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THE VIRGINIA REGISTER INFORMATION PAGE

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

ADOPTION, AMENDMENT, AND REPEAL OF REGULATIONS

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

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

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

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

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

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

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

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

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

FAST-TRACK RULEMAKING PROCESS

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

EMERGENCY REGULATIONS

Pursuant to § 2.2-4011 of the Code of Virginia, an agency, upon consultation with the Attorney General, and at the discretion of the Governor, may adopt emergency regulations that are necessitated by an emergency situation. An agency may also adopt an emergency regulation when Virginia statutory law or the appropriation act or federal law or federal regulation requires that a regulation be effective in 280 days or less from its enactment. The emergency regulation becomes operative upon its adoption and filing with the Registrar of Regulations, unless a later date is specified. Emergency regulations are limited to no more than 18 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**.

Staff of the Virginia Register: **Jane D. Chaffin**, Registrar of Regulations; **Karen Perrine**, Assistant Registrar; **Anne Bloomsburg**, Regulations Analyst; **Rhonda Dyer**, Publications Assistant; **Terri Edwards**, Operations Staff Assistant.

PUBLICATION SCHEDULE AND DEADLINES

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

July 2013 through June 2014

<u>Volume: Issue</u>	<u>Material Submitted By Noon*</u>	<u>Will Be Published On</u>
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.

NOTICES OF INTENDED REGULATORY ACTION

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

BOARD FOR BARBERS AND COSMETOLOGY

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 Barbers and Cosmetology intends to consider amending **18VAC41-20, Barbering and Cosmetology Regulations**. The purpose of the review is to confirm that current regulations are (i) as least intrusive and burdensome as possible, while still protecting the health, safety, and welfare of the public, (ii) clearly written and easily understandable, and (iii) representative of the current state of affairs of the industries. The last non-fee related regulatory change was made in 2003.

Changes in the industry and the amount of time elapsed since the last amendments warrant review of this chapter to determine whether its provisions accurately reflect current requirements and standards. Regulations will also be reviewed to make sure they are clearly written and easily understandable. Ensuring that the regulations are as clear as possible will facilitate increased compliance and, ultimately, better protection of the health, safety, and welfare of the public. The board will strive to ensure any changes to current regulations or all new regulations will be as least intrusive and burdensome as possible, while protecting the health, safety, and welfare of the public guided by §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia.

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

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

Public Comment Deadline: July 31, 2013.

Agency Contact: Demetrios J. Melis, Executive Director, Board for Barbers and Cosmetology, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8590, FAX (866) 245-9693, or email barbercosmo@dpor.virginia.gov.

V.A.R. Doc. No. R12-3107; Filed May 30, 2013, 9:24 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 5. CORPORATIONS

STATE CORPORATION COMMISSION

Final Regulation

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

Title of Regulation: **5VAC5-30. Uniform Commercial Code Filing Rules (amending 5VAC5-30-20 through 5VAC5-30-70).**

Statutory Authority: §§ 8.9A-526 and 12.1-13 of the Code of Virginia.

Effective Date: July 1, 2013.

Agency Contact: Joel Peck, Clerk of the Commission, State Corporation Commission, 1300 East Main Street, P.O. Box 1197, Richmond, VA 23218, telephone (804) 371-9733, FAX (804) 371-9912, or email joel.peck@scc.virginia.gov.

Summary:

The revisions include technical amendments, such as changing "correction statement" to "information statement," changing "filing officer" to "filing office," and amending a website address and clarifying the grounds to refuse a Uniform Commercial Code (UCC) record for filing. Additionally, amendments allow UCC search requests to be delivered by electronic delivery method provided and authorized by the filing office. Further, amendments allow the filing office to accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules for remitters, as well as allow a filing office to void a filing if the filing fee payment is dishonored, declined, refused, reversed, charged back, returned unpaid, or otherwise rejected for any reason and the remitter fails to submit a valid payment for the filing fee and any penalties after notice by the filing office. The revisions also substitute current UCC forms with updated forms adopted by the International Association of Commercial Administrators (IACA). The State Corporation Commission adopted the revised regulations as proposed without changes by an order dated June 6, 2013.

AT RICHMOND, JUNE 6, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. CLK-2013-00007

Ex Parte: In the matter of Adopting
a Revision to the Rules Governing UCC Filings

ORDER ADOPTING REGULATIONS

On April 2, 2013, the State Corporation Commission ("Commission") entered an Order to Take Notice of a proposal by the Commission to adopt regulations pursuant to § 8.9A-526 of the Code of Virginia. Among other revisions, the proposed regulations, which amend the "Rules Governing UCC Filings" ("Rules") in Title 5, Chapter 30 of the Virginia Administrative Code, provide technical amendments to the Rules and update Uniform Commercial Code ("UCC") forms. The proposed regulations also allow the Office of the Clerk of the Commission to accept electronic delivery of UCC search requests, accept payment via certain electronic funds transfer, and void UCC filings for uncollected filing fee payments.

The Order and proposed regulations were published in the Virginia Register of Regulations on April 22, 2013, posted on the Commission's website, and sent to various interested parties. Interested parties were afforded the opportunity to file written comments or request a hearing on or before May 14, 2013. No comments or requests for a hearing were filed.

NOW THE COMMISSION, upon consideration of the proposed regulations and applicable law, concludes that the proposed regulations should be adopted as proposed.

Accordingly, IT IS ORDERED THAT:

(1) The proposed regulations, as attached hereto, are ADOPTED effective July 1, 2013.

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

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

(4) In order to effectuate the transition in UCC filings under the revised Rules and avoid prejudice to individuals making UCC filings on or around the effective date on July 1, 2013, the Office of the Clerk of the Commission may continue to accept UCC filings made using the current UCC forms through July 31, 2013.

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

AN ATTESTED COPY HEREOF shall be delivered to the Clerk of the Commission, who shall forthwith mail or e-mail a copy of this Order, including a copy of the attached regulations, to any interested persons as he may designate.

5VAC5-30-20. Definitions.

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

"Amendment" means a UCC record that amends the information contained in a financing statement. Amendments also include (i) assignments and (ii) continuation and termination statements.

"Assignment" means an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

"Continuation statement" shall have the meaning prescribed by § 8.9A-102(a)(27) of the Code of Virginia.

~~"Correction [Information statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.]~~

"File number" shall have the meaning prescribed by § 8.9A-102(a)(36) of the Code of Virginia.

"Filing office" means the Clerk's Office of the State Corporation Commission.

"Filing officer" means the Clerk of the State Corporation Commission.

"Filing officer statement" means a statement entered into the UCC information management system to describe the correction of an error or inaccuracy made by the filing office.

"Financing statement" shall have the meaning prescribed by § 8.9A-102(a)(39) of the Code of Virginia.

"Individual" means a natural person, living or deceased.

~~["Information statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.]~~

"Initial financing statement" means a UCC record containing the information required to be in an initial financing statement and that causes the filing office to establish the initial record of existence of a financing statement.

"Organization" means a legal person that is not an individual.

"Personal identifiable information" shall have the meaning prescribed by § 12.1-19 B of the Code of Virginia.

"Remitter" means a person who tenders a UCC record to the filing officer office for filing, whether the person is a filer or an agent of a filer responsible for tendering the record for filing. "Remitter" does not include a person responsible merely for the delivery of the record to the filing office, such as the postal service or a courier service but does include a service provider who acts as a filer's representative in the filing process.

"Secured party of record" shall have the meaning prescribed by § 8.9A-511 of the Code of Virginia.

"Termination statement" shall have the meaning prescribed by ~~§ 8.9A-102(a)(79)~~ 8.9A-102(a)(80) of the Code of Virginia.

"Through date" means the most recent date that all submissions for a specified day have been indexed in the UCC information management system.

"UCC" means the Uniform Commercial Code - Secured Transactions (§ 8.9A-101 et seq. of the Code of Virginia).

"UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements.

"UCC record" means an initial financing statement, an amendment, and ~~a correction an information~~ or a filing officer statement, and shall not be deemed to refer exclusively to paper or paper-based writings.

5VAC5-30-30. General filing and search requirements.

A. UCC records may be tendered for filing at the filing office as follows:

1. By personal delivery, at the filing office street address;
2. By courier delivery, at the filing office street address;
3. By postal delivery, to the filing office mailing address; or
4. By electronic delivery method provided and authorized by the filing office.

B. The filing time for a UCC record delivered by personal, courier, or postal delivery is the time the UCC record is date-and-time stamped by the filing office even though the UCC record may not yet have been accepted for filing and may be subsequently rejected. The filing time for a UCC record delivered by authorized electronic delivery method is the date and time the UCC information management system receives the record and determines that all the required elements of the transmission have been received in the required format.

C. UCC search requests may be delivered to the filing office by personal, courier, ~~or~~ postal delivery, or by electronic delivery method provided and authorized by the filing office.

5VAC5-30-40. Forms, fees, and payments.

A. Forms.

1. The filing office shall only accept forms for UCC records that conform to the requirements of this chapter.
- ~~2. The forms set forth in § 8.9A-521 of the Code of Virginia shall be accepted.~~
- ~~3.~~ 2. The forms approved by the International Association of Commercial Administrators as they appear on the filing office's website (<http://www.scc.virginia.gov/division/clk/uccfile.aspx>) (<http://www.scc.virginia.gov/clk/uccfile.aspx>) shall be accepted.

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4. 3. The filing ~~office~~ office may approve other forms for acceptance, including additional forms approved by the International Association of Commercial Administrators.

B. Fees.

1. The fee for filing and indexing a UCC record is \$20.
2. The fee for submitting a UCC search request is \$7.00.
3. The fee for furnishing UCC search copies is \$.50 for each page. The fee for affixing the seal of the commission to a certificate is \$3.00.

C. Methods of payment. Filing fees and fees for services provided under this chapter may be paid by the following methods:

1. Payment in cash shall be accepted if paid in person at the filing office.
2. Personal checks, cashier's checks and money orders made payable to the State Corporation Commission or Treasurer of Virginia shall be accepted for payment if drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office.
3. Payment by credit card acceptable to the filing office or electronic check ~~shall~~ may be accepted for the filing or submission of documents delivered by authorized electronic delivery method.

4. The filing office may accept payment via electronic funds under National Automated Clearing House Association (NACHA) rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

D. Overpayment and underpayment policies.

1. The filing ~~office~~ office shall notify the remitter of the amount of any overpayment exceeding \$24.99 and send the remitter the appropriate procedure and form for requesting a refund. The filing ~~office~~ office shall refund an overpayment of \$24.99 or less only upon the written request of the remitter. A request for a refund shall be delivered to the filing office within 12 months from the date of payment.

2. Upon receipt of a UCC record with an insufficient filing fee, the filing ~~office~~ office shall return the record to the remitter with a notice stating the deficiency and may retain the filing fee.

E. Uncollected filing fee payment. A filing may be voided by the filing office if the filing fee payment that is submitted by the remitter is dishonored, declined, refused, reversed, charged back to the commission, returned to the commission unpaid, or otherwise rejected for any reason by a financial institution or other third party, and after notice from the filing office, the remitter fails to submit a valid payment for the filing fee and any penalties.

F. Federal liens. A notice of lien, certificate and other notice affecting a federal tax lien or other federal lien presented to

the filing office pursuant to the provisions of the Uniform Federal Lien Registration Act (§ 55-142.1 et seq. of the Code of Virginia) shall be treated as the most analogous UCC record unless the Uniform Federal Lien Registration Act or federal law provides otherwise.

Part II

Record Requirements

5VAC5-30-50. Acceptance and refusal of records; continuation statements.

A. The duties and responsibilities of the filing ~~office~~ office with respect to the administration of the UCC are ministerial. In accepting for filing or refusing to file a UCC record pursuant to this chapter, the filing ~~office~~ office does none of the following:

1. Determine the legal sufficiency or insufficiency of a record;
2. Determine that a security interest in collateral exists or does not exist;
3. Determine that information in the record is correct or incorrect, in whole or in part; or
4. Create a presumption that information in the record is correct or incorrect, in whole or in part.

B. The first day on which a continuation statement may be filed is the day of the month corresponding to the date upon which the related financing statement would lapse in the sixth month preceding the month in which the financing statement would lapse. If there is no such corresponding date, the first day on which a continuation statement may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. The last day on which a continuation statement may be filed is the date upon which the financing statement lapses. If the lapse date falls on a Saturday, Sunday, or other day on which the filing office is not open, then the last day on which a continuation statement may be filed, if tendered for filing by personal, courier, or postal delivery, is the last day the filing office is open prior to the lapse date. An authorized electronic delivery method may be available to file a continuation statement on a Saturday, Sunday, or other day on which the filing office is not open. The relevant anniversary for a February 29 filing date shall be March 1 in the fifth or 30th year following the date of filing.

C. Except as provided in 5VAC5-30-40 D, if the filing ~~office~~ office finds grounds to refuse a UCC record for filing, including those set forth in § 8.9A-516 (b) of the Code of Virginia, the filing ~~office~~ office shall return the record to the remitter and may retain the filing fee.

D. Nothing in this chapter shall prevent the filing ~~office~~ office from communicating to a filer or a remitter that the filing ~~office~~ office noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to identify potential defects. The responsibility for the legal effectiveness of filing

rests with filers and remitters and the filing office bears no responsibility for such effectiveness.

E. The filing ~~officer~~ office may act in accordance with § 12.1-19 B of the Code of Virginia with respect to submissions that contain personal identifiable information.

F. If a secured party or a remitter demonstrates to the satisfaction of the filing ~~officer~~ office that a UCC record that was refused for filing should not have been refused, the filing ~~officer~~ office shall file the UCC record as provided in this chapter with a filing date and time assigned when the record was originally tendered for filing. The filing ~~officer~~ office shall also file a filing officer statement that states the effective date and time of filing, which shall be the date and time the UCC record was originally tendered for filing.

Part III
Record Filing and Searches

5VAC5-30-60. Filing and data entry procedures.

A. The filing office may correct errors made by its personnel in the UCC information management system at any time. If the correction occurs after the filing ~~officer~~ office has issued a certification, the filing ~~officer~~ office shall file a filing officer statement in the UCC information management system identifying the record to which it relates, the date of the correction, and explaining the nature of the corrective action taken. The record shall be preserved as long as the record of the initial financing statement is preserved in the UCC information management system.

B. An error by a filer or remitter is the responsibility of that person. It can be corrected by filing an amendment or it can be disclosed by filing ~~a correction an information~~ an information statement pursuant to § 8.9A-518 of the Code of Virginia. ~~A correction statement shall be made only on a Statement of Claim form (Form UCC5).~~

C. 1. A UCC record tendered for filing shall designate whether a name is a name of an individual or an organization. If the name is that of an individual, the ~~first, middle and last names~~ surname, first personal name, additional name or names, and any suffix shall be given.

2. Organization names are entered into the UCC information management system exactly as set forth in the UCC record, even if it appears that multiple names are set forth in the record or if it appears that the name of an individual has been included in the field designated for an organization name.

3. The filing office will only accept forms that designate separate fields for individual and organization names and separate fields for ~~first, middle, and last names~~ the surname, first personal name, additional name or names, and any suffix. Such forms diminish the possibility of filing office error and help assure that filers' expectations are met. However, the inclusion of names in an incorrect field or the failure to transmit names accurately to the

filing office may cause a financing statement to be ineffective.

D. The filing ~~officer~~ office shall take no action upon receipt of a notification, formal or informal, of a bankruptcy proceeding involving a debtor included in the UCC information management system.

5VAC5-30-70. Search requests and reports.

A. The filing ~~officer~~ office maintains for public inspection a searchable index for all UCC records. The index shall provide for the retrieval of all filed records by the name of the debtor and by the file number of the initial financing statement.

B. Search requests shall be made only on the ~~National~~ Information Request form (Form UCC11) and shall include:

1. The name of the debtor to be searched, specifying whether the debtor is an individual or organization. A search request will be processed using the exact name provided by the requestor.
2. The name and address of the person to whom the search report is to be sent.
3. Payment of the appropriate fee, which shall be made by a method set forth in this chapter.

C. Search requests may include:

1. A request that copies of records found in the search be included with the search report, and
2. Instructions on the mode of delivery desired, if other than by postal delivery, which shall be followed if the desired mode is acceptable to the filing office.

D. Search results are produced by the application of standardized search logic to the name presented to the filing ~~officer~~ office. The following criteria apply to searches:

1. There is no limit to the number of matches that may be returned in response to the search request.
2. No distinction is made between upper and lower case letters.
3. Punctuation marks and accents are disregarded.
4. "Noise words" are limited to "an," "and," "for," "of," and "the." The word "the" is disregarded. Other noise words appearing anywhere except at the beginning of an organization name are disregarded. Certain business words are modified to a standard abbreviation: company to "co," corporation to "corp," limited to "Ltd," incorporated to "inc."
5. All spaces are disregarded.
6. After using the preceding criteria to modify the name to be searched, the search will reveal names of debtors that are contained in unexpired or all initial financing statements in an alphabetical list.

