol in order to issue citations. To the extent that current regulations are ambiguous about what behavior is prohibited, licensees will benefit from the additional clarity that this proposed change brings.

Businesses and Entities Affected. ABC reports that 12,000 businesses would be potentially affected by this proposed regulatory change; 70% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

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Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) clarify the types of restaurants that are eligible for a wine and beer license and further distinguishes restaurants that are eligible for a mixed beverage license; (ii) expand the current statutory provisions for licensees (e.g., ability to read, write, speak, and understand the English language) to managers; (iii) add language prohibiting possession of alcoholic beverages except in certain specified situations by persons to whom such alcoholic beverage may not lawfully be sold; (iv) lower the dollar amount of food that must be sold at gourmet shops in order for them to be licensed from \$2,000 to \$1,000; (v) describe the specific criminal conduct that disqualifies an employee of a business rather than cite specific sections of the Code of Virginia; and (vi) expand a restaurant's ability to advertise that drink specials are offered during specific times, without allowing advertising of specific special prices.

3VAC5-50-10. Restrictions upon sale, possession, and consumption of alcoholic beverages.

A. Except as may be otherwise permitted under ~~subdivisions 4 through 5~~ subdivision 7 of § 4.1-200 of the Code of Virginia, no licensee shall sell any alcoholic beverage to a person whom he shall know, or have reason at the time to believe, is:

1. Under the age of 21 years;
2. Intoxicated; or
3. An interdicted person.

B. No licensee shall allow the possession or consumption of any alcoholic beverage upon his licensed premises by any person to whom such alcoholic beverage may not lawfully be sold under this section, except where possession of the alcoholic beverage by a person younger than 21 years of age is due to such person's making a delivery of alcoholic beverages in pursuance of his employment or an order of his parent, or by any state, federal, or local law-enforcement officer when possession of an alcoholic beverage is necessary in the performance of his duties.

3VAC5-50-20. Determination of legal age of purchaser.

A. In determining whether a licensee, or his employee or agent, has reason to believe that a purchaser is not of legal age, the board will consider, but is not limited to, the following factors:

1. Whether an ordinary and prudent person would have reason to doubt that the purchaser is of legal age based on the general appearance, facial characteristics, behavior and manner of the purchaser; and
2. Whether the seller demanded, was shown and acted in good faith in reliance upon bona fide evidence of legal age, as defined herein, and that evidence contained a photograph and physical description consistent with the appearance of the purchaser.

B. Such bona fide evidence of legal age shall include a valid motor vehicle driver's license issued by any state of the United States or the District of Columbia, armed forces identification card, United States passport or foreign government visa, valid special identification card issued by the Virginia Department of Motor Vehicles, or any valid identification issued by any other federal or state government agency, excluding student university and college identification cards, provided such identification shall contain a photograph and signature of the subject, with the subject's height, ~~weight~~ and date of birth.

C. It shall be incumbent upon the licensee, or his employee or agent, to scrutinize carefully the identification, if presented, and determine it to be authentic and in proper order. Identification which has been altered so as to be apparent to observation or has expired shall be deemed not in proper order.

3VAC5-50-40. Designated managers of licensees; appointment generally; disapproval by board; restrictions upon employment.

A. Each retail licensee, except a licensed individual who is on the premises, shall have a designated manager able to understand and communicate in the English language in a reasonably satisfactory manner present and in actual charge of the business being conducted under the license at any time the licensed establishment is kept open for business, whether or not the privileges of the license are being exercised. The name of the designated manager of every retail licensee shall be kept posted in a conspicuous place in the establishment, in letters not less than one inch in size, during the time he is in charge.

The posting of the name of a designated manager shall qualify such person to act in that capacity until disapproved by the board.

B. The board reserves the right to disapprove any person as a designated manager if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has committed any act that would justify the board in suspending or revoking a license.

Before disapproving a designated manager, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

C. No licensee of the board shall knowingly permit a person under 21 years of age, nor one who has been disapproved by the board within the preceding 12 months, to act as designated manager of his business.

D. Notwithstanding the provisions of § 4.1-225 (1) (i) of the Code of Virginia, the board will not take action to suspend or revoke a retail license if a licensee knowingly employs a person who has been convicted in any court of a felony or of any crime or offense involving moral turpitude, except in the following two categories:

1. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the selling or serving of alcoholic beverages to customers, any person who has been convicted of a felony violation of Articles 1 (§ 18.2-248 et seq.), 1.1 (§ 18.2-265.1 et seq.), or 2 (§ 18.2-266 et seq.) of Chapter 7 of Title 18.2 the laws of the Commonwealth prohibiting the manufacture, sale, distribution, use, or possession of controlled substances, imitation controlled substances, counterfeit controlled substances, marijuana, or synthetic cannabinoids; driving under the influence of alcohol or other self-administered intoxicants; or a similar offense under the laws of any state, or the United States; or

2. The board may suspend or revoke a license if a licensee knowingly employs in the business conducted under such license, as agent, servant, or employee, in a position that is involved in the creation or maintenance of records required to be kept by the licensee under the provisions of Title 4.1 of the Code of Virginia or board regulations, or in the preparation or filing of any tax return or report required under Title 4.1 or Title 58.1 of the Code of Virginia or board regulations, any person who has been convicted of a felony violation of Articles 2 (§ 18.2-89 et seq.), 3 (§ 18.2-97.1 et seq.), 4 (§ 18.2-112.1 et seq.), or 7.1 (§ 18.2-152.2 et seq.) of Chapter 5 of Title 18.2 or Articles 1 (§ 18.2-172.2 et seq.), 3 (§ 18.2-178 et seq.), 4 (§ 18.2-182 et seq.), 5 (§ 18.2-186 et seq.), 6 (§ 18.2-194 et seq.), or 9 (§ 18.2-246.1 et seq.) of Chapter 6 of Title 18.2 the laws of the Commonwealth prohibiting robbery, burglary, larceny, embezzlement, computer crimes, forgery, false pretenses, issuing bad checks, false representations to obtain property or credit, credit card forgery or fraud, or money laundering, or a similar offense under the laws of any state, or the United States.

E. If a retail licensee wishes to employ a person whose employment would be covered by subdivisions D 1 or 2 of this section, or who has violated the laws of the Commonwealth, of any other state, or of the United States, applicable to the manufacture, transportation, possession, use or sale of alcoholic beverages, the licensee may apply to the board for approval of such employment. The board will cause the Bureau of Law Enforcement Operations to conduct an investigation into the suitability of the person for employment and recommend approval or disapproval. Before disapproving the employment of a person, the board shall accord him the same notice, opportunity to be heard, and follow the same administrative procedures accorded a licensee cited for a violation of Title 4.1 of the Code of Virginia.

3VAC5-50-60. Procedures for mixed beverage licensees generally; mixed beverage restaurant licensees; sales of spirits in closed containers.

A. No mixed beverage restaurant or carrier licensee shall:

1. Prepare, other than ~~in frozen drink dispensers of types approved by the board~~ drinks, or sell any mixed beverage except pursuant to a patron's order and immediately preceding delivery to him.
2. Serve as one drink the entire contents of a container of spirits in its original container for on-premises consumption except as provided by subsections C, D, and E.
3. Sell any mixed beverage to which alcohol has been added.

B. No mixed beverage restaurant licensee shall:

1. Allow to be kept upon the licensed premises any container of alcoholic beverages of a type authorized to be purchased under his license that does not bear the required

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mixed beverage stamp imprinted with his license number and purchase report number.

2. Use in the preparation of a mixed beverage any alcoholic beverage not purchased from the board or a wholesale wine licensee.

3. Fail to obliterate the mixed beverage stamp immediately when any container of spirits is emptied.

4. Allow any patron to possess more than two drinks of mixed beverages at any one time.

C. If a restaurant for which a mixed beverage restaurant license has been issued under § 4.1-210 of the Code of Virginia is located on the premises of a hotel or motel, whether the hotel or motel be under the same or different ownership, sales of mixed beverages, including sales of spirits packaged in original closed containers purchased from the board, as well as other alcoholic beverages, for consumption in bedrooms and private rooms of such hotel or motel, may be made by the licensee subject to the following conditions in addition to other applicable laws:

1. Spirits sold by the drink as mixed beverages or in original closed containers must have been purchased under the mixed beverage restaurant license upon purchase forms provided by the board;

2. Delivery of sales of mixed beverages and spirits in original closed containers shall be made only in the bedroom of the registered guest or to the sponsoring group in the private room of a scheduled function. This section shall not be construed to prohibit a licensee catering a scheduled private function from delivering mixed beverage drinks to guests in attendance at such function;

3. Receipts from the sale of mixed beverages and spirits sold in original closed containers, as well as other alcoholic beverages, shall be included in the gross receipts from sales of all such merchandise made by the licensee; and

4. Complete and accurate records of sales of mixed beverages and sales of spirits in original closed containers to registered guests in bedrooms and to sponsors of scheduled private functions in private rooms shall be kept separate and apart from records of all mixed beverage sales.

D. Carrier licensees may serve miniatures not in excess of two fluid ounces or 50 milliliters, in their original containers, for on-premises consumption.

E. A mixed beverage restaurant may serve as one drink the entire contents of a container of soju in its original container for on-premises consumption under the following conditions:

1. The container may be no larger than 375 milliliters.
2. Each container of soju served must be served for consumption by at least two patrons legally eligible to consume alcoholic beverages.

3VAC5-50-100. Definitions and qualifications for retail off-premises wine and beer licenses and off-premises beer licenses; exceptions; further conditions; temporary licenses.

A. Retail off-premises wine and beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment which sells a variety of prepared foods or foods requiring little preparation such as cheeses, salads, cooked meats and related condiments:

Monthly sales \$2,000
Inventory (cost) \$2,000

2. "Drugstore." An establishment selling medicines prepared by a registered pharmacist according to prescription and other medicines and articles of home and general use;

Monthly sales \$2,000
Inventory (cost) \$2,000

3. "Grocery store." An establishment which sells edible items intended for human consumption, including a variety of staple foodstuffs used in the preparation of meals:

Monthly sales \$2,000
Inventory (cost) \$2,000

4. "Convenience grocery store." An establishment which has an enclosed room in a permanent structure where stock is displayed and offered for sale, and which sells edible items intended for human consumption, consisting of a variety of such items of the type normally sold in grocery stores:

Monthly sales \$2,000
Inventory (cost) \$2,000

In regard to both grocery stores and convenience grocery stores, "edible items" shall mean such items normally used in the preparation of meals, including liquids.

5. "Gourmet shop." An establishment provided with adequate shelving and storage facilities which sell products such as cheeses and gourmet foods:

Monthly sales ~~\$2,000~~ \$1,000
Inventory (cost) ~~\$2,000~~ \$1,000

B. Retail off-premises beer licenses may be issued to persons operating the following types of establishments provided the total monthly sales and inventory (cost) of the required commodities listed in the definitions are not less than those shown:

1. "Delicatessen." An establishment as defined in subsection A:

Monthly sales \$1,000
Inventory (cost) \$1,000

2. "Drugstore." An establishment as defined in subsection A:

Monthly sales..... \$1,000
Inventory (cost) \$1,000

3. "Grocery store." An establishment as defined in subsection A:

Monthly sales..... \$1,000
Inventory (cost) \$1,000

4. "Marina store." An establishment operated by the owner of a marina which sells food and nautical and fishing supplies:

Monthly sales..... \$1,000
Inventory (cost) \$1,000

C. The board may grant a license to an establishment not meeting the qualifying figures in subsections A and B provided it affirmatively appears that there is a substantial public demand for such an establishment and that public convenience will be promoted by the issuance of the license.

D. The board in determining the eligibility of an establishment for a license shall give consideration to, but shall not be limited to, the following:

1. The extent to which sales of required commodities are secondary or merely incidental to sales of all products sold in such establishment;
2. The extent to which a variety of edible items of the types normally found in grocery stores are sold; and
3. The extent to which such establishment is constructed, arranged or illuminated to allow reasonable observation of the age and sobriety of purchasers of alcoholic beverages.

E. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to that establishment for a period of one year from the expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

3VAC5-50-110. Definitions and qualifications for retail on-premises and on-premises and off-premises licenses generally; mixed beverage licensee requirements; exceptions; temporary licenses.

A. The following definitions shall apply to retail licensees with on-premises consumption privileges and mixed beverage licensees where appropriate:

1. "Bona fide, full-service restaurant" means an established place of business where meals are regularly sold to persons and that has adequate facilities and sufficient employees for cooking, preparing, and serving such meals for consumption at tables in dining areas on the premises.

2. "Counter" means a long, narrow surface with stools or chairs along one side for the patrons, behind which refreshments or meals are prepared and served.

~~1. "Designated area." A~~ 3. "Designated area" means a room or an area in which a licensee may exercise the privilege of his license, the location, equipment and facilities of which room or area have been approved by the board. The facilities shall be such that patrons may purchase food prepared on the premises for consumption on the premises at substantially all times that alcoholic beverages are offered for sale therein. The seating capacity of such room or area shall be included in determining eligibility qualifications for a mixed beverage restaurant.

~~2. "Dining car, buffet car or club car." A vehicle operated by a common carrier of passengers by rail, in interstate or intrastate commerce and in which food and refreshments are sold.~~

~~3. "Meals." In determining what constitutes a "meal" as the term is used in this section, the board may consider the following factors, among others:~~

- ~~a. The assortment of foods commonly offered for sale;~~
- ~~b. The method and extent of preparation and service required; and~~
- ~~c. The extent to which the food served would be considered a principal meal of the day as distinguished from a snack.~~

~~4. "Habitual sales." In determining what constitutes "habitual sales" of specific foods, the board may consider the following factors, among others:~~

- ~~a. The business hours observed as compared with similar type businesses;~~
- ~~b. The extent to which such food or other merchandise is regularly sold; and~~
- ~~c. Present and anticipated sales volume in such food or other merchandise.~~

~~5. "Sale" and "sell." The definition of "sale" and "sell" as defined in 3VAC5-70-90 shall apply to this section.~~

4. "Dining area" means a public room or area in which meals are regularly sold at substantially all hours that alcoholic beverages are offered for sale therein.

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5. "Meal" means a selection of foods for one individual, served and eaten especially at one of the customary, regular occasions for taking food during the day, such as breakfast, lunch, or dinner, that consists of at least one main dish of meat, fish, poultry, legumes, nuts, seeds, eggs, or other protein sources, accompanied by vegetable, fruit, grain, or starch products.

6. "Table" means an article of furniture supported by one or more vertical legs and having a flat horizontal surface suitable for the service of meals.

B. Wine and beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that meals or other foods are regularly sold at substantially all hours that wine and beer are offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on premises only). A common carrier of passengers for which a certificate as a sight-seeing carrier by boat, or a special or charter party by boat has been issued by the State Corporation Commission, habitually serving food on the boat:

Monthly sales\$2,000

2. "Restaurant." A bona fide dining establishment ~~habitually~~ regularly selling meals with entrees and other foods prepared on the premises:

Monthly sales\$2,000

3. "Hotel." Any duly licensed establishment, provided with special space and accommodation, where, in consideration of payment, meals with entrees and other food prepared on the premises and lodging are habitually furnished to persons and which has four or more bedrooms:

Monthly sales\$2,000

In regard to both restaurants and hotels, at least \$1,000 of the required monthly sales must be in the form of meals with entrees.

C. Beer. Retail on-premises or on-premises and off-premises licenses may be granted to persons operating the following types of establishments provided that food is regularly sold at substantially all hours that beer is offered for sale and the total monthly food sales for consumption in dining areas and other designated areas on the premises are not less than those shown:

1. "Boat" (on-premises only). See subdivision B 1:

Monthly sales\$2,000

2. "Restaurant." An establishment ~~habitually~~ regularly selling food prepared on the premises:

Monthly sales\$2,000

3. "Hotel." See subdivision B 3;

Monthly sales\$2,000

D. Mixed beverage licenses. The following shall apply to mixed beverage licenses where appropriate: Mixed beverage restaurant licenses may be granted to persons operating bona fide, full-service restaurants.

1. "Bona fide, full-service restaurant." An established place of business where meals with substantial entrees are habitually sold to persons and which has adequate facilities and sufficient employees for cooking, preparing and serving such meals for consumption at tables in dining areas on the premises. In determining the qualifications of such restaurant, the board may consider the assortment of entrees and other food sold. Such restaurants shall include establishments specializing in full course meals with a single substantial entree.

2. "Monetary sales requirements." The monthly sale of food prepared on the premises shall not be less than \$4,000 of which at least \$2,000 shall be in the form of meals with entrees.

3. "Dining area." A public room or area in which meals are regularly sold at substantially all hours that mixed beverages are offered for sale therein.

4. "Outside terraces or patios." An outside terrace or patio, the location, equipment and facilities of which have been approved by the board may be approved as a "dining area" or as a "designated area" in the discretion of the board. A location adjacent to a public sidewalk, street or alley will not be approved where direct access is permitted from such sidewalk, street or alley by more than one well defined entrance therefrom. The seating capacity of an outside terrace or patio if used regularly by those operations which are seasonal in nature, shall be included in determining eligibility qualifications. For purposes of this subdivision, the term "seasonal operations" is defined as an establishment that voluntarily surrenders its license to the board for part of its license year.

5. "Tables and counters."

a. A "table" shall include any article of furniture, fixture or counter generally having a flat top surface supported by legs, a pedestal or a solid base, designed to accommodate the serving of food and refreshments (though such food and refreshments need not necessarily be served together), and to provide seating for customers. If any table is located between two backed benches, commonly known as a booth, at least one end of the structure shall be open permitting an unobstructed view therein. In no event, shall the number of individual seats at free standing tables and in booths be less than the number of individual seats at counters.

b. This subdivision shall not be applicable to a room otherwise lawfully in use for private meetings and private parties limited in attendance to members and guests of a particular group.

1. Service of food in a bona fide, full-service restaurant shall consist of taking a food order at the table, and serving the food to the table on plates or appropriate dinnerware, accompanied by appropriate tableware. The board may approve the issuance of a mixed beverage restaurant license to a buffet restaurant if (i) both alcoholic and nonalcoholic beverage service is provided at the table and (ii) actual sales show that the requirements of subdivision D 2 of this section are met.

2. Monthly sales of food prepared on the premises of a mixed beverage restaurant licensee shall not be less than \$4,000, of which at least \$2,000 shall be in the form of meals.

3. A mixed beverage restaurant licensee must have at least as many seats at tables as at counters.

E. The board may grant a license to an establishment not meeting the qualifying figures in this section, provided the establishment otherwise is qualified under the applicable provisions of the Code of Virginia and this section, if it affirmatively appears that there is a substantial public demand for such an establishment and that the public convenience will be promoted by the issuance of the license.

F. Notwithstanding the above, the board may issue a temporary license for any of the above retail operations. Such licenses may be issued only after application has been filed in accordance with § 4.1-230 of the Code of Virginia, and in cases where the sole objection to issuance of a license is that the establishment will not be qualified in terms of the sale of food or edible items. If a temporary license is issued, the board shall conduct an audit of the business after a reasonable period of operation not to exceed 180 days. Should the business be qualified, the license applied for may be issued. If the business is not qualified, the application will become the subject of a hearing if the applicant so desires. No further temporary license shall be issued to the applicant or to any other person with respect to the establishment for a period of one year from expiration and, once the application becomes the subject of a hearing, no temporary license may be issued.

G. An outside terrace or patio, the location, equipment, and facilities of which have been approved by the board, may be approved as a "dining area" or as a "designated area" in the discretion of the board.

H. Limited mixed beverage licenses may be granted to persons operating restaurants as defined in § 4.1-100 of the Code of Virginia, provided that food is regularly sold at substantially all hours that alcoholic beverages are offered for sale, and the total monthly food sales of food cooked or prepared on the premises for consumption in dining areas and other designated areas on the premises are not less than \$2,000.

3VAC5-50-160. Happy hour and related promotions; definitions; exceptions.

A. Definitions:

1. "Happy Hour." A specified period of time during which alcoholic beverages are sold at prices reduced from the customary price established by a retail licensee.
2. "Drink." Any beverage containing the amount of alcoholic beverages customarily served to a patron as a single serving by a retail licensee.

B. No retail licensee shall engage in any of the following practices:

1. Conducting a happy hour between 9 p.m. of each day and 2 a.m. of the following day;
2. Allowing a person to possess more than two drinks at any one time during a happy hour;
3. Increasing the volume of alcoholic beverages contained in a drink without increasing proportionately the customary or established retail price charged for such drink;
4. Selling two or more drinks for one price, such as "two for one" or "three for one";
5. Selling pitchers of mixed beverages;
6. Giving away drinks;
7. Selling an unlimited number of drinks for one price, such as "all you can drink for \$5.00"; ~~or~~
8. Advertising happy hour ~~in the media or on the exterior anywhere other than within the interior of the licensed premises-, except that a licensee may use the term "Happy Hour" or "Drink Specials" and the time period within which alcoholic beverages are being sold at reduced prices in any otherwise lawful advertisement; or~~
9. Establishing a customary retail price for any drink at a markup over cost significantly less than that applied to other beverages of similar type, quality, or volume.

C. This regulation shall not apply to prearranged private parties, functions, or events, not open to the public, where the guests thereof are served in a room or rooms designated and used exclusively for private parties, functions or events.

VA.R. Doc. No. R12-3239; Filed April 30, 2013, 2:15 p.m.

Proposed Regulation

Title of Regulation: 3VAC5-60. Manufacturers and Wholesalers Operations (amending 3VAC5-60-20, 3VAC5-60-50, 3VAC5-60-80; adding 3VAC5-60-25, 3VAC5-60-110).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control,

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2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of the Code of Virginia. Section 4.1-111 authorizes the Alcoholic Beverage Control Board to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia or the general laws of the Commonwealth.

Purpose: The proposed regulatory action is necessary to allow for the filing of electronic reports, as well as creating a legal basis for wineries and farm wineries to file required reports and remit appropriate taxes. The proposal also allows more time for wholesalers to file copies of purchase orders and tax-exempt sales, as well as permits the peddling of wine, which is currently allowed for beer. Finally, it provides greater latitude for distilled spirits representatives to market their products at retail trade shows. These proposals were made by various segments of the regulated community.

Alcoholic beverage regulation is essential to protect the health, safety, and welfare of citizens by encouraging temperance and maintaining an orderly market. In promulgating regulations, the board must balance the need to protect the public safety with the legitimate interests of industry participants to be free of unnecessary restrictions. Each of the proposed amendments maintains essential public safety controls, while providing more flexibility for alcoholic beverage sellers.

Substance: This regulation is amended to allow for the filing of electronic reports by wholesalers, wineries, and farm wineries. This proposal will also extend the time that wholesalers have to file purchase orders and tax-exempt invoices with the board and allow wine wholesalers to engage in the limited peddling of their product. Lastly, distilled spirits manufacturers will be allowed additional leeway in marketing their products at retail trade shows.

Issues: Extending the time for providing monthly purchase orders and tax-exempt sales will benefit wholesalers. Removing the prohibition to the peddling (sell without a preorder) of wine benefits the regulated community by providing greater flexibility in marketing of products. Farm wineries, wineries, breweries, and wholesalers will benefit from the allowance of electronic filing of required reports. The amendments clarify that wineries, farm wineries, and breweries report sales and remit taxes. The regulated community will benefit from greater flexibility in marketing products at retail trade shows.

There are no known disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations to 1) allow required reports of sales to be filed monthly rather than weekly, 2) allow up to two cases of wine to be peddled to retailers during a scheduled delivery of other wine products that were preordered by the retailers, 3) allow electronic filing of required reports, 4) increase the size of spirits samples that may be given to mixed beverage licensees from 50 milliliters to 375 milliliters and 5) allow spirits manufacturers to rent booths, provide hospitality events and pay for advertising in brochures made for conventions, trade association meetings and similar gatherings.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Currently, ABC requires manufacturers and wholesalers to file sales reports weekly. ABC proposes to only require these reports to be filed monthly and to allow them to be filed electronically. These changes will likely benefit affected entities whose time spent filing reports will likely be cut considerably and who will also likely experience savings of money spent on copying and mailing reports as they will be allowed to send those reports electronically.

Current regulations allow beer wholesalers to sell up to two extra cases of beer to a retailer at the time that they deliver product that retailer has already ordered. Wine wholesalers currently cannot make such spot sales of wine. ABC now proposes to allow wine wholesalers to follow the same rules that beer wholesalers do. This change will likely benefit wine wholesalers, who will no longer have to take extra last minute orders, and then have to make extra trips to fill those orders. This change will also likely benefit retailers who will be able to make last minute purchases on the spot to meet unexpected need in their establishments.

Current regulations allow spirits manufacturers to give samples of up to 50 milliliters to mixed beverage licensees. ABC proposes to increase the allowable size of samples to 375 milliliters so that mixed beverage licensees have a large enough sample to hold tastings for their employees (bartenders, servers, etc.). This change will likely benefit manufacturers as it will allow them greater flexibility in marketing their wares. Mixed beverage licensees will also benefit as they will be allowed to get larger samples so more of their staff will have a basis for recommending, or not recommending, purchase of the sampled product.

Current regulations do not allow spirits manufacturers to rent space to have their spirits brands represented at conventions, trade association meetings and similar gatherings. ABC proposes to change these regulations so that affected manufacturers may rent display booths so long as they pay the same fee as any other exhibitor. Manufacturers may also provide their own separate hospitality events, purchase tickets

to functions and pay registration fees at the market rate and advertise in event brochures or programs so long as they do not pay advertising fees of more than \$300 per year to any particular association or organization. This change will benefit spirits manufacturers by allowing them greater flexibility to market their wares in the manner that they think will be most profitable to them.

Businesses and Entities Affected. ABC reports that approximately 15,000 businesses would be potentially affected by these proposed regulatory changes; 70% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of

the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The proposed amendments (i) allow required reports of sales to be filed monthly rather than weekly; (ii) allow up to two cases of wine to be peddled to retailers during a scheduled delivery of other wine products that were preordered by the retailers; (iii) add provisions governing situations in which a brewery may manufacture beer bearing the brand name of another pursuant to a contract brewing arrangement; (iv) allow electronic filing of required reports; (v) increase the size of spirits samples that may be given to mixed beverage licensees from 50 milliliters to 375 milliliters; and (vi) allow spirits manufacturers to rent booths, provide hospitality events, and pay for advertising in brochures made for conventions, trade association meetings, and similar gatherings.

3VAC5-60-20. Wines; purchase orders generally; wholesale wine licensees.

A. Purchases of wine between the board, licensees or persons outside the Commonwealth shall be executed only on order forms prescribed by the board and provided at cost if supplied by the department.

B. Wholesale wine licensees shall comply with the following procedures:

1. Purchase orders. A copy of each purchase order for wine and a copy of any change in such order shall be forwarded to the board by the wholesale wine licensee at the time the order is placed or changed. Upon receipt of shipment, one copy of such purchase order shall be forwarded to the board by the licensee reflecting accurately the date received and any changes. In lieu of forwarding copies of purchase orders to the board, a wholesale licensee may submit a report to the board ~~weekly~~ monthly, in a format approved by the board, of all purchase orders for the previous ~~week~~ month. The report ~~covering the last week of any calendar month~~ must be submitted to the board on or before the ~~5th~~ 15th day of the succeeding month.

2. Sales in the Commonwealth. Separate invoices shall be used for all nontaxed wine sales in the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale. In lieu of forwarding copies of invoices to the board, a wholesale licensee may submit a report to the board ~~weekly~~ monthly, in a format approved by the board, of all invoices for the previous ~~week~~ month. The report ~~covering the last week of any calendar month~~ must be submitted to the board on or before the ~~5th~~ 15th day of the succeeding month.

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3. Out-of-state sales. Separate sales invoices shall be used for wine sold outside the Commonwealth and a copy of each such invoice shall be furnished to the board upon completion of the sale. In lieu of forwarding copies of invoices to the board, a wholesale licensee may submit a report to the board ~~weekly~~ monthly, in a format approved by the board, of all invoices for the previous ~~week~~ month. The report ~~covering the last week of any calendar month~~ must be submitted to the board on or before the ~~5th~~ 15th day of the succeeding month.

4. Peddling. ~~Wine shall not~~ A maximum of two cases or 24 bottles of wine may be peddled to retail licensees during an invoiced delivery, provided that the wholesale wine licensee provides a revised purchase order indicating the additional wine peddled during the transaction.

5. Repossession. Repossession of wine sold to a retailer shall be accomplished on forms prescribed by the board and provided at cost if supplied by the board, and in compliance with the instructions on the forms.

6. Reports to the board. Each month wholesale wine licensees shall, on forms or an electronic system prescribed by the board and in accordance with the instructions set forth therein, report to the board the purchases and sales made during the preceding month, and the amount of state wine tax collected from retailers pursuant to §§ 4.1-234 and 4.1-235 of the Code of Virginia. Each wholesale wine licensee shall on forms or an electronic system prescribed by the board on a quarterly basis indicate the quantity of wine on hand at the close of business on the last day of the last month of the preceding quarter based on actual physical inventory by brands. Reports shall be accompanied by remittance for the amount of taxes collected, less any refunds, replacements or adjustments and shall be postmarked or submitted electronically no later than the ~~fifteenth~~ 15th of the month, or if the ~~fifteenth~~ 15th is not a business day, the next business day thereafter.

3VAC5-60-25. Winery, farm winery, and brewery licenses; reports.

On or before the 15th day of each month, each winery, farm winery, and brewery licensee shall, on forms or an electronic system prescribed by the board and in accordance with the instructions set forth therein, file a report with the board of sales made in the previous calendar month. Tax payment in accordance with § 4.1-234 or 4.1-236 of the Code of Virginia shall be made with the submission of this report.

3VAC5-60-50. Records required of distillers, fruit distillers, winery licensees and farm winery licensees; procedures for distilling for another; farm wineries.

A person holding a distiller's, fruit distiller's, winery or a farm winery license shall comply with the following procedures:

1. Records. Complete and accurate records shall be kept at the licensee's place of business for a period of two years,

which records shall be available during reasonable hours for inspection by any member of the board or its special agents. Such records shall include the following information:

a. The amount in liters and alcoholic content of each type of alcoholic beverage manufactured during each calendar month;

b. The amount of alcoholic beverages on hand at the end of each calendar month;

c. Withdrawals of alcoholic beverages for sale to the board or licensees;

d. Withdrawals of alcoholic beverages for shipment outside of the Commonwealth showing:

(1) Name and address of consignee;

(2) Date of shipment; and

(3) Alcoholic content, brand name, type of beverage, size of container and quantity of shipment.

e. Purchases of cider or wine including:

(1) Date of purchase;

(2) Name and address of vendor;

(3) Amount of purchase in liters; and

(4) Amount of consideration paid.

f. A distiller or fruit distiller employed to distill any alcoholic beverage shall include in his records the name and address of his employer for such purpose, the amount of grain, fruit products or other substances delivered by such employer, the type, amount in liters and alcoholic content of alcoholic beverage distilled therefrom, the place where stored, and the date of the transaction.

2. Distillation for another. A distiller or fruit distiller manufacturing spirits for another person shall:

a. At all times during distillation keep segregated and identifiable the grain, fruit, fruit products or other substances furnished by the owner thereof;

b. Keep the alcoholic beverages distilled for such person segregated in containers bearing the date of distillation, the name of the owner, the amount in liters, and the type and alcoholic content of each container; and

c. Release the alcoholic beverages so distilled to the custody of the owner, or otherwise, only upon a written permit issued by the board.

3. Farm wineries. A farm winery shall keep complete, accurate and separate records of fresh fruits or other agricultural products grown or produced elsewhere and obtained for the purpose of manufacturing wine. ~~At least 51% of the fresh fruits or agricultural products used by the farm winery to manufacture the wine shall be grown or produced on such farm.~~ Each farm winery must comply with the provisions of § 4.1-219 of the Code of Virginia for its applicable class of winery license relating to production of fresh fruits or other agricultural products. As provided in

§ 4.1-219, the board, upon petition by the Department of Agriculture and Consumer Services, may grant a waiver from the production requirements.

3VAC5-60-80. Solicitation of mixed beverage licensees by representatives of manufacturers, etc., of spirits.

A. Generally. This section applies to the solicitation, directly or indirectly, of a mixed beverage licensee to sell or offer for sale spirits. Solicitation of a mixed beverage licensee for such purpose other than by a permittee of the board and in the manner authorized by this section shall be prohibited.

B. Permits.

1. No person shall solicit a mixed beverage licensee unless he has been issued a permit. To obtain a permit, a person shall:

- a. Register with the board by filing an application on such forms as prescribed by the board;
- b. Pay in advance a fee of \$300, which is subject to proration on a quarterly basis, pursuant to § 4.1-230 E of the Code of Virginia;
- c. Submit with the application a letter of authorization from the manufacturer, brand owner or its duly designated United States agent, of each specific brand or brands of spirits which the permittee is authorized to represent on behalf of the manufacturer or brand owner in the Commonwealth; and
- d. Be an individual at least 21 years of age.

2. Each permit shall expire yearly on June 30, unless sooner suspended or revoked by the board.

3. A permit hereunder shall authorize the permittee to solicit or promote only the brand or brands of spirits for which the permittee has been issued written authorization to represent on behalf of the manufacturer, brand owner, or its duly designated United States agent and provided that a letter of authorization from the manufacturer or brand owner to the permittee specifying the brand or brands he is authorized to represent shall be on file with the board. Until written authorization or a letter of authorization, in a form authorized by the board, is received and filed with the board for a particular brand or brands of spirits, there shall be no solicitation or promotion of such product by the permittee. Further, no amendment, withdrawal or revocation, in whole or in part, of a letter of authorization on file with the board shall be effective as against the board until written notice thereof is received and filed with the board; and, until the board receives notice thereof, the permittee shall be deemed to be the authorized representative of the manufacturer or brand owner for the brand or brands specified on the most current authorization on file with the board.

C. Records. A permittee shall keep complete and accurate records of his solicitation of any mixed beverage licensee for a period of two years, reflecting all expenses incurred by him in connection with the solicitation of the sale of his

employer's products and shall, upon request, furnish the board with a copy of such records.

D. Permitted activities. Solicitation by a permittee shall be limited to his authorized brand or brands, may include contact, meetings with, or programs for the benefit of mixed beverage licensees and employees thereof on the licensed premises, and in conjunction with solicitation, a permittee may:

- 1. Distribute directly or indirectly written educational material (one item per retailer and one item per employee, per visit) which may not be displayed on the licensed premises; distribute novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value (in quantities equal to the number of employees of the retail establishment present at the time the items are delivered); and provide film or video presentations of spirits which are essentially educational to licensees and their employees only, and not for display or viewing by customers;
- 2. Provide to a mixed beverage licensee sample servings from containers of spirits and furnish one, unopened, ~~50 milliliter~~ sample container no larger than 375 milliliters of each brand being promoted by the permittee and not sold by the licensee; such containers and sample containers shall be purchased at a government store and bear the permittee's permit number and the word "sample" in reasonable sized lettering on the container or sample container label; further, the spirits container shall remain the property of the permittee and may not be left with the licensee and any ~~50 milliliter~~ sample containers left with the licensee shall not be sold by the licensee;
- 3. Promote their authorized brands of spirits at conventions, trade association meetings, or similar gatherings of organizations, a majority of whose membership consists of mixed beverage licensees or spirits representatives for the benefit of their members and guests, and shall be limited as follows:
 - a. To sample servings from containers of spirits purchased from government stores when the spirits donated are intended for consumption during the gathering;
 - b. To displays of spirits in closed containers bearing the word "sample" in lettering of reasonable size and informational signs provided such merchandise is not sold or given away except as permitted in this section;
 - c. To distribution of informational brochures, pamphlets and the like, relating to spirits;
 - d. To distribution of novelty and specialty items bearing spirits advertising not in excess of \$10 in wholesale value; ~~and~~
 - e. To film or video presentations of spirits which are essentially educational;

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f. To display at the event the brands being promoted by the permittee;

g. To rent display booth space if the rental fee is the same as paid by all exhibitors at the event;

h. To provide its own hospitality, which is independent from activities sponsored by the association or organization holding the event;

i. To purchase tickets to functions and pay registration fees if the payments or fees are the same as paid by all attendees, participants, or exhibitors at the event; and

j. To make payments for advertisements in programs or brochures issued by the association or organization holding the event if the total payments made for all such advertisements do not exceed \$300 per year for any association or organization holding the event; or

4. Provide or offer to provide point-of-sale advertising material to licensees as provided in 3VAC5-20-20 or 3VAC5-30-80.

E. Prohibited activities. A permittee shall not:

1. Sell spirits to any licensee, solicit or receive orders for spirits from any licensee, provide or offer to provide cash discounts or cash rebates to any licensee, or to negotiate any contract or contract terms for the sale of spirits with a licensee;

2. Discount or offer to discount any merchandise or other alcoholic beverages as an inducement to sell or offer to sell spirits to licensees;

3. Provide or offer to provide gifts, entertainment or other forms of gratuity to licensees except that a permittee may provide a licensee "routine business entertainment," as defined in 3VAC5-30-70, subject to the same conditions and limitations that apply to wholesalers and manufacturers under that section;

4. Provide or offer to provide any equipment, furniture, fixtures, property or other thing of value to licensees except as permitted by this regulation;

5. Purchase or deliver spirits or other alcoholic beverages for or to licensees or provide any services as inducements to licensees, except that this provision shall not preclude the sale or delivery of wine or beer by a licensed wholesaler;

6. Be employed directly or indirectly in the manufacturing, bottling, importing or wholesaling of spirits and simultaneously be employed by a retail licensee;

7. Solicit licensees on any premises other than on their licensed premises or at conventions, trade association meetings or similar gatherings as permitted in subdivision D 3 of this section;

8. Solicit or promote any brand or brands of spirits without having on file with the board a letter from the manufacturer or brand owner authorizing the permittee to represent such brand or brands in the Commonwealth; or

9. Engage in solicitation of spirits other than as authorized by law.

F. Refusal, suspension or revocation of permits.

1. The board may refuse, suspend or revoke a permit if it shall have reasonable cause to believe that any cause exists which would justify the board in refusing to issue such person a license, or that such person has violated any provision of this section or committed any other act that would justify the board in suspending or revoking a license.

2. Before refusing, suspending or revoking such permit, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

3VAC5-60-110. Contract brewing arrangements.

A licensed brewery may manufacture beer bearing the brand of another not under common control with the manufacturing brewery, and sell and deliver the beer so manufactured to the brand owner, provided that (i) the brand owner is appropriately licensed as a brewery or beer wholesaler; (ii) the manufacturing is pursuant to a written agreement between the parties; and (iii) complete records of all beer manufactured, sold, and delivered pursuant to the agreement are maintained by both parties.

VA.R. Doc. No. R12-3240; Filed April 30, 2013, 2:16 p.m.

Proposed Regulation

Title of Regulation: 3VAC5-70. Other Provisions (amending 3VAC5-70-90, 3VAC5-70-100, 3VAC5-70-150, 3VAC5-70-210, 3VAC5-70-220).

Statutory Authority: § 4.1-111 of the Code of Virginia (3VAC5-70-90, 3VAC5-70-100, 3VAC5-70-150, 3VAC5-70-220).

§§ 4.1-111 and 4.1-227 of the Code of Virginia (3VAC5-70-210).

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia provides that the board has the power to control the possession, transportation, sale, and delivery of alcoholic beverages. Section 4.1-111 of the Code of Virginia authorizes the board to promulgate reasonable regulations necessary to carry out the provisions of Title 4.1 of the Code of Virginia or the general laws of the Commonwealth.

Purpose: The purpose of the proposed regulatory action is to (i) extend the amount of time that a banquet and special event licensee has to report its income and expenses to the board

from 30 days to 90 days after the event, (ii) clarify which alcoholic beverage producers may give samples at a hospitality room and at conventions/trade shows, (iii) clarify price discrimination by moving the pertinent parts of the regulation regarding sales of alcoholic beverages by wholesalers to retailers to 3VAC5-90 (Tied House), (iv) codify board interpretation that each licensed location is considered a separate location with regard to reduced penalties for first time offenses, (v) allow for electronic filing of reports by wine and beer shippers, and (vi) allow licensees to store records off site.

Alcoholic beverage regulation is essential to protect the health, safety, and welfare of citizens by encouraging temperance and maintaining an orderly market. In promulgating regulations, the board must balance the need to protect the public safety with the legitimate interests of industry participants to be free of unnecessary restrictions. Each of the proposed amendments maintains essential public safety controls, while providing more flexibility for alcoholic beverage sellers.

Substance: The proposed amendments establish clearer guidelines on which alcoholic beverage producers may engage in certain activities and incorporate current board interpretation that each licensed location is a separate entity for the purpose of taking advantage of reduced penalties for a first offense. Other proposed amendments clarify price discrimination issues and provide some members of the regulated community extended time to file legislatively mandated reports or an ability to file such reports electronically.

Issues: The primary advantages to the public associated with the proposed regulatory action include relaxed deadlines for monthly tax filing by wholesalers and manufacturers and clarity in the application of regulations to provide leniency to first time offenders. There are no disadvantages to the public or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Alcoholic Beverage Control Board (ABC) proposes to amend its regulations to 1) allow licensees to store records off-site, 2) allow banquet and special event licensees 90 days to file required reports, 3) add importers, bottlers, brokers and wholesalers to the list of licensees who are permitted to host events at, and donate their products to, conventions or educational events, 4) clarify that each establishment is considered a separate licensee even in cases where one entity owns multiple establishments and 5) allow licensees to file required monthly activity reports electronically.

Result of Analysis. Benefits likely outweigh costs for implementing all proposed changes.

Estimated Economic Impact. Currently, ABC requires licensees to have records available for its agents to examine at any time between the hours of 9 a.m. to 5 p.m. and to provide

records for examination within 24 hours if ABC requests them during any other times. ABC now proposes to amend this requirement so that licensees may store records off premises so long as they are electronically viewable during the hours set forth in current regulation. Licensees will likely benefit from this change as it allows them greater flexibility as to how and where they store records.

Current regulations require banquet and special event licensees to file reports with ABC no later than 30 days after their licensed event. ABC proposes to extend that time frame to 90 days. Licensees will benefit from having the extra time to file their reports. ABC does not believe that allowing more time to file reports will harm any affected entity so benefits likely outweigh costs for this proposed change.

Current regulations allow beer and wine manufacturers to take certain actions during conventions, trade association gatherings and alcohol educational programs such as tastings or research activities. They may, for instance, host an event at, and/or donate alcoholic beverages to, such gatherings. ABC now proposes to allow alcoholic beverage importers, bottlers, brokers and wholesalers to also host events or donate alcoholic beverages as manufacturers do. Affected licensees will benefit from increased freedom to take part in activities that may result in greater name recognition and, presumably, greater future income for their businesses.

Current regulations allow lesser penalties for first time offences that are committed by any licensee but are silent as to how this applies to individuals or business entities who own more than one business where alcohol beverages are sold. ABC proposes to add language that specifies that each business location counts as a separate licensee for the purposes of determining penalties. ABC representatives report that this language change reflects how current regulations are already enforced but adding this language to regulation will bring the benefit of added clarity for affected entities.

Current regulations require shipper and retailer licensees to file monthly activity reports. ABC proposes to specify that reports may be filed electronically or in paper form. This change will allow licensee greater flexibility in how they meet their regulatory requirements and may slightly lower their reporting costs (copying costs and postage) if they have the capacity to file reports electronically.

Businesses and Entities Affected. ABC reports that approximately 15,000 businesses would be potentially affected by these proposed regulatory changes; 70% of these entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

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Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

The Alcoholic Beverage Control Board proposes to amend its regulations to (i) allow licensees to store records off site; (ii) allow banquet and special event licensees 90 days to file required reports; (iii) add importers, bottlers, brokers, and wholesalers to the list of licensees who are permitted to host events at and donate their products to conventions or educational events; (iv) clarify that each establishment is considered a separate licensee even in cases where one entity owns multiple establishments; and (v) allow licensees to file required monthly activity reports electronically.

3VAC5-70-90. Records to be kept by licensees generally; additional requirements for certain retailers; "sale" and "sell" defined; gross receipts; reports.

A. All licensees shall keep complete, accurate and separate records ~~at the licensee's place of business~~ for a period of two years. The records shall be available for inspection and copying by any member of the board or its special agents during reasonable hours. Licensees may use microfilm, microfiche, disks, or other available technologies for the storage of their records, and may store them off site, provided the records so stored are readily subject to retrieval and made available for viewing on a screen or in hard copy by the board or its special agents at the licensed premises between the hours of 9 a.m. and 5 p.m. At any other time of day, if the licensee's records are not available for inspection, the licensee shall provide the records to a special agent of the board within 24 hours after a request is made to inspect the records.

The board and its special agents shall be allowed free access during reasonable hours to every place in the Commonwealth where alcoholic beverages are manufactured, bottled, stored, offered for sale or sold, for the purpose of examining and inspecting all records, invoices and accounts therein.

"Reasonable hours" shall be deemed to include all business hours of operation and any other time at which there exists any indication of activity upon the licensed premises.

B. All licensed manufacturers, bottlers or wholesalers of alcoholic beverages shall keep a complete, accurate and separate record of all alcoholic beverages manufactured, bottled, purchased, sold or shipped by him. Such records shall show the quantities of all such alcoholic beverages manufactured, bottled, purchased, sold or shipped by him; the dates of all sales, purchases, deliveries or shipments; the names and addresses of all persons to or from whom such sales, purchases, deliveries or shipments are made; the quantities and kinds of alcoholic beverages sold and delivered or shipped and the prices charged therefor and the taxes applicable thereto, if any. Every manufacturer and wholesaler, at the time of delivering alcoholic beverages to any person, shall also prepare a duplicate invoice showing the date of delivery, the quantity and value of each delivery and the name of the purchaser to whom the delivery is made.

C. Every retail licensee shall keep complete, accurate and separate records, including invoices, of the purchases and sales of alcoholic beverages, food and other merchandise. The records of alcoholic beverages shall be kept separate and apart from other records and shall include all purchases thereof, the dates of such purchases, the kinds and quantities of alcoholic beverages purchased, the prices charged therefor and the names and addresses of the persons from whom purchased.

Additionally, each retail licensee shall keep accurate accounts of daily sales, showing quantities of alcoholic beverages, food, and other merchandising sold and the prices charged therefor.

D. In addition to the requirements of subsections A and C of this section, mixed beverage restaurant licensees shall keep records of all alcoholic beverages purchased for sale as mixed beverages and records of all mixed beverage sales. The following actions shall also be taken:

1. On delivery of a mixed beverage restaurant license by the board, the licensee shall furnish to the board or its special agents a complete and accurate inventory of all alcoholic beverages currently held in inventory on the premises by the licensee; and
2. Once a year, each licensee shall submit on prescribed forms to the board an annual review report. The report is due within 30 days after the end of the mixed beverage license year and shall include:
 - a. A complete and accurate inventory of all alcoholic beverages purchased for sale as mixed beverages and held in inventory at the close of business at the end of the annual review period;
 - b. An accounting of the annual purchases of food, nonalcoholic beverages and alcoholic beverages, including alcoholic beverages purchased for sale as mixed beverages, and miscellaneous items; and
 - c. An accounting of the monthly and annual sales of all merchandise specified in subdivision 2 b of this subsection.

E. The terms "sale" and "sell" shall include exchange, barter or traffic, or delivery made otherwise than gratuitously, by any means whatsoever, of mixed beverages and other alcoholic beverages, and of meals or food.

F. In determining "gross receipts from the sale of food" for the purposes of § 4.1-210 of the Code of Virginia, a licensee shall not include any receipts for food for which there was no sale, as defined in this section. Food which is available at an unwritten, non-separate charge to patrons or employees during Happy Hours, private social gatherings, promotional events, or at any other time, shall not be included in the gross receipts. Food shall include hors d'oeuvres.

If in conducting its review pursuant to § 4.1-114 of the Code of Virginia, the board determines that the licensee has failed or refused to keep complete and accurate records of the amounts of mixed beverages or other alcoholic beverages sold at regular prices, as well as at all various reduced and increased prices offered by the licensee, the board may calculate the number of mixed drinks and other alcoholic beverage drinks sold, as determined from purchase records, and presume that such sales were made at the highest posted menu prices for such merchandise.

G. Any changes in the officers, directors or shareholders owning 10% or more of the outstanding capital stock of a corporation shall be reported to the board within 30 days; provided, however, that corporations or their wholly owned subsidiaries whose corporate common stock is publicly traded and owned shall not be required to report changes in

shareholders owning 10% or more of the outstanding capital stock.

H. All banquet and special event licensees in charge of public events shall report to the board the income and expenses associated with the public event on a form prescribed by the board when the licensee engages another person to organize, conduct or operate the event on behalf of the licensee. Reports shall be made within ~~30~~ 90 days after the date of each event. "Public events" shall be deemed to include any event at which alcoholic beverages are sold to the general public and not only to personally invited guests.

All applicants for banquet or special event licenses shall indicate at the time of application whether the event is open to the public and whether another person has been or will be engaged to organize, conduct or operate the event on behalf of the licensee. If the applicant indicates that the event is open to the public and another person has been or will be engaged to organize, conduct or operate the event on behalf of the licensee, the applicant shall attach a copy of any contract between the applicant and such other person to the license application.

3VAC5-70-100. Gifts of alcoholic beverages generally; exceptions; wine and beer tastings; taxes and records.

A. Gifts of alcoholic beverages by a licensee to any other person are prohibited except as otherwise provided in this section or as provided in §§ 4.1-119 G, 4.1-201, 4.1-201.1, 4.1-205, 4.1-209, 4.1-325, and 4.1-325.2 of the Code of Virginia.

B. Gifts of alcoholic beverages may be made by licensees as follows:

1. Personal friends. Gifts may be made to personal friends as a matter of normal social intercourse when in no wise a shift or device to evade the provisions of this section.
2. Samples. A wholesaler may give a retail licensee a sample serving or a container not then sold by such licensee of wine or beer, which such wholesaler otherwise may sell to such retail licensee, provided that in ~~a~~ the case of containers, the container does not exceed 52 fluid ounces in size (1.5 liters if in a metric-sized container) and the label bears the word "Sample" in lettering of reasonable size. Such samples may not be sold. For good cause shown the board may authorize a larger sample container.
3. Hospitality rooms; conventions. ~~A person licensed to manufacture wine or beer may~~ The following activities are permitted:
 - a. ~~Give~~ A brewer or vintner may give samples of his products to visitors to his winery or brewery for consumption on premises only in a hospitality room approved by the board, provided the donees are persons to whom such products may be lawfully sold; and
 - b. ~~Host~~ A manufacturer, importer, bottler, broker, or wholesaler may host an event at conventions of national,

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regional or interstate associations or foundations organized and operated exclusively for religious, charitable, scientific, literary, civil affairs, educational or national purposes upon the premises occupied by such licensee, or upon property of the licensee contiguous to such premises, or in a development contiguous to such premises, owned and operated by the licensee or a wholly owned subsidiary.

4. Conventions; educational programs, including ~~wine and beer~~ alcoholic beverage tastings; research; licensee associations. ~~Licensed manufacturers~~ Manufacturers, importers, bottlers, brokers, and wholesalers may donate ~~beer or wines~~ alcoholic beverages to:

a. A convention, trade association or similar gathering, composed of licensees and their guests, when the alcoholic beverages donated are intended for consumption during the convention;

b. Retail licensees attending a bona fide educational program relating to the alcoholic beverages being given away;

c. Research departments of educational institutions, or alcoholic research centers, for the purpose of scientific research on alcoholism;

d. ~~Licensed manufacturers and wholesalers may donate wine to official~~ Official associations of ~~wholesale wine licensees~~ alcoholic beverage industry members when conducting a bona fide educational program concerning ~~wine~~ alcoholic beverages, with no promotion of a particular brand, for members and guests of particular groups, associations, or organizations.

5. Conditions. Exceptions authorized by subdivisions 3 b and 4 of this subsection are conditioned upon the following:

a. That prior written notice of the activity be submitted to the board describing it and giving the date, time and place of such; and

b. That the activity be conducted in a room or rooms set aside for that purpose and be adequately supervised.

C. Wine and beer wholesalers may participate in a wine or beer tasting sponsored by a gourmet shop licensee for its customers and may provide educational material, oral or written, pertaining thereto, as well as participate in the pouring of such wine or beer.

D. Any gift authorized by this section shall be subject to the taxes imposed on sales by Title 4.1 of the Code of Virginia, and complete and accurate records shall be maintained.

3VAC5-70-150. Wholesale alcoholic beverage sales; winery and brewery discounts, price-fixing; price increases; price discrimination; inducements.

A. No winery as defined in § 4.1-401 or brewery as defined in § 4.1-500 of the Code of Virginia shall require a wholesale licensee to discount the price at which the wholesaler shall

sell any alcoholic beverage to persons holding licenses authorizing sale of such merchandise at retail. No winery, brewery, bottler or wine or beer importer shall in any other way fix or maintain the price at which a wholesaler shall sell any alcoholic beverage.

B. No winery as defined in § 4.1-401 or brewery as defined in § 4.1-500 of the Code of Virginia shall increase the price charged any person holding a wholesale license for alcoholic beverages except by written notice to the wholesaler signed by an authorized officer or agent of the winery, brewery, bottler or importer which shall contain the amount and effective date of the increase.

No increase shall take effect prior to 30 calendar days following the date on which the notice is postmarked; provided that the board may authorize such price increases to take effect with less than the aforesaid 30 calendar days' notice if a winery, brewery, bottler or importer so requests and demonstrates good cause therefor.

The provisions of this subsection shall not apply in any case where the importer required to provide notice of a price increase and the wholesaler to whom notice is to be provided are the same person.

C. No winery as defined in § 4.1-401 or brewery as defined in § 4.1-500 of the Code of Virginia shall discriminate in price of alcoholic beverages between different wholesale purchasers ~~and no wholesale wine or beer licensee shall discriminate in price of alcoholic beverages between different retail purchasers~~ except where the difference in price charged by such winery, or brewery ~~or wholesale licensee~~ is due to a bona fide difference in the cost of sale or delivery, or where a lower price was charged in good faith to meet an equally low price charged by a competing winery, or brewery ~~or wholesaler~~ on a brand and package of like grade and quality. Where such difference in price charged to any such wholesaler ~~or retail purchaser~~ does occur, the board may ask and the winery, or brewery ~~or wholesaler~~ shall furnish written substantiation for the price difference.

D. No person holding a license authorizing the sale of alcoholic beverages at wholesale ~~or retail~~ shall knowingly induce or receive a discrimination in price prohibited by subsection C of this section.

3VAC5-70-210. Schedule of penalties for first-offense violations.

A. Any licensee charged with any violation of board regulations or statutes listed below, if the licensee has no other pending charges and has not had any substantiated violations of regulation or statute within the three years immediately preceding the date of the violation, may enter a written waiver of hearing and (i) accept the period of license suspension set forth below for the violation, or (ii) pay the civil charge set forth below for the violation in lieu of suspension. In the case of a violation involving the sale of beer, wine, or mixed beverages to a person at least 18 but under 21 years of age, or to an intoxicated person, or allowing

consumption of such beverages by such person, any retail licensee that can demonstrate that it provided alcohol seller/server training certified in advance by the board to the employee responsible for such violation within the 12 months immediately preceding the alleged violation may accept the lesser period of license suspension or pay the lesser civil charge listed below for the violation in lieu of suspension. Any notice of hearing served on a licensee for a violation covered by this section shall contain a notice of the licensee's

options under this section. Any licensee who fails to notify the board of its intent to exercise one of the options provided for under this section within 20 days after the date of mailing of the notice of hearing shall be deemed to have waived the right to exercise such options and the case shall proceed to hearing. For good cause shown, the board may, in its discretion, allow a licensee to exercise the options provided for under this section beyond the 20-day period.

VIOLATION	SUSPENSION	CIVIL CHARGE	SUSPENSION WITH CERTIFIED TRAINING	CIVIL CHARGE WITH CERTIFIED TRAINING
Sale of beer, wine or mixed beverages to a person at least 18 but under 21 years of age.	25 days	\$2,000	5 days	\$1,000
Allowing consumption of beer, wine, or mixed beverages by a person at least 18 but under 21 years of age.	25 days	\$2,000	5 days	\$1,000
Aiding and abetting the purchase of alcoholic beverages by a person at least 18 but under 21 years of age.	10 days	\$1,000		
Keeping unauthorized alcoholic beverages on the premises, upon which appropriate taxes have been paid.	7 days	\$500		
Allow an intoxicated person to loiter on the premises.	7 days	\$500		
Sale to an intoxicated person.	25 days	\$2,000	5 days	\$1,000
Allow consumption by an intoxicated person.	25 days	\$2,000	5 days	\$1,000
After hours sales or consumption of alcoholic beverages.	10 days	\$1,000		
No designated manager on premises.	7 days	\$500		
Invalid check to wholesaler or board.	7 days	\$250		
Inadequate illumination.	7 days	\$500		
ABC license not posted.	7 days	\$500		
Not timely submitting report required by statute or regulation.	7 days	\$500		
Designated manager not posted.	7 days	\$500		
Person less than 18 serving alcoholic beverages; less than 21 acting as bartender.	7 days	\$500		
Sale of alcoholic beverages in unauthorized place or manner.	10 days	\$1,000		
Consumption of alcoholic beverages in unauthorized area.	7 days	\$500		

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Removal of alcoholic beverages from authorized area.	7 days	\$500		
Failure to obliterate mixed beverage stamps.	7 days	\$500		
Employee on duty consuming alcoholic beverages.	7 days	\$500		
Conducting illegal happy hour.	7 days	\$500		
Illegally advertising happy hour.	7 days	\$500		
Unauthorized advertising.	7 days	\$500		
Failure to remit state beer/wine tax (if deficiency has been corrected).	10 days	\$1,000		
Wholesaler sale of wine/beer in unauthorized manner.	10 days	\$1,000		
Wholesaler sale of wine/beer to unauthorized person.	10 days	\$1,000		

B. For purposes of this section, the Virginia Department of Alcoholic Beverage Control will certify alcohol seller/server training courses that provide instruction on all the topics listed on the Seller/Server Training Evaluation form. The following steps should be completed to submit a training program for approval:

1. Complete the Alcohol Seller/Server Training Data Sheet and review the Seller/Server Training Evaluation form to make sure the program will meet the listed criteria; and
2. Submit the Alcohol Seller/Server Training Data Sheet and a copy of the proposed training program materials for review. Materials submitted should include copies of any lesson plans and instructional materials used in the training program.

Requests for certification of training courses should be sent to:

Virginia Department of Alcoholic Beverage Control
 Education Section
 P. O. Box 27491
 Richmond, VA 23261
 Email correspondences: education@abc.virginia.gov

Persons in charge of any certified alcohol server training course shall maintain complete records of all training classes conducted, including the date and location of each class, and the identity of all those successfully completing the course.

C. For a licensee that operates more than one retail establishment, each such establishment shall be considered a separate licensee for the purpose of this section.

3VAC5-70-220. Wine or beer shipper's licenses and Internet wine retailer licenses; application process; common carriers; records and reports.

A. Any person or entity qualified for a wine shipper's license or beer shipper's license pursuant to § 4.1-209.1 of the Code of Virginia, or an Internet wine retailer license pursuant to subdivision 6 of § 4.1-207 of the Code of Virginia, must apply for such license by submitting form 805-52, Application for License. In addition to the application, each applicant shall submit as attachments a list of all brands of wine or beer sought to be shipped by the applicant, along with the board-assigned code numbers for each brand or a copy of the label approval by the appropriate federal agency for any brand not previously approved for sale in Virginia pursuant to 3VAC5-40-20 or 3VAC5-40-50 that will be sold only through direct shipment to consumers.

If the applicant is not also the brand owner of the brands listed in the application, the applicant shall obtain and submit with the application a dated letter identifying each brand, from the brand owner or any wholesale distributor authorized to distribute the brand, addressed to the Supervisor, Tax Management Section, Virginia Department of Alcoholic Beverage Control, indicating the brand owner's or wholesale distributor's consent to the applicant's shipping the brand to Virginia consumers.

The applicant shall attach (i) a photocopy of its current license as a winery, farm winery, brewery, or alcoholic beverage retailer issued by the appropriate authority for the location from which shipments will be made and (ii) evidence of the applicant's registration with the Virginia Department of Taxation for the collection of Virginia retail sales tax.

B. Any brewery, winery or farm winery that applies for a shipper's license or consents to the application by any other person, other than a retail off-premises licensee, for a license to ship such brewery's, winery's or farm winery's brands of

wine or beer shall notify all wholesale licensees that have been authorized to distribute such brands in Virginia that an application for a shipper's license has been filed. Such notification shall be by a dated letter to each such wholesale licensee, setting forth the brands that wholesaler has been authorized to distribute in Virginia for which a shipper's license has been applied. A copy of each such letter shall be forwarded to the Supervisor, Tax Management Section, by the brewery, winery, or farm winery.

C. Any holder of a wine or beer shipper's license or Internet wine retailer's license may add or delete brands to be shipped by letter to the Supervisor, Tax Management Section, designating the brands to be added or deleted. Any letter adding brands shall be accompanied by any appropriate brand-owner consents or notices to wholesalers as required with an original application.

D. Any brand owner that consents to a holder of a wine shipper's license, beer shipper's license, or Internet wine retailer's license shipping its brands to Virginia consumers may withdraw such consent by a dated letter to the affected wine or beer shipper's licensee or Internet wine retailer's licensee. Copies of all such withdrawals shall be forwarded by the brand owner, by certified mail, return receipt requested, to the Supervisor, Tax Management Section. Withdrawals shall become effective upon receipt of the copy by the Tax Management Section, as evidenced by the postmark on the return receipt.

E. Wine shipper's licensees, beer shipper's licensees, and Internet wine retailer's licensees shall maintain for two years complete and accurate records of all shipments made under the privileges of such licenses, including for each shipment:

1. Number of containers shipped;
2. Volume of each container shipped;
3. Brand of each container shipped;
4. Names and addresses of recipients; and
5. Price charged.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

F. On or before the 15th day of each month, each wine shipper's licensee, beer shipper's licensee, or Internet wine retailer's licensee shall file with the Supervisor, Tax Management Section, either in paper form or electronically as directed by the department, a report of activity for the previous calendar month. Such report shall include:

1. Whether any shipments were made during the month; and
2. If shipments were made, the following information for each shipment:
 - a. Number of containers shipped;
 - b. Volume of each container shipped;
 - c. Brand of each container shipped;

- d. Names and addresses of recipients; and
- e. Price charged.

Unless otherwise paid, payment of the appropriate beer or wine tax shall accompany each report.

G. All shipments by holders of wine shipper's licenses, beer shipper's licenses, or Internet wine retailer's licenses shall be by approved common carrier only. Common carriers possessing all necessary licenses or permits to operate as common carriers in Virginia may apply for approval to provide common carriage of wine or beer, or both, shipped by holders of wine shipper's licenses, beer shipper's licenses, or Internet wine retailer's licenses by dated letter to the Supervisor, Tax Management Section, requesting such approval and agreeing to perform deliveries of beer or wine shipped, maintain records, and submit reports in accordance with the requirements of this section. The board may refuse, suspend or revoke approval if it shall have reasonable cause to believe that a carrier does not possess all necessary licenses or permits, that a carrier has failed to comply with the regulations of the board, or that a cause exists with respect to the carrier that would authorize the board to refuse, suspend or revoke a license pursuant to Title 4.1 of the Code of Virginia. Before refusing, suspending, or revoking such approval, the board shall follow the same administrative procedures accorded an applicant or licensee under Title 4.1 of the Code of Virginia and regulations of the board.

H. When attempting to deliver wine or beer shipped by a wine shipper's licensee, beer shipper's licensee, or Internet wine retailer's licensee, an approved common carrier shall require:

1. The recipient to demonstrate, upon delivery, that he is at least 21 years of age; and
2. The recipient to sign an electronic or paper form or other acknowledgement of receipt that allows the maintenance of the records required by this section.

The approved common carrier shall refuse delivery when the proposed recipient appears to be under the age of 21 years and refuses to present valid identification. All licensees shipping wine or beer pursuant to this section shall affix a conspicuous notice in 16-point type or larger to the outside of each package of wine or beer shipped within or into the Commonwealth, in a conspicuous location stating: "CONTAINS ALCOHOLIC BEVERAGES; SIGNATURE OF PERSON AGED 21 YEARS OR OLDER REQUIRED FOR DELIVERY." Such notice shall also contain the wine shipper's, beer shipper's, or Internet wine retailer's license number of the shipping licensee. No approved common carrier shall accept for shipment any wine or beer to be shipped to anyone other than a licensee of the board unless the package bears the information required by this subsection.

I. Approved common carriers shall maintain for two years complete and accurate records of all shipments of wine or beer received from and delivered for wine or beer shipper's

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licensees, or Internet wine retailer's licensees, including for each shipment:

1. Date of shipment and delivery;
2. Number of items shipped and delivered;
3. Weight of items shipped and delivered;
4. Acknowledgement signed by recipient; and
5. Names and addresses of shippers and recipients.

The records required by this subsection shall be made available for inspection and copying by any member of the board or its special agents upon request.

J. On or before the 15th day of each January, April, July, and October, each approved common carrier shall file with the Supervisor, Tax Management Section, a report of activity for the previous calendar quarter. Such report shall include:

1. Whether any shipments were delivered during the quarter; and
2. If shipments were made, the following information for each shipment:
 - a. Dates of each delivery; and
 - b. Names and address of shippers and recipients for each delivery.

VA.R. Doc. No. R12-3241; Filed April 30, 2013, 2:18 p.m.

Proposed Regulation

Title of Regulation: 3VAC5-70. Other Provisions (adding 3VAC5-70-95).

Statutory Authority: §§ 4.1-103 and 4.1-111 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 19, 2013.

Agency Contact: W. Curtis Coleburn III, Chief Operating Officer, Department of Alcoholic Beverage Control, 2901 Hermitage Road, Richmond, VA 23220, telephone (804) 213-4409, FAX (804) 213-4411, TTY (804) 213-4687, or email curtis.coleburn@abc.virginia.gov.

Basis: Section 4.1-103 of the Code of Virginia authorizes the Alcoholic Beverage Control Board to promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) and § 4.1-111 of the Code of Virginia. Section 4.1-111 authorizes the board to promulgate reasonable regulations, not inconsistent with Title 4.1 of the Code of Virginia or the general laws of the Commonwealth, which it deems necessary to carry out the provisions of Title 4.1.

Section 4.1-232 C of the Code of Virginia provides that the board shall make refunds, prorated according to a schedule of its prescription, to licensees of state license taxes paid pursuant to § 4.1-231 A of the Code of Virginia if the place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon.

Purpose: The proposed regulatory action is essential to protect the welfare of citizens by providing a means to protect them from the total loss of unused license fees when natural disaster prevents them from exercising the privileges of a license.

Substance: The board adopted a proposed new section (3VAC5-70-95), which provides a schedule of the percentage of the license fee that will be refunded to a licensee whose place of business is destroyed by natural disaster. The percentage will vary depending on when in the course of the license year the destruction occurs.

Issues: The primary advantage to the public is providing some relief to businesses whose facilities are destroyed by natural disaster. The expense to the Commonwealth is expected to be minimal. There are no disadvantages to the public.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 728 of the 2011 Acts of the Assembly, the Alcoholic Beverage Control Board (ABC) proposes to amend its regulations so businesses that are licensed by ABC may get a prorated refund of their licensure fee if the business is destroyed by an act of God.

Result of Analysis. Benefits likely outweigh costs for implementing these proposed changes.

Estimated Economic Impact. Until legislation was passed in 2011, ABC was not authorized to provide a refund of licensure fees for any reason. Chapter 728 changed this by authorizing ABC to set a schedule for proration of license fees "if the place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon." ABC now proposes this regulatory change to do just that. Under the proposed regulation, license fees will be refunded at a rate of 75% if a business is destroyed within the first three months of the license year; business owners will get 50% of their fee back if the business is destroyed in the second three months of the license year and will get 25% if their business is destroyed in the third three months of the license year. No license fees will be refunded if an affected business is destroyed in the final three months of the license year.

Because this regulation does not impose any additional burdens on licensees, no affected entity is likely to incur any costs on account of this proposed regulatory action. Affected business owners will benefit from being able to get a portion of their licensure fee back when their businesses are destroyed (rendering the license unusable and useless).

Businesses and Entities Affected. ABC reports that approximately 16,000 businesses would be potentially affected by this proposed regulatory change; 90% of these

entities would meet the Commonwealth's definition of small business.

Localities Particularly Affected. No locality will be particularly affected by this proposed regulatory action.

Projected Impact on Employment. This proposed regulatory action is unlikely to have any effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulatory changes are unlikely to affect the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. No small business is likely to incur any costs on account of this regulatory action.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any costs on account of this regulatory action.

Real Estate Development Costs. This regulatory action will likely have no effect on real estate development costs in the Commonwealth.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Alcoholic Beverage Control Board concurs with the economic impact analysis of the Department of Planning and Budget.

Summary:

Pursuant to Chapter 728 of the 2011 Acts of Assembly, the Alcoholic Beverage Control Board proposes to amend its regulations so businesses that are licensed by the board

may get a prorated refund of their licensure fee if the business is destroyed by an act of God.

3VAC5-70-95. Proration of license tax for businesses destroyed by natural disaster.

The board shall make refunds of the state license tax paid pursuant to subsection A of § 4.1-231 of the Code of Virginia to licensees whose place of business designated in the license is destroyed by an act of God, including but not limited to fire, earthquake, hurricane, storm, or similar natural disaster or phenomenon, upon the following schedule:

If the destruction takes place within the first three months of the license year, 75% of the license tax shall be refunded. If the destruction takes place within the second three months of the license year, 50% of the license tax shall be refunded. If the destruction takes place within the third three months of the license year, 25% of the license tax shall be refunded. No refund shall be issued if the destruction takes place within the last three months of the license year.

VA.R. Doc. No. R12-3013; Filed April 30, 2013, 2:17 p.m.



TITLE 4. CONSERVATION AND NATURAL RESOURCES

BOARD OF GAME AND INLAND FISHERIES

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

Proposed Regulation

Title of Regulation: **4VAC15-40. Game: in General (amending 4VAC15-40-21, 4VAC15-40-50, 4VAC15-40-70, 4VAC15-40-130, 4VAC15-40-240, 4VAC15-40-260, 4VAC15-40-285; adding 4VAC15-40-221).**

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Regulations

Summary:

The proposed amendments (i) add the United States Department of Agriculture to the list of agencies permitted to carry out wild bird and wild animal control programs; (ii) allow dog training on squirrels during daylight hours on private lands and allow dog training on rabbits from sunrise to midnight on private lands; (iii) establish a 1,000-yard boundary adjacent to Lands End Waterfowl Management Area within which waterfowl hunting is prohibited; (iv) prohibit intentionally set traps within 50 feet of exposed animal carcasses or parts; (v) allow the taking of designated game species and fur-bearing species on special permits during closed seasons with any type of lawful weapon; (vi) make a reference by proxy to Augusta County overt; (vii) prohibit the feeding of cervids year round in eight localities; (viii) prohibit the feeding of deer or elk during deer or elk hunting season; (ix) require that all feed be removed from any feeding site prior to September 1; and (x) consider any area where feed has been distributed a "baited" area for 10 days following the complete removal of the food.

4VAC15-40-21. Special crossbow license; hunting with crossbows.

There shall be a license to hunt with a crossbow during the special archery seasons that shall be in addition to the license required to hunt small game. The fee for the special crossbow license shall be ~~\$12 for a resident and \$25 for a nonresident plus a \$.50 issuance fee. The special crossbow license may be obtained from the clerk or agent of any county or city whose duty it is to sell licenses as specified in 4VAC15-20-65.~~

4VAC15-40-50. Poisoning of wild birds and wild animals prohibited; certain control programs excepted.

It shall be unlawful to put out poison at any time for the purpose of killing any wild birds and wild animals, provided that rats and mice may be poisoned on one's own property. The provisions of this section shall not apply to the Commissioner of Agriculture and Consumer Services, the United States Department of Agriculture, or ~~his~~ their representatives or cooperators, and those being assisted in a control program ~~following procedures developed under the "Virginia Nuisance Bird Law."~~ authorized by those agencies.

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

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

B. It shall be lawful to train dogs on rabbits on private lands from sunrise to midnight.

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

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

4VAC15-40-130. Disturbing waterfowl adjacent to Lands End Waterfowl Management Area.

It shall be unlawful to ~~take, attempt to take~~ hunt, pursue, or disturb waterfowl ~~within~~ in the public waters within 1,000 yards adjacent to the Lands End Waterfowl Management Area located adjacent to the Rappahannock River in King George County for such distance offshore as may be established by the board and properly posted so as to give adequate notice to the public, provided that this section shall not abridge the privileges prescribed for landowners, and their lessees and permittees, in §§ 29.1-344 and 29.1-347 of the Code of Virginia.

4VAC15-40-221. Restricted use of traps near exposed carcasses and animal parts.

It shall be unlawful to intentionally set foothold traps, body-gripping traps, or snares within 50 feet of an animal carcass, or parts thereof, unless the carcass, or parts thereof, are completely covered at the time the trap is set or visited. For the purposes of this section, "completely covered" shall be defined as not being visible from above. Provided further, a "carcass" shall be defined as the body, portions of the body, meat, organs, or viscera of any animal, including fish. Feathers (including those with attached skin or entire bird wings), hair (with or without skin or hide), and bones that include no attached meat, organs, or viscera are excluded from this definition.

4VAC15-40-240. Animal population control.

Whenever biological evidence suggests that populations of game animals or fur-bearing animals may exceed or threaten to exceed the carrying capacity of a specified range, or whenever population reduction of a species is necessary to

manage for another wildlife species, or whenever the health or general condition of a species indicates the need for population reduction, or whenever the threat of human public health and safety or significant economic loss indicates the need for population reduction, the director is authorized to issue special permits to obtain the desired reduction by licensed hunters or licensed trappers on areas prescribed by department wildlife biologists. Designated game species or fur-bearing species may be taken in excess of the general bag limits, during closed seasons, and with any type of lawful weapon on special permits issued under this section under such conditions as may be prescribed by the director.

4VAC15-40-260. Sunday hunting on controlled shooting areas.

A. Except as otherwise provided in the sections appearing in this chapter, it shall be lawful to hunt pen-raised game birds seven days a week as provided by § 29.1-514 of the Code of Virginia. The length of the hunting season on such preserves and the size of the bag limit shall be in accordance with rules of the board. For the purpose of this chapter, controlled shooting areas shall be defined as licensed shooting preserves.

B. It shall be unlawful to hunt pen-raised game birds on Sunday on controlled shooting areas in ~~those counties having a population of not less than 54,000, nor more than 55,000,~~ Augusta County or in any county or city which prohibits Sunday operation by ordinance.

4VAC15-40-285. Unauthorized feeding of deer cervids.

~~A.~~ A. It shall be unlawful for any person to place or distribute food, salt, minerals, or similar substances; to feed or attract ~~deer cervids~~ (i) at any time in the counties (including the cities and towns within) of Buchanan, Clarke, Dickenson, Frederick, Shenandoah, Warren, and Wise; (ii) during any deer or elk season within any county, city, or town that allows deer or elk hunting; and (iii) from September 1 through the first Saturday in January, both dates inclusive, elsewhere in the Commonwealth.