E. Reports created in response to a search request shall include the following:

1. The date and time the report was generated.

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2. Identification of the name searched.
3. The through date as of the date and time the report was generated.
4. For an organization, the name as it appears after application of the standardized search logic.
5. Identification of each unexpired initial financing statement or all initial financing statements filed on or prior to the report date and time corresponding to the search criteria, by name of debtor, by file number, and by file date and file time.
6. For each initial financing statement on the report, a listing of all related UCC records filed by the filing office on or prior to the report date.
7. Copies of all UCC records revealed by the search and requested by the requestor.

F. The filing office may provide access to the searchable index via the Internet that produces search results beyond exact name matches. Search results obtained via the Internet shall not constitute an official search and will not be certified by the filing office.

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 (5VAC5-30)

~~UCC Financing Statement, Form UCC1, (rev. 5/02).~~

~~UCC Financing Statement Addendum, Form UCC1Ad, (rev. 5/09).~~

~~UCC Financing Statement Additional Party, Form UCC1AP, (rev. 5/02).~~

~~UCC Financing Statement Amendment, Form UCC3, (rev. 5/02).~~

~~UCC Financing Statement Amendment Addendum, Form UCC3Ad, (rev. 7/98).~~

~~UCC Financing Statement Amendment Additional Party, Form UCC3AP, (rev. 5/02).~~

~~Statement of Claim, Form UCC5, (rev. 5/09).~~

~~National Information Request, Form UCC11, (rev. 5/01).~~

[UCC Financing Statement, Form UCC1 \(rev. 4/11\).](#)

[UCC Financing Statement Addendum, Form UCC1Ad \(rev. 4/11\).](#)

[UCC Financing Statement Additional Party, Form UCC1AP \(rev. 8/11\).](#)

[UCC Financing Statement Amendment, Form UCC3 \(rev. 4/11\).](#)

[UCC Financing Statement Amendment Addendum, Form UCC3Ad \(rev. 4/11\).](#)

[UCC Financing Statement Amendment Additional Party, Form UCC3AP \(rev. 8/11\).](#)

[UCC Information Statement, Form UCC5 \(rev. 7/12\).](#)

[UCC Information Request, Form UCC11 \(rev. 7/12\).](#)

VA.R. Doc. No. R13-3633; Filed June 10, 2013, 3:10 p.m.

TITLE 6. CRIMINAL JUSTICE AND CORRECTIONS

CRIMINAL JUSTICE SERVICES BOARD

Fast-Track Regulation

Title of Regulation: 6VAC20-20. Rules Relating to Compulsory Minimum Training Standards for Law-Enforcement Officers (amending 6VAC20-20-21, 6VAC20-20-50).

Statutory Authority: § 9.1-102 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 31, 2013.

Effective Date: August 15, 2013.

Agency Contact: Stephanie Morton, Law Enforcement Program Coordinator, Department of Criminal Justice Services, 1100 Bank Street, 12th Floor, Richmond, VA 23219, telephone (804) 786-8003, or email stephanie.morton@dcjs.virginia.gov.

Basis: The legal authority of the Department of Criminal Justice Services, under the direction of the Criminal Justice Services Board, to establish compulsory minimum training standards subsequent to employment as a law-enforcement officer in (i) permanent positions and (ii) temporary or probationary status, and establish the time required for the completion of such training is found in § 9.1-102 of the Code of Virginia.

Purpose: The purpose of this regulatory action is to remove the reference to the 1997 document regarding performance outcomes and replace it with the department's website link to the document regarding compulsory minimum training standards. The requested revisions are essential to protect the safety and welfare of citizens to ensure that law-enforcement officers are receiving the most current training. Currently, when training standards must be revised, the department has to seek such changes through the standard regulatory process. This process requires a minimum of 12 to 18 months for completion, which is far too lengthy a wait when dealing with public and officer safety issues.

Rationale for Using Fast-Track Process: This amendment will not affect the department's constituents. This change will

allow the department to seek changes to the compulsory minimum training standards through the process listed within 6VAC20-20. Changes in training standards must go before the Law Enforcement Curriculum Review Committee, which is comprised of regional, state, and independent criminal justice training academy directors. Upon recommendation for approval by the Law Enforcement Curriculum Review Committee, the recommendation is then presented to the Committee on Training of the Criminal Justice Services Board, and the Criminal Justice Services Board must give the final approval.

Substance: This action amends the language of the regulation by removing the reference to the 1997 document regarding performance outcomes and replacing that language with the department's website link to the document regarding compulsory minimum training standards.

Issues: The advantage is that any recruit completing the compulsory minimum training standards through a certified criminal justice training academy will be receiving the most current training standards approved by the Criminal Justice Services Board. There are no disadvantages since the oversight committee is composed of knowledgeable and experienced persons who make recommendations to members appointed to serve by the Governor through the Criminal Justice Services Board and feel these revisions are in the best interest of the department's constituents and the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Criminal Justice Services (Board) proposes to amend its training regulations for law enforcement officers. Specifically, the Board proposes to:

- Add information to these regulations that will direct interested parties to the complete training standards guidelines on the Department of Criminal Justice Services (DCJS) website and
- Eliminate reference to performance outcomes in these regulations because they are now in DCJS guidelines and are subject to annual change.

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

Estimated Economic Impact. Current regulations explicitly enumerate performance outcomes. Because these performance outcomes are policy statements and are subject to annual change, the Board proposes to strike them from these regulations and, instead promulgate regulatory language that directs interested parties to a complete list of performance outcomes on the DCJS website. Because performance outcomes can change every year, but it would take two years on average to change them in regulation, this regulatory change is likely to provide the benefit of clarity to interested parties.

Businesses and Entities Affected. DCJS reports that individuals who are interested in pursuing careers as law enforcement officers are subject to the training requirements in these proposed regulations.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulatory changes.

Projected Impact on Employment. This regulatory action will likely have no impact on employment in the Commonwealth.

Effects on the Use and Value of Private Property. This regulatory action will likely have no effect on the use or value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. These proposed regulatory changes are unlikely to have any effect on small businesses in the Commonwealth.

Small Businesses: Alternative Method that Minimizes Adverse Impact. These proposed regulatory changes are unlikely to have any effect on small businesses in the Commonwealth.

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, 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 of Criminal Justice Services concurs generally with the economic impact analysis of the Department of Planning and Budget on the proposed Regulations Relating to

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Compulsory Minimum Training Standards for Law-Enforcement Officers.

Summary:

The proposed amendment replaces the reference to the December 1997 document regarding performance outcomes with the Department of Criminal Justice Services' website link to the document regarding compulsory minimum training standards for law-enforcement officers.

6VAC20-20-21. Performance outcomes and minimum hours required.

A. ~~The performance outcomes are detailed in the document entitled "Performance Outcomes for Compulsory Minimum Training For Law Enforcement Officers," December 1997, which is incorporated by reference and made a part of this chapter. Pursuant to the provisions of subdivision 2 of § 9.1-102 of the Code of Virginia, the board establishes the standards for Compulsory Minimum Training Standards for Law-Enforcement Officers. The complete document may be found on the Department of Criminal Justice Services' website at <http://www.dcjs.virginia.gov>.~~

B. Academy training.

1. Category 1 - Professionalism
2. Category 2 - Legal Issues
3. Category 3 - Communications
4. Category 4 - Patrol
5. Category 5 - Investigations
6. Category 6 - Defensive Tactics/Use of Force
7. Category 7 - Weapons Use
8. Category 8 - Driver Training
9. Category 9 - Physical Training (Optional)

ACADEMY TRAINING HOURS - 480 (excluding Category 9)

C. Field training.

Category 10 - Field Training

FIELD TRAINING HOURS - 100

TOTAL MINIMUM TRAINING STANDARDS HOURS - 580 (excluding Category 9)

6VAC20-20-50. Compliance with compulsory minimum training standards.

A. The compulsory minimum training standards shall be accomplished by satisfactory completion of the academy training objectives and criteria at a certified training academy and the successful completion of field training objectives unless otherwise provided by 6VAC20-20-30 B.

B. Officers attending approved training are required to attend all classes and shall not be placed on duty or call except in cases of emergency.

~~C. The Criminal Justice Services Board will provide a transition period for implementation of this chapter. The~~

~~transition period shall begin February 4, 1998. During the transition period, certified training academies may conduct law enforcement entry level training using the performance objectives within the "Compulsory Minimum Training Standards for Law Enforcement Officers," effective July 6, 1983, or the performance outcomes and training objectives. Accordingly, any certified training academy may institute a curriculum transition by replacing existing performance objectives with the revised performance outcomes and training objectives. Effective July 1, 1999, all entry level training programs shall meet the requirements of 6VAC20-20-21.~~

DOCUMENTS INCORPORATED BY REFERENCE
(6VAC20-20)

~~Performance Outcomes for Compulsory Minimum Training for Law Enforcement Officers, December 1997, Department of Criminal Justice Services.~~

V.A.R. Doc. No. R13-3562; Filed June 12, 2013, 11:50 a.m.

TITLE 14. INSURANCE

STATE CORPORATION COMMISSION

Proposed Regulation

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

Titles of Regulations: 14VAC5-280. Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements (amending 14VAC5-280-10, 14VAC5-280-30, 14VAC5-280-40, 14VAC5-280-70).

14VAC5-290. Rules Establishing Standards for Companies Deemed to Be in Hazardous Financial Condition (amending 14VAC5-290-30).

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

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

Public Comment Deadline: August 6, 2013.

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

Summary:

Chapter 539 of the Acts of Assembly of 2012 incorporated revisions made to the National Association of Insurance Commissioners' Credit for Reinsurance Model Law that reformed the treatment of reinsurance transactions, including allowing for the certification of reinsurers. The proposed amendments to 14VAC5-280 and 14VAC5-290 conform the regulations to those changes by (i) adding health maintenance organizations to the definition of "life and health business" and (ii) deleting references to and provisions based on § 38.2-1316.3 or 38.2-1316.6 of the Code of Virginia, which were repealed by Chapter 539.

AT RICHMOND, JUNE 7, 2013

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS-2013-00095

Ex Parte: In the matter of
Amending the Rules Establishing Standards
For Life, Annuity, and Accident and Sickness
Reinsurance Agreements and the Rules Establishing
Standards for Companies Deemed to be in
Hazardous Financial Condition

ORDER TO TAKE NOTICE

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

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

The Bureau of Insurance ("Bureau") has submitted to the Commission proposed amendments to rules set forth in Chapters 280 and 290 of Title 14 of the Virginia Administrative Code, entitled Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements, 14VAC5-280-10 et seq., and Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition, 14VAC5-290-10 et seq. (collectively, "Rules"), respectively, which amend the Rules at 14VAC5-280-10, 14VAC5-280-30, 14VAC5-280-40, 14VAC5-280-70, and 14VAC5-290-30.

The proposed amendments to Chapters 280 and 290 are necessary to implement the provisions of House Bill 1139 passed by the 2012 General Assembly. This legislation incorporates revisions made to the National Association of Insurance Commissioners' Credit for Reinsurance Model Law, which reforms the treatment of reinsurance transactions,

including allowing for the certification of reinsurers. The proposed revisions to Chapters 280 and 290 include: (i) the addition of a reference to HMOs under the definition of "life and health business" in 14VAC5-280-10, (ii) the deletion of the reference in 14VAC5-280-30 to § 38.2-1316.6 of the Code, which was repealed by House Bill 1139, and the addition of a reference to § 38.2-1316.1 et seq., (iii) the deletion of 14VAC5-280-40 A 2 because this provision pertains to provisions that were in § 38.2-1316.6 of the Code, (iv) the revision of 14VAC5-280-70 to provide consistency with other severability sections, and (v) the deletion of the reference in 14VAC5-290-30 to § 38.2-1316.3 of the Code, which was also repealed by House Bill 1139.

NOW THE COMMISSION is of the opinion that the proposed amendments submitted by the Bureau to amend the Rules at 14VAC5-280-10, 14VAC5-280-30, 14VAC5-280-40, 14VAC5-280-70, and 14VAC5-290-30 should be considered for adoption.

Accordingly, IT IS ORDERED THAT:

(1) The proposed amendments to Rules Establishing Standards for Life, Annuity, and Accident and Sickness Reinsurance Agreements, and Rules Establishing Standards for Companies Deemed to be in Hazardous Financial Condition, which amend the Rules at 14VAC5-280-10, 14VAC5-280-30, 14VAC5-280-40, 14VAC5-280-70, and 14VAC5-290-30 are attached hereto and made a part hereof.

(2) All interested persons who desire to comment in support of or in opposition to, or request a hearing to oppose amending Chapters 280 and 290 of Title 14 of the Virginia Administrative Code, shall file such comments or hearing request on or before August 6, 2013, with Joel H. Peck, Clerk, State Corporation Commission, c/o Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Interested persons desiring to submit comments electronically may do so by following the instructions at the Commission's website: <http://www.scc.virginia.gov/caseinfo.htm>. All comments shall refer to Case No. INS-2013-00095.

(3) If no written request for a hearing on the proposal to amend Chapters 280 and 290 of Title 14 of the Virginia Administrative Code is received on or before August 6, 2013, the Commission, upon consideration of any comments submitted in support of or in opposition to the proposal, may amend the Rules.

(4) AN ATTESTED COPY hereof, together with a copy of the proposal to amend rules, shall be sent by the Clerk of the Commission to the Bureau in care of Deputy Commissioner Douglas C. Stolte, who forthwith shall give further notice of the proposal to amend rules by mailing a copy of this Order, together with the proposal, to every entity that is licensed, approved, registered, or accredited in Virginia under the provisions of Title 38.2 of the Code and also subject to solvency regulation in this

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Commonwealth pursuant to the provisions of Title 38.2 of the Code, as well as to all interested parties.

(5) The Commission's Division of Information Resources forthwith shall cause a copy of this Order, together with the proposal to amend rules, to be forwarded to the Virginia Registrar of Regulations for appropriate publication in the Virginia Register of Regulations.

(6) The Commission's Division of Information Resources shall make available this Order and the attached proposed amendments to the rules on the Commission's website: <http://www.scc.virginia.gov/case>.

(7) The Bureau shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of Ordering Paragraph (4) above.

(8) This matter is continued.

14VAC5-280-10. Definitions.

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

"Commission" means State Corporation Commission.

"Insurer" means a cooperative nonprofit life benefit company, a mutual assessment life, accident and sickness insurer, a fraternal benefit society, a health services plan, a dental services plan, or an optometric services plan licensed under Title 38.2 of the Code of Virginia; and also any insurance company, whether known as a life and health insurer, a property and casualty insurer, or a reciprocal, which is licensed in Virginia and authorized to write any class of life insurance, annuities, or accident and sickness insurance.

"Life and health business" means (i) a class of insurance defined by §§ 38.2-102 through 38.2-109 of the Code of Virginia or (ii) any product or service sold or offered by a person organized and licensed in Virginia under Chapter 38 (§ 38.2-3800 et seq., cooperative nonprofit life benefit companies), Chapter 39 (§ 38.2-3900 et seq., mutual assessment life, accident and sickness insurers), Chapter 41 (§ 38.2-4100 et seq., fraternal benefit societies), Chapter 42 (§ 38.2-4200 et seq., health services plans), Chapter 43 (§ 38.2-4300 et seq., health maintenance organizations), or Chapter 45 (§ 38.2-4500 et seq., dental or optometric services plans) of Title 38.2 of the Code of Virginia.

14VAC5-280-30. Scope.

This ~~regulation~~ chapter shall apply to the life and health business of all domestic insurers and to the life and health business of all other licensed insurers who are not subject to substantially similar provisions in their states of domicile or entry.

This ~~regulation~~ chapter shall not apply to assumption reinsurance, yearly renewable term reinsurance or certain nonproportional reinsurance such as stop loss or catastrophe reinsurance; however, nothing herein shall in any way limit or prevent the application of ~~§ 38.2-1316.6~~ Article 3.1 (§ 38.2-

1316.1 et seq.) of Chapter 13 or any other provision in Title 38.2 of the Code of Virginia to any type of insurer, business or reinsurance regardless of whether such application entails a standard or principle set forth in this ~~regulation~~ chapter.

14VAC5-280-40. Accounting and actuarial requirements.

A. No insurer subject to this ~~regulation~~ chapter shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the commission if, by the terms of the reinsurance agreement, in substance or effect, any of the following conditions exist:

1. The reserve credit taken by the ceding insurer is not in compliance with the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission.

~~2. The reserve credit taken by the ceding insurer is greater than the amount which the ceding insurer would have reserved on the reinsured portion of the risk if there had been no reinsurance.~~

~~3.~~ 2. The ceding insurer is required to reimburse the reinsurer for negative experience under the reinsurance agreement, except that neither offsetting experience refunds against current and prior years' losses under the agreement nor payment by the ceding insurer of an amount equal to the current and prior years' losses under the agreement upon voluntary termination of in-force reinsurance by that ceding insurer, shall be considered such a reimbursement to the reinsurer for negative experience. Voluntary termination does not include situations where termination occurs because of unreasonable provisions which allow the reinsurer to reduce its risk under the agreement. An example of such a provision is the right of the reinsurer to increase reinsurance premiums or risk and expense charges to excessive levels forcing the ceding company to prematurely terminate the reinsurance treaty.