~~B.~~ B. Any food, salt, minerals, or similar substances placed or distributed to feed or attract cervids prior to September 1 must be completely removed by September 1, and any area where food, salt, minerals, or similar substances were placed or distributed to feed or attract cervids shall be considered to be baited for 10 days following the complete removal of the items listed in this subsection.

~~C. Nor, upon~~ Upon written notification by department personnel, ~~shall any no person shall~~ continue to place or distribute any food, salt, mineral, or similar substances for any purpose if the placement of these materials results in the attraction of and/or feeding of ~~deer cervids~~. After such notification, such person shall be in violation of this section if the placing, distribution, or presence of such food, salt, minerals, or similar substances continues.

D. No part of this regulation shall be construed to restrict bona fide agronomic plantings (including wildlife food plots),

bona fide distribution of food to livestock, or wildlife management activities conducted or authorized by the department.

VA.R. Doc. No. R13-3718; Filed May 1, 2013, 7:59 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-50. Game: Bear (amending 4VAC15-50-11, 4VAC15-50-70, 4VAC15-50-110, 4VAC15-50-120; adding 4VAC15-50-12).**

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) adjust the bear hunting season in a number of counties or portions of counties; (ii) establish a youth and apprentice hunter statewide bear hunting day; (iii) eliminate an outdated provision pertaining to physical disability and use of crossbows; (iv) update the description of a border for allowable bear hound hunting in one county; and (v) add one to two weeks of bear hound training season in multiple counties or locations.

4VAC15-50-11. Open season; generally.

A. It shall be lawful to hunt bears within:

Location	Season
Accomack County	Closed
Albemarle County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Alleghany County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Amelia County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Amherst County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

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Appomattox County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Arlington County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Augusta County (North of US-250)	Saturday prior to the fourth <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
Augusta County (South of US-250)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bath County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bedford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Bland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Botetourt County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Brunswick County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Buchanan County	First Monday in December and for 17 consecutive hunting days following <u>through the first Saturday in January, both dates inclusive.</u>
Buckingham County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Campbell County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Caroline County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

Carroll County	First Monday in December and for 17 consecutive hunting days following.
Charles City County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Charlotte County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Chesapeake (City of)	October 1 through the first Saturday in January, both dates inclusive.
Chesterfield County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Clarke County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Craig County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Culpeper County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Cumberland County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Dickenson County	First Monday in December and for 17 consecutive hunting days following <u>through the first Saturday in January, both dates inclusive.</u>
Dinwiddie County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Essex County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Fairfax County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

Regulations

Fauquier County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Floyd County	First Monday in December and for 17 consecutive hunting days following.
Fluvanna County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Franklin County	First Monday in December and for 17 consecutive hunting days following.
Frederick County	Saturday prior to the fourth Fourth Monday in November through the first Saturday in January, both dates inclusive.
Giles County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Gloucester County	Second First Monday in December and for 5 consecutive hunting days following.
Goochland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Grayson County	First Monday in December and for 17 consecutive hunting days following.
Greene County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Greensville County	Second First Monday in December and for 5 consecutive hunting days following.
Halifax County	Second First Monday in December and for 5 consecutive hunting days following.
Hanover County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Henrico County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

Henry County	First Monday in December and for 17 consecutive hunting days following.
Highland County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Isle of Wight County	Second First Monday in December and for 5 consecutive hunting days following.
James City County	Second First Monday in December and for 5 consecutive hunting days following.
King and Queen County	Second First Monday in December and for 5 consecutive hunting days following.
King George County	Second First Monday in December and for 5 consecutive hunting days following.
King William County	Second First Monday in December and for 5 consecutive hunting days following.
Lancaster County	Second First Monday in December and for 5 consecutive hunting days following.
Lee County	First Monday in December and for 17 consecutive hunting days following through the first Saturday in January, both dates inclusive.
Loudoun County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Louisa County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Lunenburg County	Second First Monday in December and for 5 consecutive hunting days following.
Madison County	Fourth Monday in November through the first Saturday in January, both dates inclusive.

Regulations

Mathews County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Mecklenburg County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Middlesex County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Montgomery County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.
Montgomery County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Nelson County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
New Kent County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Northampton County	Closed
Northumberland County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Nottoway County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Orange County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Page County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Patrick County	First Monday in December and for 17 consecutive hunting days following.
Pittsylvania County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.

Powhatan County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
<u>Prince Edward County</u>	<u>First Monday in December and for 5 consecutive hunting days following.</u>
Prince George County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Prince William County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Pulaski County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.
Pulaski County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Rappahannock County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Richmond County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Roanoke County	Saturday prior to the fourth <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
Rockbridge County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Rockingham County	Saturday prior to the fourth <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
Russell County (except on the Channels State Forest and Clinch Mountain WMA)	First Monday in December and for 17 consecutive hunting days following <u>through the first Saturday in January, both dates inclusive.</u>
Russell County (on the Channels State Forest and Clinch Mountain WMA)	Fourth Monday in November through the first Saturday in January, both dates inclusive.

Scott County	First Monday in December and for 17 consecutive hunting days following <u>through the first Saturday in January, both dates inclusive.</u>
Shenandoah County	Saturday prior to the fourth <u>Fourth</u> Monday in November through the first Saturday in January, both dates inclusive.
Smyth County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.
Smyth County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Southampton County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Spotsylvania County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Stafford County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Suffolk (City of)	October 1 through the first Saturday in January, both dates inclusive.
Surry County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Sussex County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Tazewell County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Virginia Beach (City of)	October 1 through the first Saturday in January, both dates inclusive.
Warren County	Fourth Monday in November through the first Saturday in January, both dates inclusive.
Washington County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.

Washington County (northwest of I-81 and east of Route 19)	Fourth Monday in November <u>First Monday in December</u> through the first Saturday in January, both dates inclusive.
Washington County (northwest of I-81 and west of Route 19)	First Monday in December and for 17 consecutive hunting days following.
Westmoreland County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.
Wise County	First Monday in December and for 17 consecutive hunting days following <u>through the first Saturday in January, both dates inclusive.</u>
Wythe County (southeast of I-81)	First Monday in December and for 17 consecutive hunting days following.
Wythe County (northwest of I-81)	Fourth Monday in November through the first Saturday in January, both dates inclusive.
York County	Second <u>First</u> Monday in December and for 5 consecutive hunting days following.

B. Except as provided in the subsection A of this section, bears may be hunted from the Saturday prior to the fourth Monday in November through the first Saturday in January, both dates inclusive, within the incorporated limits of any city that allows bear hunting.

4VAC15-50-12. Youth and apprentice hunter bear hunting day.

It shall be lawful for hunters 15 years of age and under and holders of a valid apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt bears on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Adult hunters accompanying youth or apprentice bear hunters on this day may not carry or discharge weapons. Bear bag limit, weight limits, and all other take restrictions specifically provided in the sections appearing in this chapter apply to this youth day. Bear hunting with dogs is prohibited except any place where there is a bear hound training season currently in progress as defined in 4VAC15-50-120 (Bear hound training season) and tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

Regulations

4VAC15-50-70. Bow and arrow hunting.

A. It shall be lawful to hunt bear during the special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

B. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-50-71, may be in the possession of a properly licensed muzzleloading gun hunter when and where the early special archery bear season overlaps the early special muzzleloading bear season.

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

D. It shall be unlawful to use dogs when hunting with bow and arrow from the second Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

~~E. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4VAC15-40-20 B, to hunt bear subject to the provisions of subsections A through D of this section. For the purpose of the application of subsections A through D to this subsection the phrase "bow and arrow" includes crossbow.~~

4VAC15-50-110. Use of dogs in hunting bear.

A. It shall be unlawful to use dogs for the hunting of bear during the open season for hunting deer in the counties west of the Blue Ridge Mountains and in the counties of Amherst (west of ~~U.S. Route 29~~ Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, and Nelson (west of Route 151); and within the boundaries of the national forests, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. It shall be unlawful to use dogs for the hunting of bear during the first 12 hunting days of the open season for hunting deer in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

C. It shall be unlawful to use dogs for the hunting of bear in the counties of Campbell (west of Norfolk Southern Railroad), Carroll (east of the New River), Fairfax, Floyd, Franklin, Grayson (east of the New River), Henry, Loudoun, Montgomery (south of Interstate 81), Patrick, Pittsylvania (west of Norfolk Southern Railroad), Pulaski (south of Interstate 81), Roanoke (south of Interstate 81), Wythe (southeast of the New River or that part bounded by Route 21 on the west, Interstate 81 on the north, the county line on the east, the New River on the southeast and Cripple Creek on the south); in the city of Lynchburg; and on Amelia, Chester F.

Phelps, G. Richard Thompson, and Pettigrew wildlife management areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-50-120. Bear hound training season.

~~A. Except as otherwise specifically provided in the sections appearing in this chapter, it shall be lawful to chase black bear with dogs, without capturing or taking, from the second Saturday in August through the last Saturday in September, both dates inclusive, in all counties and cities or in the portions in which bear hunting is permitted except in the counties of Accomack, Amelia, Appomattox, Brunswick, Buckingham, Campbell, Caroline, Carroll, Charles City, Charlotte, Chesterfield, Clarke, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Floyd, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Grayson, Greenville, Halifax, Hanover, Henrico, Henry, Isle of Wight, James City, King & Queen, King George, King William, Lancaster, Loudoun, Louisa, Lunenburg, Mathews, Mecklenburg, Middlesex, Montgomery (south of Interstate 81), New Kent, Northampton, Northumberland, Nottoway, Orange, Patrick, Pittsylvania, Powhatan, Prince Edward, Prince George, Prince William, Pulaski (south of Interstate 81), Richmond, Roanoke (south of Interstate 81), Smyth (south of Interstate 81), Southampton, Spotsylvania, Stafford, Surry, Sussex, Washington (south of Interstate 81), Westmoreland, Wythe (south of Interstate 81), and York, and in the cities of Hampton, Newport News and Norfolk, from the second Saturday in August through the last Saturday in September.~~

B. It shall be lawful to chase black bear with dogs, without capturing or taking, from the Saturday prior to the third Monday in November through the Saturday prior to the first Monday in December, both dates inclusive, in the counties of Amelia, Appomattox, Buckingham, Brunswick, Campbell (east of the Norfolk Southern Railroad), Charles City, Charlotte, Cumberland, Essex, Gloucester, Greenville, Halifax, Isle of Wight, James City, King and Queen, King George, King William, Lancaster, Lunenburg, and Mathews, Mecklenburg, from the first Monday in December for five consecutive hunting days following, both dates inclusive Middlesex, New Kent, Northumberland, Nottoway, Pittsylvania (east of the Norfolk Southern Railroad), Prince Edward, Prince George, Richmond, Southampton, Surry, Sussex, Westmoreland, and York.

C. It shall be lawful to chase black bears with dogs, without capturing or taking, in the counties of Brunswick, Greenville, Lunenburg, and Mecklenburg from the first Saturday in September through the third Saturday in September, both dates inclusive.

~~Ⓓ. D.~~ It shall be unlawful to have in possession a firearm, bow, crossbow or any weapon capable of taking a black bear while participating in the bear hound training season. The meaning of "possession" for the purpose of this section shall include, but not be limited to, having a firearm, bow,

crossbow or any weapon capable of taking a black bear in or on one's person, vehicle, or conveyance.

VA.R. Doc. No. R13-3719; Filed May 1, 2013, 9:43 a.m.

Proposed Regulation

Title of Regulation: 4VAC15-70. **Game:** Bobcat (amending 4VAC15-70-40).

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendment updates the delineation of the border in one county between where the use of dogs is and is not allowed to hunt bobcat during deer season.

4VAC15-70-40. Use of dogs in hunting bobcats during deer season in certain counties and national forests.

It shall be unlawful to use dogs for the hunting of bobcats during the open season for hunting deer in the counties of Alleghany, Amherst (west of U.S. Route 29) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the town of Amherst continuing north on U.S. 29 to the Tye River), Augusta, Bath, Bedford, Botetourt, Campbell (west of Norfolk Southern Railroad), Clarke, Frederick, Highland, Nelson (west of Route 151), Page, Pittsylvania (west of Norfolk Southern Railroad), Rockbridge, Rockingham, Shenandoah and Warren, and within the boundaries of the national forests.

VA.R. Doc. No. R13-3720; Filed May 1, 2013, 11:20 a.m.

Proposed Regulation

Title of Regulation: 4VAC15-90. **Game:** Deer (amending 4VAC15-90-10, 4VAC15-90-23, 4VAC15-90-70 through 4VAC15-90-91, 4VAC15-90-231, 4VAC15-90-241, 4VAC15-90-260, 4VAC15-90-293; adding 4VAC15-90-89, 4VAC15-90-294; repealing 4VAC15-90-20, 4VAC15-90-21, 4VAC15-90-22, 4VAC15-90-30).

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad

Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) adjust, by locality or other geographic or property divisions, the season schedules, bag limits, limits for deer of either sex, or antler point restrictions for general firearms, muzzleloading firearms, or archery deer hunting seasons; (ii) adjust areas where deer hunting with dogs is allowed; (iii) allow apprentice hunting license holders to hunt on the youth deer hunting day; (iv) adjust deer disease management requirements; (v) restrict the importation or movement of cervid carcasses or parts and the movement of such parts from areas designated for disease management; (vi) restrict the transport and possession of juvenile and adult cervids for the purpose of rehabilitation; (vii) adjust requirements for checking elk that are killed; and (viii) establish a continuous closed season for elk hunting in four counties.

4VAC15-90-10. Open season; generally.

~~Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to hunt deer from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive.~~

A. It shall be lawful to hunt deer in the following localities, including the cities and towns therein, during the following seasons, all dates inclusive.

<u>Locality</u>	<u>Season</u>
<u>Accomack County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Albemarle County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Alleghany County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Amelia County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Amherst County (west of Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>

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<u>Amherst County (east of Business U.S. 29, as defined above)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Caroline County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Appomattox County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Carroll County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Arlington County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Charles City County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Arlington County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Charlotte County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Augusta County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Chesapeake (City of)</u>	<u>October 1 through November 30</u>
<u>Bath County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Chesterfield County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Bedford County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Clarke County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Bland County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Craig County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Botetourt County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Culpeper County (except Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Brunswick County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Culpeper County (Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Buchanan County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Cumberland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Buckingham County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Dickenson County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Campbell County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Dinwiddie County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Essex County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>

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<u>Fairfax County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Grayson County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Fairfax County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Greene County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Fauquier County (except Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Greensville County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Fauquier County (Chester F. Phelps Wildlife Management Area)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Halifax County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Floyd County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>	<u>Hanover County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Fluvanna County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Henrico County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Franklin County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>	<u>Henry County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>
<u>Frederick County (non-national forest lands)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Highland County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Frederick County (national forest lands)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Isle of Wight County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Giles County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>James City County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Gloucester County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>King and Queen County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Goochland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>King George County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>King William County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
		<u>Lancaster County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>

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<u>Lee County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Northumberland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Loudoun County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Nottoway County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Loudoun County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>	<u>Orange County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Louisa County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Page County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Lunenburg County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Patrick County</u>	<u>Saturday prior to the third Monday in November and for 24 consecutive hunting days following</u>
<u>Madison County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Pittsylvania County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Mathews County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Powhatan County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Mecklenburg County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Prince Edward County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Middlesex County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Prince George County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Montgomery County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Prince William County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Nelson County (west of Route 151)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Prince William County (antlerless deer only)</u>	<u>First Saturday in September through the Friday prior to the first Saturday in October and the Monday following the first Saturday in January through the last Saturday in March</u>
<u>Nelson County (east of Route 151)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Pulaski County (except on New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>New Kent County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>		
<u>Northampton County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>		

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<u>Pulaski County (New River Unit of the Radford Army Ammunition Plant adjacent to the Town of Dublin)</u>	<u>Saturday prior to the second Monday in November through the first Saturday in January</u>	<u>Stafford County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Rappahannock County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Suffolk (City of) (east of Dismal Swamp Line)</u>	<u>October 1 through November 30</u>
<u>Richmond County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Suffolk (City of) (west of Dismal Swamp Line)</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Roanoke County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Surry County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Rockbridge County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Sussex County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Rockingham County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Tazewell County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Russell County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Virginia Beach (City of)</u>	<u>October 1 through November 30</u>
<u>Scott County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Warren County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Shenandoah County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Washington County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Smyth County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>	<u>Westmoreland County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>
<u>Southampton County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Wise County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
<u>Spotsylvania County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>	<u>Wythe County</u>	<u>Saturday prior to the third Monday in November and for 12 consecutive hunting days following</u>
		<u>York County</u>	<u>Saturday prior to the third Monday in November through the first Saturday in January</u>

B. Except as provided in subsection A of this section, east of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November through the first Saturday in January, both dates inclusive, within the

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incorporated limits of any city or town that allows deer hunting.

C. Except as provided in subsection A of this section, west of the Blue Ridge Mountains deer may be hunted from the Saturday prior to the third Monday in November and for 12 consecutive hunting days following within the incorporated limits of any city or town that allows deer hunting.

~~4VAC15-90-20. Two-week open season; cities, towns, and counties west of Blue Ridge Mountains and certain cities, towns, and counties or parts thereof east of Blue Ridge Mountains. (Repealed.)~~

~~It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 12 consecutive hunting days following in the cities, towns and counties west of the Blue Ridge Mountains (except Clarke and Floyd counties and on non-national forest lands in Frederick County, and on the Radford Army Ammunition Plant in Pulaski County), and in the counties (including cities and towns within) of Amherst (west of U.S. Route 29), Bedford, Campbell (west of Norfolk Southern Railroad except in the City of Lynchburg), Nelson (west of Route 151), and on the Chester F. Phelps Wildlife Management Area.~~

~~4VAC15-90-21. Four-week open season; certain cities, towns, and counties or parts thereof. (Repealed.)~~

~~It shall be lawful to hunt deer on the Saturday prior to the third Monday in November and for 24 consecutive hunting days following in the counties (including the cities and towns within) of Floyd, Franklin, Henry, and Patrick.~~

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

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

~~4VAC15-90-23. Youth and apprentice hunter deer hunting day.~~

~~It shall be lawful for deer hunters 15 years of age and under and holders of an apprentice hunting license, when in compliance with all applicable laws and license requirements, to hunt deer on the last Saturday in September when accompanied and directly supervised by an adult who has a valid Virginia hunting license on his person or is exempt from purchasing a hunting license. Deer of either-sex may be taken on this special youth deer hunting day. Adult hunters accompanying youth or apprentice deer hunters on this day may not carry or discharge weapons. Blaze orange is required for all persons hunting any species or any person accompanying a hunter on this day unless otherwise exempted by state law. Deer hunting with dogs is prohibited, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.~~

~~4VAC15-90-30. Open season; cities of Virginia Beach, Chesapeake and Suffolk east of Dismal Swamp Line. (Repealed.)~~

~~It shall be lawful to hunt deer from October 1 through November 30, both dates inclusive, in the cities of Virginia Beach, Chesapeake, and Suffolk east of the Dismal Swamp Line.~~

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

A. It shall be lawful to hunt deer during the early special archery season with bow and arrow from the first Saturday in October through the Friday prior to the third Monday in November, both dates inclusive.

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

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

D. It shall be unlawful to carry firearms while hunting with bow and arrow during the special archery seasons, except that a muzzleloading gun, as defined in 4VAC15-90-80, may be in the possession of a properly licensed muzzleloading gun hunter when and where a special archery deer season overlaps a special muzzleloading deer season.

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

F. It shall be unlawful to use dogs when hunting with bow and arrow during any special archery season, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

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

H. It shall be lawful to hunt antlerless deer during the special urban archery season with bow and arrow from the first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, and from the Monday following the first Saturday in January through the last Saturday in March, both dates inclusive, within the incorporated limits of any city or town in the Commonwealth (except on national forest and department-owned lands) and counties with a human population density of 300 persons per square mile or more (except on national forest and department-owned lands), provided that its governing body submits by certified letter to the department prior to April 1, its intent to participate in the special urban archery season. Any city, town, or county no longer participating in this season shall submit by certified letter to the department prior to April 1 notice of its intent not to participate in the special urban archery season.

I. It shall be lawful to hunt antlerless deer during the special antlerless archery season with a bow and arrow from the ~~first Saturday in September through the Friday prior to the first Saturday in October, both dates inclusive, in Loudoun and Prince William counties, except on department owned lands~~ Monday following the last Saturday in March through the last Saturday in April, both dates inclusive, in Arlington, Fairfax, Loudoun, and Prince William counties (including the cities and towns within).

4VAC15-90-80. Muzzleloading gun hunting.

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

B. It shall be lawful to hunt deer during the late special muzzleloading season with muzzleloading guns starting 18 consecutive hunting days immediately prior to and inclusive of the first Saturday in January, in all cities, towns, and counties west of the Blue Ridge Mountains (except Clarke County and on non-national forest lands in Frederick County), and east of the Blue Ridge Mountains in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, ~~Campbell (west of Norfolk Southern Railroad)~~, Franklin, Henry, Nelson (west of Route 151), Patrick and on national forest lands in Frederick County and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp ~~line~~) Line), and Virginia Beach.

C. Deer of either sex may be taken during the entire early special muzzleloading season east of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken on the second Saturday only of the early special muzzleloading season on state forest lands, state park lands (except Occoneechee State Park), department-owned lands and Philpott Reservoir.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season on national forest lands in Amherst, Bedford, and Nelson counties.

D. Deer of either sex may be taken on the second Saturday only during the early special muzzleloading season west of the Blue Ridge Mountains unless otherwise noted below:

- Deer of either sex may be taken during the entire early special muzzleloading season in Clarke and Floyd counties and on private lands in Carroll, Frederick, Grayson, Montgomery, Roanoke, and Warren counties.
- Antlered bucks only—no either sex deer hunting days during the early special muzzleloading season in Buchanan, Dickenson, Lee, Russell, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Botetourt, Frederick, Grayson, Page, Rockingham, Scott, Shenandoah, Warren, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on Grayson Highlands State Park and on private lands west of Routes 613 and 731 in Rockingham County.

E. Deer of either sex may be taken during the last six days of the late special muzzleloading season unless otherwise listed below:

- Deer of either sex may be taken full season during the entire late special muzzleloading season in the counties (including the cities and towns within) of Amherst (west of U.S. Route 29 Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River, except on national forest lands), Bedford (except on national forest lands), ~~Campbell (west of Norfolk Southern Railroad)~~, Floyd, Franklin, Henry, Nelson (west of Route 151, except on national forest lands), and Patrick and on private lands in Carroll, Grayson, Montgomery, Roanoke and Warren counties and in the cities of Chesapeake, Suffolk (east of the Dismal Swamp ~~line~~) Line), and Virginia Beach.
- Deer of either sex may be taken the last day only during the late special muzzleloading season in Alleghany, Bath, Dickenson (north of Route 83), Highland, Lee, Russell, Scott, Smyth, Tazewell, Washington, and Wise counties and on national forest lands in Alleghany, Amherst, Bedford, Botetourt, Frederick, Grayson, Nelson, Page, Rockingham, Shenandoah, and Warren counties, and on national forest and department-owned lands in Augusta, Bath, Highland, and Rockbridge counties and on private

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lands west of Routes 613 and 731 in Rockingham County and Grayson Highlands State Park.

- Antlered bucks only—no either-sex deer hunting days during the late special muzzleloading season in Buchanan and Dickenson (south of Route 83).

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

G. It shall be unlawful to hunt deer with dogs during any special season for hunting with muzzleloading guns, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

H. A muzzleloading gun, for the purpose of this section, means a single shot weapon, excluding muzzleloading pistols, .45 caliber or larger, firing a single projectile or sabot (with a .38 caliber or larger projectile) of the same caliber loaded from the muzzle of the weapon and propelled by at least 50 grains of black powder (or black powder equivalent or smokeless powder).

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

4VAC15-90-85. Elk hunting.

A. Closed season. There shall be a continuous closed season for elk (*Cervus elaphus*) hunting in Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, and Wise counties.

B. Open season. Except as otherwise provided by this chapter, it shall be lawful to hunt elk of either sex during (i) the general firearms deer seasons (as prescribed by 4VAC15-90-10, ~~4VAC15-90-20~~, ~~4VAC15-90-21~~, ~~4VAC15-90-22~~, and ~~4VAC15-90-23~~, and ~~4VAC15-90-30~~), (ii) the special archery seasons (as prescribed by 4VAC15-90-70), and (iii) the special muzzleloading seasons (as prescribed by 4VAC15-90-80) with bag limits as prescribed in 4VAC15-90-90.

C. Validating tags and checking elk by licensee or permittee. Upon killing an elk, any licensed or permitted hunter shall validate a tag, bonus deer permit, or special permit and check the elk in accordance with 4VAC15-90-231. At the time of checking, the hunter must call ~~1-804-367-1258~~ the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

D. Checking elk by persons exempt from license requirements or holding a license authorization number. Upon killing an elk, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E, or (iv) holding a Virginia license authorization number issued by a telephone or electronic

media agent pursuant to § 29.1-327 B of the Code of Virginia shall check the elk in accordance with 4VAC15-90-241. At the time of checking, the hunter must call ~~1-804-367-1258~~ the department upon receiving a check card or confirmation number to schedule an inspection of the carcass and the site of kill for the collection of biological samples for disease testing.

4VAC15-90-89. Earn a buck (EAB).

For the purposes of this section, the term "license year" defines the period between July 1 and June 30 of the following year.

Arlington County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Arlington County prior to taking at least two antlerless deer in Arlington County, and it shall be unlawful to take a third antlered deer in Arlington County prior to taking at least three antlerless deer in Arlington County.

Bedford County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Bedford County prior to taking at least one antlerless deer on private lands in Bedford County, and it shall be unlawful to take a third antlered deer on private lands in Bedford County prior to taking at least two antlerless deer on private lands in Bedford County.

Clarke County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Clarke County prior to taking at least one antlerless deer on private lands in Clarke County.

Fairfax County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Fairfax County prior to taking at least two antlerless deer in Fairfax County, and it shall be unlawful to take a third antlered deer in Fairfax County prior to taking at least three antlerless deer in Fairfax County.

Frederick County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Frederick County prior to taking at least one antlerless deer on private lands in Frederick County.

Loudoun County (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Loudoun County prior to taking at least two antlerless deer in Loudoun County, and it shall be unlawful to take a third antlered deer in Loudoun County prior to taking at least three antlerless deer in Loudoun County.

Prince William County except on Department of Defense lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least two antlerless deer in Prince William County (except on Department of Defense lands).

and it shall be unlawful to take a third antlered deer in Prince William County (except on Department of Defense lands) prior to taking at least three antlerless deer in Prince William County (except on Department of Defense lands).

Roanoke County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Roanoke County prior to taking at least one antlerless deer on private lands in Roanoke County.

Warren County on private lands (including the cities and towns within). During a license year, it shall be unlawful to take a second antlered deer on private lands in Warren County prior to taking at least one antlerless deer on private lands in Warren County.

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

A. The bag limit for deer east of the Blue Ridge Mountains (except on national forest lands in Amherst, Bedford, and Nelson counties) is two per day (except for the counties of, including the cities and towns within, Arlington, Fairfax, Loudoun, and Prince William where the daily bag limit is unlimited), six per license year, three of which must be antlerless.

B. The bag limit for deer west of the Blue Ridge Mountains and on national forest lands in Amherst, Bedford, and Nelson counties is one per day (except for private lands in the counties including the cities and towns within Clarke, Frederick, Roanoke, Shenandoah, and Warren where the daily bag limit is two per day), five per license year, three of which must be antlerless. Only one antlered buck taken in the county of Alleghany, Augusta, Bath, Highland, Shenandoah, Rockbridge, or Rockingham per license year may have less than four antler points one inch or longer on one side of the antlers.

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

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

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

~~F. Earn a buck (EAB) areas include all private lands in the counties (including private lands in the cities and towns within) of Bedford, Fairfax, Fauquier, Franklin, Loudoun, Patrick, Prince William, and Roanoke. In EAB areas at least one antlerless deer must be taken on private lands in an EAB area before the second antlered deer of the license year may be taken on private lands in an EAB area. Furthermore, at least two antlerless deer must have been taken on private lands in an EAB area before the third antlered deer of the license year may be taken on private lands in an EAB area.~~

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

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

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

Albemarle County: full season.

Alleghany County: the second Saturday and the last hunting day.

-National forest lands: the last hunting day.

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

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

Amherst County (east of ~~U.S. Route 29~~) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): the second, third, and fourth Saturdays and the last 24 hunting days.

Amherst County (west of ~~U.S. Route 29~~) Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River): full season.

-National forest lands: the last hunting day.

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

-Appomattox-Buckingham State Forest: the second and third Saturdays.

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

Arlington County: full season.

Regulations

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

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

Bath County: the second Saturday and the last hunting day.

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

Bedford County: full season.

-National forest lands: the last hunting day.

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

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

Botetourt County: full season.

-National forest lands: the last hunting day.

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

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

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

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

-Appomattox-Buckingham State Forest: the second and third Saturdays.

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

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

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

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

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

Carroll County: full season.

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

Charles City County: full season.

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

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

Chesapeake (City of): full season.

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

Clarke County: full season.

Craig County: full season.

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

Culpeper County: full season.

-Chester F. Phelps WMA: the second Saturday and the last hunting day.

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

-Cumberland State Forest: the second and third Saturdays.

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

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

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

Fairfax County: full season (restricted to certain parcels of land by special permit).

Fauquier County: full season.

-G. Richard Thompson WMA: the second Saturday and the last hunting day.

-Chester F. Phelps WMA: the second Saturday and the last hunting day.

Floyd County: full season.

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

Franklin County: full season.

-Philpott Reservoir: the second Saturday and the last six hunting days.

-Turkeycock Mountain WMA: the second Saturday and the last six hunting days.

Frederick County: full season

-National forest lands: the last hunting day.

Giles County: full season.

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

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

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

Grayson County: full season.

-National forest lands and Grayson Highlands State Park: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Greene County: full season.

Greensville County: full season.

Halifax County: full season.

Hanover County: full season.

Henrico County: full season.

Henry County: ~~full season~~ the second and third Saturdays and the last 12 hunting days.

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

-Turkeycock Mountain WMA: the second Saturday and the last six hunting days.

Highland County: the second Saturday and the last hunting day.

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

Isle of Wight County: full season.

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

James City County: full season.

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

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

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

Lancaster County: full season.

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

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

Loudoun County: full season.

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

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

Madison County: full season.

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

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

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

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

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

Montgomery County: full season.

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

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

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

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

-National forest lands: the last hunting day.

New Kent County: full season.

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

Northumberland County: full season.

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

Orange County: full season.

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

-National forest lands: the last hunting day.

Patrick County: ~~full season~~ the second and third Saturdays and the last 12 hunting days.

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

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

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

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

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

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

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

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

-Prince Edward State Forest: the second and third Saturdays.

Prince George County: full season.

Prince William County: full season.

Pulaski County: full season.

Regulations

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

Rappahannock County: full season.

Richmond County: full season.

Roanoke County: full season.

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

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

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

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

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

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

-Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

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

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

Shenandoah County: full season.

-National forest lands: the last hunting day.

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

-National forest lands, Clinch Mountain WMA, and Hungry Mother State Park: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Southampton County: full season.

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

Stafford County: full season.

Suffolk (City of): full season.

Surry County: full season.

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

Sussex County: full season.

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

-National forest lands, Clinch Mountain WMA, and Hidden Valley WMA: ~~the last hunting day~~ antlered bucks

only—no either-sex days. Only deer with antlers above the hairline may be taken.

Virginia Beach (City of): full season.

Warren County: full season.

-National forest lands: the last hunting day.

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

-National forest lands, Clinch Mountain WMA, Hidden Valley WMA, and the Channels State Forest: ~~the last hunting day~~ antlered bucks only—no either-sex days. Only deer with antlers above the hairline may be taken.

Westmoreland County: full season.

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

Wythe County: full season.

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

York County: full season.

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

4VAC15-90-231. Validating tags and checking deer by licensee or permittee.

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

B. Upon killing a deer and validating (notching) a license tag, bonus deer permit or special permit, as provided above, the licensee or permittee shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass and validated (notched) license tag, bonus deer permit or special permit to an authorized checking station or to an appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass will be given a game check

card furnished by the department or a confirmation number from the automated reporting system. The successful hunter shall then immediately record the game check card number or confirmation number, in ink, on the line provided on the tag that was validated (notched) in the field. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, no check card is required as long as the hunter who killed the animal is in possession of the carcass. If the automated harvest reported carcass is left unattended or transferred to the possession of another individual, written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number must be created and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

C. It shall be unlawful for any person to destroy the identity of the sex of any deer killed unless and until the license tag, bonus deer permit or special permit is validated (notched) and checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill, after an appropriate license tag has been validated (notched) as required above, as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer found in the possession of any person without a validated (notched) license tag or documentation that the deer has been checked (via a big game check station or the automated harvest reporting system) as required by this section shall be forfeited to the Commonwealth to be disposed of as provided by law.

D. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the licensee or permittee shall present the carcass, on the day of kill, at a location designated by the department for the purposes of disease surveillance or biological monitoring.

4VAC15-90-241. Checking deer by persons exempt from license requirement or holding a license authorization number.

A. Upon killing a deer, any person (i) exempt from license requirement as prescribed in § 29.1-301 of the Code of Virginia, (ii) issued a complimentary license as prescribed in § 29.1-339 of the Code of Virginia, (iii) holding a permanent license issued pursuant to § 29.1-301 E of the Code of

Virginia, or (iv) holding a Virginia license authorization number issued by a telephone or electronic media agent pursuant to § 29.1-327 B of the Code of Virginia shall, upon vehicle transport of the carcass or at the conclusion of legal hunting hours, whichever occurs first, and without unnecessary delay, present the carcass to an authorized checking station or to any appropriate representative of the department in the county or adjoining county in which the deer was killed or report the kill through the department's automated harvest reporting system. All deer killed after the first Saturday in January (as prescribed in 4VAC15-90-22 and 4VAC15-90-70) must be checked by telephone or Internet. At such time, the person checking or reporting the carcass shall be given a game check card furnished by the department or a confirmation number from the automated reporting system. If checked at a big game check station, the game check card must be kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, the game check card must be securely attached to the carcass. If the kill is reported using the automated harvest reporting system, the successful hunter shall immediately create written documentation including the successful hunter's full name, the date the animal was killed, and the confirmation number. This written documentation must be kept in possession with the carcass until the carcass is processed. If the automated harvest reported carcass is transferred to the possession of another individual, the written documentation must be transferred with the carcass to the individual and kept in possession with the carcass until the carcass is processed. If the carcass is left unattended, this written documentation must be securely attached to the carcass. Processed carcass parts of a deer killed legally in Virginia may be transported; however, upon request of any authorized law enforcement officer, sufficient verbal or written information necessary to properly establish legal possession must be furnished immediately.

B. It shall be unlawful for any person to destroy the identity (sex) of any deer killed until the deer is checked as required by this section. Successful deer hunters are allowed to dismember the carcass to pack it out from the place of kill as long as they do not destroy the identity of the sex and all the parts of the carcass are present when the deer is checked at a big game check station or reported through the automated harvest reporting system. Any deer that has not been checked (via a big game check station or the automated harvest reporting system) as required by this section found in the possession of any person exempt from license requirements or holding a license authorization number shall be forfeited to the Commonwealth to be disposed of as provided by law.

C. Upon killing a deer within an area designated by the department for deer disease management and on days designated by the department, the hunter shall present the carcass, on the same day the deer was killed, at a location designated by the department for the purposes of deer disease surveillance or biological monitoring.

Regulations

4VAC15-90-260. Hunting with dogs prohibited in certain counties and areas.

A. Generally. It shall be unlawful to hunt deer with dogs in the counties of Amherst (west of ~~U.S. Route 29~~ Business U.S. 29 from the James River to its intersection with U.S. 29 just south of the Town of Amherst continuing north on U.S. 29 to the Tye River), Bedford, Campbell (west of Norfolk Southern Railroad, and in the City of Lynchburg), Fairfax, Franklin, Henry, Loudoun, Nelson (west of Route 151), Northampton, Patrick and Pittsylvania (west of Norfolk Southern Railroad); and on the Amelia, Chester F. Phelps, G. Richard Thompson and Pettigrew Wildlife Management Areas, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

B. Special provision for Greene and Madison counties. It shall be unlawful to hunt deer with dogs during the first 12 hunting days in the counties of Greene and Madison, except that tracking dogs as defined in § 29.1-516.1 of the Code of Virginia may be used.

4VAC15-90-293. Chronic Wasting Disease deer carcass ~~importation~~ movement restrictions.

A. For the purposes of this section and in 4VAC15-40-285 and 4VAC15-90-294:

"Cervid" means any member of the deer family Cervidae, including but not limited to white-tailed deer, fallow deer, sika deer, elk, and reindeer.

~~A.~~ B. No person shall import or possess any carcass or part of a carcass of any member of the family Cervidae (deer) originating from any area designated by the department as a carcass-restriction zone in or adjacent to a state or Canadian province in which Chronic Wasting Disease has been found in free-ranging or captive deer, except that the following carcass parts may be imported and possessed:

1. Boned-out meat that is cut and wrapped;
2. Quarters or other portions of meat with no part of the spinal column or skull attached;
3. Hides or capes with no skull attached;
4. Clean (no meat or tissue attached) skull plates with antlers attached;
5. Antlers (with no meat or tissue attached);
6. Upper canine teeth (buglers, whistlers, or ivories); and
7. Finished taxidermy products.

A legible label shall be affixed to packages or containers containing the allowed carcass parts bearing the following information: the species of animal, the state or province from where the animal originated, and the name and address of the person who killed or owned the animal.