~~4.~~ 3. The ceding insurer can be deprived of surplus or assets (i) at the reinsurer's option; or (ii) automatically upon the occurrence of some event, such as the insolvency of the ceding insurer or the appointment of a receiver; or (iii) upon the unilateral termination or reduction of reinsurance coverage by the reinsurer or by the terms of the reinsurance contract. Termination of the reinsurance agreement by the reinsurer for nonpayment of reinsurance premiums or other amounts due, such as modified coinsurance reserve adjustments, interest and adjustments on funds withheld, and tax reimbursements, shall not be considered to be such a deprivation of surplus or assets.

~~5.~~ 4. The ceding insurer must, at specific points in time scheduled in the agreement, terminate or automatically recapture all or part of the reinsurance ceded.

~~6.~~ 5. The reinsurance agreement involves the possible payment by the ceding insurer to the reinsurer of amounts

other than from income realized from the reinsured policies. For example, it is improper for a ceding company to pay reinsurance premiums, or other fees or charges to a reinsurer which are greater than the direct premiums collected by the ceding company.

~~7.~~ 6. Renewal expense allowances provided or to be provided to the ceding insurer by the reinsurer in any accounting period, are not sufficient to cover anticipated allocable renewal expenses of the ceding insurer on the portion of the business reinsured, unless a liability is established for the present value of the shortfall (using assumptions equal to the applicable statutory reserve basis on the business reinsured). Those expenses include commissions, premium taxes and direct expenses including, but not limited to, billing, valuation, claims and maintenance expected by the company at the time the business is reinsured.

~~8.~~ 7. The terms or operating effect of the reinsurance agreement are such that it does not transfer all of the significant risk inherent in the business being reinsured. The table at Exhibit 1 identifies for a representative sampling of products or types of business, the risks which are considered to be significant. For products not specifically included, the risks determined to be significant shall be consistent with this table.

~~9.~~ 8. a. The credit quality, reinvestment, or disintermediation risk is significant for the business reinsured and the ceding company does not (other than for the classes of business excepted in subdivision ~~9-b~~ 8 b of this subsection) either transfer the underlying assets to the reinsurer or legally segregate such assets in a trust or escrow account or otherwise establish a mechanism satisfactory to the commission which legally segregates, by contract or contract provision, the underlying assets.

b. Notwithstanding the requirements of subdivision ~~9~~ 8 a of this subsection, the assets supporting the reserves for the following classes of business and any classes of business which do not have a significant credit quality, reinvestment or disintermediation risk may be held by the ceding company without segregation of such assets:

- (1) Health Insurance - Long Term Care/Long Term Disability
- (2) Traditional Nonparticipating Permanent
- (3) Traditional Participating Permanent
- (4) Adjustable Premium Permanent
- (5) Indeterminate Premium Permanent
- (6) Universal Life Fixed Premium (no dump-in premiums allowed)

The associated formula for determining the reserve interest rate adjustment must use a formula which reflects the ceding company's investment earnings and incorporates all realized and unrealized gains and losses

reflected in the statutory statement. An acceptable formula appears at Exhibit 2.

~~10.~~ 9. Settlements are made less frequently than quarterly or payments due from the reinsurer are not made in cash within 90 days of the settlement date.

~~11.~~ 10. The ceding insurer is required to make representations or warranties not reasonably related to the business being reinsured.

~~12.~~ 11. The ceding insurer is required to make representations or warranties about future performance of the business being reinsured.

~~13.~~ 12. The reinsurance agreement is entered into for the principal purpose of producing significant surplus aid for the ceding insurer, typically on a temporary basis, while not transferring all of the significant risks inherent in the business reinsured and, in substance or effect, the expected potential liability to the ceding insurer remains basically unchanged.

B. Compliance with the conditions of subsection A of this section is not to be interpreted to diminish the requirement of Article 3.1 (§ 38.2-1316.1 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia that the reserve credits taken must be based upon the actual liability assumed by the reinsurer to reimburse the ceding company for benefits that the ceding company is obligated to pay under its direct policies and which gave rise to the requirement of statutory reserves.

C. The ceding insurer's actuary responsible for the valuation of the reinsured business shall consider this ~~regulation~~ chapter and any applicable actuarial standards of practice when determining the proper reinsurance credit in financial statements filed with the commission. The actuary should maintain adequate documentation and be prepared upon request to describe the actuarial work that substantiates the reserves, reserve credits or any other reserve adjustments reported in the financial statement and to demonstrate to the satisfaction of the commission that such work conforms to the provisions of this ~~regulation~~ chapter.

D. Notwithstanding subsection A of this section, an insurer subject to this regulation may, with the prior approval of the commission, take such reserve credit or establish such asset as the commission may deem consistent with the laws of this Commonwealth, particularly the provisions of Title 38.2 of the Code of Virginia and related rules, regulations and administrative pronouncements, including actuarial interpretations or standards adopted by the commission. All of the insurer's financial statements filed with the commission pursuant to § 38.2-1300 or § 38.2-1301 of the Code of Virginia shall thereafter disclose the reduction in liability or the establishment of an asset.

E. 1. Each agreement entered into after March 31, 1995, which involves the reinsurance of business issued prior to the effective date of the agreement, along with any subsequent amendments thereto, shall be filed by the ceding insurer with

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the commission within 30 days from its date of execution. Each filing shall include data detailing the financial impact of the transaction. The ceding insurer's actuary who signs the financial statement actuarial opinion with respect to valuation of reserves shall be subject to the standards set forth in subsection C of this section.

2. Any increase in surplus net of federal income tax resulting from arrangements described in subdivision E 1 of this subsection shall be identified separately on the insurer's statutory financial statement as a surplus item (e.g., as part of the aggregate write-ins for gains and losses in surplus in the Capital and Surplus Account reported at page 4 of the Annual Statement) and recognition of the surplus increase as income shall be reflected on a net of tax basis in the "Reinsurance ceded" portions of the Annual Statement (e.g., Exhibit 1 and Summary of Operations for the life insurer's blue blank and the Underwriting Exhibit and Statement of Income for the property and casualty insurer's yellow blank) as earnings emerge from the business reinsured.

Example: On the last day of calendar year N, company XYZ pays a \$20 million initial commission and expense allowance to company ABC for reinsuring an existing block of business. Assuming a 34% tax rate, the net increase in surplus at inception is \$13.2 million (\$20 million - \$6.8 million) which is reported on the "Aggregate write-ins for gains and losses in surplus" line in the Capital and Surplus Account. \$6.8 million (34% of \$20 million) is reported as income (on the "Commissions and expense allowances on reinsurance ceded" line of the life insurer's Summary of Operations or as "Other underwriting expenses incurred" on the property and casualty insurer's Statement of Income).

At the end of year N+1 the business has earned \$4 million. ABC has paid \$0.5 million in profit and risk charges in arrears for the year and has received a \$1 million experience refund. Company ABC's annual statement (blue blank) would report \$1.65 million (66% of (\$4 million - \$1 million - \$0.5 million) up to a maximum of \$13.2 million) on the "Commissions and expense allowance on reinsurance ceded" line of the Summary of Operations, and -\$1.65 million on the "Aggregate write-ins for gains and losses in surplus" line of the Capital and Surplus Account. In addition, the experience refund would be reported separately as a miscellaneous income item in a life insurer's Summary of Operations and the "Other Income" segment of the property and casualty insurer's Underwriting and Investment Exhibit, Statement of Income.

14VAC5-280-70. Severability.

If any provision in this ~~regulation chapter~~ or the application thereof to any person or circumstance is held for any reason ~~held~~ held to be invalid, the remainder of the ~~provisions in this~~

~~regulation chapter~~ and the application of the provision to other persons or circumstances shall not be affected thereby.

14VAC5-290-30. Standards.

The following factors and standards, either singly or a combination of two or more, may be considered in determining whether an insurer's financial condition, method of operation, or manner of doing business in this Commonwealth might be deemed to be hazardous to its policyholders, creditors, or the general public:

1. Adverse findings resulting from any financial condition or market conduct examination conducted pursuant to Article 4 (§ 38.2-1317 et seq.) of Chapter 13 of Title 38.2 of the Code of Virginia or any inspection authorized by the general provisions of § 38.2-200, including inspections of financial statements filed pursuant to §§ 38.2-1300, 38.2-1301, 38.2-1316.2, ~~38.2-1316.3~~, 38.2-4811, or 38.2-5103 of the Code of Virginia, or reported in any examination or other information submitted pursuant to § 38.2-5103 of the Code of Virginia, or reported in any audit report, and actuarial opinions, reports, or summaries submitted pursuant to §§ 38.2-1315.1 and 38.2-3127.1 of the Code of Virginia;
2. The National Association of Insurance Commissioners' ("NAIC") Insurance Regulatory Information System ("IRIS") and its other financial analysis solvency tools and reports;
3. The ratio of the annual premium volume to surplus or of liabilities to surplus in relation to loss experience and/or the kinds of risks insured;
4. Whether the insurer's asset portfolio when viewed in light of current economic conditions and indications of financial or operation leverage is of sufficient value, liquidity, or diversity to assure the company's ability to meet its outstanding obligations as they mature;
5. Whether the insurer has established reserves and related actuarial items that make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
6. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
7. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted

assets, and cash dividends paid to shareholders, is greater than 50% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

8. Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20% of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

9. Whether the excess of surplus to policyholders over and above an insurer's statutorily required surplus to policyholders has decreased by more than 50% in the preceding 12-month period or any shorter period of time;

10. The age and collectibility of receivables;

11. Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency, or delinquent in payment of its monetary or other obligations, and which may affect the solvency of the insurer;

12. Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount that may affect the solvency of the insurer;

13. Whether any affiliate of an insurer is delinquent in the transmitting to, or payment of, net premiums or other amounts due to such insurer;

14. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;

15. Whether the management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;

16. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commission;

17. Whether the management of an insurer either has filed any false or misleading sworn financial statement, or has released any false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;

18. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

19. Whether the insurer has experienced or will experience in the foreseeable future cash flow and/or liquidity problems;

20. Whether management has established reserves and related actuarial values that do not comply with the requirements of Title 38.2 of the Code of Virginia, related

rules, regulations, administrative promulgations, and statutory accounting standards, or that are not computed in accordance with presently accepted actuarial standards consistently applied and in accordance with sound actuarial principles and standards of practice;

21. Whether management persistently engages in material under reserving that results in adverse development;

22. Whether transactions among affiliates, subsidiaries, or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity, or diversity to assure the insurer's ability to meet its outstanding obligations as they mature; or

23. Any other finding determined by the commission to be hazardous to the insurer's policyholders, creditors, or the general public.

VA.R. Doc. No. R13-3705; Filed June 10, 2013, 4:29 p.m.

◆ ————— ◆
TITLE 16. LABOR AND EMPLOYMENT

SAFETY AND HEALTH CODES BOARD

Fast-Track Regulation

Title of Regulation: 16VAC25-20. Regulation Concerning Licensed Asbestos Contractor Notification, Asbestos Project Permits, and Permit Fees (amending 16VAC25-20-40).

Statutory Authority: §§ 40.1-22 and 40.1-51.20 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 31, 2013.

Effective Date: August 15, 2013.

Agency Contact: John Crisanti, Planning and Evaluation Manager, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219, telephone (804) 786-4300, FAX (804) 786-8418, TTY (804) 786-2376, or email john.crisanti@doli.virginia.gov.

Basis: Pursuant to § 40.1-22 of the Code of Virginia, the board, with the advice of the commissioner, is authorized to adopt, alter, amend, or repeal rules and regulations to further, protect, and promote the safety and health of employees in places of employment over which it has jurisdiction. All such rules and regulations shall be designed to protect and promote the safety and health of such employees. This amendment supports that statutory mandate.

Purpose: The purpose of this regulatory action is to delete the requirement in 16VAC25-20-40, necessitating notification to the department of residential asbestos projects because Virginia law does not require a permit fee for such asbestos projects in residential buildings. New regulatory language has been inserted stating that no notification to the department or

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payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10.

Rationale for Using Fast-Track Process: Most residential asbestos projects now fall within the minimum reporting amount (10 square or 10 linear feet up to 260 linear feet or 160 square feet), and jobs of this size present a small risk to the public, require fewer inspections, and are of short duration. Therefore, eliminating the notification requirements for residential buildings will minimize the paperwork burden for asbestos contractors and also for homeowners. As such, amending the regulation is noncontroversial, and no individual or entity will be adversely affected.

Substance: In 16VAC25-20-40, the language "No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter," was replaced with "No notification to the department or payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10." While residential buildings are covered under this Virginia Occupational Safety and Health (VOSH) program, the procedure required for such structures does not include payment of a fee, therefore, the board approved the discontinuance of the requirement for notification of residential asbestos project by replacing the regulatory language requiring it.

Issues: The department does not anticipate any disadvantages to Virginia employers or Virginia employees. Most residential asbestos projects fall within the minimum reporting amount (10 square or 10 linear feet up to 260 linear feet or 160 square feet). Jobs of this size present a small risk to the public, require fewer inspections, and are of short duration. Advantages to the public, private citizens, or businesses from the elimination of the notification requirements for residential buildings will include minimizing the paperwork burden for asbestos contractors and also for homeowners.

The department does not anticipate any disadvantages to the department with the adoption of these changes. Eliminating the notification requirements for residential buildings will reduce the number of applications the department will have to process.

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

The department believes that these amendments are noncontroversial, and no individual or entity will be adversely affected.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Safety and Health Codes Board (Board) proposes to amend its regulations that govern licensed asbestos contractor

notification, asbestos project permits and permit fees to eliminate a requirement that the Department of Labor and Industry (DOLI) receive notification of asbestos projects in residential buildings.

Result of Analysis. Benefits likely outweigh costs for this proposed regulatory change.

Estimated Economic Impact. Currently, individuals who are removing asbestos from residential buildings (as defined by these regulations) do not have to pay a fee but do have to provide notification of the project to DOLI. The Board now proposes to amend these regulations so that notification is no longer required for projects in residential buildings that do not require payment of a fee to DOLI. No entity is likely to incur costs on account of this regulatory change. Asbestos contractors, and owners of affected properties, will benefit from not having to spend time notifying DOLI of these residential projects. DOLI will likely also see a slight benefit from not having to process these notifications.

Businesses and Entities Affected. Board staff reports that there are 180 asbestos contractors in the Commonwealth. All of these individuals, plus owners of residential properties that may have asbestos on premises, will likely be affected by this proposed regulatory change.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulations.

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 additional expense on account of these regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any additional expense on account of these regulatory changes.

Real Estate Development Costs. This regulatory action will likely have little 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, 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 of Labor and Industry concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The amendments eliminate the notification requirements to the department for asbestos projects in residential buildings defined as site-built homes, modular homes, condominium units, mobile homes, manufactured housing, and duplexes or other multi-unit dwellings consisting of four units or fewer that are currently in use or intended for use only for residential purposes. However, demolition of any such structures that are to be replaced by other than a residential building shall not fall within this definition and would be subject to payment of a fee. This action is in response to the Governor's Regulatory Reform Initiative.

16VAC25-20-40. Exemption.

~~No asbestos project fees will be required for residential buildings. Notification for asbestos projects in residential buildings shall otherwise be in accordance with applicable portions of this chapter. No notification to the department or payment of asbestos project fees is required for asbestos projects in residential buildings as defined under 16VAC25-20-10.~~

V.A.R. Doc. No. R13-3650; Filed June 12, 2013, 8:30 a.m.

Fast-Track Regulation

Title of Regulation: **16VAC25-40. Standard for Boiler and Pressure Vessel Operator Certification (amending 16VAC25-40-10, 16VAC25-40-20, 16VAC25-40-30).**

Statutory Authority: §§ 15.2-910 and 40.1-51.6 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 31, 2013.

Effective Date: August 15, 2013.

Agency Contact: Ed Hilton, Director, Boiler Safety Compliance, Department of Labor and Industry, Main Street Centre, 600 East Main Street, Richmond, VA 23219,

telephone (804) 786-3169, FAX (804) 371-2324, TTY (804) 786-2376, or email ed.hilton@doli.virginia.gov.

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

The Safety and Health Codes Board is authorized by § 15.2-910 of the Code of Virginia to "...establish standards to be used in determining an applicant's ability, proficiency and qualifications."

Purpose: The purpose of this regulatory action is to delete requirements in subsection C of 16VAC25-40-30, necessitating actions by the Commonwealth's chief boiler inspector to provide or evaluate the written examination for boiler operator certification for any locality in the Commonwealth because no such requests to the department have ever been made by any county, city, or town.

Rationale for Using Fast-Track Process: The Boiler Safety Compliance Program of the Department of Labor and Industry sought the repeal of the requirement that it provide and evaluate written examinations referenced in subsection C of 16VAC25-40-30 since the department has never been asked to provide or evaluate such an examination. Subsection C has never been implemented by any locality. Therefore, it has been determined by the department to be of no value in protecting the public health, safety, or welfare.

Amending the regulation is noncontroversial and no individual or entity will be adversely affected.

Substance: This regulatory action:

1. In 16VAC25-40-30 C deletes the phrase "provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be administered by the agent or board." The sentence now reads: "The written examination for boiler operator certification shall be administered by the agent or board."
2. In 16VAC25-40-30 I deletes the term "receive and" preceding "evaluate" to be consistent with the changes made in subsection C. Subsection I now will read: "The agent or board shall evaluate the applications and examinations and issue Certificates of Competency to applicants successfully completing the examination process."
3. In 16VAC25-40-30 L for continuity with the revisions proposed for subsection C, (i) deletes the term "receipt" preceding "examination"; (ii) inserts the term "date" following "following the"; (iii) inserts "the" preceding "examination"; and (iv) deletes the phrase "results from the chief boiler inspector of the Commonwealth or his designee" following "the examination." Subsection L now will read: "Applicants shall be notified in writing by the

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agent or board of the results of their application within 30 days following the date of the examination."

4. In 16VAC25-40-30 N substitutes the term "Competency" for "competency" following "Certificates of" to more accurately reflect the reference; and removes the term "the department and issued by" also for continuity with subsection C. Subsection N now will read: "Certificates of Competency shall be provided by the adopting jurisdiction at a frequency established by the adopting jurisdiction."

5. In 16VAC25-40-30 O substitutes the term "Certificate of Competency" for "certificate of competency" to more accurately reflect this reference.

6. In 16VAC25-40-10 deletes the unnecessary definitions of terms "Commissioner" and "Department" for continuity with revisions to subsection C of 16VAC25-40-30.

7. In 16VAC25-40-20 D substitutes the term "board" for "Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry" following "amendment to the."

Issues: The department does not anticipate any advantages or disadvantages to Virginia employers, Virginia employees, or self-employed individuals, with the adoption of these changes.

The department does not anticipate any advantages or disadvantages to the department or the Commonwealth with the adoption of these changes. This regulation requiring the chief boiler inspector of the Commonwealth or his designee to provide and evaluate the written examination for boiler operator in 16VAC25-40-30 C is being repealed because the department has never been requested to provide and evaluate written examinations for boiler operator certification pursuant to this subsection nor has this subsection ever been implemented by any locality.

The department believes that there are no disadvantages to the public or the Commonwealth with the adoption of these changes as these services have never been requested or utilized.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Safety and Health Codes Board (Board) proposes to amend its regulations that govern certification for boiler and pressure vessel operators by making several clarifying changes to regulatory text and by eliminating a requirement that the chief boiler inspector or his designee provide and evaluate a written certification examination for boiler and pressure vessel operators who maintain boilers in any locality in the Commonwealth.

Result of Analysis. There is insufficient information to ascertain whether benefits will outweigh costs for these proposed regulations.

Estimated Economic Impact. Current regulations require the chief boiler inspector or his designee to provide and evaluate a written examination for boiler and pressure vessel operators. Board staff reports that this regulatory requirement has been in place since 1993 but that no locality has ever actually implemented it by asking the Department of Labor and Industry (DOLI) to provide or evaluate the required written examination. As a consequence, the Board now proposes to eliminate this requirement. Board staff reports that, absent this requirement, localities would provide an examination should they ever decide to implement 16VAC25-40-30 C. This change will increase uncertainty for boiler operators because regulations will no longer state who is responsible for providing and evaluating a written certification exam. Any localities that choose to implement 16VAC25-40-30 C in the future would also incur costs for providing and evaluating a written exam.

Businesses and Entities Affected. Board staff reports that affected entities include Virginia localities and any boiler operators that operate/maintain boilers in any county, city or town in the Commonwealth. Board staff further reports that between several dozen and several hundred entities are subject to these regulations and, therefore, will be affected by these proposed regulatory changes.

Localities Particularly Affected. Localities that employ boiler and pressure vessel operators will be particularly affected by these proposed regulations.

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 additional expense on account of these regulatory changes.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No small business is likely to incur any additional expense on account of these regulatory changes.

Real Estate Development Costs. This regulatory action will likely have little 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, 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 purpose of this regulatory action is to delete requirements in the Standard for Boiler and Pressure Vessel Operator Certification, 16VAC25-40, requiring actions by the Department of Labor and Industry that have never been requested by any county, city, or town. The department anticipates that no entities or businesses will be affected by this amendment and that this regulatory action will result in no economic impacts, costs, or other effects on Virginia localities, employers, employees, the department, real estate development costs, or the use and value of private property.

Summary:

This regulatory action discontinues the requirement in 16VAC25-40-30 that the Department of Labor and Industry provide and evaluate the written examination for boiler operator certification for local governments. Since the enactment of the regulation, no locality has ever requested the department to provide and evaluate any such written examinations for boiler operators who would be covered under this regulation. This action is in response to the Governor's Regulatory Reform Initiative.

16VAC25-40-10. Definitions.

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

"Accredited" means accredited by an accrediting body recognized by the U.S. Department of Education.

"Act" refers to § 15.2-910 of the Code of Virginia.

"Agent" means the agent established by a county, city or town, under local ordinance to examine and determine an applicant's qualifications for certification under the Act.

"Approved" means acceptable to the Commissioner of Labor and Industry.

"Board" means the board established by a county, city or town, under local ordinance to examine and determine an applicant's qualifications for certification under the Act.

"Boiler" means a closed vessel in which water is heated, steam is generated, steam is superheated, or any combination of them, under pressure or vacuum for use externally to itself by the direct application of heat. The term "boiler" shall include fired units for heating or vaporizing liquids other than water where these units are separate from processing systems and are complete within themselves.

"Boiler operator" means an individual who would normally be the senior operational and maintenance person at the site of the boiler who would be expected to react to changing operational and maintenance situations.

"Certificate of Competency" means a certificate issued to a person who has passed the prescribed examination as provided in subsection C of 16VAC25-40-30.

~~"Commissioner" means the Commissioner of the Department of Labor and Industry.~~

~~"Department" means the Department of Labor and Industry.~~

"Heating plant" means a heating system containing a low pressure steam or hot water boiler used to generate energy for use in heating buildings, potable water or processing.

"High pressure boiler" means a steam boiler where the safety valves are set to relieve at a pressure of more than 15 pounds per square inch.

"Horsepower rating of a boiler" for the purpose of this chapter shall be the largest rating determined in accordance with each of the following (i) by dividing the square feet of boiler heating surface by 10; or (ii) the manufacturer's rated output in horsepower; or (iii) where the manufacturer's rated output is expressed in terms other than horsepower, such rating converted into horsepower by the use of one of the factors as defined in this chapter.

"Hot water heating boiler" means any hot water boiler operated at pressures not exceeding 160 psi or temperatures not exceeding 250°F.

"Jurisdiction" as referred to in this standard shall mean counties, cities and towns in the Commonwealth.

"Low pressure boiler" means a steam boiler where the safety valves are set to relieve at a pressure of 15 pounds per square inch or less and hot water heating boilers.

"Pressure vessel" as referred to in this chapter shall be any vessel in which (i) the pressure is obtained from an external source, or by an internal or external application of heat; and (ii) is an auxiliary to a boiler plant.

"One boiler horsepower" shall be defined as (i) the evaporation of 34.5 pounds of water per hour from and at 212°F; or (ii) 33475 British Thermal Units (B.T.U.) per hour; or (iii) 140 square feet of steam radiation; or (iv) 224 square feet of water radiation at 150°F; or (v) 10 kilowatt per hour electrical input to boiler.

"Steam plant" means a system containing a high pressure boiler to generate energy for use in heating, power generation or processing operations.

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16VAC25-40-20. Authority and application.

A. This chapter is established in accordance with § 15.2-910 of the Code of Virginia for use by counties, cities and towns for the certification of boiler and pressure vessel operators.

B. This chapter shall apply to any person who engages in, or offers to engage in, for the general public for compensation, the operation or maintenance of a boiler or pressure vessel. All jurisdictions who choose to regulate the certification of boiler and pressure vessel operators shall utilize this standard for control of certification within the Commonwealth.

C. This chapter shall not affect licensing or inspection under any other provision of the Code of Virginia.

D. Localities shall forward a copy of their certification ordinance upon adoption or amendment to the ~~Office of Boiler and Pressure Vessel Safety in the Virginia Department of Labor and Industry~~ board.

E. The Department of Labor and Industry will provide advisory opinions concerning interpretation and application of this chapter upon request.

F. This chapter shall not apply to any person who, in his capacity as an employee, is engaged in the operation or maintenance of a boiler or pressure vessel owned by his employer.

16VAC25-40-30. Certification.

A. Boiler operators and pressure vessel operators covered under this chapter shall be duly certified in the proper class by the examining agent or board of the jurisdiction adopting a boiler certification ordinance.

B. The agent or board shall be appointed by the adopting jurisdiction. Any such agent or board shall provide for the examination of applicants for boiler and pressure vessel operator certification no less than 12 times per year.

C. The written examination for boiler operator certification shall be ~~provided and evaluated by the chief boiler inspector of the Commonwealth, or his designee, and be administered~~ by the agent or board.

Such examination shall include questions, diagrams and practical tests of sufficient scope to demonstrate that the applicant has the necessary qualifications, experience and knowledge of the basic principles involved in operation, care and maintenance to operate safely the boiler and auxiliary pressure vessels of the class for which an application for certification has been made.

Specific competencies shall include, but not be limited to the following:

1. Principles of boiler design;
2. General operation practices;
3. Effects of water treatment;
4. Inspection requirements; and
5. Emergency shutdown procedures.

D. The class of certification and the training and experience requirements are as follows:

1. Class-1 Boiler Operator - To take charge of and operate or maintain any steam plant.

Requirements:

Two years experience as an operator of high pressure boiler beyond that experience which is required for a Class-2 operator.

Substitution of a degree in mechanical engineering from an accredited college, university or school of technology or successful completion of an approved boiler operator apprenticeship program or a U.S. military training course may be permitted for one year of the required experience.

2. Class-2 Boiler Operator - To take charge of and operate any of the following:

a. A high pressure steam plant where the total horsepower rating of the boiler is not in excess of 500 boiler horsepower, or a combination of high pressure boilers and heating boilers and auxiliary pressure vessels; or

b. A heating plant having low pressure boilers with a pump return with no limitation on total capacity; or

c. A heating plant having hot water heating boilers, with no limitation on total capacity.

Requirements:

At least two years experience as a boiler operator or an assistant boiler operator, fireman or oiler, in a high pressure steam plant of more than 75 boiler horsepower; or

Four years of such experience in a plant of not less than 50 boiler horsepower.

Substitution of a degree in mechanical engineering from an accredited college, university or school of technology or successful completion of any approved boiler operator apprenticeship program or a U.S. military training course may be permitted for one year of the required experience.

E. In cases where a boiler operator has been operating a plant for a period of at least one year prior to the effective date of implementation of this chapter by the adopting jurisdiction, or where the classification of such a boiler operator has been changed by this chapter, such an operator may be conditionally certified for a three-year period by the agent or board in order that the operator may continue operation of that plant and no other. A suitable endorsement should be noted on his certification documents.

F. Application for examination in the class of certification shall be made on an approved form provided by the agent or board of the adopting jurisdiction. A notarized statement of education, training and experience in operating steam boilers or low pressure boiler plants and auxiliary pressure vessels shall be provided with the application.

TITLE 18. PROFESSIONAL AND OCCUPATIONAL LICENSING

DEPARTMENT OF HEALTH PROFESSIONS

Final Regulation

G. No certification shall be required of an individual holding a valid license or certificate, under Chapter 3.1 (§ 40.1-51.5 et. seq.) of Title 40.1 of the Code of Virginia, or certified under this chapter by another jurisdiction. An applicant who holds a valid certificate or license from any state or local government outside the Commonwealth may be certified without examination upon the presentation of the following to the agent or board (i) a valid certificate or license from that authority and (ii) the certification or licensure requirements of that authority; provided that the authority's requirements for certification or licensure are equal to or greater than those established under this chapter.

H. Applicants must successfully complete an examination and the other requirements to be deemed certified, except as indicated in subsection G above.

I. The agent or board shall ~~receive and~~ evaluate the applications and examinations and issue certificates of competency to applicants successfully completing the examination process.

J. The agent or board of the adopting jurisdiction may permit an applicant to sit for a written examination at a lower class than that for which the applicant has applied, if it is determined that an applicant lacks either experience or requisite knowledge of the class applied for.

K. Applicants who fail to pass the required examination may not be reexamined until 90 days after the date of the last examination.

L. Applicants shall be notified in writing by the agent or board of the results of their application within 30 days following the ~~receipt date of the examination results from the chief boiler inspector of the Commonwealth or his designee.~~

M. The certification fee shall be established by the adopting jurisdiction.

N. Certificates of ~~competency~~ Competency shall be provided by ~~the department and issued by~~ the adopting jurisdiction at a frequency established by the adopting jurisdiction.

O. When a ~~certificate of competency~~ Certificate of Competency has been lost or destroyed, the owner shall present a notarized statement to that effect and pay a processing charge established by that jurisdiction for issuance of a duplicate certificate.

VA.R. Doc. No. R13-3651; Filed June 12, 2013, 8:29 a.m.



REGISTRAR'S NOTICE: The Department of Health Professions 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 Department of Health Professions will receive, consider, and respond to petitions from any interested person at any time with respect to reconsideration or revision.

Title of Regulation: **18VAC76-20. Regulations Governing the Prescription Monitoring Program (amending 18VAC76-20-50, 18VAC76-20-60).**

Statutory Authority: §§ 54.1-2505 and 54.1-2520 of the Code of Virginia.

Effective Date: August 15, 2013.

Agency Contact: Ralph Orr, Program Manager, Department of Health Professions, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4523, FAX (804) 527-4470, or email ralph.orr@dhp.virginia.gov.

Summary:

Chapter 472 of the Acts of Assembly of 2009 changed the name of the Health Practitioners' Intervention Program to the Health Practitioners' Monitoring Program (HPMP). The amendments to 18VAC76-20-50 conform the regulation.

Chapter 739 of the Acts of Assembly of 2013 expanded the list of to whom the Director of the HPMP may disclose information. The amendment to 18VAC76-20-60 authorizes the director to disclose information to a prescriber for the purpose of obtaining a record of prescriptions issued by that prescriber.

18VAC76-20-50. Criteria for mandatory disclosure of information by the director.

A. In order to request disclosure of information contained in the program, an individual shall be registered with the director as an authorized agent entitled to receive reports under § 54.1-2523 B of the Code of Virginia.

1. Such request for registration shall contain an attestation from the applicant's employer of the eligibility and identity of such person.
2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

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B. An authorized agent shall only request disclosure of information related to a specific investigation, or in the case of a request from the Health Practitioners' ~~Intervention Monitoring Program (HPMP)~~ Intervention Monitoring Program (HPMP), disclosure of information related to a specific applicant for or participant in ~~HPMP~~ HPMP. Requests shall be made in a format designated by the department and shall contain a case identifier number, a specified time period to be covered in the report, and the specific recipient, prescriber, or dispenser for which the report is to be made.

C. The request from an authorized agent shall include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

18VAC76-20-60. Criteria for discretionary disclosure of information by the director.

A. In accordance with § 54.1-2523 C of the Code of Virginia, the director may disclose information in the program to certain persons provided the request is made in a format designated by the department.

B. The director may disclose information to:

1. The recipient of the dispensed drugs, provided the request is accompanied by a copy of a valid photo identification issued by a government agency of any jurisdiction in the United States verifying that the recipient is over the age of 18 and includes a notarized signature of the requesting party. The report shall be mailed to the address on the license or delivered to the recipient at the department.

2. The prescriber for the purpose of establishing a treatment history for a patient or prospective patient or for the purpose of obtaining a record of prescriptions issued by that prescriber, provided the request is accompanied by the prescriber's registration number with the United States Drug Enforcement Administration (DEA) and attestation that the prescriber is in compliance with patient notice requirements of 18VAC76-20-70. The prescriber may delegate the submission of a request for information, provided the delegation is in compliance with § 54.1-2523.2 of the Code of Virginia. The health care professionals to whom the prescriber has authorized access to information shall be registered with the program. Requests for information made by a delegated health care professional shall be made in his own name, using his own unique identifiers assigned by the program.

3. Another regulatory authority conducting an investigation or disciplinary proceeding or making a decision on the granting of a license or certificate, provided the request is related to an allegation of a possible controlled substance violation and that it is accompanied by the signature of the chief executive officer who is authorized to certify orders or to grant or deny licenses.

4. Governmental entities charged with the investigation and prosecution of a dispenser, prescriber, or recipient participating in the Virginia Medicaid program, provided the request is accompanied by the signature of the official within the Office of the Attorney General responsible for the investigation.

5. A dispenser for the purpose of establishing a prescription history for a specific person to assist in determining the validity of a prescription, provided the request is accompanied by the dispenser's license number issued by the relevant licensing authority and an attestation that the dispenser is in compliance with patient notice requirements of 18VAC76-20-70.

C. In each case, the request must be complete and provide sufficient information to ensure the correct identity of the prescriber, recipient, and/or dispenser.

D. Except as provided in subdivision B 1 of this section, the request form shall include an attestation that the prescription data will not be further disclosed and only used for the purposes stated in the request and in accordance with the law.