~~B.~~ C. Any person who imports into Virginia any deer carcass or parts described in subsection A of this section and is notified that the animal has tested positive for Chronic Wasting Disease must report the test results to the department within 72 hours of receiving the notification. In order to

facilitate the proper disposal of any infected material, the department may take into possession any imported carcass or carcass part of an animal if the animal has tested positive for Chronic Wasting Disease.

D. No person shall transport any carcass or part of a carcass of any cervid out of any area designated by the department as a disease containment area, except that the carcass parts enumerated in subsection B of this section may be transported, and carcasses or parts may be transported directly to locations designated by the department, provided that such carcasses or parts are transported without unnecessary delay and secured within a vehicle or vehicles during transit. Provisions of this section shall not apply to employees of the department or another government agency working in an official disease investigation capacity.

4VAC15-90-294. Rehabilitation of cervids.

A. For the purposes of this section:

"Juvenile" means any cervid less than one year of age on December 31 of the current calendar year.

"Adult" means any cervid greater than one year of age on December 31 of the current calendar year.

B. No person permitted by the department to rehabilitate cervids may transport, possess, rehabilitate, or release adult cervids.

C. Juvenile cervids requiring continued rehabilitation beyond December 31 of the current calendar year shall not be transported, possessed, released, or rehabilitated without written authorization from the department.

D. Cervids that originate within an area designated by the department for disease management shall not be transported or possessed for the purposes of rehabilitation. If such a cervid is brought to a rehabilitator permitted by the department, the permittee shall hold the cervid in isolation and immediately notify the department.

E. Cervids from any county (including the cities and towns therein) containing an area designated by the department for cervid disease management may be rehabilitated and released in the county of origin only if the cervid originated from a portion of the county outside the disease management area.

VA.R. Doc. No. R13-3721; Filed May 1, 2013, 6:33 a.m.

Proposed Regulation

Title of Regulation: 4VAC15-110. Game: Fox (repealing 4VAC15-110-75).

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad

Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendment repeals the existing section governing live trapping of fox for foxhound training preserves. The conditions for a permit to operate a foxhound training preserve are proposed in 4VAC15-290-160.

4VAC15-110-75. Foxhound training preserves; live-trapping for release. (Repealed.)

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

VA.R. Doc. No. R13-3722; Filed May 1, 2013, 1:51 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-170. Game: Otter (amending 4VAC15-170-20).**

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendment increases the season bag limit in all counties west of the Blue Ridge Mountains from two to four otters per trapper.

4VAC15-170-20. Open season for trapping; season bag limit west of the Blue Ridge Mountains.

A. It shall be lawful to trap otter from December 1 through the last day of February, both dates inclusive.

B. The season bag limit for trapping otter shall be ~~two~~ four per trapper in counties west of the Blue Ridge Mountains.

VA.R. Doc. No. R13-3723; Filed May 1, 2013, 11:00 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-230. Game: Squirrel (amending 4VAC15-230-20).**

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendment extends the squirrel hunting season through the end of February.

4VAC15-230-20. Gray and red squirrel. Season; generally.

Except as otherwise provided by local legislation and with the specific exceptions provided in the sections appearing in this chapter, it shall be lawful to hunt squirrel from the first Saturday in September through ~~January 31~~ the last day in February, both dates inclusive.

VA.R. Doc. No. R13-3724; Filed May 1, 2013, 10:52 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-240. Game: Turkey (amending 4VAC15-240-40, 4VAC15-240-51, 4VAC15-240-60).**

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

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) allow apprentice hunting license holders to hunt on youth spring and fall turkey hunting days and (ii) eliminate a provision pertaining to physical disabilities that was rendered obsolete by the establishment of hunting with crossbows.

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

A. Except as otherwise provided in this section, it shall be lawful to hunt bearded turkeys from the second Saturday in April and for 30 consecutive hunting days following, both dates inclusive, from 1/2 hour before sunrise to 12:00 noon

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

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

C. Bearded turkeys may be hunted by calling.

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

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

4VAC15-240-51. Youth and apprentice hunter fall turkey hunt hunting day.

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

4VAC15-240-60. Bow and arrow hunting.

A. Season. It shall be lawful to hunt turkey with bow and arrow in those counties and areas open to fall turkey hunting from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

B. Bag limit. The daily and seasonal bag limit for hunting turkey with bow and arrow shall be the same as permitted during the general turkey season in those counties and areas open to fall turkey hunting, and any turkey taken shall apply toward the total season bag limit.

C. Carrying firearms prohibited. It shall be unlawful to carry firearms while hunting with bow and arrow during special archery season.

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

E. Use of dogs prohibited during bow season. It shall be unlawful to use dogs when hunting with bow and arrow from the first Saturday in October through the Saturday prior to the second Monday in November, both dates inclusive.

~~F. It shall be lawful for persons with permanent physical disabilities, who are in full compliance with the requirements of 4VAC15-40-20 B, to hunt turkey subject to the provisions of subsections A through E of this section. For the purpose of the application of subsections A through E to this subsection the phrase "bow and arrow" includes crossbow.~~

VA.R. Doc. No. R13-3725; Filed May 1, 2013, 10:33 a.m.

Proposed Regulation

Title of Regulation: **4VAC15-270. Game: Firearms (amending 4VAC15-270-10, 4VAC15-270-90).**

Statutory Authority: §§ 29.1-501, 29.1-502, and 29.1-528 of the Code of Virginia.

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments (i) prohibit the use of air rifles for bear and deer hunting and (ii) provide a model ordinance provision that counties and cities may use to allow hunting of coyotes with rifles larger than .22 caliber rim fire between March 1 and August 31.

4VAC15-270-10. Size rifles for hunting bear and deer.

It shall be unlawful to use a rifle of a ~~calibre~~ caliber less than 23 for the hunting or killing of bear and deer. Rifles must use an explosive propellant; pneumatic (air or gas) rifles are prohibited.

4VAC15-270-90. Model ordinances related to hunting with firearms for counties and cities.

Per the provisions of § 29.1-528 A of the Code of Virginia, the following model ordinances related to hunting with firearms may be adopted by counties and cities. In accordance with § 29.1-528 B of the Code of Virginia, no such ordinance shall be enforceable unless the governing body of the locality notifies the director by registered mail prior to May 1 of the year in which the ordinance is to take effect.

Model Ordinance 1:

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire.

Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 2:

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire, except rifles of a larger caliber may be used for hunting groundhogs and coyotes between March 1 - August 31. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 3:

It shall be unlawful to hunt with a rifle larger than .22 caliber rim fire, except rifles of a larger caliber may be used to hunt from a stand elevated at least 10 feet from the ground. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 4:

Muzzleloading rifles may only be used to hunt from a stand elevated at least 10 feet from the ground. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 5:

Muzzleloading rifles firing a single projectile may not be used to hunt between April 1 - May 31. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 6:

It shall be unlawful to hunt with shotguns loaded with slugs. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 7:

It shall be unlawful to engage in hunting with a firearm within the right-of-way of any primary or secondary highway. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

Model Ordinance 8:

It shall be unlawful to engage in hunting with a firearm within 100 yards of any primary or secondary highway. Any person who violates the provisions of this ordinance shall be guilty of a Class 3 misdemeanor.

V.A.R. Doc. No. R13-3726; Filed May 1, 2013, 11:39 a.m.

Proposed Regulation

Title of Regulation: 4VAC15-290. **Game:** Permits (amending 4VAC15-290-60; adding 4VAC15-290-150, 4VAC15-290-160).

Statutory Authority: §§ 29.1-501 and 29.1-502 of the Code of Virginia (4VAC15-290-60, 4VAC15-290-150).

§§ 29.1-103, 29.1-501, and 29.1-502 of the Code of Virginia (4VAC15-290-160).

Public Hearing Information:

June 13, 2013 - 9 a.m. - Department of Game and Inland Fisheries, 4000 West Broad Street, Richmond, VA

Public Comment Deadline: May 31, 2013.

Agency Contact: Phil Smith, Regulatory Coordinator, Department of Game and Inland Fisheries, 4010 West Broad Street, Richmond, VA 23230, telephone (804) 367-8341, or email phil.smith@dgif.virginia.gov.

Summary:

The proposed amendments establish (i) standards for elementary and secondary school teachers to possess and

display wildlife without a permit to exhibit wildlife and (ii) requirements for a permit to operate a foxhound training preserve.

4VAC15-290-60. Holding wild animals for exhibition purposes.

A. Where an exhibit is educational and purposeful in nature, wild animals may be exhibited with a permit provided for in § 29.1-417 of the Code of Virginia, under such restrictions and conditions as the board may prescribe.

B. Elementary or secondary school teachers may possess and display wildlife for educational purposes without a permit to exhibit wildlife, provided that:

1. Notification of the display is made to the department by mail to Permits Section, VDGIF, P.O. Box 11104, Richmond, VA 23230-1104. This notification shall be made within 48 hours of the beginning of the display, shall be updated any time that additional wildlife is added to the display, and shall include:

- a. Number and species of wildlife held for display;
- b. Physical address of the location of the display; and
- c. Duration for which the display is intended to be maintained.

2. Species allowed to be possessed and displayed pursuant to this subsection shall be limited to those species included in the List of Native and Naturalized Fauna of Virginia, which is incorporated by reference in 4VAC15-20. In addition, in no case shall the following species be possessed and displayed without a permit to exhibit wildlife:

- a. Those species for which a permit is required by 4VAC15-30-40.
- b. Fur-bearing animals as defined in § 29.1-100 of the Code of Virginia.
- c. Those species defined as nonnative or exotic animals pursuant to 4VAC15-20-50.
- d. Federal and state threatened and endangered species pursuant to 4VAC15-20-130.
- e. Nuisance species designated by § 29.1-100 of the Code of Virginia or 4VAC15-20-160, or nonindigenous aquatic nuisance species designated by § 29.1-571 of the Code of Virginia or 4VAC15-20-210.
- f. Predatory or undesirable animals or birds for which a permit is required by 4VAC15-30-20.

3. Any person bitten by mammalian wildlife must report the injury to the local health department. The offending animal must be segregated and housed separately from other animals and humans until the health department is notified.

4. Wildlife must be confined under sanitary and humane conditions that are appropriate for the species in captivity. All cages and enclosures shall be locked at all times when

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wildlife is not under the immediate control or direct supervision of the handler to prevent wildlife escape and unauthorized contact with individuals.

5. No wildlife held, possessed, or displayed may be released for any purpose without the written authorization of the department.

6. The department shall be notified within 24 hours of an instance of wildlife sickness or disease or in the event of an escape.

7. Teachers possessing and displaying wildlife for educational purposes in accordance with this section shall comply with all other local, state, and federal laws and regulations pertaining to species possessed and displayed.

4VAC15-290-150. (Reserved.)

4VAC15-290-160. Foxhound training preserves.

A. A permit shall be required for the operation of a foxhound training preserve in the Commonwealth. The director or his designee may issue, deny, renew, modify, suspend, and revoke permits for the operation of foxhound training preserves. Permit requirements shall include, but not be limited to:

1. Application requirements, including:

a. Operator information, including name, date of birth, address, phone number, and email address, as well as an indication as to whether the operator has previously been convicted of any federal or state wildlife law or regulation violation and, if so, a description of such conviction.

b. Preserve information, including whether the preserve is public or private, the name and location of the preserve, the names and addresses of adjacent landowners, and the mailing address and phone number of the preserve, if different from the operator.

c. Evidence of the size of the preserve. A 7-1/2 minute 1:24,000 topographic map or aerial image indicating the fenced area shall be provided. For preserves under 150 acres, or where determined necessary by the department to determine compliance with minimum acreage requirements, the department shall further require a plat of legible scale by a certified land surveyor that shows ties to property lines (submeter) and is produced using a differential global positioning system capable of producing submeter accuracy positioning, which shall be reviewed by the department and must indicate that the fenced area is 100 acres to an accuracy level of plus or minus one acre.

d. An application fee of \$50.

e. A certification statement by the operator attesting to the accuracy of the application and agreeing to notification of the department of any change within 30 days.

2. Provisions establishing a permit term of one year, after which permits may be renewed in accordance with the department's permit renewal procedures.

3. Acreage requirements specifying that each preserve must be at least 100 contiguous acres completely fenced. Facilities that consist of less than 100 contiguous acres permitted prior to (insert effective date of this regulation) may remain permitted so long as permit coverage is continuously maintained. The map or aerial image of the preserve boundaries must be on file with the department, and must be updated if any landowner changes, or if boundaries are altered.

4. Fencing requirements sufficient to prevent foxes and hounds from entering or escaping the enclosure. These requirements may include requirements for double strands of barbed wire at the top and electric wire at the bottom of the perimeter fencing and at all gates around the preserve, or other such fencing as deemed necessary. Such requirements shall also require rounded fence corners within the enclosure or the use of interior fencing to provide dog-proof escape areas at nonrounded fence corners.

5. Habitat and escape cover requirements, including adequate natural cover within the enclosure and at least one man-made dog-proof escape structure per 20 acres, unless greater escape cover is deemed necessary based on an inspection of the enclosure. Each escape structure or device must offer foxes effective refuge from dogs at all times and shall be appropriately distributed throughout the enclosure.

6. Requirements that all persons participating in the training of foxhounds in a preserve, unless specifically exempted by law, shall have a valid resident or nonresident Virginia hunting license, or a nonresident license to hunt exclusively in foxhound training preserves. Participants are not required to have a hunting license when participating in a dog field trial authorized by the department.

a. Hunting of any species other than foxes is prohibited within the preserve unless otherwise provided for by the department.

b. A dog field trial permit shall be required for all field trials.

7. Requirements for training and field trials held within the preserve, including:

a. Hound density restrictions specifying the maximum number of dogs that may be trained or participate in field trials in the enclosure at any one time. This maximum hound density shall not exceed one dog per two acres of preserve. When deemed necessary, more restrictive hound densities may be required, based on available escape cover and past history of hound-related mortality events.

b. Limits on the number of days per week during which training or field trials may occur. Training or field trials with foxhound densities exceeding one dog per 10 acres shall not be permitted for two days prior to and two days after any field trial event and shall be limited to a maximum of five days per week.

c. All dogs training or participating in field trial events within the preserve shall be up to date on their rabies vaccinations. Proof of rabies vaccination status shall consist of a current rabies certificate signed by a licensed veterinarian.

d. No field trial event shall provide for a cash or monetary prize to the participants.

8. Provisions regarding the stocking of the enclosure, including:

a. The purchase of foxes for the purposes of stocking a preserve shall be prohibited. However, the time and expenses of trappers supplying foxes may be reimbursed, so long as a written receipt detailing the amount paid and the specific expenses being reimbursed is prepared and given to the trapper, with a copy retained by the preserve operator. Receipts shall be retained by both parties for two years and are subject to inspection by the department at any time.

b. Only wild, live-trapped red (*Vulpes vulpes*) and gray (*Urocyon cinereoargenteus*) foxes may be released into preserves. Foxes may only be trapped for stocking purposes within the Commonwealth. No importation of foxes from out of state is permitted nor may foxes be relocated from one preserve to another, except that foxes may be transported from acclimation training enclosures to another enclosure of the same operator. Release of coyotes into foxhound training preserves is prohibited.

c. Live-trapped wild foxes may be released only in preserves that are operating under a valid permit and are open to the public for foxhound training purposes.

d. Acclimation requirements providing a minimum of seven days for foxes to become familiar with available food and habitat resources within the enclosure prior to any dog training or field trial event and 14 days prior to any dog training at hound densities exceeding one dog per 10 acres.

e. All preserves shall provide the necessary habitat to meet the food, water, and cover requirements of wild foxes.

f. The department shall be notified of any fox mortality or observation of diseased foxes within the preserve. The department may require specific health management procedures as deemed necessary and may suspend the operation of the preserve or halt stocking at any time warranted. Inspection and treatment of foxes by a licensed veterinarian may be required at the operator's expense. In the event of disease outbreaks, costs

associated with testing, depopulating, cleaning, and disinfecting shall be the sole expense of the operator.

9. Provisions to prevent the ingress of black bears and, as deemed appropriate, other wildlife into the enclosure, and procedures for reporting the ingress of bears into the enclosure and the removal of bears or other wildlife.

10. Recordkeeping and reporting requirements, including:

a. Maintenance of a registry of the names, addresses, and phone numbers of all hunters training hounds or participating in field trials, the dates hunted, and the number of dogs per hunt. A separate contact list with the complete address and telephone number for each hunter may be maintained in lieu of the contact information in the registry.

b. The development and submission of a report to the department that includes the number, species (red or gray), and source of all foxes trapped and stocked in the preserve, including the name and address of each trapper, the county of origin of each fox, and the capture and release dates of each fox. This report shall be submitted by March 15 of each year, and no permit shall be renewed if the report is not submitted.

c. All records shall be kept current and retained for a period of two years and are subject to inspection by the department at any time.

11. Provisions allowing for inspections of the enclosure and of the permittee's records by the department at the time of application, during annual inspections, or at any other time. The department may also conduct disease testing of transported foxes and wildlife within the enclosure at any time.

12. Such other conditions as may be determined appropriate by the department.

B. The director or his designee may grant variances to the requirements of subsection A of this section where it is determined by the department that the imposition of a requirement would impose an unreasonable burden on the operator and that the purposes of the requirement can be substantially fulfilled by alternative conditions. Any relief granted shall be the minimum necessary, documented in the operator's permit, and subject to review by the department at each permit renewal.

C. It shall be lawful for any foxhound training preserve permittee, and licensed trappers designated in writing by the permittee and approved by the department, to live-trap and transport red and gray foxes from September 1 through the last day of February, both dates inclusive, only for the purpose of stocking foxhound training preserves covered by permits issued pursuant to this section. For the purpose of this section, foxes may be live-trapped on private lands with landowner permission or on public lands designated by the department and transported within the Commonwealth, unless otherwise specifically prohibited. Trapping expenses may be

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reimbursed by the preserve owner as provided in this section; however, in no case shall the direct sale of foxes or payment on a per fox basis be permitted. Except as provided in this section, all trapping shall otherwise comply with laws and regulations governing trapping.

1. The preserve operator may designate in writing no more than 10 licensed trappers from whom foxes may be obtained. Any person convicted of violating any provision of state or federal hunting and trapping laws and regulations shall not be eligible to supply foxes to preserves for at least two years and up to five years following the most recent violation. In determining the appropriate length of restriction, the department shall take into account the nature and severity of the most recent violation and any past violation.

2. All live-trapped foxes must be taken by legal means and foxes transported or held for release shall be kept in safe, sanitary, and humane conditions with water and food available and with protection from the elements.

3. Foxes may be retained for no more than seven days following their capture, and all foxes must be transported to the preserve by the final day of the trapping season. Records shall be maintained by trappers as to the length of time that each fox is retained in their possession and shall be subject to inspection by the department at any time.

D. Failure to comply with the provisions of a permit or the requirements of this section or other applicable wildlife laws or regulations may result in modification, suspension, or revocation of the permit, or denial of a permit application.

VA.R. Doc. No. R13-3727; Filed May 1, 2013, 2:23 a.m.

MARINE RESOURCES COMMISSION

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

Final Regulation

Title of Regulation: **4VAC20-490. Pertaining to Sharks (amending 4VAC20-490-20, 4VAC20-490-42, 4VAC20-490-44).**

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

Effective Date: May 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 (i) cross reference the definition of "COLREGS Line" with the Code of Regulations; (ii) establish the landings quota for May 1, 2013, through

April 30, 2014, as 4,408,894 pounds; (iii) increase the daily trip limit from 3,000 pounds to 3,300 pounds; and (iv) modify the limited entry system for the commercial spiny dogfish fishery.

4VAC20-490-20. Definitions.

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

"Agent" means any person who possesses the Commercial Fisherman Registration License, fishing gear license, or fishing permit of a registered commercial fisherman in order to fish that commercial fisherman's gear or sell that commercial fisherman's harvest.

"Carcass length" means that length measured in a straight line from the anterior edge of the first dorsal fin to the posterior end of the shark carcass.

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

"Commercial shark fisherman" means any commercial fisherman permitted to land or possess sharks (excluding spiny dogfish) that has landed and sold one pound of shark or more (excludes spiny dogfish) in that calendar year (January 1 through December 31).

"Commercially permitted nonsandbar large coastal shark" means any of the following species:

Blacktip, *Carcharhinus limbatus*
Bull, *Carcharhinus leucas*
Great hammerhead, *Sphyrna mokarran*
Lemon, *Negaprion brevirostris*
Nurse, *Ginglymostoma cirratum*
Scalloped hammerhead, *Sphyrna lewini*
Silky, *Carcharhinus falciformis*
Smooth hammerhead, *Sphyrna zygaena*
Spinner, *Carcharhinus brevipinna*
Tiger, *Galeocerdo cuvier*

"Commercially permitted pelagic shark" means any of the following species:

Blue, *Prionace glauca*
Oceanic whitetip, *Carcharhinus longimanus*
Porbeagle, *Lamna nasus*
Shortfin mako, *Isurus oxyrinchus*
Thresher, *Alopias vulpinus*

"Commercially permitted small coastal shark" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*
Blacknose, *Carcharhinus acronotus*

Bonnethead, *Sphyrna tiburo*

Finetooth, *Carcharhinus isodon*

"Commercially prohibited shark" means any of the following species:

Atlantic angel, *Squatina dumeril*

Basking, *Cetorhinus maximus*

Bigeye sand tiger, *Odontaspis noronhai*

Bigeye sixgill, *Hexanchus nakamurai*

Bigeye thresher, *Alopias superciliosus*

Bignose, *Carcharhinus altimus*

Caribbean reef, *Carcharhinus perezii*

Caribbean sharpnose, *Rhizoprionodon porosus*

Dusky, *Carcharhinus obscurus*

Galapagos, *Carcharhinus galapagensis*

Longfin mako, *Isurus paucus*

Narrowtooth, *Carcharhinus brachyurus*

Night, *Carcharhinus signatus*

Sand tiger, *Carcharias taurus*

Sevengill, *Heptranchias perlo*

Sixgill, *Hexanchus griseus*

Smalltail, *Carcharhinus porosus*

Whale, *Rhincodon typus*

White, *Carcharodon carcharias*

"Control rule" means a time-certain date, past, present or future, used to establish participation in a limited entry fishery and may or may not include specific past harvest amounts.

"Dressed weight" means the result from processing a fish by removal of head, viscera, and fins, but does not include removal of the backbone, halving, quartering, or otherwise further reducing the carcass.

"Finning" means removing the fins and returning the remainder of the shark to the sea.

"Fork length" means the straight-line measurement of a fish from the tip of the snout to the fork of the tail. The measurement is not made along the curve of the body.

"Movable gill net" means any gill net other than a staked gill net.

"Large mesh gill net" means any gill net having a stretched mesh equal to or greater than five inches.

"Longline" means any fishing gear that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, greater than 1,000 feet in length, with multiple leaders (gangions) and hooks, whether retrieved by hand or mechanical means.

"Permitted commercial gear" means rod and reel, handlines, shark shortlines, small mesh gill nets, large mesh gill nets, pound nets, and weirs.

"Recreational shore angler" means a person not fishing from a vessel nor transported to or from a fishing location by a vessel.

"Recreational vessel angler" means a person fishing from a vessel or transported to or from a fishing location by a vessel.

"Recreationally permitted shark" means any of the following species:

Atlantic sharpnose, *Rhizoprionodon terraenovae*

Blacknose, *Carcharhinus acronotus*

Blacktip, *Carcharhinus limbatus*

Blue, *Prionace glauca*

Bonnethead, *Sphyrna tiburo*

Bull, *Carcharhinus leucas*

Finetooth, *Carcharhinus isodon*

Great hammerhead, *Sphyrna mokarran*

Lemon, *Negaprion brevirostris*

Nurse, *Ginglymostoma cirratum*

Oceanic whitetip, *Carcharhinus longimanus*

Porbeagle, *Lamna nasus*

Scalloped hammerhead, *Sphyrna lewini*

Shortfin mako, *Isurus oxyrinchus*

Smooth dogfish, *Mustelus canis*

Smooth hammerhead, *Sphyrna zygaena*

Spinner, *Carcharhinus brevipinna*

Thresher, *Alopias vulpinus*

Tiger, *Galeocerdo cuvier*

"Recreationally prohibited shark" means any of the following species:

Atlantic angel, *Squatina dumeril*

Basking, *Cetorhinus maximus*

Bigeye sand tiger, *Odontaspis noronhai*

Bigeye sixgill, *Hexanchus nakamurai*

Bigeye thresher, *Alopias superciliosus*

Bignose, *Carcharhinus altimus*

Caribbean reef, *Carcharhinus perezii*

Caribbean sharpnose, *Rhizoprionodon porosus*

Dusky, *Carcharhinus obscurus*

Galapagos, *Carcharhinus galapagensis*

Longfin mako, *Isurus paucus*

Narrowtooth, *Carcharhinus brachyurus*

Night, *Carcharhinus signatus*

Sand tiger, *Carcharias taurus*

Sandbar, *Carcharhinus plumbeus*

Sevengill, *Heptranchias perlo*

Silky, *Carcharhinus falciformis*

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Sixgill, *Hexanchus griseus*
Smalltail, *Carcharhinus porosus*
Whale, *Rhincodon typus*
White, *Carcharodon carcharias*

"Research only shark" means any of the following species:

Sandbar, *Carcharhinus plumbeus*

"Shark shortline" means a fish trotline that is set horizontally, either anchored, floating or attached to a vessel, and that consists of a mainline or groundline, 1,000 feet in length or less, with multiple leaders (gangions) and no more than 50 corrodible circle hooks, whether retrieved by hand or mechanical means.

"Small mesh gill net" means any gill net having a stretched mesh less than five inches.

"Smooth dogfish" means any shark of the species *Mustelus canis*.

"Spiny dogfish" means any shark of the species *Squalus acanthias*.

4VAC20-490-42. Spiny dogfish commercial quota and catch limitations.

A. For the 12-month period of ~~May 1, 2012~~ May 1, 2013, through ~~April 30, 2013~~ April 30, 2014, the spiny dogfish commercial landings quota shall be limited to ~~3,764,732~~ 4,408,894 pounds.

B. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia any spiny dogfish harvested from federal waters for commercial purposes after it has been announced that the federal quota for spiny dogfish has been taken.

C. It shall be unlawful for any person to take, possess aboard any vessel or land in Virginia more than ~~3,000~~ 3,300 pounds of spiny dogfish per day for commercial purposes.

D. It shall be unlawful for any person to harvest or to land in Virginia any spiny dogfish for commercial purposes after the quota specified in subsection A of this section has been landed and announced as such.

E. Any spiny dogfish harvested from state waters or federal waters, for commercial purposes, shall only be sold to a federally permitted dealer.

F. It shall be unlawful for any buyer of seafood to receive any spiny dogfish after any commercial harvest or landing quota described in this section has been attained and announced as such.

4VAC20-490-44. Spiny dogfish limited entry fishery permit and permit transfers.

A. It shall be unlawful for any person to take, catch, possess, or land any spiny dogfish without first having obtained a spiny dogfish limited entry fishery permit from the Marine Resources Commission. Such permit shall be completed in full by the permittee who shall keep a copy of that permit in his possession while fishing for or selling spiny dogfish.

Permits shall only be issued to Virginia registered commercial fishermen meeting either of the following criteria described in subdivision 1 or 2 of this subsection:

1. Shall have documented ~~on Virginia mandatory harvest reporting forms~~ (i) harvest from a legally licensed, movable gill net for an average of at least 60 days from 2006 through 2008, and (ii) a minimum harvest of one pound of spiny dogfish at any time from 2006 through 2008, and (iii) harvest of at least one pound of spiny dogfish from May 1, 2010, through April 30, 2012, on Virginia mandatory harvest reporting forms.

2. Shall have documented ~~on Virginia mandatory reporting forms~~ (i) harvests that total greater than 10,000 pounds of spiny dogfish in any one year from 2006 through 2008, and (ii) harvest of at least one pound of spiny dogfish from May 1, 2010, through April 30, 2012, on Virginia mandatory harvest reporting forms.

~~3.~~ B. Any smooth dogfish or unidentified dogfish documented on Virginia mandatory reporting forms as harvested during the months of November through February; 2006 through 2008; shall be classified as spiny dogfish when determining eligibility for a Spiny Dogfish Limited Entry Fishery Permit as described in subdivisions A 1 and A 2 of this ~~subsection~~ section.

~~B.~~ C. It is unlawful to transfer any spiny dogfish limited entry fishery permit after November 23, 2009.

~~C.~~ D. The use of agents in the spiny dogfish fishery is prohibited.

~~D.~~ E. The commissioner or his designee may grant exceptions to the prohibition against transfers of the spiny dogfish limited entry fishery permit as described in subsection ~~B C~~ of this section to any individual who meets any of the following criteria:

1. Demonstrates a significant hardship on the basis of health and provides the commissioner documentation, by an attending physician, of the medical condition.
2. Demonstrates a significant hardship on the basis of a call to active military duty and provides the commissioner an explanation, in writing, and copy of the military orders for active duty.
3. Documents the retirement or death of the immediate family member permitted for the spiny dogfish limited entry fishery and possessing a legal Commercial Fisherman Registration License.

NOTICE: The following form used in administering the regulation was filed by the agency. The form is not being published; however, online users of this issue of the Virginia Register of Regulations may click on the name to access the form. The form is 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 (4VAC20-490)

[Mandatory Harvest Reporting Form, MR 560001 \(rev. 1/13\).](#)

VA.R. Doc. No. R13-3677; Filed April 29, 2013, 1:44 p.m.

Final Regulation

Title of Regulation: 4VAC20-900. Pertaining to Horseshoe Crab (amending 4VAC20-900-21, 4VAC20-900-25).

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

Effective Date: May 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:

These amendments establish mesh size and twine size specifications for gill nets harvesting horseshoe crabs.

4VAC20-900-21. License requirements and exemption.

A. The taking by hand of as many as five horseshoe crabs in any one day for personal use only shall be exempt from the licensing requirements.

B. Except as provided for in 4VAC20-900-25 G 3, it shall be unlawful for any boat or vessel to land horseshoe crabs in Virginia for commercial purposes without first obtaining a either type of horseshoe crab endorsement license as described in this section. The horseshoe crab endorsement license shall be required of each boat or vessel used to land horseshoe crabs for commercial purposes. Possession of any quantity of horseshoe crabs that exceeds the limit described in subsection A of this section shall be presumed for commercial purposes. There shall be no fee for the license.

C. To be eligible for an unrestricted horseshoe crab endorsement license, the boat or vessel shall have landed and sold at least 500 horseshoe crabs in Virginia in at least one year during the period 1998 through 2000, ~~except as described in subsection D of this section.~~

1. The owner shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of ~~the~~ applicant's name, address, and telephone number, and boat or vessel name, and its registration or documentation number.

2. The owner shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of landings data from the National Marine Fisheries Service.

D. To be eligible for a restricted horseshoe crab endorsement license that is limited to using a crab dredge to harvest horseshoe crabs, a Virginia registered commercial fisherman's boat or vessel shall have landed at least 10,000 pounds of whelk in any one year from 2002 through 2005.

1. The Virginia registered commercial fisherman shall complete an application for each boat or vessel by providing to the Marine Resources Commission a notarized and signed statement of ~~the~~ applicant's name, address, and telephone number, and boat or vessel name, and its registration or documentation number.

2. The Virginia registered commercial fisherman shall complete a notarized authorization to allow the Marine Resources Commission to obtain copies of whelk landings data from the National Marine Fisheries Service.

E. To be eligible for a horseshoe crab hand harvester permit, the individual shall have been issued a horseshoe crab hand harvester permit, prior to the license moratorium of May 1, 2011, and shall have documented on Virginia mandatory harvest reporting forms a minimum harvest of one horseshoe crab by hand harvest methods, at any time from 1993 through 2010.

F. It shall be unlawful for any registered commercial fisherman or seafood landing licensee who does not possess any type of a valid horseshoe crab endorsement license or horseshoe crab hand harvester permit to possess horseshoe crabs, without first obtaining a valid horseshoe crab bycatch permit from the Marine Resources Commission.

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

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

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

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

D. The commercial quota of horseshoe crab for 2013 shall be 172,828 horseshoe crabs. Additional quantities of horseshoe crab may be transferred to Virginia by other jurisdictions, in accordance with the provisions of Addendum I to the Atlantic States Marine Fisheries Commission Fishery Management Plan for Horseshoe Crab, April 2000, provided that the combined total of the commercial quota and transfer from other jurisdictions shall not exceed 355,000 horseshoe crabs. It shall be unlawful for any person to harvest from Virginia waters, or to land in Virginia, any horseshoe crab for commercial purposes after any calendar-year commercial quota of horseshoe crab has been attained and announced as such.

E. It shall be unlawful for any person to harvest or land horseshoe crabs during any calendar year, from waters east of the COLREGS line by any gear after 81,331 male horseshoe

Regulations

crabs have been landed and announced as such, ~~to also include~~ and the following provisions shall also apply:

1. It shall be unlawful for any person to harvest or land any female horseshoe crabs from waters east of the COLREGS line.
2. It shall be unlawful for any person to harvest or land any amount of horseshoe crabs from waters east of the COLREGS line by any gear, except for trawl or dredge gear.
- F. For the purposes of this regulation, no horseshoe crab shall be considered a male horseshoe crab unless it possesses at least one modified, hook-like appendage as its first pair of walking legs.
- G. Limitations on the daily harvest and possession of horseshoe crabs for any vessel described below are as follows:
 1. It shall be unlawful for any person who holds a valid unrestricted horseshoe crab endorsement license, as described in 4VAC20-900-21 C, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 2,500, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-21 C and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 1,250.
 2. It shall be unlawful for any person who holds a valid restricted horseshoe crab endorsement license, as described in 4VAC20-900-21 D, to possess aboard any vessel or to land any number of horseshoe crabs in excess of 1,000, except that when it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person who meets the requirements of 4VAC20-900-21 D, and holds a valid horseshoe crab endorsement license to possess aboard any vessel in Virginia any number of horseshoe crabs in excess of 500. The harvest of horseshoe crabs, described in this subdivision, shall be restricted to using only crab dredge.
 3. It shall be unlawful for a horseshoe crab bycatch permittee to possess aboard any vessel more than 500 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 500 per day except as described in subdivision 4 of this subsection. When it is projected and announced that 80% of the commercial quota is taken, it shall be unlawful for any person with a horseshoe crab bycatch permit to possess aboard any vessel more than 250 horseshoe crabs or for any vessel to land any number of horseshoe crabs in excess of 250 per day except as described in subdivision 4 of this subsection.
 4. It shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 1,000 horseshoe crabs per day. When it is projected and announced that 80% of the commercial

quota is taken, it shall be unlawful for any two horseshoe crab bycatch permittees fishing from the same boat or vessel to possess or land more than 500 horseshoe crabs per day.

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

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

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

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

c. It shall be unlawful for any person to harvest or possess horseshoe crabs taken by any gill net that has a stretched mesh measure equal to or greater than six inches, unless the twine size of that gill net is equal to or greater than 0.81 millimeters in diameter (0.031 inches) and that person possesses his own valid commercial striped bass permit or his own black drum harvesting and selling permit, as well as either a horseshoe crab endorsement license or horseshoe crab bycatch permit.

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

I. When it is projected and announced that 65,065 of the commercial quota, as described in subsection E of this section, has been taken from waters east of the COLREGS ~~line~~ Line, the limitations on the possession and landing of male horseshoe crabs are as follows:

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

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

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

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

VA.R. Doc. No. R13-3676; Filed April 29, 2013, 12:47 p.m.

Final Regulation

Title of Regulation: 4VAC20-950. **Pertaining to Black Sea Bass (amending 4VAC20-950-45, 4VAC20-950-47).**

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

Effective Date: May 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 lower the recreational possession limit for black sea bass from 25 fish to 20 fish and increase the commercial black sea bass directed fishery quota from 316,000 pounds to 394,000 pounds.

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~~ 20 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~~ 20, during any open season described in subsection D of this section, except January 1 through the last day of February 2013 open season. 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. 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 15 black sea bass from January 1 through the last day of February 2013. 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 15, from January 1 through the last day of February 2013. 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.

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

D. The open recreational fishing seasons, in 2013, shall be from January 1 through the last day of February, May 19 through October 14, and from November 1 through December 31.

E. It shall be unlawful for any person fishing recreationally to take, catch, or possess any black sea bass, except during an open recreational season.

4VAC20-950-47. Commercial harvest quotas.

A. The 2013 commercial black sea bass directed fishery quota is ~~316,000~~ 394,000 pounds. When it has been announced that the directed fishery quota has been projected as reached and the directed fishery has been closed, it shall be unlawful for any directed commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass.

B. The 2013 commercial black sea bass bycatch fishery quota is 40,000 pounds. When it has been announced that the bycatch fishery quota has been projected as reached and the bycatch fishery has been closed, it shall be unlawful for any bycatch commercial black sea bass fishery permittee to possess aboard any vessel or land in Virginia any black sea bass. In the event the bycatch fishery quota is exceeded, the amount of the quota overage shall be deducted from the following year's bycatch fishing quota.

VA.R. Doc. No. R13-3678; Filed April 29, 2013, 9:55 a.m.

DEPARTMENT OF MINES, MINERALS AND ENERGY**Fast-Track Regulation**

Title of Regulation: 4VAC25-31. **Reclamation Regulations for Mineral Mining (repealing 4VAC25-31-50, 4VAC25-31-550).**

Statutory Authority: §§ 45.1-161.3 and 45.1-180.3 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 19, 2013.

Effective Date: July 4, 2013.