E. In order to request disclosure of information contained in the program, a designated employee of the Department of Medical Assistance Services or of the Office of the Chief Medical Examiner shall register with the director as an authorized agent entitled to receive reports under § 54.1-2523 C of the Code of Virginia.

1. Such request for registration shall include an attestation from the applicant's employer of the eligibility and identity of such person.

2. Registration as an agent authorized to receive reports shall expire on June 30 of each even-numbered year or at any such time as the agent leaves or alters his current employment or otherwise becomes ineligible to receive information from the program.

VA.R. Doc. No. R13-3769; Filed June 11, 2013, 8:41 a.m.

BOARD OF NURSING

Fast-Track Regulation

Title of Regulation: 18VAC90-50. Regulations Governing the Certification of Massage Therapists (amending 18VAC90-50-20, 18VAC90-50-40, 18VAC90-50-60, 18VAC90-50-70).

Statutory Authority: § 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 31, 2013.

Effective Date: August 15, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations.

Purpose: The purpose of the amendments is to update regulatory language and clarify the process for provisional practice. Elimination of unnecessary or outdated provisions and inclusion of language consistent with current practices will facilitate submission of documentation for certification. The goal is to enable qualified applicants to obtain certification that provides the public with some assurance of competency and accountability in the delivery of massage therapy services.

Rationale for Using Fast-Track Process: The amendments make the regulations less restrictive and are not controversial. They are consistent with recommendations for regulatory reform received during the comment period on periodic review from the Virginia Chapter of the American Massage Therapy Association.

Substance: Regulations are amended to (i) facilitate electronic submission of documents and forms, (ii) allow the board to accept a certificate of naturalization as evidence of a name change, and (iii) clarify when an applicant may engage in the provisional practice of massage therapy.

Issues: The primary advantages to the public are facilitation of applications and renewals and elimination of confusing, outdated language in the regulations. There are no disadvantages to the public. The advantage to the Commonwealth is clarity in the regulations, which reduces queries to board staff.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing (Board) proposes to amend its regulations that set the rules for certification of massage therapists to update language and clarify the process for provisional practice.

Result of Analysis. Benefits likely outweigh costs for these proposed regulations.

Estimated Economic Impact. Current regulations require that applicants or certificate holders who move submit a change of address in writing within 30 days of the change. Current regulations also require applicants or certificate holders whose names have changed to submit either a copy of a marriage certificate or a court order for name change. The Board proposes to allow changes of address to be submitted electronically and also to allow certificates of naturalization as proof of name change. Both of these changes will benefit affected individuals by allowing them greater flexibility in providing documentation to the Board. No entity is likely to incur any costs on account of these changes.

Current regulations allow eligible candidates who have filed an application for certification in Virginia to practice massage therapy for not more than 90 days between completion of their education program and receipt of the results of their certification exam (and the issuance of their certification). The Board proposes to add language that clarifies that the application filed must be complete and that provisional practice must be authorized by the Board. The Department of Health Professions (DHP) reports that the proposed new language will not change current practice as the Board already requires authorization for provisional practice. Consequently, no affected entity is likely to incur any costs on account of these proposed changes. To the extent that the requirements for provisional practice might have been hard for some individuals to understand, these clarifying changes will provide a benefit.

Businesses and Entities Affected. DHP reports that there are currently 6,345 individuals certified as massage therapists in the Commonwealth. All of these entities, as well as any individuals who seek certification in the future, will be affected by these proposed regulations.

Localities Particularly Affected. No localities will be particularly affected by these proposed regulations.

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 costs on account of this proposed change.

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

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

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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 Board of Nursing concurs with the analysis of the Department of Planning and Budget on proposed amended regulations for 18VAC90-50, Regulations Governing the Certification of Massage Therapists.

Summary:

This regulatory action is initiated in response to the Governor's Regulatory Reform Initiative. The amendments (i) facilitate electronic submission of documents and forms, (ii) allow the board to accept a certificate of naturalization as evidence of a name change, and (iii) clarify when an applicant may engage in the provisional practice of massage therapy.

18VAC90-50-20. Operational requirements.

A. Requirements for current mailing address.

1. Each applicant or certificate holder shall maintain a current address of record with the board. Any change in the address of record or the public address, if different from the address of record, shall be submitted electronically or in writing to the board within 30 days of such change.

2. All required notices mailed by the board to any applicant or certificate holder shall be validly given when mailed to the latest address of record on file with the board.

B. A certificate holder who has had a change of name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or a court order evidencing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence and the required fee.

C. Each certified massage therapist shall conspicuously post his current Virginia certificate in a public area at his practice location.

Part II

Requirements for Certification

18VAC90-50-40. Initial certification.

A. An applicant seeking initial certification shall submit a completed application and required fee and verification of meeting the requirements of § 54.1-3029 A of the Code of Virginia as follows:

1. Is at least 18 years old;
2. Has successfully completed a minimum of 500 hours of training from a massage therapy program certified or

approved by the State Council of Higher Education or an agency in another state, the District of Columbia or a United States territory that approves educational programs, notwithstanding the provisions of § 22.1-320 of the Code of Virginia;

3. Has passed the National Certification Exam for Therapeutic Massage and Bodywork, the National Certification Exam for Therapeutic Massage, the Licensing Examination of the Federation of State Massage Therapy Boards, or an exam deemed acceptable to the board; and

4. Has not committed any acts or omissions that would be grounds for disciplinary action or denial of certification as set forth in § 54.1-3007 of the Code of Virginia and 18VAC90-50-90.

B. No application for certification under provisions of § 54.1-3029 B of the Code of Virginia shall be considered unless submitted prior to July 1, 1998.

C. An applicant who has been licensed or certified in another country and who, in the opinion of the board, meets the educational requirements shall take and pass ~~the national certifying an~~ examination as required in subsection A of this section in order to become certified.

18VAC90-50-60. Provisional certification.

A. An eligible candidate who has filed ~~an a~~ a completed application for certification in Virginia may engage in the provisional practice of massage therapy in Virginia for a period not to exceed 90 days ~~between completion of the education program and the receipt of the results of the candidate's first certifying examination upon written authorization from the board.~~

B. The designation of "massage therapist" or "certified massage therapist" shall not be used by the applicant during the 90 days of provisional certification.

C. An applicant who fails the certifying examination shall have his provisional certification withdrawn upon the receipt of the examination results and shall not be eligible for certification until he passes such examination ~~and becomes nationally certified.~~

Part III

Renewal and Reinstatement

18VAC90-50-70. Renewal of certification.

A. Certificate holders born in even-numbered years shall renew their certificates by the last day of the birth month in even-numbered years. Certificate holders born in odd-numbered years shall renew their certificates by the last day of the birth month in odd-numbered years.

B. The certificate holder shall complete the ~~application renewal form~~ and ~~return~~ submit it with the required fee and attest that he has complied with continuing competency requirements of 18VAC90-50-75.

C. Failure to receive the application for renewal shall not relieve the certified massage therapist of the responsibility for renewing the certificate by the expiration date.

D. The certificate shall automatically lapse by the last day of the birth month if not renewed; and use of the title "massage therapist" or "certified massage therapist" is prohibited.

VA.R. Doc. No. R13-3543; Filed June 5, 2013, 4:27 p.m.

Fast-Track Regulation

Title of Regulation: **18VAC90-60. Regulations Governing the Registration of Medication Aides (amending 18VAC90-60-20, 18VAC90-60-40, 18VAC90-60-60, 18VAC90-60-90, 18VAC90-60-92, 18VAC90-60-100, 18VAC90-60-110).**

Statutory Authority: §§ 54.1-2400 and 54.1-3005 of the Code of Virginia.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: July 31, 2013.

Effective Date: August 15, 2013.

Agency Contact: Jay P. Douglas, R.N., Executive Director, Board of Nursing, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4515, FAX (804) 527-4455, or email jay.douglas@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia establishes the general powers and duties of health regulatory boards, including the responsibility to promulgate regulations.

Purpose: The purpose of the amendments to the regulation is to update language and eliminate unnecessary or outdated provisions. Inclusion of language consistent with current practices will facilitate administration of medications and submission of documentation for registration. The goal is to enable qualified applicants to obtain registration that provides the public with some assurance of competency and accountability in the administration of medications to residents of assisted living facilities.

Rationale for Using Fast-Track Process: The amendments are less restrictive and not controversial. There were no comments received during the comment period on periodic review.

Substance: The amendments (i) facilitate electronic submission of documents and forms, (ii) allow the board to accept a certificate of naturalization as evidence of a name change, (iii) clarify the process for application approval and requesting of an informal conference if an application is denied, (iv) allow up to 20% of the skills practice to be done by simulation, (v) allow completion of a nursing education to count for training in client care, and (vi) allow an exception to the prohibition for intramuscular administration of medication for glucagon.

Issues: The primary advantages to the public are facilitation of applications; expansion of educational opportunity; and elimination of confusing, outdated language. There are no

disadvantages to the public. The advantage to the Commonwealth is clarity in the regulations, which reduces queries to board staff.

Small Business Impact Report of Findings: This regulatory action serves as the report of findings of the regulatory review pursuant to § 2.2-4007.1 of the Code of Virginia.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Nursing proposes 1) to allow 20% of the required 20 hours of supervised skills practice in medication aide training to be a simulation experience, 2) to allow registered aides to report their change of address electronically, 3) to allow registrants to use a certificate of naturalization as documentation of a name change, and 4) to clarify a number of existing requirements.

Result of Analysis. The benefits likely exceed the costs for one or more proposed changes. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for at least one change.

Estimated Economic Impact. One of the proposed changes will allow 20% (four hours) of the required 20 hours of supervised skills practice in medication aide training to be a simulation experience. The proposed percentage is consistent with the allowance for simulation in nursing education programs. This change will primarily affect training institutions and new medication aides. Currently, there are 141 training institutions in the Commonwealth. The number of new medication aides registered in fiscal years (FY) 2011 and 2012 was 899 and 861, respectively. However, the number of affected medication aides will be larger than those who are registered because some applicants who take the training may not qualify for registration.

Being able to substitute simulation experience for actual experience is likely to reduce training costs as the simulation method is probably more conducive to train a large number of people simultaneously. If the training costs are reduced for the training institutions, some of the reduction will likely be passed on to the applicants depending on the competitiveness of the training industry. However, the Department of Health Professions (DHP) acknowledges that the simulation method may not be as effective as real hands on training. This is the reason why only 20% of required training is allowed to be a simulation experience.

Another proposed change will allow registered aides to report their change of address electronically in addition to via a written submission. This change is expected to facilitate the submission of address change information and produce net benefits by reducing compliance costs such as time, travel, and postage costs on registered aides. DHP states that medication aides are generally very mobile and a fairly large proportion of them change their address in a given year. Currently, there are 4,936 medication aides registered in Virginia.

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In addition, one of the proposed changes will allow registrants to use a certificate of naturalization as documentation of a name change. Under the current rules, a court order or a marriage certificate is required. This change is expected to produce net benefits by reducing compliance costs for those who have a certificate of naturalization at hand, but not a court order or marriage certificate. However, the number of people who may be affected by this change is likely to be very small.

The remaining changes are clarifications of the current requirements and are not anticipated to create a significant economic impact other than perhaps avoiding some potential confusion among the medication aides.

Businesses and Entities Affected. The proposed regulations apply to 141 training institutions and approximately 4,936 medication aides registered in Virginia.

Localities Particularly Affected. No locality will be disproportionately affected.

Projected Impact on Employment. Allowance of simulation experience to meet the required real supervised skills practice is likely to increase the demand for training staff involved in simulation while reducing the demand for staff providing real world supervision. Remaining proposed changes are not anticipated to have a significant impact on employment.

Effects on the Use and Value of Private Property. Allowance of simulation experience to meet the required real supervised skills practice is likely to positively affect the asset value of the training centers offering this option as the demand for their services is likely to increase while the opposite is expected for the training institutions that do not offer the simulation method.

Small Businesses: Costs and Other Effects. The proposed regulation is expected to have an impact on 141 medication aide training institutions most if not all of which are small businesses. While no small business costs are expected, other effects on them are the same as discussed above.

Small Businesses: Alternative Method that Minimizes Adverse Impact. The proposed changes are not anticipated to have an 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, 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 Board of Nursing concurs with the analysis of the Department of Planning and Budget on a fast-track action for 18VAC90-60, Regulations Governing the Registration of Medication Aides, to promulgate changes recommended pursuant to the Governor's Regulatory Reform Project.

Summary:

This regulatory action is in response to the Governor's Regulatory Reform Initiative. The amendments (i) facilitate electronic submission of documents and forms, (ii) allow the board to accept a certificate of naturalization as evidence of a name change, (iii) clarify the process for application approval and requesting of an informal conference if an application is denied, (iv) allow up to 20% of the skills practice to be done by simulation, (v) allow completion of a nursing education to count for training in client care, and (vi) allow an exception to the prohibition for intramuscular administration of medication for glucagon.

18VAC90-60-20. Identification; accuracy of records.

A. Any person regulated by this chapter shall, while on duty, wear identification that is clearly visible to the client and that indicates the person's first and last name and the appropriate title issued to such person by the board under which he is practicing in that setting.

B. A medication aide who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or a court order evidencing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence.

C. A medication aide shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted electronically or in writing to the board within 30 days of such change. All notices required by law and by this chapter to be mailed by the board to any registrant shall be validly given when mailed to the latest address of record on file with the board.

Part II
Medication Aide Training Programs

18VAC90-60-40. Establishing and maintaining a medication aide training program.

A. Establishing a medication aide training program.

1. A program provider wishing to establish a medication aide training program shall submit a completed application and pay the prescribed fee to the board at least 90 days in advance of the first expected offering of the program.
2. ~~The application shall provide evidence~~ Initial approval may be granted when all documentation of the program's compliance with requirements as set forth in this part ~~has been submitted and deemed satisfactory to the board.~~
3. ~~The committee shall, If approval is denied, the applicant may request, within 30 days of the mailing of the decision, an informal conference committee to be convened in accordance with § 2.2-4019 of the Code of Virginia; receive and review the application and shall make a recommendation to the board to grant or deny approval.~~
4. If the committee's recommendation is to deny approval, no further action will be required of the board unless the program requests a hearing before the board or a panel thereof in accordance with § 2.2-4020 and subdivision 11 of § 54.1-2400 of the Code of Virginia.

B. Maintaining an approved medication aide training program. To maintain approval, the program shall:

1. Continue to comply with requirements as set forth in this part.
2. Document that the cumulative passing rate for the program's first-time test takers taking the competency evaluation required for registration over the past two years is not less than 80%.
3. Report all substantive changes within 10 days of the change to the board to include, but not be limited to, a change in the program instructors, curriculum or program location.
4. Cooperate with any unannounced visits to the program conducted by board representatives for the purpose of ensuring compliance with requirements for approval or in response to complaints about the program.
5. Provide documentation that each student enrolled in such program has been given a copy of applicable Virginia law and regulation for the registration and practice of medication aides.
6. Provide each student with a certificate of completion.

18VAC90-60-60. Requirements for the program curriculum.

A. Prerequisite for the program. A student seeking enrollment in a medication aide training program shall have successfully completed the direct care staff training required by the Department of Social Services for employment in an

assisted living facility or an approved nurse aide education program.

B. Hours of instruction. An approved program shall consist of a minimum of 68 hours of student instruction and training to include:

1. At least 40 hours of classroom or didactic instruction over and above any facility orientation program or training in direct client care provided by the facility;
2. At least 20 hours of supervised skills practice in medication administration to residents of an assisted living facility, after which the training program shall evaluate the student's minimal competency in the clinical skills of administering medications on a form provided by the board. Up to 20% of the supervised skills practice may be completed by a simulation experience in a simulation laboratory. The clinical evaluation shall be conducted one-on-one with a qualified instructor with experience in medications in long-term care; and
3. An eight-hour module in facilitating client self-administration or assisting with the administration of insulin to include instruction and skills practice in the administration of insulin as specified in the board-approved curriculum.

C. Content of the curriculum. An approved program shall use the curriculum developed and provided by the board, which shall, at a minimum, include the following topics:

1. Preparing for safe administration of medications to clients in assisted living facilities;
2. Maintaining aseptic conditions;
3. Understanding of basic pharmacology;
4. Facilitating client self-administration or assisting with medication administration;
5. Following proper procedure for preparing, administering, and maintaining medications; and
6. Following appropriate procedures for documentation and reporting to the licensed healthcare professional on duty at the facility or to the client's prescriber.

D. In addition to the training curriculum, the program shall provide one or more four-hour modules that can be used by facilities as refresher courses or by medication aides to satisfy requirements for continuing education.

Part III

Registration of Medication Aides

18VAC90-60-90. Requirements for initial registration.

A. To be registered as a medication aide, an applicant shall:

1. Provide documentation of successful completion of a staff training program in direct client care approved by the Department of Social Services, a nursing education program, or ~~of~~ an approved nurse aide education program;
2. Provide documentation of successful completion of one of the following:

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a. A medication aide training program approved by the board in accordance with this chapter; or

b. A nursing education program preparing for registered nurse licensure or practical nurse licensure; ~~or~~

~~c. An eight hour refresher course preparing a person to take the competency evaluations required for registration and one year of experience working as a medication aide in an assisted living facility. The one year of experience working as a medication aide in an assisted living facility shall be completed prior to December 31, 2008, and may only be accepted as evidence of training until August 1, 2009;~~

3. Submit the required application and fee as prescribed by the board;

4. Disclose whether there are grounds for denial of registration as specified in § 54.1-3007 of the Code of Virginia; and

5. Provide documentation of successful completion of competency evaluations consisting of:

a. A clinical evaluation of minimal competency in the skills of administering medications as specified in 18VAC90-60-60 B 2; and

b. A written examination as specified by the board with a passing score determined by the board.

B. An applicant who fails to take the board-approved examination within one year of completion of the training or who has failed the examination in three attempts shall reenroll and successfully complete another approved medication aide training program before reapplying for registration.

18VAC90-60-92. Requirements for registration by endorsement.

An applicant applying for registration by endorsement who has met the requirements for registration or certification as a medication aide in another state or the District of Columbia may be deemed eligible to sit for the competency evaluation if there are no grounds for denial of registration as specified in § 54.1-3007 of the Code of Virginia and upon submission of:

1. A completed application and fee; and

2. Verification of registration or certification as a medication aide in another state or the District of Columbia that is current or eligible for reinstatement.

18VAC90-60-100. Renewal or reinstatement of registration.

A. Renewal of registration.

1. Registered medication aides shall renew by the last day of their birth month each year.

2. The medication aide shall complete the application and submit it with the required fee and an attestation that he has completed continuing education as required by subsection B of this section.

3. Failure to receive the application for renewal shall not relieve the medication aide of the responsibility for renewing his registration by the expiration date.

4. The registration shall automatically lapse if the medication aide fails to renew by the expiration date.

5. Any person administering medications in an assisted living facility during the time a registration has lapsed shall be considered an illegal practitioner and shall be subject to prosecution under the provisions of § 54.1-3008 of the Code of Virginia.

B. Continuing education required for renewal.

1. In addition to hours of continuing education in direct client care required for employment in an assisted living facility, a medication aide shall have ~~four~~ the following:

a. Four hours each year of population-specific training in medication administration in the assisted living facility in which the aide is employed; or a

b. A refresher course in medication administration offered by an approved program.

2. A medication aide shall maintain documentation of continuing education for a period of four years following the renewal period for which the records apply.

3. The board shall periodically conduct a random audit ~~of at least 1.0%~~ of its registrants to determine compliance. A medication aide selected for audit shall provide documentation as evidence of compliance within 30 days of receiving notification of the audit.

4. The board may grant an extension for compliance with continuing education requirements for up to one year, for good cause shown, upon a written request from the registrant prior to the renewal deadline.

C. Reinstatement of registration.

1. An individual whose registration has lapsed for less than one renewal cycle may renew by payment of the renewal fee and late fee and attestation that he has completed all required continuing education for the period since his last renewal.

2. An individual whose registration has lapsed for more than one year shall:

a. Apply for reinstatement of registration by submission of a completed application and fee;

b. Provide evidence of completion of all required continuing education for the period since his last renewal, not to exceed eight hours of training in medication administration;

c. Retake the written and practical competency evaluation as required by the board; and

d. Attest that there are no grounds for denial of registration as specified in § 54.1-3007 of the Code of Virginia.

18VAC90-60-110. Standards of practice.

A. A medication aide shall:

1. Document and report all medication errors and adverse reactions immediately to the licensed healthcare professional in the facility or to the client's prescriber;
2. Give all medications in accordance with the prescriber's orders and instructions for dosage and time of administration and document such administration in the client's record; and
3. Document and report any information giving reason to suspect the abuse, neglect or exploitation of clients immediately to the licensed healthcare professional in the facility or to the facility administrator.

B. A medication aide shall not:

1. Transmit verbal orders to a pharmacy;
2. Make an assessment of a client or deviate from the medication regime ordered by the prescriber;
3. Mix, dilute or reconstitute two or more drug products, with the exception of insulin or glucagon; or
4. Administer by intramuscular or intravenous routes or medications via a nasogastric or percutaneous endoscopic gastric tube except for administration of glucagon.

VA.R. Doc. No. R13-3542; Filed June 5, 2013, 3:59 p.m.

BOARD OF LONG-TERM CARE ADMINISTRATORS**Proposed Regulation**

Title of Regulation: 18VAC95-30. Regulations Governing the Practice of Assisted Living Facility Administrators (amending 18VAC95-30-130, 18VAC95-30-150, 18VAC95-30-180, 18VAC95-30-190; adding 18VAC95-30-201; repealing 18VAC95-30-95).

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

Public Hearing Information:

July 11, 2013 - 9 am - Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Suite 201, Board Room 1, Henrico, VA

Public Comment Deadline: August 30, 2013.

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

Basis: Section 54.1-2400 provides the board the authority to promulgate regulations that are reasonable and necessary to administer effectively the regulatory system. In addition, the second enactment clause of Chapter 609 of the 2011 Acts of Assembly, which amended §§ 54.1-3103.1 and 63.2-1803 of the Code of Virginia, mandated that the board promulgate regulations for the oversight of acting administrators of assisted living facilities who have sought licensure but who

are not yet licensed as long-term care administrators by a preceptor registered or recognized by the board.

Purpose: The purpose of the regulatory action is to comply with the second enactment of Chapter 609 of the 2011 Acts of the Assembly. To implement the provisions of Chapter 609, the board will amend certain regulations for an administrator-in-training to ensure adequate oversight by the preceptor who is supervising the training of a person serving as the acting administrator for an assisted living facility to protect its residents, who are generally a very vulnerable population.

Since the revised law will allow an acting administrator (unlicensed person) to remain in charge of an assisted living facility for up to 180 days (rather than the current 90 days), it is essential for the health, welfare, and safety of residents in that facility to ensure appropriate oversight by the person who is supervising and training the acting administrator and to identify the status of the acting administrator to the public.

Substance: Regulations will require identification to the public that the acting administrator of an assisted living facility is an administrator-in-training, that the preceptor is responsible for appropriate oversight by being present in the facility for training on a regular basis (at least two hours per week), and that survey visit reports for the facility become part of the administrator-in-training reports. The time frame for completion of an assisted living facility administrator-in-training program is set at 150 days since the law provides that in no case shall an assisted living facility be operated with an acting administrator for more than 180 days from the last date of employment of a licensed administrator.

Issues: The primary advantage of the amendments is increased oversight of an unlicensed person who is serving as an acting administrator. If the acting administrator has applied for licensure and is in an administrator-in-training program, he may serve for 150 days with a possible 30-day extension if the acting administrator is awaiting the results of the licensure examination. During that six-month period, the facility is being run by an unlicensed person who has not yet demonstrated minimal competency. Oversight by a preceptor and appropriate identification of the acting administrator provides a measure of assurance that the residents are adequately protected. There are no disadvantages to the public. There are no advantages or disadvantages to the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapter 609 of the 2011 Acts of the Assembly, the Board of Long-Term Care Administrators (Board) proposes to amend its requirements for the training of acting administrators of assisted living facilities who intend to become licensed administrators.

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

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Estimated Economic Impact. Prior to 2011, the State Board of Social Services, as the entity that licenses long term care facilities, had the authority to decide how long acting administrators could replace licensed Long Term Care Administrators. Board of Social Services regulations allowed long term care facilities 90 days after a licensed administrator left employment to hire a new licensed administrator and allowed an acting administrator to run the facility in the interim. In 2011, the General Assembly passed a bill that allows an acting administrator to do the job of a licensed administrator for 90 days while a long term care facility finds a new licensed administrator except when the acting administrator has applied to be an administrator-in-training; in that case the acting administrator can fulfill the duties of a licensed administrator for 150 days and can apply for a 30 day extension to that 150 days if the acting administrator has completed all training and testing and is just awaiting their results on the national examination.

In response to this change to the Code of Virginia, the Board of Long-Term Care Administrators proposes to change its regulations to reflect that acting administrators have 150 days to finish their administrator-in-training program and to require that preceptors for acting administrators have at least two hours of face to face contact per week with their trainees.

The change in preceptor rules is proposed because most administrators-in-training (AIT) work in a facility where the current administrator is their preceptor and, so, AITs have many hours of face to face contact. This is not the case when the acting administrator is also an AIT being trained by an outside preceptor. The Board believes that requiring a minimal amount of weekly face to face training between preceptors and acting administrators who are also AITs will result in more consistent training. Preceptors may incur some additional travel costs on account of this proposed change but these costs are likely outweighed by the benefits for the acting administrator AITs, who may get more valuable individual direction from their preceptors, and for the public served by long term care facilities.

Both the change to the Code of Virginia and the change to these regulations that give acting administrators 150 days to become licensed represent a loosening of requirements. Because this is the case, no affected entity is likely to incur any additional costs.

Businesses and Entities Affected. The Department of Health Professions (DHP) reports that the Board currently licenses approximately 600 long term care administrators. DHP further reports that fewer than 12 facilities a year have acting administrators at some time during the year. All of these entities will likely be affected by these proposed regulations.

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

Projected Impact on Employment. These proposed regulations will likely have no effect on employment in the Commonwealth.

Effects on the Use and Value of Private Property. These proposed regulations will likely have no effect on the use and value of private property in the Commonwealth.

Small Businesses: Costs and Other Effects. DHP reports that most licensees are employed by small private businesses or non-profit ventures. None of these entities are, however, likely to incur any additional costs.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No affected small businesses are likely to incur any additional costs on account of these proposed regulations.

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 Board of Long-Term Care Administrators concurs with the analysis of the Department of Planning and Budget for the proposed regulation, 18VAC95-30, Regulations Governing the Practice of Assisted Living Administrators.

Summary:

The proposed amendments require (i) identification to the public that the acting administrator of an assisted living facility is an administrator-in-training, (ii) that the preceptor responsible for appropriate oversight of the acting administrator be present in the facility for training on a regular basis (at least two hours per week), and (iii) that survey visit reports for the facility become part of the administrator-in-training reports.

Part III
Requirements for Licensure

18VAC95-30-95. Licensure of current administrators. (Repealed.)

~~A. Until January 2, 2009, any person who has served in one of the following positions for the period of one of the four years immediately preceding application for licensure may be licensed by the board:~~

- ~~1. A full time administrator of record in accordance with requirements of 22VAC40-72-200, or an assistant administrator in an assisted living facility, as documented on an application for licensure; or~~
- ~~2. A full time regional administrator with onsite supervisory responsibilities for one or more assisted living facilities with at least two years of previous experience as the administrator of an assisted living facility as documented on an application for licensure.~~

~~B. Persons who are applying for licensure based on experience as an administrator as specified in subsection A of this section shall document a passing grade on the national credentialing examination for administrators of assisted living facilities approved by the board.~~

18VAC95-30-130. Application package.

A. An application for licensure shall be submitted after the applicant completes the qualifications for licensure.

B. An individual seeking licensure as an assisted living facility administrator or registration as a preceptor shall submit:

1. A completed application as provided by the board;
2. Additional documentation as may be required by the board to determine eligibility of the applicant, to include the most recent survey report if the applicant has been serving as an acting administrator of a facility;
3. The applicable fee; and
4. An attestation that he has read and understands and will remain current with the applicable Virginia laws and the regulations relating to assisted living facilities.

C. With the exception of school transcripts, examination scores, and verifications from other state boards, all parts of the application package shall be submitted at the same time. An incomplete package shall be retained by the board for one year, after which time the application shall be destroyed and a new application and fee shall be required.

18VAC95-30-150. Required hours of training.

A. The ALF AIT program shall consist of hours of continuous training as specified in 18VAC95-30-100 A 1 in a facility as prescribed in 18VAC95-30-170 to be completed within 24 months, except a person in an ALF AIT program who has been approved by the board and is serving as an acting administrator shall complete the program within 150 days. An extension may be granted by the board on an individual case basis. The board may reduce the required

hours for applicants with certain qualifications as prescribed in subsection B of this section.

B. An ALF AIT applicant with prior health care work experience may request approval to receive hours of credit toward the total hours as follows:

1. An applicant who has been employed full time for one of the past four years immediately prior to application as an assistant administrator in a licensed assisted living facility or nursing home or as a hospital administrator shall complete 320 hours in an ALF AIT;
2. An applicant who holds a license or a multistate licensure privilege as a registered nurse and who has held an administrative level supervisory position in nursing for at least one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 320 hours in an ALF AIT; or
3. An applicant who holds a license or a multistate licensure privilege as a licensed practical nurse and who has held an administrative level supervisory position in nursing for at least one of the past four consecutive years in a licensed assisted living facility or nursing home shall complete 480 hours in an ALF AIT.

18VAC95-30-180. Preceptors.

A. Training in an ALF AIT program shall be under the supervision of a preceptor who is registered or recognized by a licensing board.

B. To be registered by the board as a preceptor, a person shall:

1. Hold a current, unrestricted Virginia assisted living facility administrator or nursing home administrator license;
2. Be employed full-time as an administrator in a training facility or facilities for a minimum of one of the past four years immediately prior to registration or be a regional administrator with on-site supervisory responsibilities for a training facility or facilities; and
3. Submit an application and fee as prescribed in 18VAC95-30-40. The board may waive such application and fee for a person who is already approved as a preceptor for nursing home licensure.

C. A preceptor shall:

1. Provide direct instruction, planning and evaluation;
2. Be routinely present with the trainee in the training facility; and
3. Continually evaluate the development and experience of the trainee to determine specific areas needed for concentration.

D. A preceptor may supervise no more than two trainees at any one time.

E. A preceptor for a person who is serving as an acting administrator while in an ALF AIT program shall be present

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in the training facility for face-to-face instruction and review of the trainee's performance for a minimum of two hours per week.

18VAC95-30-190. Reporting requirements.

A. The preceptor shall maintain progress reports on forms prescribed by the board for each month of training. For a person who is serving as an acting administrator while in an ALF AIT program, the preceptor shall include in the progress report evidence of face-to-face instruction and review for a minimum of two hours per week.

B. The trainee's certificate of completion plus the accumulated original monthly reports shall be submitted by the preceptor to the board within 30 days following the completion of the program.

18VAC95-30-201. Administrator-in-training program for acting administrators.

A. A person who is in an ALF AIT program while serving as an acting administrator pursuant to § 54.1-3103.1 of the Code of Virginia shall be identified on his nametag as an acting administrator-in-training.

B. The facility shall post the certificate issued by the board for the acting administrator and a copy of the license of the preceptor in a place conspicuous to the public.

VA.R. Doc. No. R12-2920; Filed June 5, 2013, 4:01 p.m.

REAL ESTATE BOARD

Proposed Regulation

Title of Regulation: **18VAC135-20. Virginia Real Estate Board Licensing Regulations (amending 18VAC135-20-10 through 18VAC135-20-45, 18VAC135-20-60, 18VAC135-20-70, 18VAC135-20-80, 18VAC135-20-101, 18VAC135-20-120, 18VAC135-20-140 through 18VAC135-20-240, 18VAC135-20-260 through 18VAC135-20-310, 18VAC135-20-360; adding 18VAC135-20-55, 18VAC135-20-165, 18VAC135-20-225; repealing 18VAC135-20-100, 18VAC135-20-105).**

Statutory Authority: §§ 54.1-201 and 54.1-2105 of the Code of Virginia.

Public Hearing Information:

August 7, 2013 - 9 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Suite 200, Board Room 2, Richmond, VA

Public Comment Deadline: August 30, 2013.

Agency Contact: Christine Martine, Executive Director, Real Estate Board, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8552, FAX (804) 527-4299, or email reboard@dpor.virginia.gov.

Basis: Section 54.1-201 of the Code of Virginia provides the general authority for the regulatory boards to promulgate regulations to administer the regulatory system. Section 54.1-2105 of the Code of Virginia provides that the Real Estate Board may do all things necessary and convenient for

carrying into effect the provisions of its duties, including promulgating necessary regulations.

Purpose: Changes are made annually to the Real Estate Board's statutes by the General Assembly. Since the regulations have not undergone substantial revision since 2008, a thorough review was necessary to ensure the regulations complement the Real Estate Board's laws, provide minimum burdens on the regulants, protect the public, and reflect current procedures and policies of the board and the Department of Professional and Occupational Regulation.

Substance: Proposed changes are intended to improve the clarity of the regulations and ensure consistency with current practices and legal requirements and standards of practice in the industry. As a result of this thorough review, it was determined that sections pertaining to previous education requirements and additional qualifications for renewal of reciprocal license were no longer relevant. The subsection on duties of a supervising broker was moved from the place of business section to its own section to complement changes in the law. A new section was added on voluntary compliance to address a new section in the Code of Virginia. The board also amended 18VAC135-20-260 to clarify what actions constitute failure to safeguard the interests of the public and engaging in improper, fraudulent, or dishonest conduct.

Issues: The primary advantage to the public is that the revisions will improve the clarity of the regulations and ensure consistency with current board practices, legal requirements, and standards of practice in the industry—all to better protect the health, safety, and welfare of citizens of the Commonwealth.