Agency Contact: Michael Skiffington, Regulatory Coordinator, Department of Mines, Minerals and Energy, 1100 Bank Street, 8th Floor, Richmond, VA 23219-3402, telephone (804) 692-3212, FAX (804) 692-3237, TTY (800) 828-1120, or email mike.skiffington@dmme.virginia.gov.

Basis: The department is authorized to promulgate regulations necessary to the performance of its duties under § 45.1-161.3 of the Code of Virginia. Section 45.1-180.3 of the Code of Virginia gives the director of the department specific authority over the reclamation of mineral mines.

Purpose: The purpose of this action is to repeal unnecessary or duplicative regulations. There are no substantive changes to the regulation.

Rationale for Using Fast-Track Process: This rulemaking is expected to be noncontroversial because unnecessary or duplicative regulations are being repealed.

Substance: Two sections of 4VAC25-31 are being repealed because they are duplicative or unnecessary. No substantive changes are being made.

Regulations

Issues: The primary advantage is simplifying the Virginia Administrative Code by eliminating unnecessary or duplicative regulations. There are no disadvantages.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Department of Mines, Minerals and Energy (DMME) proposes to repeal two redundant sections of these regulations.

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

Estimated Economic Impact. The proposed repeal of redundant language will have no impact on requirements and essentially no economic impact beyond saving a small amount of time spent reading regulations.

Businesses and Entities Affected. There are 433 mineral operations currently in the Commonwealth of Virginia. Approximately 90% of these (roughly 390) would qualify as small businesses.¹

Localities Particularly Affected. The proposed regulations will affect all localities in the Commonwealth that have mineral mines. According to DMME, 91% of Virginia's counties have mineral mines governed by these regulations.

Projected Impact on Employment. The proposed repeal does not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal does not significantly affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal does not significantly affect costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal does not adversely affect small businesses.

Real Estate Development Costs. The proposed repeal does not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the

regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

¹ Data source: Department of Mines, Minerals and Energy

Agency's Response to Economic Impact Analysis: The Department of Mines, Minerals and Energy concurs with the economic impact analysis conducted by the Department of Planning and Budget.

Summary:

The regulatory action repeals sections that are unnecessary and duplicative.

4VAC25-31-50. ~~Mineral Mine Operator's Manual. (Repealed.)~~

~~The Mineral Mine Operator's Manual is a nonregulatory guidance document to assist operators in complying with Title 45.1 of the Code of Virginia. The manual may be obtained from the division.~~

4VAC25-31-550. ~~Intensive agricultural use. (Repealed.)~~

~~If the post mining use is to be intensive agriculture, the planting and harvesting of a normal crop yield is required. A normal yield for a particular crop is equal to the five year average for the county. The use of grass, water bars, or diversion strips and natural vegetative drainage control may be required in the initial planting year as specified by the director.~~

VA.R. Doc. No. R13-3520; Filed April 26, 2013, 8:30 a.m.



TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

FORENSIC SCIENCE BOARD

Final Regulation

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

Title of Regulation: **6VAC40-40. Regulations for the Implementation of the Law Permitting DNA Analysis upon Arrest for All Violent Felonies and Certain Burglaries (amending 6VAC40-40-40).**

Statutory Authority: § 9.1-1110 of the Code of Virginia.

Effective Date: June 20, 2013.

Agency Contact: Stephanie Merritt, Department Counsel, Department of Forensic Science, 700 North Fifth Street, Richmond, VA 23219, telephone (804) 786-2281, or email stephanie.merritt@dfs.virginia.gov.

Summary:

The amendment updates the website address of the State Compensation Board.

Part III

DNA Sample Tracking Application

6VAC40-40-40. Use of LIDS.

An Internet accessible DNA sample tracking application developed by the State Compensation Board through LIDS shall be accessible through the State Compensation Board's website at www.scb.state.va.us www.scb.virginia.gov. Access to the DNA sample tracking application shall be located under the website's "Restricted Access" section. User identifications and passwords shall be assigned to all law-enforcement agencies responsible for taking saliva or tissue samples from arrestees.

VA.R. Doc. No. R13-3708; Filed April 24, 2013, 1:13 p.m.



TITLE 8. EDUCATION

VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

Final Regulation

REGISTRAR'S NOTICE: Virginia Polytechnic Institute and State University is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4002 A 6 of the Code of Virginia, which exempts educational institutions operated by the Commonwealth.

Title of Regulation: **8VAC105-10. Traffic and Parking Regulations (repealing 8VAC105-10-10 through 8VAC105-10-550).**

8VAC105-11. Parking and Traffic (adding 8VAC105-11-10 through 8VAC105-11-80).

Statutory Authority: §§ 23-9.2:3 and 23-122 of the Code of Virginia.

Effective Date: April 30, 2013.

Agency Contact: Natalie Hart, Deputy Chief of Staff, 210 Burruss Hall, Blacksburg, VA 24061, telephone (540) 231-6231 or email nhart@vt.edu.

Summary:

The action adopts new parking and traffic regulations in 8VAC105-11 to replace existing parking and traffic regulations in 8VAC105-10.

**CHAPTER 11
PARKING AND TRAFFIC**

8VAC105-11-10. Definitions.

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

"Parking and Traffic Procedures" means the 2012-2013 Parking and Traffic Procedures, Virginia Tech Parking Services.

"Virginia Tech" means Virginia Polytechnic Institute and State University.

"University owned or leased property" means any property owned, leased, or controlled by Virginia Tech.

8VAC105-11-20. Procedures.

A. Parking and Traffic Procedures, as published by Virginia Tech, will be administered by the Virginia Tech Parking Services and the Virginia Tech Police Department.

B. This chapter applies to all Virginia Tech faculty, staff, students, contractors, vendors, businesses, visitors, and all other persons who use university owned and leased parking facilities and spaces.

C. Parking and Traffic Procedures pursuant to this chapter are available on the website of Virginia Tech Parking Services. Limited numbers of hardcopies are available upon request at Virginia Tech Parking Services.

8VAC105-11-30. Permits required.

A. All motor vehicles parked on university owned or leased property are required to properly display a valid Virginia Tech parking permit as defined by Parking and Traffic Procedures or other notice pursuant to this chapter.

B. Visitors are required to park in (i) designated areas with the appropriate permit obtained from Virginia Tech Parking Services or Virginia Tech Visitor Information Center or (ii) pay areas. If parked in a pay area, visitors are required to pay the prevailing rate.

8VAC105-11-40. Damage and loss.

Virginia Tech is not responsible for loss or damage to any vehicle or the loss of contents while parked or operated on university owned or leased property.

8VAC105-11-50. Parking.

A. Parking is permitted in authorized, clearly identified spaces only with a valid permit or other authorization. Parking is not allowed on (i) turf; (ii) at loading docks or loading zones; or (iii) in or on pedestrian crosswalks, handicap access ramps, services areas, sidewalks, and unmarked areas without specific authorization.

Regulations

B. Virginia Tech Parking Services may designate specific parking areas, issue special permits, or issue notices related to special events. Parking related to these special events shall be in accord with said specific parking areas, special permits, or notices.

8VAC105-11-60. Enforcement.

A. All laws and regulations enacted by the Commonwealth of Virginia and regulations and policies enacted by Virginia Tech are duly enforced. Motor vehicles in violation may be subject to penalties in accord with university parking procedures including but not limited to citations, fines, immobilization, towing, or impoundment, at the owner's risk and expense.

B. If a vehicle is displaying a valid Virginia Tech parking permit and incurs a citation for violation of this chapter or Parking and Traffic Procedures, the registered owner of the permit will be held responsible for all citations and fines.

C. If a vehicle is not displaying a valid Virginia Tech parking permit and incurs a citation for violation of this chapter or Parking and Traffic Procedures, the registered owner of the vehicle will be held responsible for all citations and fines. However, the registered owner of a vehicle is ultimately responsible for all violations issued to that vehicle, regardless of who is operating the vehicle.

Regardless of Parking and Traffic Procedures, any person shall abide by instructions of Virginia Tech Police Officers or Parking Services Enforcement Personnel. When in conflict with this chapter or Parking and Traffic Procedures, the instructions of the enforcement personnel shall supersede.

8VAC105-11-70. Appeals.

All individuals who receive a violation under this chapter have a right to appeal the violation as set forth in the Parking and Traffic Procedures.

8VAC105-11-80. Procedural changes, amendments, and notices.

Changes, amendments, and notices related to Parking and Traffic Procedures shall be effective when posted on the Virginia Tech Parking Services website and shall become part of this chapter upon adoption and filing pursuant to § 2.2-4103 of the Code of Virginia.

DOCUMENTS INCORPORATED BY REFERENCE
(8VAC105-11)

[2012-2013 Parking and Traffic Procedures, Virginia Tech Parking Services.](#)

VA.R. Doc. No. R13-3519; Filed April 30, 2013, 4:16 p.m.



TITLE 9. ENVIRONMENT

VIRGINIA WASTE MANAGEMENT BOARD

Fast-Track Regulation

Title of Regulation: **9VAC20-60. Virginia Hazardous Waste Management Regulations (amending 9VAC20-60-430).**

Statutory Authority: § 10.1-1402 and Article 4 (§ 10.1-1426 et seq.) of Chapter 14 of Title 10.1 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 19, 2013.

Effective Date: July 4, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law.

Purpose: The rationale for the removal of the annual report for hazardous waste transporters is that the report provides minimal information and the information reported is not used to determine compliance. The report is not necessary for overall program performance.

Rationale for Using Fast-Track Process: The proposed amendment is expected to be noncontroversial because the report provides minimal information and the information reported is not used to determine compliance.

Substance: Subsection F of 9VAC20-60-430 is deleted to remove the requirement for submittal of an annual report for hazardous waste transporting activities.

Issues: There are no disadvantages to the public, the agency, or the Commonwealth.

Department of Planning and Budget Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (board) proposes to eliminate the annual report requirement for transporters of hazardous waste.

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

Estimated Economic Impact. According to the Department of Environmental Quality, the report provides minimal information and the information reported is not used to determine compliance with these regulations. Thus there is no disadvantage to eliminating the report. Currently the 250 hazardous waste transporter firms in the Commonwealth

spend cumulatively approximately 200 hours annually on preparing and sending the report.¹ The proposed amendment would eliminate these staff time costs (just under an hour per firm). The proposed amendment clearly produces a net benefit.

Businesses and Entities Affected. The amendment affects the estimated 250 hazardous waste transporter firms in the Commonwealth.²

Localities Particularly Affected. The proposed amendment does not disproportionately affect any particular localities.

Projected Impact on Employment. The proposed amendments will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment is estimated to reduce required staff time by just under an hour for each hazardous waste transporter firm in the Commonwealth.

Small Businesses: Costs and Other Effects. The proposed amendment is estimated to reduce required staff time by just under an hour for each small hazardous waste transporter firm in the Commonwealth.

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

Real Estate Development Costs. The proposed amendments will not significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

¹ Source: Department of Environmental Quality

² Data source: Department of Environmental Quality

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The amendment removes the annual report requirement for transporters of hazardous waste.

9VAC20-60-430. Recordkeeping and reporting requirements.

A. Except as provided in 9VAC20-60-430 B and 9VAC20-60-430 C, all transporters shall retain one signed copy of all manifests in their records for not less than three years from the date of acceptance for shipment by the initial transporter. The retained copy shall show his signature as well as those of the generator and the designated facility owner or operator, or next designated transporter.

B. For shipments delivered to the designated facility by water (bulk shipment), each water (bulk shipment) transporter shall retain a copy of the shipping paper containing all the information required in 40 CFR 263.20(e)(2) for a period of three years from the date of acceptance by the initial transporter.

C. For shipments of hazardous waste by rail within the United States:

1. The initial rail transporter shall keep a copy of the manifest and shipping paper with all the information required in 40 CFR 263.20(f)(2) for a period of three years from the date the hazardous waste was accepted by the initial transporter.
2. The final rail transporter shall keep a copy of the signed and dated manifest (or the shipping paper if signed by the designated facility in lieu of the manifest) for a period of three years from the date the hazardous waste was accepted by the initial transporter.
3. Intermediate rail transporters are not required to keep records pursuant to this chapter.

D. A transporter who transports hazardous waste out of the United States shall keep a copy of the manifest, indicating that the hazardous waste left the United States, for a period of three years from the date the waste was accepted by the initial transporter.

E. The periods of retention referred to in this part are extended automatically during the course of any unresolved enforcement action regarding the regulated activity or as requested by the director.

~~F. All transporters permitted by the director under 9VAC20-60-450 are required to submit an annual report of hazardous waste transporting activities. The annual report shall be a summary of activities and shall be submitted on and include the information required by the Transporter Annual Report form (Form 7.2-1). The annual report shall be submitted~~

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~~within 90 days of the close of the reporting year. The reporting year ends December 31 of each calendar year.~~

FORMS (9VAC20-60)

~~Application for a Transporter Permit, Form 7.1 (rev. 12/01).~~

~~Transporter Annual Report, Form 7.2-1 (rev. 12/01).~~

~~Intra-Commonwealth Shipments, Form 7.2-2 (rev. 12/01).~~

~~Shipments to Other States, Form 7.2-3 (rev. 12/01).~~

~~Shipments into the Commonwealth, Form 7.2-4 (rev. 12/01).~~

~~Shipments to Foreign Facilities, Form 7.2-5 (rev. 12/01).~~

VA.R. Doc. No. R13-3448; Filed April 29, 2013, 8:41 a.m.

Fast-Track Regulation

Title of Regulation: **9VAC20-120. Regulated Medical Waste Management Regulations (amending 9VAC20-120-280, 9VAC20-120-490; repealing 9VAC20-120-480).**

Statutory Authority: § 10.1-1402 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 19, 2013.

Effective Date: July 4, 2013.

Agency Contact: Debra A. Harris, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4206, FAX (804) 698-4346, TTY (804) 698-4021, or email debra.harris@deq.virginia.gov.

Basis: Section 10.1-1402 of the Virginia Waste Management Act, Chapter 14 (§ 10.1-1400 et seq.) of Title 10.1 of the Code of Virginia, authorizes the Virginia Waste Management Board to promulgate and enforce regulations necessary to carry out its powers and duties and the intent of the chapter and federal law.

Purpose: The rationale for this regulatory action is to remove duplicative requirements for registration of transporters under 9VAC20-120. The information received by the registration is minimal and the same information can be obtained from the federal registration.

Rationale for Using Fast-Track Process: The proposed amendment is expected to be noncontroversial because the information received by the registration is minimal and the same information can be obtained from the federal registration.

Substance: The requirements for registration of regulated medical waste transporters have been removed from the regulation. The special criteria for transport under Part VI of 9VAC20-120 are still required, except for the registration. Part VI still contains requirements for sanitation, access, storage, packaging and labeling, and other requirements for transportation of regulated medical waste.

Issues: No disadvantage to the public or the Commonwealth will result from the adoption of these amendments.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Virginia Waste Management Board (Board) proposes to repeal the requirement that transporters of regulated medical waste are required to register with the Department of Environmental Quality (Department).

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

Estimated Economic Impact. Currently, transporters of regulated medical waste are required to register with the Department; this duplicates United States Department of Transportation registration requirements. Further, according to the Department state registration is unnecessary as the information can be obtained from the federal registration. Consequently, the proposed repeal of the state registration requirement will produce a net benefit since it will save transporters of regulated medical waste approximately 30 minutes of staff time without any impact on public health and safety.

Businesses and Entities Affected. The Department reports that there are approximately 207 registered regulated medical waste transporters. This proposed amendment will affect these firms.

Localities Particularly Affected. The proposed amendment does not disproportionately affect any particular localities.

Projected Impact on Employment. The proposed amendment will not significantly affect employment.

Effects on the Use and Value of Private Property. The proposed amendment will save transporters of regulated medical waste approximately 30 minutes of staff time.

Small Businesses: Costs and Other Effects. The proposed amendment will save small transporters of regulated medical waste approximately 30 minutes of staff time.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed amendment does not adversely affect small businesses.

Real Estate Development Costs. The proposed amendment will not significantly affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and

estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The state registration requirements for transporters of medical waste are duplicative of the federal registration requirements and unnecessary as the information received from the registration under 9VAC20-120 can be obtained from the federal registration. Therefore, this action repeals the registration requirements under 9VAC20-120-480 and amends 9VAC20-120-280 and 9VAC20-120-490 to conform.

9VAC20-120-280. Containment and cleanup procedures.

Following a spill of regulated medical waste or its discovery, the following procedures shall be implemented:

1. Take appropriate precautions to ensure personnel do not come into contact with any contaminants by wearing appropriate personal protective equipment.
2. Repackage spilled waste in accordance with the packaging requirements in 9VAC20-120-210.
3. Transport any regulated medical waste by a transporter registered in accordance with the provisions of 9VAC20-120-480, Registration of transporters that meets the requirements of Part VI (9VAC20-120-400 et seq.) of this chapter.
4. Clean and disinfect any areas having been contacted by regulated medical wastes. Materials used to decontaminate the area will be disinfectants effective against mycobacteria.
5. Take necessary steps to replenish containment and cleanup kit.

9VAC20-120-480. Registration of transporters. (Repealed.)

~~A. Prior to transporting any regulated medical waste within the Commonwealth, all transporters must register with the Department of Environmental Quality. Registration shall consist of filing the data specified in subsection B of this section, in written form, and the department will issue a registration number to the transporter. No regulated medical waste shall be transported until the registration number is~~

~~issued. Transporter shall notify the generator of the waste of his registration number when he collects the waste.~~

~~B. Data to be submitted by persons wishing to register as a transporter of regulated medical waste shall be as follows:~~

- ~~1. Name of the person or firm.~~
- ~~2. Business address and telephone number of person or firm. Include headquarters and local office.~~
- ~~3. Make, model and license number of each vehicle to be used to transport regulated medical waste within the Commonwealth.~~
- ~~4. Name, business address and telephone number of each driver who will operate in the Commonwealth.~~
- ~~5. Areas (counties and cities) of the Commonwealth in which the transporter will operate.~~
- ~~6. a. Any person or firm other than reported in subdivision 1 of this subsection that is associated with the registering firm or any other name under which that person or firm does business.~~
 - ~~b. Any other person or firm using any of the same vehicles and operators.~~
- ~~7. The name and phone number of a person who may be contacted in the event of an accident or release.~~
- ~~8. A copy of the signed certification statement as follows:~~

~~I, (Full Name of Chief Executive), am chief executive officer of (Legal Name Of Firm) and do hereby affirm that all the information provided in this application is correct to the best of my knowledge; and I further affirm that neither this firm, any antecedent firm to this firm, or any of the officers of this or antecedent firms has been convicted of a felony in any state.~~

~~C. Within 30 calendar days following the change of any data in subsection B of this section, the transporter shall notify the department of that change. Failure to notify the department nullifies the registration and invalidates the registration number. When the transporter changes legal name, corporate ownership, or the chief executive officer, he shall notify the department within 30 days of such a change. Upon receiving such a notification, the department will revoke the old registration and reissue a new registration based on the new information.~~

~~D. Use of a false or invalid registration number is prohibited.~~

~~Note: All filings of data and requests for registration number and issuance of a registration number shall be in writing.~~

9VAC20-120-490. Transport by mail.

Transport of regulated medical waste by the United States Postal Services that fully complies with 39 CFR 111 shall be considered to be transportation by a registered transporter and in compliance with this chapter if:

1. The generator maintains a complete and legible copy of the manifest or mail disposal service shipping record for a

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period of three years (Note: disposer's certification and other tracking items must be completed and shown on the copy);

2. The addressee is a facility permitted by all the appropriate agencies of the Commonwealth of Virginia or the host state; and

3. No package may be more than 35 pounds by weight.

VA.R. Doc. No. R13-3447; Filed April 25, 2013, 9:54 a.m.

STATE WATER CONTROL BOARD

Fast-Track Regulation

Title of Regulation: 9VAC25-240. Procedural Rule No. 3 - Certification Pursuant to 33 USC § 1341 ("401" Certification): Procedures for Applications, for Issuance, and for Requests for Modification or Revocation (repealing 9VAC25-240-10 through 9VAC25-240-70).

Statutory Authority: § 62.1-44.15 of the Code of Virginia; § 401 of the federal Clean Water Act.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 19, 2013.

Effective Date: July 4, 2013.

Agency Contact: William K. Norris, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4022, FAX (804) 698-4347, TTY (804) 698-4021, or email william.norris@deq.virginia.gov.

Basis: Section 62.1-44.15 of the Code of Virginia authorizes the State Water Control Board to adopt such regulations as it deems necessary to enforce the general water quality management program.

Purpose: The purpose of this action is to repeal an existing regulation that has been superseded.

Rationale for Using Fast-Track Process: The fast-track process is being used for this regulatory action since the regulation has been superseded and the certification requirements are governed by 9VAC25-210.

Substance: The substantive change is to repeal an existing regulation that has been superseded by certification requirements governed by 9VAC25-210.

Issues: There are no anticipated disadvantages to the public or the Commonwealth. The advantages to the public and the Commonwealth are the elimination of confusion on the appropriate procedures to acquire the certification and the removal of an unnecessary regulation from the Virginia Administrative Code.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Water Control Board (Board) proposes to repeal this regulation which provides for the issuance of a certification

by the Board that a proposed activity that may result in a discharge to state waters meets the requirements of the federal Clean Water Act. This regulation has been superseded by the Virginia Water Protection Permit Regulation (9VAC25-210).

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

Estimated Economic Impact. Since this regulation has been superseded by the Virginia Water Protection Permit Regulation, repealing it will have no impact beyond eliminating potential confusion. Thus, the repeal of this regulation will produce a small net benefit.

Businesses and Entities Affected. The proposed repeal of this regulation has no impact beyond potentially reducing confusion among interested individuals looking for the state rules concerning the issuance of a certification by the Board that a proposed activity that may result in a discharge to state waters meets the requirements of the federal Clean Water Act.

Localities Particularly Affected. The proposed repeal of this regulation does not disproportionately affect any particular localities.

Projected Impact on Employment. The proposed repeal of this regulation will not affect employment.

Effects on the Use and Value of Private Property. The proposed repeal of this regulation will not affect the use and value of private property.

Small Businesses: Costs and Other Effects. The proposed repeal of this regulation will not affect small businesses beyond eliminating some potential confusion.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed repeal of this regulation does not adversely affect small businesses.

Real Estate Development Costs. The proposed repeal of this regulation does not affect real estate development costs.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, a determination of the public benefit, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to

comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPBs best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The department has reviewed the economic impact analysis prepared by the Department of Planning and Budget and has no comment.

Summary:

The State Water Control Board is repealing this regulation, which provides for the issuance of a certification by the board that a proposed activity that may result in a discharge to state waters meets the requirements of the federal Clean Water Act. This regulation has been superseded by the Virginia Water Protection Permit Regulation (9VAC25-210) and is no longer necessary.

VA.R. Doc. No. R13-3437; Filed April 25, 2013, 9:31 a.m.



TITLE 12. HEALTH

STATE BOARD OF HEALTH

Final Regulation

Titles of Regulations: **12VAC5-410. Regulations for the Licensure of Hospitals in Virginia (amending 12VAC5-410-10, 12VAC5-410-60).**

12VAC5-412. Regulations for Licensure of Abortion Facilities (adding 12VAC5-412-10 through 12VAC5-412-370).

Statutory Authority: §§ 32.1-12 and 32.1-127 of the Code of Virginia.

Effective Date: June 20, 2013.

Agency Contact: Erik Bodin, Director, Office of Licensure and Certification, Department of Health, 9960 Mayland Drive, Suite 401, Richmond, VA 23233, telephone (804) 367-2102, FAX (804) 527-4502, or email erik.bodin@vdh.virginia.gov.

Summary:

The regulations are necessary to support the implementation of the amendments to § 32.1-127 of the Code of Virginia enacted by Chapter 670 of the 2011 Acts of Assembly. The regulations establish licensure requirements for facilities performing five or more first trimester abortions per month. For purposes of licensure, these facilities are classified as a category of hospital. The regulations contain provisions pertaining to definitions,

procedures for licensure or license renewal, organization and management, infection prevention, patient care, quality assurance, medical records and reports, disaster preparedness, facility security, functional safety and maintenance, and design and construction.

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

Part I

Definitions and General Information and Procedures

Article 1

Definitions

12VAC5-410-10. Definitions.

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

"Board" means the State Board of Health.

"Chief executive officer" means a job descriptive term used to identify the individual appointed by the governing body to act in its behalf in the overall management of the hospital. Job titles may include administrator, superintendent, director, executive director, president, vice-president, and executive vice-president.

"Commissioner" means the State Health Commissioner.

"Consultant" means one who provides services or advice upon request.

"Department" means an organized section of the hospital.

"Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.

"Facilities" means building(s), equipment, and supplies necessary for implementation of services by personnel.

"Full-time" means a 37-1/2 to 40 hour work week.

"General hospital" means institutions as defined by § 32.1-123 of the Code of Virginia with an organized medical staff; with permanent facilities that include inpatient beds; and with medical services, including physician services, dentist services and continuous nursing services, to provide diagnosis and treatment for patients who have a variety of medical and dental conditions that may require various types of care, such as medical, surgical, and maternity.

"Home health care department/service/program" means a formally structured organizational unit of the hospital that is designed to provide health services to patients in their place of residence and meets Part II (12VAC5-381-150 et seq.) of the regulations adopted by the board for the licensure of home care organizations in Virginia.

"Medical" means pertaining to or dealing with the healing art and the science of medicine.

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"Nursing care unit" means an organized jurisdiction of nursing service in which nursing services are provided on a continuous basis.

"Nursing home" means an institution or any identifiable component of any institution as defined by § 32.1-123 of the Code of Virginia with permanent facilities that include inpatient beds and whose primary function is the provision, on a continuing basis, of nursing and health related services for the treatment of patients who may require various types of long term care, such as skilled care and intermediate care.

"Nursing services" means patient care services pertaining to the curative, palliative, restorative, or preventive aspects of nursing that are prepared or supervised by a registered nurse.

"Office of Licensure and Certification" or "OLC" means the Office of Licensure and Certification of the Virginia Department of Health.

"Organized" means administratively and functionally structured.

"Organized medical staff" means a formal organization of physicians and dentists with the delegated responsibility and authority to maintain proper standards of medical care and to plan for continued betterment of that care.

"Outpatient hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that primarily provide facilities for the performance of surgical procedures on outpatients. Such patients may require treatment in a medical environment exceeding the normal capability found in a physician's office, but do not require inpatient hospitalization. ~~Outpatient abortion clinics are deemed a category of outpatient hospitals.~~

"Ownership/person" means any individual, partnership, association, trust, corporation, municipality, county, governmental agency, or any other legal or commercial entity that owns or controls the physical facilities and/or manages or operates a hospital.

"Rural hospital" means any general hospital in a county classified by the federal Office of Management and Budget (OMB) as rural, any hospital designated as a critical access hospital, any general hospital that is eligible to receive funds under the federal Small Rural Hospital Improvement Grant Program, or any general hospital that notifies the commissioner of its desire to retain its rural status when that hospital is in a county reclassified by the OMB as a metropolitan statistical area as of June 6, 2003.

"Service" means a functional division of the hospital. Also used to indicate the delivery of care.

"Special hospital" means institutions as defined by § 32.1-123 of the Code of Virginia that provide care for a specialized group of patients or limit admissions to provide diagnosis and treatment for patients who have specific conditions (e.g., tuberculosis, orthopedic, pediatric, maternity).

"Special care unit" means an appropriately equipped area of the hospital where there is a concentration of physicians,

nurses, and others who have special skills and experience to provide optimal medical care for patients assigned to the unit.

"Staff privileges" means authority to render medical care in the granting institution within well-defined limits, based on the individual's professional license and the individual's experience, competence, ability, and judgment.

"Unit" means a functional division or facility of the hospital.

12VAC5-410-60. Separate license.

A. A separate license shall be required by hospitals maintained on separate premises even though they are operated under the same management. Separate license is not required for separate buildings on the same grounds or within the same complex of buildings.

B. Hospitals which have separate organized sections, units, or buildings to provide services of a classification covered by provisions of other state statutes or regulations may be required to have an additional applicable license for that type or classification of service (e.g., psychiatric, nursing home, home health services, and outpatient surgery, ~~outpatient abortions~~ surgery).

CHAPTER 412

REGULATIONS FOR LICENSURE OF ABORTION FACILITIES

Part I

Definitions and Requirements for Licensure

12VAC5-412-10. Definitions.

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

"Abortion" means the use of an instrument, medicine, drug, or other substance or device with the intent to terminate the pregnancy of a woman, known to be pregnant, for reasons other than a live birth or to remove a dead fetus. Spontaneous miscarriage is excluded from this definition.

"Abortion facility" means a facility in which five or more first trimester abortions per month are performed.

"Administrator" means the person appointed by the governing body as having responsibility for the overall management of the abortion facility. Job titles may include director, executive director, office manager, or business manager.

"Commissioner" means the State Health Commissioner.

"Department" means the Virginia Department of Health.

"First trimester" means the first 12 weeks from conception based on an appropriate clinical estimate by a licensed physician.

"Informed written consent" means the knowing and voluntary written consent to abortion by a pregnant woman of any age in accordance with § 18.2-76 of the Code of Virginia.

"Licensee" means the person, partnership, corporation, association, organization, or professional entity who owns or

on whom rests the ultimate responsibility and authority for the conduct of the abortion facility.

"Minor" means a patient under the age of 18.

"Patient" means any person seeking or obtaining services at an abortion facility.

"Physician" means a person licensed to practice medicine in Virginia.

"Spontaneous miscarriage" means the expulsion or extraction of a product of human conception resulting in other than a live birth and which is not an abortion.

"Trimester" means a 12-week period of pregnancy.

12VAC5-412-20. General.

A license to establish or operate an abortion facility shall be issued only (i) when the abortion facility is in compliance with all applicable federal, state, and local statutes and regulations and the provisions of this chapter and (ii) when the application fee has been received by the department.

No person or entity shall establish, conduct, maintain, or operate in this state, any abortion facility without having obtained a license. Any person establishing, conducting, maintaining, or operating an abortion facility without a license shall be subject to penalties and other actions pursuant to § 32.1-27 of the Code of Virginia.

12VAC5-412-30. Classification.

Abortion facilities shall be classified as a category of hospital.

12VAC5-412-40. Separate license.

An abortion facility operating at more than one location shall be required to obtain separate licenses for each location in which abortion services are provided.

Abortion facilities which have separate organized sections, units, or buildings to provide services of a classification covered by provisions of other state statutes or regulations shall be required to have any additional applicable license required for that type or classification of service.

Facilities licensed as either a general hospital or an outpatient surgical hospital by the department are not subject to the provisions of this chapter.

12VAC5-412-50. Request for issuance.

A. Abortion facility licenses shall be issued by the commissioner. All applications for licensure shall be submitted initially to the department's Office of Licensure and Certification (OLC).

B. Each abortion facility shall be designated by a distinct identifying name which shall appear on the application for licensure. Any change of name shall be reported to the OLC within 30 days.

C. Application for initial licensure of an abortion facility shall be accompanied by a copy of the abortion facility's certificate of use and occupancy or a statement from the facility's certified architect or engineer that the facility is

substantially complete and eligible for a certificate of occupancy.

D. The OLC shall consider an application complete when all requested information and the appropriate nonrefundable application fee are submitted.

E. Written notification from the applicant to OLC that it is ready for the on-site survey must be received 30 days prior to OLC scheduling of the initial licensure survey. Applicants for initial licensure shall be notified of the time and date of the initial licensure survey, after the notice of readiness is received by the OLC.

F. A license shall not be assigned or transferred. A new application for licensure shall be made at least 30 days in advance of a change of ownership or location.

12VAC5-412-60. License expiration and renewal.

A. Licenses shall expire at midnight April 30 following the date of issue and shall be renewable annually, upon filing of a renewal application and payment of the appropriate nonrefundable renewal application fee. Renewal applications shall only be granted after a determination by the OLC that the applicant is in substantial compliance with this chapter.

B. The annual license renewal application shall be submitted to the OLC at least 60 days prior to the expiration date of the current license. A renewal application submitted more than 60 days past the expiration of the current license shall not be accepted.

C. Any abortion facility failing to submit an acceptable plan of correction as required in 12VAC5-412-110 shall not be eligible for license renewal.

12VAC5-412-70. Return and/or reissuance of license.

A. It is the responsibility of the abortion facility's governing body to maintain a current and accurate license at all times.

B. An abortion facility shall give written notification 30 calendar days in advance of implementing any of the following planned changes:

1. Change of location.
2. Change of ownership.
3. Change of name.
4. Voluntary closure.
5. Change of administrator.
6. Change of operator.

Notices shall be sent to the attention of the director of the OLC.

C. The license issued by the commissioner shall be returned to the OLC when any of the changes listed in subsection B of this section occur. In addition, if the abortion facility is no longer operational, or the license has been suspended or revoked, the license shall be returned to the OLC within five calendar days of the abortion facility closing. The abortion facility's patients and the OLC shall be notified where all patient records will be located.

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D. The OLC shall determine if any changes affect the terms of the license or the continuing eligibility for a license. A licensing representative may inspect the abortion facility during the process of evaluating a change.

E. The abortion facility will be notified in writing by the OLC whether a license can be reissued or a new application is needed.

12VAC5-412-80. Allowable variances.

A. The commissioner may authorize a temporary variance only to a specific provision of this chapter. In no event shall a temporary variance exceed the term of the license. An abortion facility may request a temporary variance to a particular standard or requirement contained in a particular provision of this chapter when the standard or requirement poses an impractical hardship unique to the abortion facility and when a temporary variance to it would not endanger the safety or well-being of patients. The request for a temporary variance shall describe how compliance with the current standard or requirement constitutes an impractical hardship unique to the abortion facility. The request should include proposed alternatives, if any, to meet the purpose of the standard or requirement that will ensure the protection and well-being of patients. At no time shall a temporary variance be extended to general applicability. The abortion facility may withdraw a request for a temporary variance at any time.

B. The commissioner may rescind or modify a temporary variance if: (i) conditions change; (ii) additional information becomes known that alters the basis for the original decision; (iii) the abortion facility fails to meet any conditions attached to the temporary variance; or (iv) results of the temporary variance jeopardize the safety or well-being of patients.

C. Consideration of a temporary variance is initiated when a written request is submitted to the commissioner. The commissioner shall notify the abortion facility in writing of the receipt of the request for a temporary variance. The licensee shall be notified in writing of the commissioner's decision on the temporary variance request. If granted, the commissioner may attach conditions to a temporary variance to protect the safety and well-being of patients.

D. If a temporary variance is denied, expires, or is rescinded, routine enforcement of the standard or requirement to which the temporary variance was granted shall be resumed.

12VAC5-412-90. Right of entry.

Pursuant to § 32.1-25 of the Code of Virginia, any duly designated employee of the Virginia Department of Health shall have the right to enter upon and into the premises of any licensed abortion facility, or any entity the department has reason to believe is operated or maintained as an abortion facility without a license, in order to determine the state of compliance with the provisions of this chapter and applicable laws. Any such employee shall properly identify himself as an inspector designated by OLC; the abortion facility may verify the identity of the inspector prior to his admission.

Such entries and inspections shall be made with the permission of the owner or person in charge, unless an inspection warrant is obtained after denial of entry from an appropriate circuit court. If the owner, or person in charge, refuses entry, this shall be sufficient cause for immediate revocation or suspension of the license. If the entity is unlicensed, the owner or person in charge shall be subject to penalties and other actions pursuant to § 32.1-27 of the Code of Virginia.

12VAC5-412-100. On-site inspection.

A. An OLC representative shall make periodic unannounced on-site inspections of each abortion facility as necessary, but not less often than biennially. If the department finds, after inspection, noncompliance with any provision of this chapter, the abortion facility shall receive a written licensing report of such findings. The abortion facility shall submit a written plan of correction in accordance with provisions of 12VAC5-412-110.

B. The abortion facility shall make available to the OLC's representative any requested records and shall allow access to interview the agents, employees, contractors, and any person under the abortion facility's control, direction, or supervision. If copies of records are removed from the premises, patient names and addresses contained in such records shall be redacted by the abortion facility before removal.

C. If the OLC's representative arrives on the premises to conduct a survey and the administrator, the nursing director, or a person authorized to give access to patient records is not available on the premises, such person or the designated alternate shall be available on the premises within one hour of the surveyor's arrival. A list of patients receiving services on the day of the survey as well as a list of all of the abortion facility's patients for the previous 12 months shall be provided to the surveyor within two hours of arrival if requested. Failure to be available or to respond shall be grounds for penalties in accordance with § 32.1-27 of the Code of Virginia and denial, suspension, or revocation of the facility's license in accordance with 12VAC5-412-130.

12VAC5-412-110. Plan of correction.

A. Upon receipt of a written licensing report, each abortion facility shall prepare a written plan of correction addressing each licensing violation cited at the time of inspection.

B. The administrator shall submit, within 15 working days of receipt of the inspection report, an acceptable plan of correction as determined by the OLC. The plan of correction shall contain for each violation cited:

1. A description of the corrective action or actions to be taken and the personnel to implement the corrective action;
2. The expected correction date, not to exceed 30 working days from the exit date of the survey;
3. A description of the measures implemented to prevent a recurrence of the violation; and

4. The signature of the person responsible for the validity of the report.

C. The administrator shall be notified whenever any item in the plan of correction is determined to be unacceptable. Failure to submit an acceptable plan of correction may result in a penalty in accordance with § 32.1-27 of the Code of Virginia or in denial, revocation, or suspension of a license in accordance with 12VAC5-412-130.

D. The administrator shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12VAC5-412-120. OLC complaint investigations.

A. The OLC shall investigate any complaints regarding alleged violations of this chapter and applicable law. When the investigation is complete, the abortion facility and the complainant, if known, will be notified of the findings of the investigation.