The primary advantage to the Commonwealth is that the revisions to the regulations reflect the importance that Virginia places on ensuring regulations are not burdensome but provide protection to the citizens of the Commonwealth. No disadvantages to the Commonwealth could be identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Real Estate Board (the Board) proposes to 1) incorporate statutory voluntary audit and compliance procedures, 2) require a reciprocity licensee to pass the Board's written examination within 12 months prior to applying for a license pursuant to the changes in law, 3) require initial license applicants to submit to fingerprinting pursuant to changes in law, 4) allow a licensee to carry over excess continuing education credits into the next renewal period pursuant to changes in law, 5) allow a broker to downgrade his license to that of a salesperson, 6) remove the \$90 cap on the license examination fee, and 7) require that a proprietary school applicant demonstrate a minimum net worth and offer more options to qualify for pre-license instructor certification.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs for some of the proposed changes. The benefits exceed the costs

for other proposed changes. Detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. The proposed amendments mainly incorporate numerous changes made to the related statutes since 2008. Pursuant to the Chapters 373 and 637 of the 2010 Acts of Assembly, one of the proposed changes incorporates voluntary audit and compliance procedures. This change requires a principal broker or a supervising broker to audit the practices, policies, and procedures of his firm or sole proprietorship at least once every two years. If the results of self audit indicate non-compliance with regulations or law, the broker is required to remedy the non-compliance. When such a report is submitted, it provides immunity to the broker from enforcement.

This requirement introduces additional compliance costs on the principal or supervising brokers in terms of added self audit costs. However, it also affords an opportunity to them to identify problematic practices and correct deficiencies voluntarily without risking enforcement action from the Board. The voluntary audit and compliance procedures are expected to improve compliance with the regulations and law without increasing the administrative costs of the Board. While the proposed voluntary audit and compliance procedures represent a significant change, they have already been implemented in practice under the statutory language. Thus, the proposed incorporation of the voluntary audit and compliance procedures in the regulations are not expected to create a significant economic impact upon incorporation of these amendments in the regulations.

Pursuant to the Chapters 373 and 637 of the 2010 Acts of Assembly, another proposed change requires a reciprocity licensee to pass the Boards written examination within 12 months prior to applying for a license. Previously, a reciprocity licensee could wait up to two years to pass the written test. This change shortens the time frame a reciprocity licensee can perform as a real estate salesperson or broker in Virginia from two years to 12 months. According to the Department of Professional Occupational Regulation (DPOR), a few hundred reciprocity licenses are granted in a year. Since this requirement has already been implemented under the statutory authority, no significant economic effect is expected from this proposed language upon its promulgation.

The proposed changes also require initial license applicants to submit to fingerprinting pursuant to Chapter 667 of the 2009 Acts of Assembly. This change is expected to affect approximately 3,000 individuals applying for licensure every year. The fingerprinting is estimated to cost \$62 per case, of which \$37 goes to the State Police and \$25 goes to the vendor. This additional cost is paid by the applicant. The main benefit of this requirement is likely improved compliance with the Boards existing background requirements.

Pursuant to Chapter 750 of the 2012 Acts of Assembly, the proposed changes allow a licensee to carry over excess

continuing education credits into the next renewal period if they are obtained six months prior to the license expiration date. This change is expected to benefit regulants who have taken more than the required amount of continuing education credits for renewal.

The proposed changes also allow a broker to downgrade his license to that of a salesperson. Such applicants are required to submit a complete application package for the salesperson license and be subject to the requirements of the broker license if he wishes to become licensed as a broker again. According to DPOR, some brokers no longer want to meet the continuing education requirements to maintain the broker license. While brokers are required to have 24 hours of continuing education per year, salespersons are required to have only 16 hours of continuing education per year. The additional 8 hours of continuing education is estimated to cost approximately \$50. Of the 11,835 brokers, how many may choose this option is not known. The Board has already implemented this requirement. Thus, no significant economic effect is expected from this proposed language upon its promulgation.

One of the proposed changes removes the \$90 cap on the license examination fee. The exam is administered by a contracted vendor. The current fee amount negotiated with the Board is \$60 which is in effect until 2015. Currently, the regulations allow the exam fee to be adjusted according to proper procurement procedures not to exceed \$90. The proposed removal of the cap will allow the Board to contract with a vendor with a negotiated price above \$90 per exam when the contract needs to be renewed. Approximately, 6,300 individuals take this test every year.

The proposed changes require that a proprietary school applicant demonstrate a minimum net worth of \$2,000 by a Certified Public Accountant certified letter and include more options to qualify for pre-license instructor certification. The net worth requirement has been established in guidance documents for three years. It was added to the regulation to require evidence of financial responsibility. Under the proposed changes, there are more options to qualify for pre-license instructor certification, but the applicant must meet two of the six options listed instead of one of the three. The Board receives 80 100 applications per year for pre-license instructor certification. The goal of this change is to make the instructor a more effective teacher. The board has also added a provision that would allow the board to waive the requirements if proof of experience in related field of real estate can be demonstrated.

The proposed changes also update the requirements for maintenance and management of financial records and actions that constitute an improper dealing pursuant to Chapter 461 of the 2011 Acts of Assembly; and the requirements for maintenance and management of escrow accounts pursuant to Chapter 181 of the 2010 Acts of Assembly.

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Businesses and Entities Affected. This regulation change will affect all brokers, salespersons, business entities and firms. As of March 1, 2013, 55,753 individuals and 6,199 firms/sole proprietorships are regulated by the Board.

Localities Particularly Affected. The proposed regulations apply throughout the Commonwealth.

Projected Impact on Employment. While some of the changes discussed above are expected to have a positive impact on employment, some others are expected to have a negative impact. For example, voluntary audit and compliance procedures are likely to add to demand for labor. Shortening the time frame a reciprocity licensee can perform as an agent or broker in Virginia is likely to reduce supply of real estate professionals in Virginia. Fingerprinting requirements are likely to add to the demand for fingerprinting services. Being able to carryover excess continuing education credits are likely to reduce demand for continuing education services. Allowing a broker to downgrade his license to that of a salesperson is likely to reduce demand for continuing education services. The net impact of these opposing effects on employment is not known.

Effects on the Use and Value of Private Property. While some of the changes discussed above are expected to reduce compliance costs, some others are expected to increase them. For example, voluntary audit and compliance procedures, shortening the time frame a reciprocity licensee can perform as an agent or broker in Virginia, and fingerprinting requirements are likely to add to the compliance costs. Being able to carryover excess continuing education credits and allowing a broker to downgrade his license to that of a salesperson is likely to reduce the compliance costs. The net impact of these opposing effects on compliance costs and consequently on asset value of affected firms is not known.

Small Businesses: Costs and Other Effects. Most of the 6,199 firms/sole proprietorships are likely to be small businesses. Costs and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Shortening the time frame a reciprocity licensee can perform as an agent or broker in Virginia and fingerprinting requirements are the changes with probably the most significant adverse impact. There is no known alternative that minimizes these adverse impacts.

Real Estate Development Costs. No significant 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, 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 Real Estate Board concurs with approval with the economic impact analysis performed by the Department of Planning and Budget.

Summary:

The proposed amendments (i) incorporate statutory voluntary audit and compliance procedures (Chapters 373 and 637 of the Acts of Assembly of 2010), (ii) require a reciprocity licensee to pass the board's written examination within 12 months prior to applying for a license (Chapters 373 and 637 of the Acts of Assembly of 2010), (iii) require initial license applicants to submit to fingerprinting (Chapter 667 of the Acts of Assembly of 2009), (iv) allow a licensee to carry over excess continuing education credits into the next renewal period (Chapter 750 of the Acts of Assembly of 2012), (v) allow a broker to downgrade his license to that of a salesperson, (vi) remove the \$90 cap on the license examination fee, (vii) require that a proprietary school applicant demonstrate a minimum net worth, (viii) offer more options to qualify for prelicense instructor certification, (ix) change requirements for maintenance and management of financial records and amend the list of actions that constitute improper dealing (Chapter 461 of the Acts of Assembly of 2011), and (x) change the requirements for maintenance and management of escrow accounts (Chapter 181 of the Acts of Assembly of 2010).

Part I

General

18VAC135-20-10. 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:

"Active" means any broker or salesperson who is under the supervision of a principal or supervising broker of a firm or sole proprietor and who is performing those activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Actively engaged" means active licensure with a licensed real estate firm or sole proprietorship in performing those activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia for an average of at least 40 hours per week. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

"Actively engaged in the brokerage business" means anyone who holds an active real estate license.

"Associate broker" means any individual licensee of the board holding a broker's license other than one who has been designated as the principal broker.

"Client" means a person who has entered into a brokerage relationship with a licensee as defined by § 54.1-2130 of the Code of Virginia.

"Firm" means any sole proprietorship (nonbroker owner), partnership, association, limited liability company, or corporation, other than a sole proprietorship (principal broker owner), which is required by 18VAC135-20-20 B to obtain a separate brokerage firm license. The firm's licensed name may be any assumed or fictitious name properly filed with the board.

"Inactive status" refers to any broker or salesperson who is not under the supervision of a principal broker or supervising broker, who is not active with a firm or sole proprietorship and who is not performing any of the activities defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

"Independent contractor" means a licensee who acts for or represents a client other than as a standard agent and whose duties and obligations are governed by a written contract between the licensee and the client.

"Licensee" means real estate brokers and salespersons as defined in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

"Principal broker" means the individual broker who shall be designated by each firm to assure compliance with Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, and this chapter, and to receive communications and notices from the board which may affect the firm or any licensee active with the firm. In the case of a sole proprietorship, the licensed broker who is the sole proprietor shall have the responsibilities of the principal broker. The principal broker shall have responsibility for the activities of the firm and all its licensees. The principal broker shall have signatory authority on all escrow accounts maintained by the firm.

"Principal to a transaction" means a party to a real estate transaction including without limitation a seller or buyer, landlord or tenant, optionor or optionee, licensor or licensee. For the purposes of this chapter, the listing or selling broker, or both, are not by virtue of their brokerage relationship, principals to the transaction.

"Sole proprietor" means any individual, not a corporation, limited liability company, partnership, or association, who is trading under the individual's name, or under an assumed or

fictitious name pursuant to the provisions of Chapter 5 (§ 59.1-69 et seq.) of Title 59.1 of the Code of Virginia.

"Standard agent" means a licensee who acts for or represents a client in an agency relationship. A standard agent shall have the obligations as provided in Article 3 (§ 54.1-2130 et seq.) of Chapter 21 of Title 54.1 of the Code of Virginia.

"Supervising broker" means (i) the individual broker who shall be designated by the principal broker to supervise the provision of real estate brokerage services by the associate brokers and salespersons assigned to branch offices or (ii) the broker, who may be the principal broker, designated by the principal broker to supervise a designated agent as stated in § 54.1-2130 of the Code of Virginia.

Part II Entry

18VAC135-20-20. Necessity for license. (Refer to § 54.1-2106.1 of the Code of Virginia.)

A. Sole proprietor (principal broker owner). A real estate broker's license shall be issued to an individual trading under an assumed or fictitious name, that is, a name other than the individual's full name, only after the individual signs and acknowledges a certificate provided by the board, setting forth the name under which the business is to be organized and conducted, the address of the individual's residence, and the address of the individual's place of business. Each certificate must be attested by the clerk of court of the county or jurisdiction wherein the business is to be conducted. The attention of all applicants and licensees is directed to §§ 59.1-69 through 59.1-76 of the Code of Virginia.

B. Sole proprietor (nonbroker owner), partnership, association, limited liability company, or corporation. Every sole proprietor (nonbroker owner), partnership, association, limited liability company, or corporation must secure a real estate license for its firm before transacting real estate business. This license is separate and distinct from the individual broker license required of each partner, associate, manager of a limited liability company, and officer of a corporation who is active in the firm's brokerage business. Each applicant for such license shall disclose, and the license shall be issued to, the name under which the applicant intends to do or does business and holds itself out to the public. Each applicant shall also disclose the business address of the firm. The board will consider the application of any partnership, association, corporation or limited liability company only after the entity is authorized to conduct business in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia.

C. Each real estate firm is required to have a principal broker whose license is in good standing with the board in order to transact real estate business.

D. Branch office license. If a real estate broker maintains more than one place of business within the state, a branch office license shall be issued for each place of business

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maintained. Application for the license shall be made on forms provided by the board and shall reveal the name of the firm, the location of the branch office, and the name of the supervising broker for that branch office. The branch office license shall be maintained at the branch office location.

18VAC135-20-30. Qualifications for licensure.

Every applicant to the Real Estate Board for an individual salesperson's or broker's license shall have the following qualifications:

1. The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate broker or a real estate salesperson in such a manner as to safeguard the interests of the public.
2. The applicant shall meet the current educational requirements by achieving a passing grade in all required courses of § 54.1-2105 of the Code of Virginia prior to the time the applicant sits for the licensing examination and applies for licensure.
3. The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.
4. In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:
 - a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and
 - b. All felony convictions during his 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.
5. The applicant shall be at least 18 years old.
6. The applicant shall have a high school diploma or its equivalent.
7. The applicant, within 12 months prior to making complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board.

8. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established with regard to conduct at the examination may be grounds for denial of application.

9. Applicants for licensure who do not meet the requirements set forth in subdivisions 3 and 4 of this section may be approved for licensure following consideration by the board.

18VAC135-20-40. Additional qualifications for brokers.

An applicant for an individual license as a real estate broker shall meet the following requirements in addition to those set forth in 18VAC135-20-30:

1. The applicant shall meet the current educational requirements of § 54.1-2105 of the Code of Virginia.
2. The applicant shall have been actively engaged as defined in 18VAC135-20-10 as a real estate salesperson for a period of 36 of the 48 months immediately preceding application. This requirement may be waived at the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.
3. The applicant's experience must be verified by the principal or supervising broker for whom the licensee worked at the time of obtaining that experience.

18VAC135-20-45. Additional qualifications for salesperson's or associate broker's license as a business entity.

An applicant for a salesperson's license as a business entity shall meet the following requirements in addition to those set forth in 18VAC135-20-30:

1. Every owner or officer who actively participates in the real estate business shall hold a license as a salesperson or ~~associate~~ broker. The business entity license does not replace the individual license. More than one licensee may be a participant of the business entity.
2. When one licensee is the owner or officer, the business entity shall be named in accordance with § 54.1-2106.1 C of the Code of Virginia.
3. The board will consider the application of any partnership, association, corporation or limited liability company only after the entity is authorized to do business in accordance with §§ 59.1-69 through 59.1-76 of the Code of Virginia.

18VAC135-20-55. Downgrade to salesperson's license.

A broker who wants to downgrade his license(s) to that of a salesperson must submit a complete application with appropriate fee. When downgrading the license(s), the licensee agrees his current broker's license(s) ceases to exist, and if he chooses to become licensed as a broker again, he must pass the current broker examination and must meet the current education and experience requirements in place at the time of application.

18VAC135-20-60. Qualifications for licensure by reciprocity.

An individual who is currently licensed as a real estate salesperson or broker in another jurisdiction may obtain a Virginia real estate license by meeting the following requirements:

1. The applicant shall be at least 18 years of age.
2. The applicant shall have a high school diploma or its equivalent.
3. The applicant shall have received the salesperson's or broker's license by virtue of having passed in the jurisdiction of licensure a written examination deemed to be substantially equivalent to the Virginia examination.
4. The applicant shall sign a statement verifying that he has read and understands the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.
5. The applicant, within 12 months prior to making a complete application for a license, shall have passed a written examination provided by the board or by a testing service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.

6. The applicant shall follow all procedures established with regard to conduct at the examination. Failure to comply with all procedures established by the board with regard to conduct at the examination may be grounds for denial of application.

~~6. 7.~~ The applicant shall be in good standing as a licensed real estate broker or salesperson in every jurisdiction where licensed and the applicant shall not have had a license as a real estate broker or real estate salesperson which was suspended, revoked, or surrendered in connection with a disciplinary action or which has been the subject of discipline in any jurisdiction prior to applying for licensure in Virginia. The applicant shall be in compliance with all the terms of all board orders, including but not limited to paying imposed monetary penalties and costs, plus any accrued interest and other fees, and completing imposed education.

~~7. 8.~~ At the time of application for a salesperson's license, the applicant must have been actively engaged as defined by 18VAC135-20-10 for 12 of the preceding 36 months or have met educational requirements that are substantially equivalent to those required in Virginia. At the time of application for a broker's license, the applicant must have met educational requirements that are substantially equivalent to those required in Virginia, and the applicant must have been actively engaged as defined by 18VAC135-20-10 for 36 of the preceding 48 months. The broker applicant's experience must be verified by an individual who has direct knowledge of the applicant's activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia. These requirements may be waived at

the discretion of the board in accordance with § 54.1-2105 of the Code of Virginia.

~~8. 9.~~ The applicant shall have a good reputation for honesty, truthfulness, and fair dealing, and be competent to transact the business of a real estate salesperson or broker in such a manner as to safeguard the interests of the public.

~~9. 10.~~ In accordance with § 54.1-204 of the Code of Virginia, each applicant shall submit to fingerprinting and shall disclose the following information:

- a. All misdemeanor convictions involving moral turpitude, sexual offense, drug distribution or physical injury within five years of the date of the application; and
- b. All felony convictions during his 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.