B. As required by the OLC, the administrator shall submit a plan of correction for any deficiencies found during a complaint investigation in accordance with 12VAC5-412-110 and shall be responsible for assuring the plan of correction is implemented and monitored so that compliance is maintained.

12VAC5-412-130. Violation of this chapter or applicable law; denial, revocation, or suspension of license.

A. When the department determines that an abortion facility is (i) in violation of any provision of Article 1 (§ 32.1-123 et seq.) of Chapter 5 of Title 32.1 of the Code of Virginia or of any applicable regulation, or (ii) is permitting, aiding, or abetting the commission of any illegal act in the abortion facility, the department may deny, suspend, or revoke the license to operate an abortion facility in accordance with § 32.1-135 of the Code of Virginia.

B. If a license or certification is revoked as herein provided, a new license or certification may be issued by the commissioner after satisfactory evidence is submitted to him that the conditions upon which revocation was based have been corrected and after proper inspection has been made and compliance with all provisions of Article 1 of Chapter 5 of Title 32.1 of the Code of Virginia and applicable state and federal law and regulations hereunder has been obtained.

C. Suspension of a license shall in all cases be for an indefinite time. The commissioner may restore a suspended license when he determines that the conditions upon which suspension was based have been corrected and that the interests of the public will not be jeopardized by resumption of operation. No additional fee shall be required for restoring such license.

D. The abortion facility has the right to contest the denial, revocation, or suspension of a license in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

Part II
Organization and Management

12VAC5-412-140. Management and administration.

A. The abortion facility shall comply with:

1. This chapter (12VAC5-412);
2. Other applicable federal, state, or local laws and regulations; and
3. The abortion facility's policies and procedures.

B. The abortion facility shall submit or make available reports and information necessary to establish compliance with this chapter and applicable law.

C. The abortion facility shall permit OLC inspectors to conduct inspections to:

1. Verify application information;
2. Determine compliance with this chapter and applicable law;
3. Review necessary records and documents; and
4. Investigate complaints.

D. An abortion facility shall give written notification 30 calendar days in advance of implementing any of the following planned changes:

1. Change of location.
2. Change of ownership.
3. Change of name.
4. Voluntary closure.
5. Change of administrator.
6. Change of operator.

Notices shall be sent to the attention of the director of the OLC.

E. The current license from the department shall be posted at all times in a place readily visible and accessible to the public.

12VAC5-412-150. Governing body.

A. Each abortion facility shall have a governing body responsible for the management and control of the operation of the abortion facility.

B. There shall be disclosure of abortion facility ownership. Ownership interest shall be reported to the OLC and in the case of corporations, all individuals or entities holding 5.0% or more of total ownership shall be identified by name and address. The OLC shall be notified of any changes in ownership.

C. The governing body shall provide facilities, personnel, and other resources necessary to meet patient and program needs.

D. The governing body shall have a formal organizational plan with written bylaws. These shall clearly set forth organization, duties and responsibilities, accountability, and relationships of professional staff and other personnel. The

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bylaws shall identify the person or organizational body responsible for formulating policies.

E. The bylaws shall include at a minimum the following:

1. A statement of purpose;
2. Description of the functions and duties of the governing body or other legal authority;
3. A statement of authority and responsibility delegated to the administrator and to the clinical staff;
4. Provision for selection and appointment of clinical staff and granting of clinical privileges; and
5. Provision of guidelines for relationships among the governing body, the administrator, and the clinical staff.

12VAC5-412-160. Policies and procedures.

A. Each abortion facility shall develop, implement, and maintain documented policies and procedures, which shall be readily available on the premises and shall be reviewed annually and updated as necessary by the governing body. The policies and procedures shall include but shall not be limited to the following topics:

1. Personnel;
2. Types of elective services performed in the abortion facility;
3. Types of anesthesia that may be used;
4. Admissions and discharges, including criteria for evaluating the patient before admission and before discharge;
5. Obtaining informed written consent of the patient pursuant to § 18.2-76 of the Code of Virginia prior to the initiation of any procedures;
6. When to use sonography to assess patient risk;
7. Infection prevention;
8. Quality and risk management;
9. Management and effective response to medical and/or surgical emergency;
10. Management and effective response to fire;
11. Ensuring compliance with all applicable federal, state, and local laws;
12. Abortion facility security;
13. Disaster preparedness;
14. Patient rights;
15. Functional safety and abortion facility maintenance; and
16. Identification of the administrator and methods established by the governing body for holding the administrator responsible and accountable.

B. These policies and procedures shall be based on recognized standards and guidelines. A copy of the policies and procedures approved by the governing body and revisions thereto shall be made available to the OLC upon request.

12VAC5-412-170. Administrator.

A. The governing body shall select an administrator who shall be responsible for the managerial, operational, financial, and reporting components of the abortion facility, including but not limited to:

1. Ensuring the development, implementation, and enforcement of all policies and procedures, including patient rights;
2. Employing qualified personnel and ensuring appropriate personnel orientation, training, education, and evaluation;
3. Ensuring the accuracy of public information materials and activities;
4. Ensuring an effective budgeting and accounting system is implemented; and
5. Maintaining compliance with applicable laws and regulations and implementing corrective action.

B. Any change in the position of the administrator shall be reported immediately by the governing body to the department in writing.

C. A qualified individual shall be appointed in writing to act in the absence of the administrator.

12VAC5-412-180. Personnel.

A. Each abortion facility shall have a staff that is adequately trained and capable of providing appropriate service and supervision to patients. The abortion facility shall develop, implement, and maintain policies and procedures to ensure and document appropriate staffing by licensed clinicians based on the level, intensity, and scope of services provided.

B. The abortion facility shall obtain written applications for employment from all staff. The abortion facility shall obtain and verify information on the application as to education, training, experience, and appropriate professional licensure, if applicable.

C. Each abortion facility shall obtain a criminal history record check pursuant to § 32.1-126.02 of the Code of Virginia on any compensated employee not licensed by the Board of Pharmacy, whose job duties provide access to controlled substances within the abortion facility.

D. The abortion facility shall develop, implement, and maintain policies and procedures to document that its staff participate in initial and ongoing training and education that is directly related to staff duties and appropriate to the level, intensity, and scope of services provided. This shall include documentation of annual participation in fire safety and infection prevention in-service training.

E. Job descriptions.

1. Written job descriptions that adequately describe the duties of every position shall be maintained.
2. Each job description shall include position title, authority, specific responsibilities, and minimum qualifications.

3. Job descriptions shall be reviewed at least annually, kept current, and given to each employee and volunteer when assigned to the position and when revised.

F. A personnel file shall be maintained for each staff member. The records shall be completely and accurately documented, readily available, including by electronic means and systematically organized to facilitate the compilation and retrieval of information. The file shall contain a current job description that reflects the individual's responsibilities and work assignments, and documentation of the person's in-service education, and professional licensure, if applicable.

G. Personnel policies and procedures shall include, but not be limited to:

1. Written job descriptions that specify authority, responsibility, and qualifications for each job classification;
2. Process for verifying current professional licensing or certification and training of employees or independent contractors;
3. Process for annually evaluating employee performance and competency;
4. Process for verifying that contractors and their employees meet the personnel qualifications of the abortion facility; and
5. Process for reporting licensed and certified health care practitioners for violations of their licensing or certification standards to the appropriate board within the Department of Health Professions.

H. A personnel file shall be maintained for each staff member. Personnel record information shall be safeguarded against loss and unauthorized use. Employee health related information shall be maintained separately within the employee's personnel file.

12VAC5-412-190. Clinical staff.

A. Physicians and nonphysician health care practitioners shall constitute the clinical staff. Clinical privileges of physician and nonphysician health care practitioners shall be clearly defined.

B. Abortions shall be performed by physicians who are licensed to practice medicine in Virginia and who are qualified by training and experience to perform abortions. The abortion facility shall develop, implement, and maintain policies and procedures to ensure and document that abortions that occur in the abortion facility are only performed by physicians who are qualified by training and experience.

C. A physician shall remain on the premises until all patients are medically stable, sign the discharge order, and be readily available and accessible until the last patient is discharged. Licensed health care practitioners trained in post-procedure assessment shall remain on the premises until the last patient has been discharged. The physician shall give a discharge

order after assessing a patient or receiving a report from such trained health care practitioner indicating that a patient is safe for discharge. The abortion facility shall develop, implement, and maintain policies and procedures that ensure there is an appropriate evaluation of medical stability prior to discharge of the patient and that adequate trained health care practitioners remain with the patient until she is discharged from the abortion facility.

D. Licensed practical nurses, working under direct supervision and direction of a physician or a registered nurse, may be employed as components of the clinical staff.

12VAC5-412-200. Patients' rights.

A. Each abortion facility shall establish a protocol relating to the rights and responsibilities of patients consistent with the current edition of the Joint Commission Standards of Ambulatory Care. The protocol shall include a process reasonably designed to inform patients of their rights and responsibilities, in a language or manner they understand. Patients shall be given a copy of their rights and responsibilities upon admission.

B. The abortion facility shall establish and maintain complaint handling procedures which specify the:

1. System for logging receipt, investigation, and resolution of complaints; and
2. Format of the written record of the findings of each complaint investigated.

C. The abortion facility shall designate staff responsible for complaint resolution, including:

1. Complaint intake, including acknowledgment of complaints;
2. Investigation of the complaint;
3. Review of the investigation findings and resolution for the complaint; and
4. Notification to the complainant of the proposed resolution within 30 days from the date of receipt of the complaint.

D. Any patient seeking an abortion shall be given a copy of the complaint procedures, in a language or manner she understands, at the time of admission to service.

E. The abortion facility shall provide each patient or her designee with the name, mailing address, and telephone number of the:

1. Abortion facility contact person; and
2. OLC Complaint Unit, including the toll-free complaint hotline number. Patients may submit complaints anonymously to the OLC. The abortion facility shall display a copy of this information in a conspicuous place.

F. The abortion facility shall maintain documentation of all complaints received and the status of each complaint from date of receipt through its final resolution. Records shall be maintained for no less than three years.

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Part III

Quality Management and Infection Prevention

12VAC5-412-210. Quality management.

A. The abortion facility shall implement an ongoing, comprehensive, integrated, self-assessment program of the quality and appropriateness of care or services provided, including services provided under contract or agreement. The program shall include process design, data collection/analysis, assessment and improvement, and evaluation. The findings shall be used to correct identified problems and revise policies and practices, as necessary.

B. The following shall be evaluated to assure adequacy and appropriateness of services, and to identify unacceptable or unexpected trends or occurrences:

1. Staffing patterns and performance;
2. Supervision appropriate to the level of service;
3. Patient records;
4. Patient satisfaction;
5. Complaint resolution;
6. Infections, complications, and other adverse events; and
7. Staff concerns regarding patient care.

C. A quality improvement committee responsible for the oversight and supervision of the program shall be established and at a minimum shall consist of:

1. A physician;
2. A nonphysician health care practitioner;
3. A member of the administrative staff; and
4. An individual with demonstrated ability to represent the rights and concerns of patients. The individual may be a member of the facility's staff.

In selecting members of this committee, consideration shall be given to the candidate's abilities and sensitivity to issues relating to quality of care and services provided to patients.

D. Measures shall be implemented to resolve problems or concerns that have been identified.

E. Results of the quality improvement program shall be reported to the licensee at least annually and shall include the deficiencies identified and recommendations for corrections and improvements. The report shall be acted upon by the governing body and the facility. All corrective actions shall be documented. Identified deficiencies that jeopardize patient safety shall be reported immediately in writing to the licensee by the quality improvement committee.

12VAC5-412-220. Infection prevention.

A. The abortion facility shall have an infection prevention plan that encompasses the entire abortion facility and all services provided, and which is consistent with the provisions of the current edition of "Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care," published by the U.S. Centers for Disease Control and

Prevention. An individual with training and expertise in infection prevention shall participate in the development of infection prevention policies and procedures and shall review them to assure they comply with applicable regulations and standards.

1. The process for development, implementation, and maintenance of infection prevention policies and procedures and the regulations or guidance documents on which they are based shall be documented.

2. All infection prevention policies and procedures shall be reviewed at least annually by the administrator and appropriate members of the clinical staff. The annual review process and recommendations for changes/updates shall be documented in writing.

3. A designated person in the abortion facility shall have received training in basic infection prevention, and shall also be involved in the annual review.

B. Written infection prevention policies and procedures shall include, but not be limited to:

1. Procedures for screening incoming patients and visitors for acute infectious illnesses and applying appropriate measures to prevent transmission of community-acquired infection within the abortion facility;

2. Training of all personnel in proper infection prevention techniques;

3. Correct hand-washing technique, including indications for use of soap and water and use of alcohol-based hand rubs;

4. Use of standard precautions;

5. Compliance with [~~blood borne~~ bloodborne] pathogen requirements of the U.S. Occupational Safety and Health Administration;

6. Use of personal protective equipment;

7. Use of safe injection practices;

8. Plans for annual retraining of all personnel in infection prevention methods;

9. Procedures for monitoring staff adherence to recommended infection prevention practices; and

10. Procedures for documenting annual retraining of all staff in recommended infection prevention practices.

C. Written policies and procedures for the management of the abortion facility, equipment, and supplies shall address the following:

1. Access to hand-washing equipment and adequate supplies (e.g., soap, alcohol-based hand rubs, disposable towels or hot air driers);

2. Availability of utility sinks, cleaning supplies, and other materials for cleaning, disposal, storage, and transport of equipment and supplies;

3. Appropriate storage for cleaning agents (e.g., locked cabinets or rooms for chemicals used for cleaning) and

product-specific instructions for use of cleaning agents (e.g., dilution, contact time, management of accidental exposures);

4. Procedures for handling, storing, and transporting clean linens, clean/sterile supplies, and equipment;

5. Procedures for handling/temporary storage/transport of soiled linens;

6. Procedures for handling, storing, processing, and transporting regulated medical waste in accordance with applicable regulations;

7. Procedures for the processing of each type of reusable medical equipment between uses on different patients. The procedure shall address: (i) the level of cleaning/disinfection/sterilization to be used for each type of equipment; (ii) the process (e.g., cleaning, chemical disinfection, heat sterilization); and (iii) the method for verifying that the recommended level of disinfection/sterilization has been achieved. The procedure shall reference the manufacturer's recommendations and any applicable state or national infection control guidelines;

8. Procedures for appropriate disposal of nonreusable equipment;

9. Policies and procedures for maintenance/repair of equipment in accordance with manufacturer recommendations;

10. Procedures for cleaning of environmental surfaces with appropriate cleaning products;

11. An effective pest control program, managed in accordance with local health and environmental regulations; and

12. Other infection prevention procedures necessary to prevent/control transmission of an infectious agent in the abortion facility as recommended or required by the department.

D. The abortion facility shall have an employee health program that includes:

1. Access to recommended vaccines;

2. Procedures for assuring that employees with communicable diseases are identified and prevented from work activities that could result in transmission to other personnel or patients;

3. An exposure control plan for [~~blood-borne~~ bloodborne] pathogens;

4. Documentation of screening and immunizations offered/received by employees in accordance with statute, regulation, or recommendations of public health authorities, including documentation of screening for tuberculosis and access to hepatitis B vaccine; and

5. Compliance with requirements of the U.S. Occupational Safety and Health Administration for reporting of workplace-associated injuries or exposure to infection.

E. The abortion facility shall develop, implement, and maintain policies and procedures for the following patient education, follow up, and reporting activities:

1. A procedure for surveillance, documentation, and tracking of reported infections; and

2. Policies and procedures for reporting conditions to the local health department in accordance with the Regulations for Disease Reporting and Control (12VAC5-90), including outbreaks of disease.

Part IV

Patient Care Management

12VAC5-412-230. Patient services; patient counseling.

A. Abortions performed in abortion facilities shall be performed only on patients who are within the first trimester of pregnancy based on an appropriate clinical estimate by a licensed physician.

B. No person may perform an abortion upon an unemancipated minor unless informed written consent is obtained from the minor and the minor's parent, guardian, or other authorized person. If the unemancipated minor elects not to seek the informed written consent of an authorized person, a copy of the court order authorizing the abortion entered pursuant to § 16.1-241 of the Code of Virginia shall be obtained prior to the performance of the abortion.

C. A physician shall not perform an abortion without first obtaining the informed written consent of the patient pursuant to the provisions of § 18.2-76 of the Code of Virginia.

D. When abortions are being performed, a staff member currently certified to perform [~~cardio-pulmonary~~ cardiopulmonary] resuscitation shall be available on site for emergency care.

E. The abortion facility shall offer each patient seeking an abortion, in a language or manner she understands, appropriate counseling and instruction in the abortion procedure and shall develop, implement, and maintain policies and procedures for the provision of family planning and post-abortion counseling to its patients.

F. There shall be an organized discharge planning process that includes an evaluation of the patient's capacity for self-care and discharge instructions for patients to include instructions to call or return if signs of infection develop.

12VAC5-412-240. Medical testing and laboratory services.

A. Prior to the initiation of any abortion, a medical history and physical examination, including a confirmation of pregnancy, and completion of all the requirements of informed written consent pursuant to § 18.2-76 of the Code of Virginia, shall be completed for each patient.

1. Use of any additional medical testing shall be based on an assessment of patient risk. The clinical criteria for such additional testing and the actions to be taken if abnormal results are found shall be documented.

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2. Medical testing shall include a recognized method to confirm pregnancy and determination or documentation of Rh factor.

3. The abortion facility shall develop, implement, and maintain policies and procedures for screening of sexually transmitted diseases consistent with current guidelines issued by the U.S. Centers for Disease Control and Prevention. The policies and procedures shall address appropriate responses to a positive screening test.

4. A written report of each laboratory test and examination shall be a part of the patient's record.

B. Laboratory services shall be provided on site or through arrangement with a laboratory certified to provide the required procedures under the Clinical Laboratory Improvement Amendments of 1988 (CLIA-88) (42 CFR Part 493).

1. Facilities for collecting specimens shall be available on site.

2. If laboratory services are provided on site they shall be directed by a person who qualifies as a director under CLIA-88 and shall be performed in compliance with CLIA-88 standards.

3. All laboratory supplies shall be monitored for expiration dates, if applicable, and disposed of properly.

C. All tissues removed resulting from the abortion procedure shall be examined to verify that villi or fetal parts are present; if villi or fetal parts cannot be identified with certainty, the tissue specimen shall be sent for further pathologic examination and the patient alerted to the possibility of an ectopic pregnancy, and referred appropriately.

D. All tissues removed resulting from the abortion procedure shall be managed in accordance with requirements for medical waste pursuant to the Regulated Medical Waste Management Regulations (9VAC20-120).

12VAC5-412-250. Anesthesia service.

A. The anesthesia service shall comply with the office-based anesthesia provisions of the Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic (18VAC85-20-310 et seq.).

B. The anesthesia service shall be directed by and under the supervision of a physician licensed in Virginia.

C. When moderate sedation or conscious sedation is administered, the licensed health care practitioner who administers the anesthesia shall routinely monitor the patient according to procedures consistent with such administration.

D. An abortion facility administering moderate sedation/conscious sedation shall maintain the following equipment, supplies, and pharmacological agents as required by 18VAC85-20-360 B:

1. Appropriate equipment to manage airways;

2. Drugs and equipment to treat shock and anaphylactic reactions;

3. Precordial stethoscope;

4. Pulse oximeter with appropriate alarms or an equivalent method of measuring oxygen saturation;

5. Continuous electrocardiograph;

6. Devices for measuring blood pressure, heart rate, and respiratory rate;

7. Defibrillator; and

8. Accepted method of identifying and preventing the interchangeability of gases.

E. Elective general anesthesia shall not be used.

F. If deep sedation or a major conductive block is administered or if general anesthesia is administered in an emergent situation, the licensed health care practitioner who administers the anesthesia service shall remain present and available in the facility to monitor the patient until the patient meets the discharge criteria.

G. In addition to the requirements of subsection D of this section, an abortion facility administering deep sedation or a major conductive block, or administering general anesthesia in an emergent situation, shall maintain the following equipment, supplies, and pharmacological agents as required by 18VAC85-20-360 C:

1. Drugs to treat malignant hyperthermia, when triggering agents are used;

2. Peripheral nerve stimulator, if a muscle relaxant is used; and

3. If using an anesthesia machine, the following shall be included:

a. End-tidal carbon dioxide monitor (capnograph);

b. In-circuit oxygen analyzer designed to monitor oxygen concentration within breathing circuit by displaying oxygen percent of the total respiratory mixture;

c. Oxygen failure-protection devices (fail-safe system) that have the capacity to announce a reduction in oxygen pressure and, at lower levels of oxygen pressure, to discontinue other gases when the pressure of the supply of oxygen is reduced;

d. Vaporizer exclusion (interlock) system, which ensures that only one vaporizer, and therefore only a single anesthetic agent can be actualized on any anesthesia machine at one time;

e. Pressure-compensated anesthesia vaporizers, designed to administer a constant nonpulsatile output, which shall not be placed in the circuit downstream of the oxygen flush valve;

f. Flow meters and controllers, which can accurately gauge concentration of oxygen relative to the anesthetic agent being administered and prevent oxygen mixtures of less than 21% from being administered;

g. Alarm systems for high (disconnect), low (subatmospheric), and minimum ventilatory pressures in

the breathing circuit for each patient under general anesthesia; and

h. A gas evacuation system.

H. The abortion facility shall develop, implement, and maintain policies and procedures outlining criteria for discharge from anesthesia care. Such criteria shall include stable vital signs, responsiveness and orientation, ability to move voluntarily, controlled pain, and minimal nausea and vomiting. Discharge from anesthesia care is the responsibility of the health care practitioner providing the anesthesia care and shall occur only when the patient has met specific physician-defined criteria.

12VAC5-412-260. Administration, storage and dispensing of drugs.

A. Controlled substances, as defined in § 54.1-3401 of the Code of Virginia, shall be stored, administered, and dispensed in accordance with federal and state laws. The dispensing of drugs, excluding manufacturers' samples, shall be in accordance with Chapter 33 [(~~§ 54.1-3400 et seq.~~) (§ 54.1-3300 et seq.)] of Title 54.1 of the Code of Virginia, Regulations Governing the Practice of Pharmacy (18VAC110-20), and Regulations for Practitioners of the Healing Arts to Sell Controlled Substances (18VAC110-30).

B. Drugs, as defined in § 54.1-3401 of the Code of Virginia, whose intended use is to induce a termination of pregnancy shall only be prescribed, dispensed, or administered by a physician.

C. Drugs maintained in the abortion facility for daily administration shall not be expired and shall be properly stored in enclosures of sufficient size with restricted access to authorized personnel only. Drugs shall be maintained at appropriate temperatures in accordance with definitions in 18VAC110-20-10.

D. The mixing, diluting, or reconstituting of drugs for administration shall be in accordance with regulations of the Board of Medicine (18VAC85-20-400 et seq.).

E. Records of all drugs in Schedules I-V received, sold, administered, dispensed, or otherwise disposed of shall be maintained in accordance with federal and state laws, to include the inventory and reporting requirements of a theft or loss of drugs found in § 54.1-3404 of the Code of Virginia.

12VAC5-412-270. Equipment and supplies.

An abortion facility shall maintain medical equipment and supplies appropriate and adequate to care for patients based on the level, scope, and intensity of services provided, to include:

1. A bed or recliner suitable for recovery;
2. Oxygen with flow meters and masks or equivalent;
3. Mechanical suction;
4. Resuscitation equipment to include, as a minimum, resuscitation bags and oral airways;

5. Emergency medications, intravenous fluids, and related supplies and equipment;

6. Sterile suturing equipment and supplies;

7. Adjustable examination light;

8. Containers for soiled linen and waste materials with covers; and

9. Refrigerator.

12VAC5-412-280. Emergency equipment and supplies.

An abortion facility shall maintain medical equipment, supplies, and drugs appropriate and adequate to manage potential emergencies based on the level, scope, and intensity of services provided. Such medical equipment, supplies, and drugs shall be determined by the physician and shall be consistent with the current edition of the American Heart Association's Guidelines for [~~Advanced Cardiovascular Life Support~~ Cardiopulmonary Resuscitation and Emergency Cardiovascular Care]. Drugs shall include, at a minimum, those to treat the following conditions:

1. Cardiopulmonary arrest;
2. Seizure;
3. Respiratory distress;
4. Allergic reaction;
5. Narcotic toxicity;
6. Hypovolemic shock; and
7. Vasovagal shock.

12VAC5-412-290. Emergency services.

A. An abortion facility shall provide ongoing urgent or emergent care and maintain on the premises adequate monitoring equipment, suction apparatus, oxygen, and related items for resuscitation and control of hemorrhage and other complications.

B. An abortion facility that performs abortions using intravenous sedation shall provide equipment and services to render emergency resuscitative and life-support procedures pending transfer of the patient to a hospital. Such medical equipment and services shall be consistent with the current edition of the American Heart Association's Guidelines for Advanced Cardiovascular Life Support.

C. A written agreement shall be executed with a licensed general hospital to ensure that any patient of the abortion facility shall receive needed emergency treatment. The agreement shall be with a licensed general hospital capable of providing full surgical, anesthesia, clinical laboratory, and diagnostic radiology service on 30 minutes notice and which has a physician in the hospital and available for emergency service at all times. When emergency transfer is necessary, the responsible physician at the abortion facility must provide direct communication to the emergency department staff regarding the status of the patient, the procedure details, and the suspected complication. All patients must be provided with contact information for a representative of the abortion

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facility, so that an emergency department physician or treating provider may make contact with a provider of the facility if late complications arise.

Part V

Support Services - Health Information Records and Reports

12VAC5-412-300. Health information records.

An accurate and complete clinical record or chart shall be maintained on each patient. The record or chart shall contain sufficient information to satisfy the diagnosis or need for the medical or surgical service. It shall include, but not be limited to the following:

1. Patient identification;
2. Admitting information, including patient history and physical examination;
3. Signed consent;
4. Confirmation of pregnancy; and
5. Procedure report to include:
 - a. Physician orders;
 - b. Laboratory tests, pathologist's report of tissue, and radiologist's report of x-rays;
 - c. Anesthesia record;
 - d. Operative record;
 - e. Surgical medication and medical treatments;
 - f. Recovery room notes;
 - g. Physicians' and nurses' progress notes;
 - h. Condition at time of discharge;
 - i. Patient instructions (preoperative and postoperative); and
 - j. Names of referral physicians or agencies; and
6. Any other information required by law to be maintained in the health information record.

12VAC5-412-310. Records storage.

Provisions shall be made for the safe storage of medical records or accurate and eligible reproductions thereof according to applicable federal and state law, including the Health Insurance Portability and Accountability Act (42 USC § 1320d et seq.).

12VAC5-412-320. Required reporting.

A. Abortion facilities shall comply with the fetal death and induced termination of pregnancy reporting provisions in the Board of Health Regulations Governing Vital Records (12VAC5-550-120).

B. The abortion facility shall report the following events to OLC:

1. Any patient, staff, or visitor death;
2. Any serious injury to a patient;
3. Medication errors that necessitate a clinical intervention other than monitoring;

4. A death or significant injury of a patient or staff member resulting from a physical assault that occurs within or on the abortion facility grounds; and

5. Any other incident reported to the malpractice insurance carrier or in compliance with the federal Safe Medical Devices Act of 1990 (21 USC § 301 et seq. - Pub. L. No. 101-629).

C. Notification of the events listed in subsection B of this section shall be required within 24 hours of occurrence. Each notice shall contain the:

1. Abortion facility name;
2. Type and circumstance of the event being reported;
3. Date of the event; and
4. Actions taken by the abortion facility to protect patient and staff safety and to prevent recurrence.

D. Compliance with this section does not relieve the abortion facility from complying with any other applicable reporting or notification requirements, such as those relating to law-enforcement or professional regulatory agencies.

E. Records that are confidential under federal or state law shall be maintained as confidential by the OLC and shall not be further disclosed by the OLC, except as required or permitted by law.

F. Abortion facilities shall ensure that employees mandated to report suspected child abuse or neglect under § 63.2-1509 of the Code of Virginia comply with the reporting requirements of § 63.2-1509 of the Code of Virginia.

Part VI

Functional Safety and Maintenance

12VAC5-412-330. Abortion facility security and safety.

The abortion facility shall develop, implement, and maintain policies and procedures to ensure safety within the abortion facility and on its grounds and to minimize hazards to all occupants. The policies and procedures shall include, but not be limited to:

1. Abortion facility security;
2. Safety rules and practices pertaining to personnel, equipment, gases, liquids, drugs, supplies, and services; and
3. Provisions for disseminating safety-related information to employees and users of the abortion facility.

12VAC5-412-340. Disaster preparedness.

A. Each abortion facility shall develop, implement, and maintain policies and procedures to ensure reasonable precautions are taken to protect all occupants from hazards of fire and other disasters. The policies and procedures shall include provisions for evacuation of all occupants in the event of a fire or other disaster.

B. An abortion facility that participates in community disaster planning shall establish plans, based on its

capabilities, to meet its responsibilities for providing emergency care.

12VAC5-412-350. Maintenance.

A. The abortion facility's structure, its component parts, and all equipment such as elevators, heating, cooling, ventilation, and emergency lighting, shall be kept in good repair and operating condition. Areas used by patients shall be maintained in good repair and kept free of hazards. All wooden surfaces shall be sealed with nonlead-based paint, lacquer, varnish, or shellac that will allow sanitization.

B. When patient monitoring equipment is utilized, a written preventive maintenance program shall be developed and implemented. This equipment shall be checked and/or tested in accordance with manufacturer's specifications at periodic intervals, not less than annually, to ensure proper operation and a state of good repair. After repairs and/or alterations are made to any equipment, the equipment shall be thoroughly tested for proper operation before it is returned to service. Records shall be maintained on each piece of equipment to indicate its history of testing and maintenance.

12VAC5-412-360. [Fire-fighting Firefighting] equipment and systems.

A. Each abortion facility shall establish a monitoring program for the internal enforcement of all applicable fire and safety laws and regulations and shall designate a responsible employee for the monitoring program.

B. All fire protection and alarm systems and other firefighting equipment shall be inspected and tested in accordance with the current edition of the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia) to maintain them in serviceable condition.

C. All corridors and other means of egress or exit from the building shall be maintained clear and free of obstructions in accordance with the current edition of the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia).

Part VII

Design and Construction

12VAC5-412-370. Local and state codes and standards.

Abortion facilities shall comply with state and local codes, zoning, and building ordinances and the Virginia Uniform Statewide Building Code (13VAC5-63). In addition, abortion facilities shall comply with Part 1 and sections 3.1-1 through 3.1-8 and section 3.7 of Part 3 of the 2010 Guidelines for Design and Construction of Health Care Facilities of the Facilities Guidelines Institute, which shall take precedence over the Virginia Uniform Statewide Building Code pursuant to § 32.1-127.001 of the Code of Virginia.

Entities operating as of the effective date of this chapter as identified by the department through submission of Reports of Induced Termination of Pregnancy pursuant to 12VAC5-550-120 or other means and that are now subject to licensure may be licensed in their current buildings if such entities

submit a plan with the application for licensure that will bring them into full compliance with this provision within two years from the date of licensure.

In order to determine whether the abortion facility is in compliance with this provision, the commissioner may obtain additional information from the facility or its architect concerning the design and construction of the facility.

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

[FORMS (12VAC5-412)

[Application for Abortion Facility Licensure \(eff. 5/03\).](#)

[OSHA Forms for Recording Work-Related Injuries and Illnesses, 2004. \]](#)

DOCUMENTS INCORPORATED BY REFERENCE (12VAC5-412)

[Guidelines for Design and Construction of Health Care Facilities, \[2010 Edition, Part 1 and Sections 3.1-1 through 3.1-8 and 3.7 of Part 3, \] Facilities Guidelines Institute \(formerly of the American Institute of Architects\), Washington, D.C. \[,2010 Edition.](#)

[Guidelines for Cardiopulmonary Resuscitation and Emergency Cardiovascular Care. Circulation. November 2, 2010, Volume 122, Issue 18 Suppl 3, American Heart Association, 7272 Greenville Avenue, Dallas, TX 75231-4596 \(\[http://circ.ahajournals.org/content/vol122/18_suppl_3/\]\(http://circ.ahajournals.org/content/vol122/18_suppl_3/\)\).](#)

[Sexually Transmitted Diseases Treatment Guidelines, 2010, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.](#)

[Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services \(\[http://www.cdc.gov/HAI/prevent/prevent_pubs.html\]\(http://www.cdc.gov/HAI/prevent/prevent_pubs.html\)\).](#)

[Standards for Ambulatory Care, Rights and Responsibilities of the Individual, 2011, The Joint Commission, 1515 W. 22nd Street, Suite 1300W, Oak Brook, IL 60523, telephone 1-877-223-2866, email \[jrcustomerservice@pbd.com\]\(mailto:jrcustomerservice@pbd.com\).](#)

[Bloodborne Pathogens - OSHA's Bloodborne Pathogens Standard, OSHA Fact Sheet and Quick Reference Guide, 2011 U.S. Occupational Safety and Health Administration. \]](#)

V.A.R. Doc. No. R12-2970; Filed April 25, 2013, 5:06 p.m.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR CONTRACTORS

Emergency Regulation

Title of Regulation: **18VAC50-22. Board for Contractors Regulations (amending 18VAC50-22-10, 18VAC50-22-100, 18VAC50-22-130, 18VAC50-22-140, 18VAC50-22-160, 18VAC50-22-170, 18VAC50-22-180, 18VAC50-22-260; adding 18VAC50-22-65).**

Statutory Authority: §§ 54.1-201 and 54.1-1146 of the Code of Virginia.

Effective Dates: July 1, 2013, and until replaced by final regulations as provided in the third enactment of Chapter 865 of the 2011 Acts of Assembly.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Preamble:

Chapter 865 of the 2011 Acts of Assembly provides for the licensure of residential building energy analysts by the Board for Contractors and requires the board to promulgate regulations to implement the provisions of the act, to be effective within 280 days of its enactment.

The amendments add licensing requirements for residential building energy analyst firms.

Part I Definitions

18VAC50-22-10. General definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Address of record" means the mailing address designated by the licensee to receive notices and correspondence from the board.

"Affidavit" means a written statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a notary or other person having the authority to administer such oath or affirmation.

"Business entity" means a sole proprietorship, partnership, corporation, limited liability company, limited liability partnership, or any other form of organization permitted by law.

"Change order" means any modification to the original contract including, but not limited to, the time to complete the work, change in materials, change in cost, and change in the scope of work.

"Controlling financial interest" means the direct or indirect ownership or control of more than 50% ownership of a firm.

"Firm" means any business entity recognized under the laws of the Commonwealth of Virginia.

"Formal vocational training" means courses in the trade administered at an accredited educational facility; or formal training, approved by the department, conducted by trade associations, businesses, military, correspondence schools or other similar training organizations.

"Full-time employee" means an employee who spends a minimum of 30 hours a week carrying out the work of the licensed contracting business.

"Helper" or "laborer" means a person who assists a licensed tradesman and who is not an apprentice as defined in 18VAC50-30-10.

"Licensee" means a firm holding a license issued by the Board for Contractors to act as a contractor, as defined in § 54.1-1100 of the Code of Virginia.

"Net worth" means assets minus liabilities. For purposes of this chapter, assets shall not include any property owned as tenants by the entirety.

"Prime contractor" means a licensed contractor that performs, supervises, or manages the construction, removal, repair, or improvement of real property pursuant to the terms of a primary contract with the property owner/lessee. The prime contractor may use its own employees to perform the work or use the services of other properly licensed contractors.

"Principal place of business" means the location where the licensee principally conducts business with the public.

"Reciprocity" means an arrangement by which the licensees of two states are allowed to practice within each other's boundaries by mutual agreement.

"Reinstatement" means having a license restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license for another period of time.

"Residential building analyst firm" means any business entity wherein a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, is offered or practiced.

"Responsible management" means the following individuals:

1. The sole proprietor of a sole proprietorship;
2. The partners of a general partnership;
3. The managing partners of a limited partnership;
4. The officers of a corporation;
5. The managers of a limited liability company;
6. The officers or directors of an association or both; and
7. Individuals in other business entities recognized under the laws of the Commonwealth as having a fiduciary responsibility to the firm.

"Sole proprietor" means any individual, not a corporation, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Supervision" means providing guidance or direction of a delegated task or procedure by a tradesman licensed in accordance with Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, being accessible to the helper or laborer, and periodically observing and evaluating the performance of the task or procedure.

"Supervisor" means the licensed master or journeyman tradesman who has the responsibility to ensure that the installation is in accordance with the applicable provisions of the Virginia Uniform Statewide Building Code and provides supervision to helpers and laborers as defined in this chapter.

"Tenants by the entirety" means a tenancy which is created between a husband and wife and by which together they hold title to the whole with right of survivorship so that, upon death of either, the other takes whole to exclusion of the deceased's remaining heirs.

"Virginia Uniform Statewide Building Code" or "USBC" means building regulations comprised of those promulgated by the Virginia Board of Housing and Community Development in accordance with § 36-98 of the Code of Virginia, including any model codes and standards that are incorporated by reference and that regulate construction, reconstruction, alteration, conversion, repair, maintenance or use of structures, and building and installation of equipment therein.

18VAC50-22-65. Requirements for a residential building energy analyst firm.

A. An applicant for a residential building energy analyst firm license must meet the requirements of this section.

B. The firm shall name a qualified individual who meets all of the following requirements:

1. Is at least 18 years old;
2. Holds a current residential building energy analyst license issued by the board; and
3. Is a full-time employee of the firm as defined in this chapter or is a member of the responsible management of the firm.

C. The applicant shall provide documentation, acceptable to the board, that the firm currently carries a minimum of \$500,000 of liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia.

D. The firm, the qualified individual, and all members of the responsible management of the firm shall disclose, at the time of application, any current or previous energy analyst or home inspection licenses held in Virginia, or in other jurisdictions, and any disciplinary actions taken on these licenses. This includes, but is not limited to, any monetary penalties, fines, suspensions, revocations, surrender of a

license in connection with a disciplinary action, or voluntary termination of a license in Virginia or in any other jurisdiction.

E. The firm shall provide information for the past five years prior to application on any outstanding, past-due debts, judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies. The firm, its qualified individual, and all members of the responsible management of the firm shall submit information on any past-due debts and judgments or defaults on bonds directly related to the practice of residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia.

F. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall disclose the following information about the firm, all members of the responsible management, and the qualified individual for the firm:

1. All misdemeanor convictions within three years of the date of application; and
2. All felony convictions during their lifetime.

Any plea of nolo contendere shall be considered a conviction for purposes of this subsection. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt. The board, in its discretion, may deny licensure to any applicant in accordance with § 54.1-204 of the Code of Virginia.

18VAC50-22-100. Fees.

Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Initial License	with license application	\$210
Class B Initial License	with license application	\$345
Class A Initial License	with license application	\$360
<u>Residential Building Energy Analyst Firm License</u>	<u>with license application</u>	<u>\$210</u>
Qualified Individual Exam Fee	with exam application	\$20
Class B Exam	with exam application (\$20)	\$40

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Fee	per section)	
Class A Exam Fee	with exam application (\$20 per section)	\$60

Note: A \$25 Recovery Fund assessment is also required with each initial license application. If the applicant does not meet all requirements and does not become licensed, this assessment will be refunded. The examination fees approved by the board but administered by another governmental agency or organization shall be determined by that agency or organization.

18VAC50-22-130. Qualifications for renewal.

A. The license holder's completed renewal form and appropriate fees must be received within 30 days of the license expiration date in order to renew the license. Applications and fees received after the 30-day period will be processed in accordance with Part IV (18VAC50-22-160 et seq.) of this chapter.

B. Applicants for renewal of a Class C license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-40. Applicants for renewal of a Class B license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-50. Applicants for renewal of a Class A license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-60.

C. Applicants for renewal of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-65 and shall submit proof of insurance as required in 18VAC50-22-65 C.

18VAC50-22-140. Renewal fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable.

In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Renewal	with renewal application	\$195
Class B Renewal	with renewal application	\$225
Class A Renewal	with renewal application	\$240
<u>Residential Building Energy</u>	<u>with renewal application</u>	<u>\$195</u>

<u>Analyst Firm</u>		
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The date on which the renewal fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for renewal or must apply for reinstatement.

Part IV Reinstatement

18VAC50-22-160. Reinstatement required.

Should the Department of Professional and Occupational Regulation fail to receive a license holder's renewal form and appropriate fees within 30 days of the license expiration date, the licensee shall be required to reinstate the license. Applicants for reinstatement of a Class C license shall meet the requirements of 18VAC50-22-130. Applicants for reinstatement of a Class B license shall continue to meet the qualifications for licensure set forth in 18VAC50-22-50. Applicants for reinstatement of a Class A license shall continue to meet all the qualifications for licensure set forth in 18VAC50-22-60. Applicants for reinstatement of a residential building energy analyst firm license shall continue to meet all of the qualifications for licensure set forth in 18VAC50-22-65.

18VAC50-22-170. Reinstatement fees.

Each check or money order should be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable. In the event that a check, money draft, or similar instrument for payment of a fee required by statute or regulation is not honored by the bank or financial institution named, the applicant or regulant shall be required to remit fees sufficient to cover the original fee, plus an additional processing charge set by the department:

Fee Type	When Due	Amount Due
Class C Reinstatement	with reinstatement application	\$405*
Class B Reinstatement	with reinstatement application	\$460*
Class A Reinstatement	with reinstatement application	\$490*
<u>Residential Building Energy Analyst Firm Reinstatement</u>	<u>with reinstatement application</u>	<u>\$405*</u>

*Includes renewal fee listed in 18VAC50-22-140.

The date on which the reinstatement fee is received by the Department of Professional and Occupational Regulation or its agent shall determine whether the licensee is eligible for reinstatement or must apply for a new license and meet the

entry requirements in place at the time of that application. In order to ensure that licensees are qualified to practice as contractors, no reinstatement will be permitted once one year from the expiration date of the license has passed.

18VAC50-22-180. Status of licensee during the period prior to reinstatement.

A. When a license is reinstated, the licensee shall continue to have the same license number and shall be assigned an expiration date two years from the previous expiration date of the license.

B. A contractor who reinstates his license shall be regarded as having been continuously licensed without interruption. Therefore:

1. The contractor shall remain under the disciplinary authority of the board during this entire period and may be held accountable for his activities during this period.
2. A consumer who contracts with a contractor during the period between the expiration of the license and the reinstatement of the license shall not be prohibited from making a claim on the Virginia Contractor Transaction Recovery Fund.

A contractor who fails to reinstate his license shall be regarded as unlicensed from the expiration date of the license forward.

Nothing in this chapter shall divest the board of its authority to discipline a contractor for a violation of the law or regulations during the period of time for which the contractor was licensed.

C. A residential building energy analyst firm who reinstates its license shall be regarded as having been continuously licensed without interruption and shall remain under the disciplinary authority of the board during this entire period and may be held accountable for its activities during this period.

18VAC50-22-260. Filing of charges; prohibited acts.

A. All complaints against contractors and residential building energy analyst firms may be filed with the Department of Professional and Occupational Regulation at any time during business hours, pursuant to § 54.1-1114 of the Code of Virginia.

B. The following are prohibited acts:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board.
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license.
3. Failure of the responsible management, designated employee, or qualified individual to report to the board, in writing, the suspension or revocation of a contractor

license by another state or conviction in a court of competent jurisdiction of a building code violation.

4. Publishing or causing to be published any advertisement relating to contracting which contains an assertion, representation, or statement of fact that is false, deceptive, or misleading.

5. Negligence and/or incompetence in the practice of contracting or residential building energy analyses.

6. Misconduct in the practice of contracting or residential building energy analyses.

7. A finding of improper or dishonest conduct in the practice of contracting by a court of competent jurisdiction or by the board.

8. Failure of all those who engage in residential contracting, excluding subcontractors to the contracting parties and those who engage in routine maintenance or service contracts, to make use of a legible written contract clearly specifying the terms and conditions of the work to be performed. For the purposes of this chapter, residential contracting means construction, removal, repair, or improvements to single-family or multiple-family residential buildings, including accessory-use structures as defined in § 54.1-1100 of the Code of Virginia. Prior to commencement of work or acceptance of payments, the contract shall be signed by both the consumer and the licensee or his agent.

9. Failure of those engaged in residential contracting as defined in this chapter to comply with the terms of a written contract which contains the following minimum requirements:

- a. When work is to begin and the estimated completion date;
- b. A statement of the total cost of the contract and the amounts and schedule for progress payments including a specific statement on the amount of the down payment;
- c. A listing of specified materials and work to be performed, which is specifically requested by the consumer;
- d. A "plain-language" exculpatory clause concerning events beyond the control of the contractor and a statement explaining that delays caused by such events do not constitute abandonment and are not included in calculating time frames for payment or performance;
- e. A statement of assurance that the contractor will comply with all local requirements for building permits, inspections, and zoning;
- f. Disclosure of the cancellation rights of the parties;
- g. For contracts resulting from a door-to-door solicitation, a signed acknowledgment by the consumer that he has been provided with and read the Department of Professional and Occupational Regulation statement of

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protection available to him through the Board for Contractors;

h. Contractor's name, address, license number, class of license, and classifications or specialty services; and

i. Statement providing that any modification to the contract, which changes the cost, materials, work to be performed, or estimated completion date, must be in writing and signed by all parties.

10. Failure to make prompt delivery to the consumer before commencement of work of a fully executed copy of the contract as described in subdivisions 8 and 9 of this subsection for construction or contracting work.

11. Failure of the contractor to maintain for a period of five years from the date of contract a complete and legible copy of all documents relating to that contract, including, but not limited to, the contract and any addenda or change orders.

12. Refusing or failing, upon request, to produce to the board, or any of its agents, any document, book, record, or copy of it in the licensee's possession concerning a transaction covered by this chapter or for which the licensee is required to maintain records.

13. Failing to respond to an agent of the board or providing false, misleading or incomplete information to an investigator seeking information in the investigation of a complaint filed with the board against the contractor. Failing or refusing to claim certified mail sent to the licensee's address of record shall constitute a violation of this regulation.

14. Abandonment defined as the unjustified cessation of work under the contract for a period of 30 days or more.

15. The intentional and unjustified failure to complete work contracted for and/or to comply with the terms in the contract.

16. The retention or misapplication of funds paid, for which work is either not performed or performed only in part.

17. Making any misrepresentation or making a false promise that might influence, persuade, or induce.

18. Assisting another to violate any provision of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; or combining or conspiring with or acting as agent, partner, or associate for another.

19. Allowing a firm's license to be used by another.

20. Acting as or being an ostensible licensee for undisclosed persons who do or will control or direct, directly or indirectly, the operations of the licensee's business.

21. Action by the firm, responsible management as defined in this chapter, designated employee or qualified individual to offer, give, or promise anything of value or benefit to any federal, state, or local employee for the purpose of

influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry.

22. Where the firm, responsible management as defined in this chapter, designated employee or qualified individual has been convicted or found guilty, after initial licensure, regardless of adjudication, in any jurisdiction, of any felony or of any misdemeanor, there being no appeal pending therefrom or the time of appeal having elapsed. Any plea of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction received from a court shall be accepted as prima facie evidence of a conviction or finding of guilt.

23. Failure to inform the board in writing, within 30 days, that the firm, a member of responsible management as defined in this chapter, its designated employee, or its qualified individual has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or of a Class 1 misdemeanor or any misdemeanor conviction for activities carried out while engaged in the practice of contracting.

24. Having been disciplined by any county, city, town, or any state or federal governing body including action by the Virginia Department of Health, which action shall be reviewed by the board before it takes any disciplinary action of its own.

25. Failure to abate a violation of the Virginia Uniform Statewide Building Code, as amended.

26. Failure of a contractor to comply with the notification requirements of the Virginia Underground Utility Prevention Act, Chapter 10.3 (§ 56-265.14 et seq.) of Title 56 of the Code of Virginia (Miss Utility).

27. Practicing in a classification, specialty service, or class of license for which the contractor is not licensed.

28. Failure to satisfy any judgments.

29. Contracting with an unlicensed or improperly licensed contractor or subcontractor in the delivery of contracting services.

30. Failure to honor the terms and conditions of a warranty.

31. Failure to obtain written change orders, which are signed by both the consumer and the licensee or his agent, to an already existing contract.

32. Failure to ensure that supervision, as defined in this chapter, is provided to all helpers and laborers assisting licensed tradesman.

33. Failure of a residential building energy analyst firm to ensure that residential building energy analyses conducted by the firm are consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the "Energy Star" Program.

34. Failure of a residential building energy analyst firm to maintain the liability insurance required in 18VAC50-22-65 C at any time while licensed by the board.

VA.R. Doc. No. R13-2849; Filed April 24, 2013, 8:49 a.m.

Emergency Regulation

Title of Regulation: **18VAC50-30. Individual License and Certification Regulations (amending 18VAC50-30-40, 18VAC50-30-90, 18VAC50-30-120, 18VAC50-30-130, 18VAC50-30-185, 18VAC50-30-190, 18VAC50-30-200).**

Statutory Authority: §§ 54.1-201 and 54.1-1146 of the Code of Virginia.

Effective Dates: July 1, 2013, and until replaced by final regulations as provided in the third enactment of Chapter 865 of the 2011 Acts of Assembly.

Agency Contact: Eric L. Olson, Executive Director, Board for Contractors, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-2785, FAX (804) 527-4401, or email contractors@dpor.virginia.gov.

Preamble:

Chapter 865 of the 2011 Acts of Assembly provides for the licensure of residential building energy analysts by the Board for Contractors and requires the board to promulgate changes to its regulations to implement the provisions of the act, to be effective within 280 days of its enactment.

The amendments add licensing requirements for residential building energy analysts, including standards for performing residential building energy analyses.

18VAC50-30-40. Evidence of ability and proficiency.

A. Applicants for examination to be licensed as a journeyman shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in the trade and 240 hours of formal vocational training in the trade. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 80 hours of formal training, but not to exceed 200 hours;
2. Four years of practical experience and 80 hours of vocational training for liquefied petroleum gas fitters and natural gas fitter providers except that no substitute experience will be allowed for liquefied petroleum gas and natural gas workers;
3. An associate degree or a certificate of completion from at least a two-year program in a tradesman-related field from an accredited community college or technical school as evidenced by a transcript from the educational institution and two years of practical experience in the trade for which licensure is desired;
4. A bachelor's degree received from an accredited college or university in an engineering curriculum related to the trade and one year of practical experience in the trade for which licensure is desired; or

5. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients attesting to the applicant's work in the trade, may be granted permission to sit for the journeyman's level examination without having to meet the educational requirements.

B. Applicants for examination to be licensed as a master shall furnish evidence that one of the following experience standards has been attained:

1. Evidence that they have one year of experience as a licensed journeyman; or
2. On or after July 1, 1995, an applicant with 10 years of practical experience in the trade, as verified by reference letters of experience from any of the following: building officials, building inspectors, current or former employers, contractors, engineers, architects or current or past clients, attesting to the applicant's work in the trade, may be granted permission to sit for the master's level examination without having to meet the educational requirements.

C. Individuals who have successfully passed the Class A contractors trade examination prior to January 1, 1991, administered by the Virginia Board for Contractors in a certified trade shall be deemed qualified as a master in that trade in accordance with this chapter.

D. Applicants for examination to be certified as a backflow prevention device worker shall furnish evidence that one of the following experience and education standards has been attained:

1. Four years of practical experience in water distribution systems and 40 hours of formal vocational training in a school approved by the board; or
2. Applicants with seven or more years of experience may qualify with 16 hours of formal vocational training in a school approved by the board.

The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

E. An applicant for certification as an elevator mechanic shall:

1. Have three years of practical experience in the construction, maintenance and service/repair of elevators, escalators, or related conveyances; 144 hours of formal vocational training; and satisfactorily complete a written examination administered by the board. Experience in excess of four years may be substituted for formal vocational training at a ratio of one year of experience for 40 hours of formal training, but not to exceed 120 hours;

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2. Have three years of practical experience in the construction, maintenance, and service/repair of elevators, escalators, or related conveyances and a certificate of completion of the elevator mechanic examination of a training program determined to be equivalent to the requirements established by the board; or

3. Successfully complete an elevator mechanic apprenticeship program that is approved by the Virginia Apprenticeship Council or registered with the Bureau of Apprenticeship and Training, U.S. Department of Labor, as evidenced by providing a certificate of completion or other official document, and satisfactorily complete a written examination administered by the board.

F. Pursuant to § 54.1-1129.1 A of the Code of Virginia, an applicant for examination as a certified water well systems provider shall provide satisfactory proof to the board of at least:

1. One year of full-time practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board to qualify for examination as a trainee water well systems provider;

2. Three years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 24 hours of formal vocational training in the trade to qualify for examination as a journeyman water well systems provider; or

3. Six years of practical experience in the drilling, installation, maintenance, or repair of water wells or water well systems under the supervision of a certified master water well systems provider or other equivalent experience as approved by the board and 48 hours of formal vocational training in the trade to qualify for examination as a master water well systems provider.

G. Pursuant to § 54.1-1145 B of the Code of Virginia, an applicant for licensure as a residential building energy analyst shall provide satisfactory proof to the board of:

1. The completion of a residential building energy analyst training program approved by the board.

2. The completion of a minimum of five residential building energy analyses under the supervision of a licensed residential building energy analyst.

3. Current membership in good standing with a certifying organization approved by the board, and

4. Maintaining a minimum of \$100,000 of liability insurance from a company authorized to provide such insurance in the Commonwealth of Virginia unless the individual is employed by a company that holds a valid residential building energy analyst firm license issued by the board.

The applicant shall provide information for the past five years prior to application on any outstanding, past-due debts, judgments, outstanding tax obligations, defaults on bonds, or pending or past bankruptcies.

H. Individuals applying for initial licensure as a residential building energy analyst who meet the criteria of § 54.1-1145 C of the Code of Virginia are not required to meet the eligibility standards for licensure found in 18VAC50-30-40 G.

18VAC50-30-90. Fees for licensure and certification.

A. Each check or money order shall be made payable to the Treasurer of Virginia. All fees required by the board are nonrefundable and shall not be prorated. The date of receipt by the department or its agent is the date that will be used to determine whether or not it is on time. Fees remain active for a period of one year from the date of receipt and all applications must be completed within that time frame.

B. Fees are as follows:

Original tradesman license by examination	\$130
Original tradesman license without examination	\$130
Card exchange (exchange of locality-issued card for state-issued Virginia tradesman license)	\$95
Liquefied petroleum gas fitter	\$130
Natural gas fitter provider	\$130
Backflow prevention device worker certification	\$130
Elevator mechanic certification	\$130
Water well systems provider certification	\$130
<u>Residential building energy analyst license</u>	<u>\$130</u>

18VAC50-30-120. Renewal.

A. Licenses and certification cards issued under this chapter shall expire two years from the last day of the month in which they were issued as indicated on the license or certification card.

B. Effective with all licenses issued or renewed after December 31, 2007, as a condition of renewal or reinstatement and pursuant to § 54.1-1133 of the Code of Virginia, all individuals holding tradesman licenses with the trade designations of plumbing, electrical and heating ventilation and cooling shall be required to satisfactorily complete three hours of continuing education for each designation and individuals holding licenses as liquefied petroleum gas fitters and natural gas fitter providers, one hour of continuing education, relating to the applicable building code, from a provider approved by the board in accordance with the provisions of this chapter. An inactive tradesman is not required to meet the continuing education requirements as a condition of renewal.

C. Certified elevator mechanics, as a condition of renewal or reinstatement and pursuant to § 54.1-1143 of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education relating to the provisions of the Virginia Statewide Building Code pertaining to elevators, escalators and related conveyances. This continuing education will be from a provider approved by the board in accordance with the provisions of this chapter.

D. Certified water well systems providers, as a condition of renewal or reinstatement and pursuant to § 54.1-1129. 1 B of the Code of Virginia, shall be required to satisfactorily complete eight hours of continuing education in the specialty of technical aspects of water well construction, applicable statutory and regulatory provisions, and business practices related to water well construction from a provider approved by the board in accordance with the provisions of this chapter.

E. Renewal fees are as follows:

Tradesman license	\$90
Liquefied petroleum gas fitter license	\$90
Natural gas fitter provider license	\$90
Backflow prevention device worker certification	\$90
Elevator mechanic certification	\$90
Water well systems provider certification	\$90
<u>Residential building energy analyst license</u>	<u>\$90</u>

All fees are nonrefundable and shall not be prorated.

F. The board will mail a renewal notice to the regulant outlining procedures for renewal. Failure to receive this notice, however, shall not relieve the regulant of the obligation to renew. If the regulant fails to receive the renewal notice, a photocopy of the tradesman license or backflow prevention device worker certification card may be submitted with the required fee as an application for renewal within 30 days of the expiration date.

G. The date on which the renewal fee is received by the department or its agent will determine whether the regulant is eligible for renewal or required to apply for reinstatement.

H. The board may deny renewal of a tradesman license or a backflow prevention device worker certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

I. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

J. Residential building energy analysts, as a condition of renewal or reinstatement, shall provide documentation of continued membership, in good standing, of a certifying organization approved by the board, and proof of insurance as required in 18VAC50-30-40 G 4.

18VAC50-30-130. Reinstatement.

A. Should the Department of Professional and Occupational Regulation fail to receive the renewal application or fees within 30 days of the expiration date, the regulant will be required to apply for reinstatement of the license or certification card.

B. Reinstatement fees are as follows:

Tradesman license	\$140*
Liquefied petroleum gas fitter license	\$140*
Natural gas fitter provider license	\$140*
Backflow prevention device worker certification	\$140*
Elevator mechanic certification	\$140*
Water well systems provider certification	\$140*
<u>Residential building energy analyst license</u>	<u>\$140*</u>

*Includes renewal fee listed in 18VAC50-30-120.

All fees required by the board are nonrefundable and shall not be prorated.

C. Applicants for reinstatement shall meet the requirements of 18VAC50-30-30.

D. The date on which the reinstatement fee is received by the department or its agent will determine whether the license or certification card is reinstated or a new application is required.

E. In order to ensure that license or certification card holders are qualified to practice as tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers, elevator mechanics, ~~or~~ water well systems providers, or residential building energy analysts, no reinstatement will be permitted once one year from the expiration date has passed. After that date the applicant must apply for a new license or certification card and meet the then current entry requirements.

F. Any tradesman, liquefied petroleum gas fitter, or natural gas fitter provider activity conducted subsequent to the expiration of the license may constitute unlicensed activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Further, any person who holds himself out as a certified backflow prevention device worker, as defined in § 54.1-1128 of the Code of Virginia, or as a certified elevator mechanic, as defined in § 54.1-1140 of the Code of Virginia, or as a water well systems provider as defined in § 54.1-1129.1 of the Code of Virginia, without the

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appropriate certification, may be subject to prosecution under Title 54.1 of the Code of Virginia. Any activity related to the operating integrity of an elevator, escalator, or related conveyance, conducted subsequent to the expiration of an elevator mechanic certification may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia. Any individual who completes a residential building energy analysis, as defined in § 54.1-1144 of the Code of Virginia, subsequent to the expiration of a residential building energy analyst license, may constitute illegal activity and may be subject to prosecution under Title 54.1 of the Code of Virginia.

G. The board may deny reinstatement of a license or certification card for the same reasons as it may refuse initial issuance or to discipline a regulant. The regulant has a right to appeal any such action by the board under the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

H. Failure to timely pay any monetary penalty, reimbursement of cost, or other fee assessed by consent order or final order shall result in delaying or withholding services provided by the department, such as, but not limited to, renewal, reinstatement, processing of a new application, or exam administration.

Part V Standards of Conduct

18VAC50-30-185. Revocation of licensure or certification.

A. Licensure or certification may be revoked for misrepresentation or a fraudulent application or for incompetence as demonstrated by an egregious or repeated violation of the Virginia Uniform Statewide Building Code.

B. The board shall have the power to require remedial education and to fine, suspend, revoke or deny renewal of a license or certification card of any individual who is found to be in violation of the statutes or regulations governing the practice of licensed tradesmen, liquefied petroleum gas fitters, natural gas fitter providers, backflow prevention device workers ~~or~~, elevator mechanics, or residential building energy analysts in the Commonwealth of Virginia.

18VAC50-30-190. Prohibited acts.

Any of the following are cause for disciplinary action:

1. Failure in any material way to comply with provisions of Chapter 1 (§ 54.1-100 et seq.) or Chapter 11 (§ 54.1-1100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board;
2. Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license or certification card;
3. Where the regulant has failed to report to the board, in writing, the suspension or revocation of a tradesman, liquefied petroleum gas fitter or natural gas fitter provider license, certificate or card, or backflow prevention device worker or water well systems provider certification card,

by another state or a conviction in a court of competent jurisdiction of a building code violation;

4. Negligence or incompetence in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider;

5. Misconduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider;

6. A finding of improper or dishonest conduct in the practice of a tradesman, liquefied petroleum gas fitter, natural gas fitter provider, backflow prevention device worker, elevator mechanic, or water well systems provider by a court of competent jurisdiction;

7. For licensed tradesmen, liquefied petroleum gas fitters or natural gas fitter providers performing jobs under \$1,000, or backflow prevention device workers, elevator mechanics, or water well systems providers performing jobs of any amount, abandonment, the intentional and unjustified failure to complete work contracted for, or the retention or misapplication of funds paid, for which work is either not performed or performed only in part (unjustified cessation of work under the contract for a period of 30 days or more shall be considered evidence of abandonment);

8. Making any misrepresentation or making a false promise of a character likely to influence, persuade, or induce;

9. Aiding or abetting an unlicensed contractor to violate any provision of Chapter 1 or Chapter 11 of Title 54.1 of the Code of Virginia, or these regulations; or combining or conspiring with or acting as agent, partner, or associate for an unlicensed contractor; or allowing one's license or certification to be used by an unlicensed or uncertified individual;

10. Where the regulant has offered, given or promised anything of value or benefit to any federal, state, or local government employee for the purpose of influencing that employee to circumvent, in the performance of his duties, any federal, state, or local law, regulation, or ordinance governing the construction industry;

11. Where the regulant has been convicted or found guilty, after initial licensure or certification, regardless of adjudication, in any jurisdiction of any felony or of a misdemeanor involving lying, cheating or stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession, there being no appeal pending therefrom or the time of appeal having elapsed. Any pleas of guilty or nolo contendere shall be considered a conviction for the purposes of this subdivision. The record of a conviction certified or authenticated in such form as to be admissible in evidence under the laws of the jurisdiction

where convicted shall be admissible as prima facie evidence of such guilt;

12. Having failed to inform the board in writing, within 30 days, that the regulant has pleaded guilty or nolo contendere or was convicted and found guilty of any felony or a misdemeanor involving lying, cheating, stealing, sexual offense, drug distribution, physical injury, or relating to the practice of the profession;

13. Having been disciplined by any county, city, town, or any state or federal governing body for actions relating to the practice of any trade, backflow prevention device work, or water well systems provider work, which action shall be reviewed by the board before it takes any disciplinary action of its own;

14. Failure to comply with the Virginia Statewide Building Code;

15. Practicing in a classification or specialty service for which the regulant is not licensed or certified;

16. Failure to obtain any document required by the Virginia Department of Health for the drilling, installation, maintenance, repair, construction, or removal of water wells, water well systems, water well pumps, or other water well equipment; ~~and~~

17. Failure to obtain a building permit or applicable inspection, where required;

18. Failure to perform a residential building energy analysis consistent with the requirements set forth by the board, the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the "Energy Star" Program; and

19. Failure of a residential building energy analyst to maintain the liability insurance required in 18VAC50-30-40 G 4.

Part VI

Vocational Training and Continuing Education Providers

18VAC50-30-200. Vocational training.

A. Vocational training courses must be completed through accredited colleges, universities, junior and community colleges; adult distributive, marketing and formal vocational training as defined in this chapter; Virginia Apprenticeship Council programs; or proprietary schools approved by the Virginia Department of Education.

B. Backflow prevention device worker courses must be completed through schools approved by the board. The board accepts the American Society of Sanitary Engineers' (ASSE) standards for testing procedures. Other programs could be approved after board review. The board requires all backflow training to include instruction in a wet lab.

C. Elevator mechanic courses must be completed through schools approved by the board. The board accepts training programs approved by the National Elevator Industry Education Program (NEIEP). Other programs could be approved after board review.

D. Water well systems provider courses must be completed through schools or programs approved by the board.

E. Residential building energy analyst courses must be completed through programs that meet or exceed the standards set forth by the U.S. Environmental Protection Agency, the U.S. Department of Energy, or the Home Performance with Energy Program. Other programs could be approved after board review.

VA.R. Doc. No. R13-2739; Filed April 24, 2013, 8:49 a.m.

REAL ESTATE APPRAISER BOARD

Final Regulation

REGISTRAR'S NOTICE: The following regulatory action is exempt from the Administrative Process Act in accordance with § 2.2-4006 A 4 c of the Code of Virginia, which excludes regulations that are necessary to meet the requirements of federal law or regulations, provided such regulations do not differ materially from those required by federal law or regulation. The Real Estate Appraiser Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC130-20. Real Estate Appraiser Board Rules and Regulations (amending 18VAC130-20-10, 18VAC130-20-60, 18VAC130-20-110).**

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

Effective Date: July 1, 2013.

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

Summary:

The amendments provide that (i) only certified real estate appraisers may supervise licensed real estate appraiser trainees; (ii) supervising appraisers must be in good standing and not subject to any disciplinary action within the last two years that affects the supervising appraiser's legal eligibility to engage in appraisal practice; and (iii) licensed real estate appraiser trainees must complete 28 hours of continuing education to renew the trainee license at the expiration of the first two-year license term. This action amends the board's regulations to comply with Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), which was amended by the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. No. 111-203) on July 21, 2010. Pursuant to this amendment, § 1116 of FIRREA (12 USC § 3345) requires trainee appraisers and supervisory appraisers to meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation.

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Part I General

18VAC130-20-10. Definitions.

The following words and terms when used in this chapter, unless a different meaning is provided or is plainly required by the context, shall have the following meanings:

"Accredited colleges, universities, junior and community colleges" means those accredited institutions of higher learning approved by the Virginia Council of Higher Education or listed in the Transfer Credit Practices of Designated Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers or a recognized international equivalent.

"Adult distributive or marketing education programs" means those programs offered at schools approved by the Virginia Department of Education or any other local, state, or federal government agency, board or commission to teach adult education or marketing courses.

"Analysis" means a study of real estate or real property other than the estimation of value.

"Appraisal Foundation" means the foundation incorporated as an Illinois Not for Profit Corporation on November 30, 1987, to establish and improve uniform appraisal standards by defining, issuing and promoting such standards.

"Appraisal subcommittee" means the designees of the heads of the federal financial institutions regulatory agencies established by the Federal Financial Institutions Examination Council Act of 1978 (12 USC § 3301 et seq.), as amended.

"Appraiser" means one who is expected to perform valuation services competently and in a manner that is independent, impartial and objective.

"Appraiser classification" means any category of appraiser which the board creates by designating criteria for qualification for such category and by designating the scope of practice permitted for such category.

"Appraiser Qualifications Board" means the board created by the Appraisal Foundation to establish appropriate criteria for the certification and recertification of qualified appraisers by defining, issuing and promoting such qualification criteria; to disseminate such qualification criteria to states, governmental entities and others; and to develop or assist in the development of appropriate examinations for qualified appraisers.

"Appraiser trainee" means an individual who is licensed as an appraiser trainee to appraise those properties which the supervising appraiser is permitted to appraise.

"Business entity" means any corporation, partnership, association or other business entity under which appraisal services are performed.

"Certified general real estate appraiser" means an individual who meets the requirements for licensure that relate to the

appraisal of all types of real estate and real property and is licensed as a certified general real estate appraiser.

"Certified instructor" means an individual holding an instructor certificate issued by the Real Estate Appraiser Board to act as an instructor.

"Certified residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any residential real estate or real property of one to four residential units regardless of transaction value or complexity. Certified residential real estate appraisers may also appraise or provide a review appraisal of nonresidential properties with a transaction value up to \$250,000.

"Classroom hour" means 50 minutes out of each 60-minute segment. The prescribed number of classroom hours includes time devoted to tests which are considered to be part of the course.

"Distance education" means an educational process based on the geographical separation of provider and student (i.e., CD-ROM, on-line learning, correspondence courses, etc.).

"Experience" as used in this chapter includes but is not limited to experience gained in the performance of traditional appraisal assignments, or in the performance of the following: fee and staff appraisals, ad valorem tax appraisal, review appraisal, appraisal analysis, real estate consulting, highest and best use analysis, and feasibility analysis/study.

For the purpose of this chapter, experience has been divided into four major categories: (i) fee and staff appraisal, (ii) ad valorem tax appraisal, (iii) review appraisal, and (iv) real estate consulting.

1. "Fee/staff appraiser experience" means experience acquired as either a sole appraiser, as a cosigner, or through disclosure of assistance in the certification in accordance with the Uniform Standards of Professional Appraisal Practice.

Sole appraiser experience is experience obtained by an individual who makes personal inspections of real estate, assembles and analyzes the relevant facts, and by the use of reason and the exercise of judgment, forms objective opinions and prepares reports as to the market value or other properly defined value of identified interests in said real estate.

Cosigner appraiser experience is experience obtained by an individual who signs an appraisal report prepared by another, thereby accepting full responsibility for the content and conclusions of the appraisal.

To qualify for fee/staff appraiser experience, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 1 and 2.

2. "Ad valorem tax appraisal experience" means experience obtained by an individual who assembles and analyzes the relevant facts, and who correctly employs those recognized methods and techniques that are necessary to produce and communicate credible appraisals within the context of the real property tax laws. Ad valorem tax appraisal experience may be obtained either through individual property appraisals or through mass appraisals as long as applicants under this category of experience can demonstrate that they are using techniques to value real property similar to those being used by fee/staff appraisers and that they are effectively utilizing the appraisal process.

To qualify for ad valorem tax appraisal experience for individual property appraisals, an individual must have prepared written appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation.

To qualify for ad valorem tax appraisal experience for mass appraisals, an individual must have prepared mass appraisals or have documented mass appraisal reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 6.

In addition to the preceding, to qualify for ad valorem tax appraisal experience, the applicant's experience log must be attested to by the applicant's supervisor.

3. "Reviewer experience" means experience obtained by an individual who examines the reports of appraisers to determine whether their conclusions are consistent with the data reported and other generally known information. An individual acting in the capacity of a reviewer does not necessarily make personal inspection of real estate, but does review and analyze relevant facts assembled by fee/staff appraisers, and by the use of reason and exercise of judgment, forms objective conclusions as to the validity of fee/staff appraisers' opinions. Reviewer experience shall not constitute more than 1,000 hours of total experience claimed and at least 50% of the review experience claimed must be in field review wherein the individual has personally inspected the real property which is the subject of the review.

To qualify for reviewer experience, an individual must have prepared written reports after January 30, 1989, recommending the acceptance, revision, or rejection of the fee/staff appraiser's opinions that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standard 3.

Signing as "Review Appraiser" on an appraisal report prepared by another will not qualify an individual for experience in the reviewer category. Experience gained in

this capacity will be considered under the cosigner subcategory of fee/staff appraiser experience.

4. "Real estate consulting experience" means experience obtained by an individual who assembles and analyzes the relevant facts and by the use of reason and the exercise of judgment, forms objective opinions concerning matters other than value estimates relating to real property. Real estate consulting experience includes, but is not necessarily limited to, the following:

- Absorption Study
- Ad Valorem Tax Study
- Annexation Study
- Assemblage Study
- Assessment Study
- Condominium Conversion Study
- Cost-Benefit Study
- Cross Impact Study
- Depreciation/Cost Study
- Distressed Property Study
- Economic Base Analysis
- Economic Impact Study
- Economic Structure Analysis
- Eminent Domain Study
- Feasibility Study
- Highest and Best Use Study
- Impact Zone Study
- Investment Analysis Study
- Investment Strategy Study
- Land Development Study
- Land Suitability Study
- Land Use Study
- Location Analysis Study
- Market Analysis Study
- Market Strategy Study
- Market Turning Point Analysis
- Marketability Study
- Portfolio Study
- Rehabilitation Study
- Remodeling Study
- Rental Market Study
- Right of Way Study
- Site Analysis Study
- Utilization Study
- Urban Renewal Study
- Zoning Study

To qualify for real estate consulting experience, an individual must have prepared written reports after January 30, 1989, that comply with the Uniform Standards of Professional Appraisal Practice in the edition in effect at the time of the reports' preparation, including Standards 4 and 5. Real estate consulting shall not constitute more than 500 hours of experience for any type of appraisal license.

"Inactive license" means a license that has been renewed without meeting the continuing education requirements

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specified in this chapter. Inactive licenses do not meet the requirements set forth in § 54.1-2011 of the Code of Virginia.

"Licensed residential real estate appraiser" means an individual who meets the requirements for licensure for the appraisal of or the review appraisal of any noncomplex, residential real estate or real property of one to four residential units, including federally related transactions, where the transaction value is less than \$1 million. Licensed residential real estate appraisers may also appraise or provide a review appraisal of noncomplex, nonresidential properties with a transaction value up to \$250,000.

"Licensee" means any individual holding an active license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, certified residential real estate appraiser, licensed residential real estate appraiser, or appraiser trainee as defined, respectively, in § 54.1-2009 of the Code of Virginia and in this chapter.

"Local, state or federal government agency, board or commission" means an entity established by any local, federal or state government to protect or promote the health, safety and welfare of its citizens.

"Proprietary school" means a privately owned school offering appraisal or appraisal related courses approved by the board.

"Provider" means accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations.

"Real estate appraisal activity" means the act or process of valuation of real property or preparing an appraisal report.

"Real estate appraisal" or "real estate related organization" means any appraisal or real estate related organization formulated on a national level, where its membership extends to more than one state or territory of the United States.

"Reciprocity agreement" means a conditional agreement between two or more states that will recognize one another's regulations and laws for equal privileges for mutual benefit.

"Registrant" means any corporation, partnership, association or other business entity which provides appraisal services and which is registered with the Real Estate Appraiser Board in accordance with § 54.1-2011 E of the Code of Virginia.

"Reinstatement" means having a license or registration restored to effectiveness after the expiration date has passed.

"Renewal" means continuing the effectiveness of a license or registration for another period of time.

"Sole proprietor" means any individual, but not a corporation, partnership or association, who is trading under his own name, or under an assumed or fictitious name pursuant to the provisions of §§ 59.1-69 through 59.1-76 of the Code of Virginia.

"Substantially equivalent" is any educational course or seminar, experience, or examination taken in this or another jurisdiction which is equivalent in classroom hours, course content and subject, and degree of difficulty, respectively, to those requirements outlined in this chapter and Chapter 20.1 (§ 54.1-2009 et seq.) of Title 54.1 of the Code of Virginia for licensure and renewal.

"Supervising appraiser" means any individual holding a license issued by the Real Estate Appraiser Board to act as a certified general real estate appraiser, or certified residential real estate appraiser, ~~or licensed residential real estate appraiser~~ who supervises any unlicensed person acting as a real estate appraiser or an appraiser trainee as specified in this chapter.

"Transaction value" means the monetary amount of a transaction which may require the services of a certified or licensed appraiser for completion. The transaction value is not always equal to the market value of the real property interest involved. For loans or other extensions of credit, the transaction value equals the amount of the loan or other extensions of credit. For sales, leases, purchases and investments in or exchanges of real property, the transaction value is the market value of the real property interest involved. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of the loan or the market value of real property calculated with respect to each such loan or interest in real property.

"Uniform Standards of Professional Appraisal Practice" means those standards promulgated by the Appraisal Standards Board of the Appraisal Foundation for use by all appraisers in the preparation of appraisal reports.

"Valuation" means an estimate or opinion of the value of real property.

"Valuation assignment" means an engagement for which an appraiser is employed or retained to give an analysis, opinion or conclusion that results in an estimate or opinion of the value of an identified parcel of real property as of a specified date.

"Waiver" means the voluntary, intentional relinquishment of a known right.

18VAC130-20-60. Qualifications for licensure as an appraiser trainee.

An applicant for licensure as an appraiser trainee shall meet the following educational, experience, and examination requirements in addition to those set forth in subdivisions 1 through 5 and 9 of 18VAC130-20-30.

1. Within 12 months after being approved by the board to take the examination, the applicant shall have registered for and passed a written examination provided by the board or by a testing service acting on behalf of the board. Successful completion of the examination is valid for a period of 24 months.

2. Within the five-year period immediately preceding application for licensure, the applicant shall have successfully completed 75 hours of approved real estate appraisal courses from accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations. The classroom hours shall include the 15-hour National Uniform Standards of Professional Appraisal Practice course.

3. There is no experience requirement for the appraiser trainee classification.

4. Responsibilities of supervising appraisers are described in this subdivision.

a. The appraiser trainee shall be subject to direct supervision by a supervising appraiser who shall be state certified in good standing and not subject to any disciplinary action within the last two years that affects the supervising appraiser's legal eligibility to engage in appraisal practice.

b. The supervising appraiser shall be responsible for the training and direct supervision of the appraiser trainee by:

(1) Accepting responsibility for the appraisal report by signing and certifying the report is in compliance with the Uniform Standards of Professional Appraisal Practice;

(2) Reviewing the appraiser trainee appraisal report(s); and

(3) Personally inspecting each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of the Uniform Standards of Professional Appraisal Practice for the property type.

c. The appraiser trainee is permitted to have more than one supervising appraiser, but a supervising appraiser may not supervise more than three trainees, at one time, unless a state program in the licensing jurisdiction provides for progress monitoring, supervising certified appraiser qualifications, and supervision and oversight requirements for supervising appraisers.

18VAC130-20-110. Qualifications for renewal.

A. As a condition of renewal, and under § 54.1-2014 of the Code of Virginia, all active certified general real estate appraisers, certified residential real estate appraisers, and licensed residential real estate appraisers, resident or nonresident, shall be required to complete continuing education courses satisfactorily within each licensing term as follows:

1. All real estate appraisers must satisfactorily complete continuing education courses or seminars offered by

accredited colleges, universities, junior and community colleges; adult distributive or marketing education programs; local, state or federal government agencies, boards or commissions; proprietary schools; or real estate appraisal or real estate related organizations of not less than 28 classroom hours during each licensing term.

2. All real estate appraisers may also satisfy up to one half of an individual's continuing education requirements by participation other than as a student in educational processes and programs approved by the board to be substantially equivalent for continuing education purposes, including but not limited to teaching, program development, or authorship of textbooks.

3. Seven of the classroom hours completed to satisfy the continuing education requirements shall be the National Uniform Standards of Professional Appraisal Practice update course or its equivalent.

B. As a condition of renewal, all licensed real estate appraiser trainees shall meet the continuing education requirements set forth in subsection A of this section ~~beginning with the second licensing term. Continuing education is not required to renew a real estate appraiser trainee license at the expiration of the first licensing term.~~

C. All applicants for renewal of a license shall meet the standards for entry as set forth in subdivisions 1, 3, and 4 of 18VAC130-20-30.

D. Applicants for the renewal of a registration shall meet the requirement for registration as set forth in 18VAC130-20-20.

E. Applicants for the renewal of a certificate as an instructor shall meet the standards for entry as set forth in 18VAC130-20-80.

F. Licensees applying to activate an inactive license must complete all required continuing education hours that would have been required if the licensee was active prior to application to activate the license.

VA.R. Doc. No. R13-3713; Filed April 29, 2013, 3:51 p.m.

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

Final Regulation

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

Regulations

Title of Regulation: 18VAC160-20. Board for Waterworks and Wastewater Works Operators and Onsite Sewage System Professionals Regulations (amending 18VAC160-20-98).

Statutory Authority: §§ 54.1-201 and 54.1-2301 of the Code of Virginia.

Effective Date: July 1, 2013.

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

Summary:

The amendment permits an individual who possesses a valid wastewater works operator license to sit for the conventional onsite sewage system operator exam.

18VAC160-20-98. Qualifications for licensure - onsite sewage system operators.

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

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

C. Specific entry requirements.

1. Conventional onsite sewage system operator. Each individual applying for an initial conventional onsite sewage system operator license shall pass a board-approved examination and shall ~~have at least one year of full-time experience as a sewage handler or one year of full-time experience working under the direct supervision of either an interim conventional, interim alternative, conventional, or alternative onsite sewage system operator licensee.~~ meet one of the following requirements:

a. Have at least one year of full-time experience as a sewage handler;

b. Have one year of full-time experience working under the direct supervision of either an interim conventional, interim alternative, conventional, or alternative onsite sewage system operator licensee; or

c. Possess a valid wastewater works operator license.

2. Alternative onsite sewage system operator. Each individual applying for an initial alternative onsite sewage system operator license shall possess a valid interim onsite sewage system operator license or a valid conventional onsite sewage system operator license, shall pass a board-approved examination, and shall meet one of the following requirements:

a. Have no high school diploma and 24 months of full-time experience working under the direct supervision of an alternative onsite sewage system operator licensee or

an interim alternative onsite sewage system operator licensee;

b. Have a high school diploma or GED and 12 months of full-time experience working under the direct supervision of an alternative onsite sewage system operator licensee or an interim alternative onsite sewage system operator licensee; or

c. Possess a valid Class IV or higher wastewater works operator license and have satisfactorily completed an onsite sewage system operator course approved by the board or have six months of full-time experience working under the direct supervision of an alternative onsite sewage system operator licensee or an interim alternative onsite sewage system operator licensee.

D. Education and training substitution. Each individual applying for a conventional or an alternative onsite sewage system operator license may receive credit for up to half of the experience required by this section for:

1. Satisfactory completion of postsecondary courses in wastewater, biology, chemistry, geology, hydraulics, hydrogeology, or soil science at the rate of one month per semester hour or two-thirds of a month per quarter hour; or

2. Satisfactory completion of board-approved onsite sewage system operator training courses at the rate of one month for each training credit earned. Up to one training credit is awarded for each 10 hours of classroom contact time or for each 20 hours of laboratory exercise and field trip contact time. No credit towards training credits is granted for breaks, meals, receptions, and time other than classroom, laboratory and field trip contact time.

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

FORMS (18VAC160-20)

Continuing Professional Education (CPE) Certificate of Completion, 19CPE (rev. 05/09).

Application for Training Course Approval, 19CRS (rev. 05/09).

Experience Verification Form, 19EXP (eff. 07/09).

[Experience Verification Application – Onsite Sewage System Applicants Only, A436-19EXP \(rev. 10/12\).](#)

Education & Training Substitution Form, 19ET_SUB (eff. 07/09).

Licensure Fee Notice, 19FEE (eff. 07/09).

Interim Onsite Soil Evaluator - VDH Employees Only License Application, 1930LIC (eff. 07/09).

Interim Onsite Sewage System Installer License Application, 1931_32LIC (eff. 07/09).

Interim Onsite Sewage System Operator License Application, 1933_34LIC (eff. 07/09).

Onsite Soil Evaluator Exam & License Application, 1940_41EXLIC (eff. 07/09).

[Onsite Sewage System Installer Exam & License Application, A465-1944EXLIC \(rev. 12/12\).](#)

Onsite Sewage System Operator Exam & License Application, 1942_43EXLIC (eff. 07/09).

[Suspension of Examination – Conventional Onsite Sewage System Installer License Application, 1944WAIV \(eff. 07/12\).](#)

[Onsite Sewage System Operator - Exam & License Application, A465-1942EXLIC-v3, \(eff 07/13\).](#)

VA.R. Doc. No. R13-3656; Filed April 19, 2013, 8:36 a.m.



TITLE 22. SOCIAL SERVICES

STATE BOARD OF SOCIAL SERVICES

Fast-Track Regulation

Title of Regulation: 22VAC15-11. Public Participation Guidelines (repealing 22VAC15-11-10 through 22VAC15-11-110).

Statutory Authority: §§ 2.2-4007.02 and 63.2-217 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: June 19, 2013.

Effective Date: July 5, 2013.

Agency Contact: Karin Clark, Regulatory Coordinator, Department of Social Services, 801 East Main Street, Room 1507, Richmond, VA 23219, telephone (804) 726-7017, FAX (804) 726-7015, TTY (800) 828-1120, or email karin.clark@dss.virginia.gov.

Basis: In accordance with changes to the Code of Virginia effective July 1, 2012, the Child Day Care Council was abolished. Per Chapters 803 and 835 of the 2012 Acts of Assembly, regulations promulgated by the council pursuant to §§ 63.2-1734 and 63.2-1735 of the Code of Virginia shall be administered by the State Board of Social Services and remain in effect until the board promulgates new regulations. Section 63.2-217 of the Code of Virginia provides that the board shall adopt regulations necessary to carry out the purposes of Title 63.2 of the Code of Virginia.

Purpose: The State Board of Social Services has a public participation guidelines regulation (22VAC40-12) that

mirrors 22VAC15-11, the Child Day Care Council's public participation guidelines regulation. This action repeals 22VAC15-11 because it is no longer needed.

Rationale for Using Fast-Track Process: The action is not expected to be controversial because the State Board of Social Services already has in effect a public participation guidelines regulation, which mirrors the Child Day Care Council regulation. The board's regulation will cover regulations previously promulgated by the council. Public participation will not be compromised by the repeal of 22VAC15-11. This action simply repeals an unnecessary regulation.

Substance: There are no substantive provisions or changes with this action.

Issues: There are no disadvantages to the public, agency, or Commonwealth. In keeping with the goal of streamlining government and creating efficiency, the action is advantageous to the public, agency, and the Commonwealth because it removes an unnecessary regulation from the Virginia Administrative Code and eliminates the administrative tasks associated with maintaining it.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services proposes to repeal public participation guidelines of a now defunct entity, the Child Day Care Council.

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

Estimated Economic Impact. In accordance with changes to the Code of Virginia, effective July 1, 2012, the Child Day Care Council (Council) was abolished. Chapters 803 and 835 of the 2012 Acts of Assembly mandated that regulations promulgated by the Council pursuant to §§ 63.2-1734 and 63.2-1735 shall be administered by the State Board of Social Services (Board) and remain in effect until the Board promulgates new regulations.

The Board already has public participation guidelines that are identical to those of the abolished Council. This action repeals the Council's duplicative public participation guidelines, as they are no longer needed. The proposed repeal is not expected to create any significant economic effects other than reducing the amount of regulatory text in the Virginia Administrative Code.

Businesses and Entities Affected. The proposed regulations primarily apply to child day care centers and their customers. Currently, there are 2,523 licensed day care centers. The number of child day care center customers is not known.

Localities Particularly Affected. Proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. No impact on employment is expected.

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Effects on the Use and Value of Private Property. No effects of the use and value of private property expected.

Small Businesses: Costs and Other Effects. No costs or other effects are expected on small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes are not anticipated to have any adverse impact on small businesses.

Real Estate Development Costs. No impact on real estate development costs is expected.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 14 (10). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

Agency's Response to Economic Impact Analysis: The Department of Social Services concurs with the economic impact analysis prepared by the Department of Planning and Budget.

Summary:

Chapters 803 and 835 of the 2012 Acts of Assembly abolished the Child Day Care Council and transferred its responsibilities to the State Board of Social Services effective July 1, 2012. The State Board of Social Services has public participation guidelines in 22VAC40-12; therefore, the public participation guidelines for the Child Day Care Council are repealed.

V.A.R. Doc. No. R13-3284; Filed April 19, 2013, 10:59 a.m.

Final Regulation

REGISTRAR'S NOTICE: The State Board of Social Services is claiming an exemption from the Administrative Process Act in accordance with § 2.2-4006 A 4 a of the Code of Virginia, which excludes regulations that are necessary to

conform to changes in Virginia statutory law where no agency discretion is involved.

Title of Regulation: **22VAC40-411. General Relief Program (amending 22VAC40-411-10; repealing 22VAC40-411-30 through 22VAC40-411-60, 22VAC40-411-80 through 22VAC40-411-110, 22VAC40-411-130 through 22VAC40-411-160).**

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

Effective Date: July 2, 2013.

Agency Contact: Bernadette Anderson, Department of Social Services, Division of Benefit Programs, 801 East Main Street, Richmond, VA 23219, telephone (804) 726-7388, FAX (804) 726-7357, TTY (800) 828-1120, or email bernadette.anderson@dss.virginia.gov.

Summary:

The amendments remove all General Relief (GR) components, with the exception of the unattached children component, in response to Item 332 of the 2011 Appropriation Act, which eliminated the associated program funding. The components eliminated are (i) assistance for unemployed employable individuals, (ii) assistance for employable individuals, (iii) institutional care, (iv) ongoing and emergency medical assistance, (v) interim assistance, (vi) food credit authorization assistance, (vii) shelter assistance, and (x) clothing assistance.

22VAC40-411-10. Definitions.

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

~~"Advocacy services" means legal services to help establish eligibility for federal disability benefits.~~

"Affidavit of support" or "Form I-134" means a statement of a sponsor's income, resources, and willingness to support. Form I-134 or similar form is filed with the Citizenship and Immigrant Services (USCIS) by a United States resident who sponsors an alien seeking admission to the United States as a permanent resident. The affidavit is made for the purpose of assuring the United States government that the sponsored alien will not become a public charge in the United States.

"Agency" means the local department of social services.

"Agency action" or "action" means action taken by the superintendents or directors or local board certifying the individual or family is eligible for maintenance or emergency assistance.

~~"Agency contract" means the local department of social services has an agreement with a pharmacy to provide prescription drugs for recipients of General Relief.~~

"Appeal process" means a review of the decision on the disability claim that can involve four steps: reconsideration, hearing before an administrative law judge, review by Appeals Council, and hearing in a federal court.

"Assistance for unattached children" means a component of the General Relief Program that can provide assistance to children who would be eligible for Temporary Assistance for Needy Families (TANF) if the relationship requirement were met.

~~"Assistance for unemployable individuals" means a component of the General Relief Program that can provide assistance to individuals who are unable to work because of physical or mental disability, age or lack of training, illness in the family, or home responsibilities.~~

~~"Assistance for unemployed employable individuals" means a component of the General Relief Program that can provide assistance to individuals who are not working but are able to work.~~

"Assistance unit" means the individual or group of individuals whose needs, income, and resources are considered in determining eligibility for a component.

~~"Bar association" means a professional association for attorneys.~~

~~"Clothing assistance" means a component of the General Relief Program that can be used to purchase clothing for individuals who have an emergency need.~~

"Component" means a specific type of assistance provided under the General Relief Program.

~~"Disability" means a physical or mental condition rendering a person unable to perform any meaningful work and this condition is expected to last at least 12 months or result in death.~~

~~"Disability Determination Services" means a program administered by the Virginia Department of Rehabilitative Services that makes decisions on disability claims for the Social Security Administration.~~

~~"Disability insurance benefits" means Title II of the Social Security Act that provides benefits to disabled persons who have worked for a substantial period in employment covered by Social Security.~~

"Entitlement date or entitlement" means the date eligibility begins.

~~"Emergency medical assistance" means a component of the General Relief Program that can be used to purchase medical assistance for individuals who have an emergency need.~~

"Equal Access to Justice Act" means an act that allows a federal court to grant an attorney a fee for proceedings before an administrative agency.

~~"Food credit authorization assistance" means a component of the General Relief Program that can be used to purchase food for individuals who have an emergency need.~~

"Federal disability benefits" means disability insurance benefits or Supplemental Security Income.

"Foster child" means a child who is entrusted or committed to a state mandated service and the child is identified as "at risk" or "in crisis."

"General Relief Plan" means the document completed by a local department of social services to identify the components included in the General Relief Program for the locality.

"General Relief Program (GR)" means an optional program funded by state (62.5%) and local funds (37.5%) with the primary purpose of assisting individuals unattached children who do not qualify for aid in a federal category. The program is supervised by the State Department of Social Services and administered by local agencies. ~~Each agency chooses the components and subcomponents to be included in its General Relief Program.~~

"Hearing before an administrative law judge" means the first level formal fair hearing of decisions of the Social Security Administration to deny federal disability benefits. The hearing is conducted by an attorney who is an official of the Social Security Administration.

~~"Interim assistance" means a component of the General Relief Program that can provide assistance to individuals who have applied for Supplemental Security Income (SSI), who must apply for SSI, or are appealing an SSI decision. Individuals receiving interim assistance must sign an authorization allowing the Social Security Administration to send their initial retroactive Supplemental Security Income benefits to the local agency, which then reimburses its general relief budget for the amount of financial assistance given the individuals while their Supplemental Security Income benefits were pending approval.~~

"Legal aid attorney" means an attorney who provides legal services at no cost to people within certain income guidelines.

"Maintenance payments" or "maintenance" means ongoing financial assistance from the general relief program.

"Maximum for the locality" means the amount of reimbursable assistance applicable to some components based on the agency group. Agencies are placed in one of three groups based on shelter expenses in the area.

"Monthly maximum" means the dollar amount of assistance specified in the General Relief Plan for some components the unattached child component.

~~"Ongoing medical assistance" means a component of the General Relief Program that can be used to provide individuals continuing medical assistance. The component is composed of 10 subcomponents including prescription drugs.~~

"Permanent resident status" means having been lawfully accorded the privilege of residing permanently in the United States as an immigrant.

"Private attorney" means an attorney engaged in the private practice of law for which a fee is charged.

"Provider" means an attorney, or an individual working under the supervision of an attorney legally allowed to do so, who provides assistance in establishing an individual's eligibility for federal disability benefits.

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"Recipient" means an individual who is receiving interim assistance.

~~"Reconsideration" means a review of the disability claim by the Disability Determination Services.~~

~~"Recoupment" means the amount reimbursed to the general relief or state and local foster care funds from an individual's retroactive Supplemental Security Income benefits for assistance to that individual while approval for federal disability benefits was pending approval.~~

"Reimbursable" means the amount an assistance unit can receive per month for which the state/local match is available.

~~"Rent/house payments" means a subcomponent of the shelter assistance component that can be used to pay housing expenses.~~

"Review by the Appeals Council" means a review of the decisions of the administrative law judge by a review unit of the Social Security Administration. The Appeals Council either decides the case or issues an order returning it to an administrative law judge for further review.

~~"Shelter assistance" means a component of the General Relief Program that can be used to provide for the shelter needs of individuals. The component's two subcomponents are rent/house payments and utility payments.~~

"Sponsor" means a person, or any public or private agency or organization, that executed an affidavit of support or similar agreement on behalf of an alien as a condition of the alien's entry into the United States as a permanent resident.

"Sponsored alien" means an immigrant who due to the likelihood of his becoming a public charge would have been excluded from lawful admission into the United States. As a condition of this immigrant's admission, a person or public or private agency or organization executed an affidavit of support or similar agreement guaranteeing the federal, state, and local governments that the immigrant would not become a public charge.

"Standard of assistance" means the amount of reimbursable assistance based on the size of the assistance unit and the local department of social services group. Local agencies are placed in one of three groups based on shelter expenses in the area.

"Standard of assistance at 90% of need" means the amount of reimbursable assistance applicable to some components based on the size of the assistance unit and the agency group. Agencies are placed in one of three groups based on shelter expenses in the area.

"Subcomponent" means a part of a component.

"Supplemental Security Income" means Title XVI of the Social Security Act that provides benefits to a disabled person based on financial need.

"Temporary Assistance for Needy Families" (TANF) means the federal program administered by the Virginia Department

of Social Services that provides assistance for families with children.

"United States Citizenship and Immigration Services (USCIS)" is a branch of the United States Department of Homeland Security delegated authority to enforce the Immigration and Nationality Act and all other laws relating to the immigration and naturalization of aliens.

~~"Utility payments" means a subcomponent of the shelter assistance component that can be used to pay for items, such as electricity, oil, water, and natural gas.~~

22VAC40-411-30. Assistance for unemployed employable individuals. (Repealed.)

~~An agency electing to provide this component will specify in its General Relief Plan the types of assistance units served. The choices are:~~

- ~~1. Parents and their minor children;~~
- ~~2. A parent and minor children;~~
- ~~3. A married couple with no children;~~
- ~~4. One individual; or~~
- ~~5. An unmarried pregnant woman.~~

22VAC40-411-40. Assistance for unemployable individuals. (Repealed.)

~~An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:~~

- ~~1. The standard of assistance at 90% of need times three;~~
- ~~2. The standard of assistance at 90% of need times six;~~
- ~~3. The standard of assistance at 90% of need times nine; or~~
- ~~4. The standard of assistance at 90% of need times 12 or the maximum for the locality times 12.~~

22VAC40-411-50. Ongoing medical assistance. (Repealed.)

~~A. An agency electing to provide this component will specify in its General Relief Plan the amount of assistance that can be received by an assistance unit in 12 consecutive months. The choices are:~~

- ~~1. Three times the monthly maximum;~~
- ~~2. Six times the monthly maximum;~~
- ~~3. Nine times the monthly maximum; or~~
- ~~4. Twelve times the monthly maximum.~~

~~B. An agency electing to provide for the purchase of prescription drugs will specify in its General Relief Plan whether recipients are required to obtain drugs at a pharmacy with an agency contract. The choices are:~~

- ~~1. Recipients are not required to buy prescription drugs from a contracted pharmacy; or~~
- ~~2. Recipients are required to buy prescription drugs from a contracted pharmacy.~~

22VAC40-411-60. Interim assistance. (Repealed.)

~~An agency that elects to provide this component but does not elect to provide assistance for unemployable individuals will specify in its General Relief Plan whether interim assistance will be restricted to assistance units with an individual with a disability that will last 12 months, has lasted 12 months, or will result in death. The choices are:~~

- ~~1. Assistance will not be restricted; or~~
- ~~2. Assistance will be restricted.~~

22VAC40-411-80. Food credit authorization assistance. (Repealed.)

~~An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:~~

- ~~1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or~~
- ~~2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.~~

22VAC40-411-90. Shelter assistance. (Repealed.)

~~A. An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:~~

- ~~1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or~~
- ~~2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.~~

~~B. An agency electing to provide rent/house payments will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:~~

- ~~1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or~~
- ~~2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.~~

~~C. An agency electing to provide utility payments will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:~~

- ~~1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or~~
- ~~2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.~~

22VAC40-411-100. Emergency medical assistance. (Repealed.)

~~A. An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:~~

~~1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or~~

~~2. Assistance will be provided for a maximum of one to 12 months out of 12 consecutive months.~~

~~B. An agency electing to provide prescription drugs will specify in its General Relief Plan whether recipients are required to obtain drugs at a pharmacy with an agency contract. The choices are:~~

~~1. Recipients are not required to buy prescription drugs from a contracted pharmacy; or~~

~~2. Recipients are required to buy prescription drugs from a contracted pharmacy.~~

22VAC40-411-110. Clothing assistance. (Repealed.)

~~An agency electing to provide this component will specify in its General Relief Plan the maximum number of months that assistance can be received by an assistance unit. The choices are:~~

~~1. Assistance will be provided for a maximum of one to six months out of six consecutive months; or~~

~~2. Assistance will be provided for a maximum of one to 12 months.~~

22VAC40-411-130. Disability advocacy referral. (Repealed.)

~~The agency electing to provide disability advocacy services will identify recipients of the interim assistance component of general relief who have received written notification from the Social Security Administration that their disability claims at the application or reconsideration level have been denied. Within five working days after the identification, the agency will send letters to the interim assistance recipients explaining advocacy services, offering to refer them to advocacy providers for legal representation during the appeal process, providing information on how the appeal would affect their general relief benefits, and advising them that they have five days from the receipt of this letter to contact the agency requesting advocacy services.~~

~~If the interim assistance recipient chooses to participate in the Disability Advocacy Project, he will be allowed to select a provider from a list of qualified advocacy providers with whom the agency has contracts or be allowed to select another provider if that provider meets the qualifications and agrees to enter into a contract with the agency.~~

~~The agency will have the interim assistance recipient sign a Confidentiality Form (VDSS Form 032-01-0040-03 eng) giving the agency permission to refer the recipient to the selected provider.~~

~~Within five working days after the selection, a referral letter will be sent by the agency to the selected advocacy provider.~~

22VAC40-411-140. Duties of the disability advocacy provider. (Repealed.)

~~Advocacy providers will perform the following services:~~

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~~1. Within five working days of receipt of a referral letter from the agency, send a letter to the interim assistance recipient or the child's representative, acknowledging the referral and instructing the recipient or child's representative to protect the filing date by filing a Request for Reconsideration or Request for a Hearing with the Social Security Administration within 60 days of the date of his denial notice.~~

~~2. Contact the interim assistance recipient or child's representative by mail and telephone, if necessary, to schedule an appointment for an interview. If the provider cannot contact the recipient or the recipient does not keep the appointment, the provider will promptly notify the agency.~~

~~3. During the interview with the interim assistance recipient or child's representative, provide legal advice and counsel regarding federal disability benefits and the appeal process. The provider will assess the potential eligibility of the recipient or child for federal disability benefits. The decision whether to proceed or not proceed in the appeal process must be made by the recipient or the child's representative after receiving legal advice from the provider. The recipient or the child's representative must request the services of the advocacy provider by signing the Social Security Form SSA 1696 U4 under the Appointment of Representative section.~~

~~4. Within 15 working days of the initial interview with the recipient or child's representative, send a notification letter to the recipient or child's representative with a copy to the agency stating whether or not the provider will accept this case for legal representation.~~

~~5. If the provider agrees to provide advocacy services, sign Social Security Form SSA 1696 U4 under the Acceptance of Appointment and Waiver of Fee sections. Copies of the form will be sent within five working days to the Social Security Administration and to the agency.~~

~~6. Assist in the completion and timely filing of any necessary Social Security forms requesting a reconsideration, hearing, or review of the hearing decision.~~

~~7. Assist in obtaining and using medical, social, vocational evidence, or expert testimony that may substantiate the presence and severity of the disability.~~

~~8. Assist the recipient in making and keeping appointments for examinations.~~

~~9. Prepare for and adequately represent the recipient or child at interviews, hearings, or appeals related to application for Supplemental Security Income.~~

~~10. Notify the recipient or the child's representative of any denial and the right to appeal to the next level in the appeal process.~~

~~11. Notify the agency of any denial and the recipient's or child's representative's decision to proceed or not proceed to the next level in the appeal process.~~

~~12. Notify the recipient, the child's representative, and the agency when advocacy services have ended.~~

22VAC40-411-150. Disability advocacy contracts. (Repealed.)

~~Agencies shall contract with licensed legal aid or private attorneys or advocates working under the supervision of an attorney who may lawfully do so to provide legal representation in the appeal process. The providers must have previously provided successful representation to disability claimants during the reconsideration, administrative law judge hearing, Appeals Council, or federal district court levels of the federal disability adjudication process.~~

~~Qualified attorneys will be recruited by agencies giving written notice to their local legal aid and bar associations that contracts for legal representation of interim assistance recipients and foster children in the federal disability benefits appeal process will be available.~~

22VAC40-411-160. Disability advocacy disbursement. (Repealed.)

~~To receive payment, the advocacy provider must submit a petition and copy of the favorable Social Security Administration decision to the agency within 60 days of such a decision. Disbursement for legal representation will be made by the agency within 20 working days after the agency receives the initial Supplemental Security Income payment due the recipient or child.~~

~~No disbursement will be made unless the following have occurred:~~

~~1. The agency referred the recipient or child's representative for legal representation;~~

~~2. The recipient or child's representative requested the legal representation by signing the Appointment of Representative section of Social Security Form SSA 1696 U4;~~

~~3. The advocacy provider signed the Acceptance of Appointment and Waiver of Fee sections of Social Security Form SSA 1696 U4; and~~

~~4. The agency received the initial Supplemental Security Income payment for the recipient or child.~~

~~No disbursement will be made for legal services given before the date of the agency's referral letter. Providers shall not require from the recipient or child's representative prepayment of any fees, costs, or disbursement.~~

~~The disbursement made by the agency will represent payment in full for all legal services to the recipient or child in this process with no further obligation on the part of the state or local department of social services, the recipient, nor the child's representative.~~

~~Neither the recipient, the child's representative, the State Department of Social Services, nor local agency shall be obligated to pay any additional fees, costs, or disbursement related to the provision of legal services in the appeal process.~~

~~including, but not limited to, payment for medical, psychological, or vocational consultations obtained to substantiate the disability claim. Under most circumstances, if preapproved by Disability Determination Services, the Social Security Administration will cover the cost of these consultations.~~

~~Contracting attorneys will agree to waive their right to legal fees paid by the Social Security Administration from the initial check for retroactive disability insurance benefits due the recipient or child should he be found eligible for both disability insurance benefits and Supplemental Security Income. An award for attorney's fees under the Equal Access to Justice Act will not be required to be waived.~~

~~The provider's fee will be paid entirely from the recoupment from the initial Supplemental Security Income payment for state and local financial assistance given the recipient or child while the Supplemental Security Income application was pending approval. The fee per favorable decision at the reconsideration level will be \$300; at the hearing before an administrative law judge, \$600; and at the Appeals Council or federal district court, \$750. The fee may in no event exceed the recoupment for the state and local assistance paid.~~

VA.R. Doc. No. R13-3462; Filed April 25, 2013, 10:33 a.m.

GOVERNOR

EXECUTIVE ORDER NUMBER 63 (2013)

Establishing the Governor's Teacher Cabinet

Importance of the Issue

Virginia's teachers are entrusted with the education of our children and strive to instill a love of learning in and out of the classroom. Our teachers, through academics, athletics, extra-curricular activities and social interaction, lead students to develop independence, self-discipline and character. We must do everything we can to recruit, retain and reward excellent teachers in Virginia. Teachers are valuable resources to ensure a prosperous future in the Commonwealth.

While the Commonwealth is fortunate to benefit from a top-ranked K-12 education system and world class teachers, we must continue to look for ways to elevate our educator workforce and to place the most effective and prepared teachers in the classroom. We must ensure that we craft policies, procedures and regulations that allow for flexibility and innovation, yet continue to hold our educators accountable.

The following measures are a critical step to continue promoting the importance of effective teachers.

Establishment of the Governor's Teacher Cabinet

We must harness the unlimited educational potential to create greater opportunities for our young people and the Commonwealth. Accordingly, by virtue of the authority vested in me as Governor under Article V of the Constitution of Virginia and under the laws of the Commonwealth, including but not limited to §§ 2.2-134 and 2.2-135 of the Code of Virginia, and subject to my continuing and ultimate authority and responsibility to act in such matters, I hereby establish the Governor's Teacher Cabinet ("Cabinet").

Composition of the Governor's Teacher Cabinet

The Governor's Teacher Cabinet shall receive the full staff support of the Office of the Secretary of Education and the Virginia Department of Education. The Cabinet shall include up to twenty non-legislative citizen members comprised of educators with diverse experiences and perspectives. The Cabinet shall include up to two legislators with a background in education. The Secretary of Education and Teacher of the Year shall serve as ex-officio members. All agencies, as deemed necessary by the Secretary of Education, shall participate and provide assistance as requested. In addition, each executive branch agency that has a significant impact on K-12 education shall designate one person to serve as a liaison to the Cabinet. Further, I reserve the authority to designate any other such citizens as I deem appropriate to serve on the Cabinet. The Governor shall appoint the chair and vice chair(s) of the Cabinet.

Members of the Cabinet shall serve without compensation.

Charge for the Governor's Teacher Cabinet

The Governor's Teacher Cabinet shall have the following responsibilities:

1. Identify additional resources, learning tools and professional development opportunities that the Department of Education could make available to local school divisions;
2. Recommend strategies for greater parent and community engagement;
3. Recommend strategies to improve the K-12 education, higher education and workforce collaboration;
4. Identify any needed improvements to administrative responsibilities; and
5. Recommend strategies to close the achievement gap and assist disadvantaged students.

An estimated 400 hours of staff time will be required to support the Cabinet. An estimated \$2,000 in office materials is expected to fund the Cabinet. Such funding as is necessary for the term of the Cabinet's existence shall be provided from sources, including both private and appropriated funds, contributed or appropriated for purposes related to the work of the cabinet, as authorized by § 2.2-135(B) of the Code of Virginia.

The Cabinet shall provide its first report of recommendations and action items to the Governor no later than July 1, 2013. The Cabinet shall thereafter provide regular supplemental reports setting forth additional recommendations and actions items and reporting on agency progress implementing the Cabinet's recommendations adopted by the Governor.

Effective Date of the Executive Order

Pursuant to § 2.2-135 of the Code of Virginia, the Cabinet shall remain in effect for a period of one year and the Executive Order shall remain in effect for one year.

Given under my hand and under the Seal of the Commonwealth of Virginia this 29th day of April, 2013.

/s/ Robert F. McDonnell
Governor

GENERAL NOTICES/ERRATA

STATE CORPORATION COMMISSION

Bureau of Insurance

May 1, 2013

Administrative Letter 2013-04

To: All Entities with Authority to Appoint Insurance Producers in Virginia and Other Interested Parties

Re: Producer Licensing Appointment Fee Reduction Effective July 1, 2013

The purpose of this Administrative Letter is to advise insurers that effective July 1, 2013, the producer licensing appointment fee will be reduced from \$12.00 to \$10.00. This reduction stems from the fact that the anticipated increase in processing costs, which led to an increase in the statutory maximum for the appointment fee to \$25.00 in 2002, did not occur.

Please note that the July 2013 appointment renewal invoices for the fiscal year ending June 30, 2013 and the appointment billing for the quarter ending June 30, 2013, will be billed on or about July 1, 2013, at the current \$12.00 amount. However, the appointment fees billed to insurers for the quarter ending September 30, 2013, and payable on November 10, 2013, (and for each quarter thereafter) will be billed at the reduced \$10.00 amount.

Questions concerning this administrative letter may be addressed to Preston Winn, Manager, Producer Licensing Section, Bureau of Insurance, State Corporation Commission, email preston.winn@scc.virginia.gov, telephone (804) 371-9631.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

STATE BOARD OF SOCIAL SERVICES

Virginia Child Support Guidelines Review Panel to Hold Public Hearing

The Virginia Child Support Guidelines Review Panel (Panel) is undertaking its statutory responsibility to examine and review the child support guidelines found at §§ 20-108.1 and 20-108.2 of the Code of Virginia.

The Panel has scheduled a public hearing on Monday, June 17, 2013, at 10 a.m. to hear the suggestions and concerns of interested citizens in addressing the guidelines. The location of the meeting is Virginia State Capitol, House Room 1, Capitol Square, Richmond, VA 23219.

The hearing seeks comment from the public about the guidelines, which define financial obligations of parents for their children.

Documents for the public hearing will be posted under the public hearing documents tab at

<http://dls.state.va.us/GROUPS/childsupport/meetings/061713/materials.htm>.

The hearing will begin at 10 a.m. Registration of speakers will begin at 9:30 a.m. In order to give everyone a chance to speak, each speaker is asked to limit comments to three minutes. Speakers are encouraged to provide a written copy of their comments. The written copy may contain more detail than the three-minute public presentation.

The Panel also encourages written comment by mail, fax, or email. Comments may be mailed by June 10, 2013, to Alice G. Burlinson, Senior Assistant Attorney General, Division of Child Support Enforcement, 4504 Starkey Road, SW, Suite 103, Roanoke, VA 24018-8518, telephone (540) 776-2779, FAX (540) 776-2797, or email vaguidelinespanel@dss.virginia.gov.

STATE WATER CONTROL BOARD

Fifth Annual Review Report and Five-Year Summary for the SPGP 07-SPGP-01

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) seeks public comment on the state's fifth annual review report and five-year summary for the State Program General Permit 07-SPGP-01, granted by the United States Army Corps of Engineers for the discharge of dredged or fill material in nontidal waters of the United States associated with certain residential, commercial, and institutional developments and linear transportation projects within the geographical limits of the Commonwealth of Virginia.

Public comment period: April 29, 2013, to May 29, 2013.

DEQ has prepared the fifth annual review report and five-year summary, which is available on DEQ's website at <http://www.deq.virginia.gov/Portals/0/DEQ/Water/WetlandsStreams/07-SPGP-01%20Report%20-%20%2001Sept2011-30May2012%20&%202007-2012%20Summary.pdf> or by contacting the person named below. The public may also review the report documents at DEQ's central office in Richmond. DEQ is interested in receiving public comment regarding the report and/or the overall effectiveness of the State Program General Permit (07-SPGP-01) process.

How to comment: DEQ accepts comments from the public by email, fax, or postal mail. All comments must include the name, address, and telephone number of the person commenting and be received by DEQ within the comment period.

Contact Information: Steve Hardwick, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4168, FAX (804) 698-4347, TDD (804) 698-4021, or email steven.hardwick@deq.virginia.gov.

General Notices/Errata

VIRGINIA CODE COMMISSION

Notice to State Agencies

Contact Information: *Mailing Address:* Virginia Code Commission, General Assembly Building, 201 North 9th Street, 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/cumultab.htm>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.