~~10. 11.~~ Applicants for licensure who do not meet the requirements set forth in subdivisions ~~6 7~~ and ~~9 10~~ of this ~~subsection~~ section may be approved for licensure following consideration by the board.

18VAC135-20-70. Activation or transfer of license.

A. Any inactive licensee may activate that license with a licensed real estate firm or sole proprietorship by completing an activate form prescribed by the board. Continuing education pursuant to ~~§ 54.1-2105~~ 54.1-2105.03 of the Code of Virginia shall be completed within two years prior to activation of a license when the license has been inactive for more than 30 days. Any licensee who has not been active with a licensed real estate firm or sole proprietorship for a period of greater than three years shall be required to meet the existing prelicense educational requirements.

B. Any licensee may transfer from one licensed real estate firm or sole proprietorship to another by completing and submitting to the board a transfer application and the fee as set forth in 18VAC135-20-80.

C. A licensee who submits an activate application to the board shall not conduct business with the real estate firm or sole proprietorship set forth in the application until the application is processed and the license is issued by the board.

18VAC135-20-80. Application fees.

A. All application fees for licenses are nonrefundable and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. Application fees are as follows:

Salesperson by education and examination	\$150
Salesperson by reciprocity	\$150

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Salesperson's or associate broker's license as a business entity	\$190
Broker by education and examination	\$190
Broker by reciprocity	\$190
Broker concurrent license	\$140
Firm license	\$250
Branch office license	\$190
Transfer application	\$60
Activate application	\$60

C. The fee for examination or reexamination is subject to contracted charges to the board by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with these contracts. ~~The fee shall not exceed \$90 per candidate.~~

18VAC135-20-100. Qualification for renewal; continuing education requirements. (Repealed.)

~~Effective until June 30, 2008, as a condition of renewal, and pursuant to § 54.1-2105 of the Code of Virginia, all active brokers and salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of postlicense education regardless of whether his license is active or inactive. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation of license).~~

~~1. Providers shall be those as defined in 18VAC135-20-350.~~

~~2. Eight of the 16 required hours shall include two hours of training in fair housing laws, and a minimum of one hour each in state real estate laws and regulations, ethics and standards of conduct, agency and contracts for brokers. Eight of the 16 required hours shall include two hours of training in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in state real estate laws and regulations, agency, and contracts for salespersons. If the licensee submits a notarized affidavit to the board which certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in~~

~~other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:~~

- ~~a. Property rights;~~
- ~~b. Contracts;~~
- ~~c. Deeds;~~
- ~~d. Mortgages and deeds of trust;~~
- ~~e. Types of mortgages;~~
- ~~f. Leases;~~
- ~~g. Liens;~~
- ~~h. Real property and title insurance;~~
- ~~i. Investment;~~
- ~~j. Taxes in real estate;~~
- ~~k. Real estate financing;~~
- ~~l. Brokerage and agency contract responsibilities;~~
- ~~m. Real property management;~~
- ~~n. Search, examination and registration of title;~~
- ~~o. Title closing;~~
- ~~p. Appraisal of real property;~~
- ~~q. Planning subdivision developments and condominiums;~~
- ~~r. Regulatory statutes;~~
- ~~s. Housing legislation;~~
- ~~t. Fair housing;~~
- ~~u. Real Estate Board regulations;~~
- ~~v. Land use;~~
- ~~w. Business law;~~
- ~~x. Real estate economics;~~
- ~~y. Real estate investments;~~
- ~~z. Federal real estate law;~~
- ~~aa. Commercial real estate;~~
- ~~bb. Americans With Disabilities Act;~~
- ~~cc. Environmental issues impacting real estate;~~
- ~~dd. Building codes and design;~~
- ~~ee. Local laws and zoning;~~
- ~~ff. Escrow requirements;~~
- ~~gg. Ethics and standards of conduct; and~~
- ~~hh. Common interest ownership.~~

~~3. Licensees holding licenses in other jurisdictions must complete eight hours, which shall include fair housing laws, state real estate laws and regulations, ethics and standards of conduct, agency and contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this subsection.~~

~~4. The board may approve additional subjects at its discretion and in accordance with § 54.1-2105 of the Code of Virginia.~~

~~5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.~~

~~6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.~~

~~7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.~~

18VAC135-20-101. Qualification for renewal; continuing education requirements.

Effective July 1, 2008, as As a condition of renewal, and pursuant to § ~~54.1-2105~~ 54.1-2105.03 of the Code of Virginia, all active salespersons, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 16 classroom, correspondence, or other distance learning instruction hours during each licensing term, except for salespersons who are renewing for the first time and are required to complete 30 hours of post-license education regardless of whether his license is active or inactive. All active brokers, resident or nonresident, except those called to active duty in the Armed Forces of the United States, shall be required to satisfactorily complete a course or courses of not less than a total of 24 classroom, correspondence, or other distance learning instruction hours during each licensing term. Active licensees called to active duty in the Armed Forces of the United States may complete these courses within six months of their release from active duty. Inactive brokers and salespersons are not required to complete the continuing education course as a condition of renewal (see 18VAC135-20-70, Activation of license).

1. Providers shall be those as defined in 18VAC135-20-350;

2. For salespersons, eight of the required 16 hours shall include two hours ~~of training~~ in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in ~~state real estate laws and regulations~~ legal updates and emerging trends, real estate agency and real estate contracts. For brokers, 16 of the 24 required hours shall include eight hours in supervision and management of real estate agents and the management of real estate brokerage firms, two hours ~~of training~~ in fair housing laws, three hours in ethics and standards of conduct and a minimum of one hour each in ~~state real estate laws and regulations~~ legal updates and emerging trends, real estate agency and real estate contracts. If the licensee submits a

notarized affidavit to the board that certifies that he does not practice residential real estate brokerage, residential management or residential leasing and shall not do so during the licensing term, training in fair housing shall not be required; instead such licensee shall receive training in other applicable federal and state discrimination laws and regulations. The remaining hours shall be on subjects from the following list:

- a. Property rights;
- b. Contracts;
- c. Deeds;
- d. Mortgages and deeds of trust;
- e. Types of mortgages;
- f. Leases;
- g. Liens;
- h. Real property and title insurance;
- i. Investment;
- j. Taxes in real estate;
- k. Real estate financing;
- l. Brokerage and agency contract responsibilities;
- m. Real property management;
- n. Search, examination and registration of title;
- o. Title closing;
- p. Appraisal of real property;
- q. Planning subdivision developments and condominiums;
- r. Regulatory statutes;
- s. Housing legislation;
- t. Fair housing;
- u. Real Estate Board regulations;
- v. Land use;
- w. Business law;
- x. Real estate economics;
- y. Real estate investments;
- z. Federal real estate law;
- aa. Commercial real estate;
- bb. Americans With Disabilities Act;
- cc. Environmental issues impacting real estate;
- dd. Building codes and design;
- ee. Local laws and zoning;
- ff. Escrow requirements;
- gg. Ethics and standards of conduct; and
- hh. Common interest ownership.

3. Salespersons holding licenses in other jurisdictions must complete eight hours, which shall include fair housing laws, ~~state real estate laws and regulations~~ legal updates

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and emerging trends, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this ~~subsection~~ section. Brokers holding licenses in other jurisdictions must complete 16 hours that shall include supervision and management of real estate agents and the management of real estate brokerage firms, fair housing laws, ~~state real estate laws and regulations~~ legal updates and emerging trends, ethics and standards of conduct, and real estate agency and real estate contracts and may substitute education completed in their jurisdiction for the remaining hours required by subdivision 2 of this ~~subsection~~ section.

4. The board may approve additional subjects at its discretion and in accordance with § ~~54.1-2105~~ 54.1-2105.03 of the Code of Virginia.

5. Credit for continuing education course completion is given for each class hour/clock hour as defined in 18VAC135-20-350.

6. Licensees are responsible for retaining for three years and providing proof of continuing education. Proof of course completion shall be made on a form prescribed by the board. Failure to provide documentation of completion as directed by the board will result in the license not being renewed and/or disciplinary action pursuant to this chapter.

7. Instructors who are also licensees of the board may earn continuing education credit for teaching continuing education courses.

8. Any continuing education credits completed by the licensee in excess of that required in the current license term that are obtained in the six months immediately prior to the license expiration date shall carry over into the next two-year renewal period.

18VAC135-20-105. Additional qualifications for renewal of a reciprocal license. (Repealed.)

~~In addition to the requirements set forth in 18VAC135-20-100, all licensees, including those licensees who upgrade to broker prior to renewal, who obtained their license by reciprocity in accordance with 18VAC135-20-60 must pass a written examination provided by the board or a testing service acting on behalf of the board covering Virginia real estate license law and regulations of the Real Estate Board.~~

18VAC135-20-120. Fees for renewal.

A. All fees for renewals are nonrefundable, and the date of receipt by the board or its agent is the date that will be used to determine whether it is on time.

B. Renewal fees are as follows:

Salesperson	\$65
Salesperson's or associate broker's license as a business entity	\$90

Broker	\$80
Concurrent broker	\$80
Firm	\$160
Branch office	\$90

Part IV Reinstatement

18VAC135-20-140. Failure to renew; reinstatement required.

A. All applicants for reinstatement must meet all requirements set forth in ~~18VAC135-20-100~~ 18VAC135-20-101. Applicants for reinstatement ~~of an active who want to activate their~~ license must have completed the continuing education requirement in order to reinstate and activate the license. Applicants for reinstatement of an inactive license are not required to complete the continuing education requirement for license reinstatement.

B. If the requirements for renewal of a license, including receipt of the fee by the board, are not completed by the licensee within 30 days of the expiration date noted on the license, a reinstatement fee is required as follows:

Salesperson	\$100
Salesperson's or associate broker's license as a business entity	\$135
Broker	\$120
Concurrent Broker	\$120
Firm	\$245
Branch Office	\$135

C. A license may be reinstated for up to one year following the expiration date with payment of the reinstatement fee. After one year, the license may not be reinstated under any circumstances and the applicant must meet all current educational and examination requirements and apply as a new applicant.

D. Any real estate activity conducted subsequent to the expiration date may constitute unlicensed activity and be subject to prosecution under Chapter 1 (§ 54.1-100 et seq.) of Title 54.1 of the Code of Virginia.

Part V Standards of Practice and Conduct

18VAC135-20-155. Grounds for disciplinary action.

The board has the power to fine any licensee and to suspend or revoke any license issued under the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia and this chapter in accordance with subdivision A 7 of § 54.1-201 and § 54.1-202 of the Code of Virginia and the provisions of the Administrative Process Act, Chapter 40 (§ 2.2-4000 et seq.) of Title 2.2 of the Code of Virginia, where the licensee has been found to have violated or

cooperated with others in violating any provision of ~~Chapter~~ Chapters 1 (§ 54.1-100 et seq.), 2 (§ 54.1-200 et seq.), 3 (§ 54.1-300 et seq.), and 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, Chapter ~~4-3~~ 27.3 (§ ~~6-1-2-19~~ 55-525.16 et seq.) of Title ~~6-1~~ 55 of the Code of Virginia, or any regulation of the board. Any licensee failing to comply with the provisions of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the Real Estate Board in performing any acts covered by §§ 54.1-2100 and 54.1-2101 of the Code of Virginia may be charged with ~~improper dealings a violation~~, regardless of whether those acts are in the licensee's personal capacity or in his capacity as a real estate licensee.

18VAC135-20-160. Place of business.

A. Within the meaning and intent of § 54.1-2110 of the Code of Virginia, a place of business shall be an office where:

1. The principal broker, either through his own efforts or through the efforts of his employees or associates, regularly transacts the business of a real estate broker as defined in § 54.1-2100 of the Code of Virginia; and
2. The principal broker and his employees or associates can receive business calls and direct business calls to be made.

B. No place of business shall be in a physical residence unless it is separate and distinct from the living quarters of the residence with its own entrance and is accessible by the public.

C. Every principal broker shall have readily available to the public in the main place of business the firm license, the principal broker license and the license of every salesperson and broker active with the firm. The branch office license and a roster of every salesperson or broker assigned to the branch office shall be posted in a conspicuous place in each branch office.

18VAC135-20-165. Duties of supervising broker.

~~D.~~ Each place of business and each branch office shall be supervised by a supervising broker. The supervising broker shall exercise reasonable and adequate supervision of the provision of real estate brokerage services by associate brokers and salespersons assigned to the branch office. The supervising broker may designate another broker to assist in administering the provisions of this ~~subsection~~ section. The supervising broker does not relinquish overall responsibility for the supervision of the acts of all licensees assigned to the branch office. Factors to be considered in determining whether the supervision is reasonable and adequate include but are not limited to the following:

1. The availability of the supervising broker to all licensees under the supervision of the broker to review and approve all documents, including but not limited to leases, contracts affecting the firm's clients, brokerage agreements, and advertising;

2. The availability of training and written procedures and policies ~~which that~~ provide, without limitation, clear guidance in the following areas:

- a. Proper handling of escrow deposits;
- b. Compliance with federal and state fair housing laws and regulations if the firm engages in residential brokerage, residential leasing, or residential property management;
- c. Advertising;
- d. Negotiating and drafting of contracts, leases, and brokerage agreements;
- e. Use of unlicensed individuals;
- f. Agency relationships;
- g. Distribution of information on new or changed statutory or regulatory requirements;
- h. Disclosure of matters relating to the condition of the property; and
- i. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

3. The availability of the supervising broker in a timely manner to supervise the management of the brokerage services;

4. The supervising broker ensures the brokerage services are carried out competently and in accordance with the provisions of this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia;

5. The supervising broker undertakes reasonable steps to ensure compliance by all licensees assigned to the branch office; including but not limited to ensuring the licensees have an active, current license;

6. The supervising broker ensures only licensees undertake activities requiring a license, including but are not limited to:

- a. Show property;
- b. Hold an open house;
- c. Answer questions on listings, title, financing, closing, contracts, brokerage agreements, and legal documents;
- d. Discuss, explain, interpret, or negotiate a contract, listing, lease agreement, or property management agreement with anyone outside the firm; and
- e. Negotiate or agree to any commission, commission split, management fee, or referral fee.

7. A supervising broker shall provide adequate supervision over the unlicensed employee(s) or assistants under the supervision of a broker as they perform the following permitted activities:

- a. Perform general clerical duties, including answering the phones and reading information shown on the listing;

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- b. Submit listings and changes to MLS;
- c. Follow up on loan commitments after contracts have been ratified;
- d. Have keys made for listings;
- e. Compute commission checks;
- f. Place signs on properties;
- g. Act as a courier service;
- h. Schedule appointments;
- i. Record and deposit earnest money deposits, security deposits, and advance rents;
- j. Prepare contract forms for approval of the licensee and supervising broker;
- k. Prepare promotional materials and advertisements for approval of the licensee and supervising broker;
- l. Assemble closing documents;
- m. Obtain required public information from governmental entities;
- n. Monitor license and personnel files;
- o. Order routine repairs as directed by licensee;
- p. Are compensated for their work at a predetermined rate that is not contingent upon the occurrence of a real estate transaction; and
- q. Perform any other activities undertaken in the regular course of business for which a license is not required.

~~6.~~ 8. If a supervising broker is located more than 50 miles from the place of business or the branch office and there are licensees who regularly conduct business assigned to the branch office or at the place of business, the supervising broker must certify in writing on a quarterly basis on a form provided by the board that the supervising broker complied with the requirements ~~in~~ of this subsection section; and

~~7.~~ 9. The supervising broker must maintain the records required in this ~~subsection~~ section for three years. The records must be furnished to the board's agent upon request.

18VAC135-20-170. Maintenance of licenses.

A. Name and address.

1. Salespersons and individual brokers shall at all times keep the board informed of their current name and home address. Changes of name and address must be reported to the board in writing within 30 calendar days of such change. The board shall not be responsible for the licensee's failure to receive notices, communications and correspondence caused by the licensee's failure to promptly notify the board of any change of address. A licensee may use a professional name other than a legal name if that professional name is filed with the board prior to its use. The professional name shall include the licensee's first or last name and shall not include any titles.

2. Salespersons and brokers shall be issued a license only to the place of business of the sole proprietorship or firm with which the salesperson or broker is active.

3. Principal brokers must at all times keep the board informed of their current firm and branch office name and addresses and changes of name and address must be reported to the board in writing within 30 calendar days of such change. A physical address is required. A post office box will not be accepted.

B. Discharge or termination of active status.

1. When any salesperson or broker is discharged or in any way terminates his active status with a sole proprietorship or firm, it shall be the duty of the sole proprietor or principal broker to return the license ~~by certified mail~~ to the board so that it is received within 10 calendar days of the date of termination or status change. The sole proprietor or principal broker shall indicate on the license the date of termination, and shall sign the license before returning it.

2. When any principal broker is discharged or in any way terminates his active status with a firm, it shall be the duty of the firm to notify the board and return the license ~~by certified mail~~ to the board within three business days of termination or status change. The firm shall indicate on the license the date of termination, and shall sign the license before returning it. See § 54.1-2109 of the Code of Virginia for termination relating to the death or disability of the principal broker.

18VAC135-20-180. Maintenance and management of escrow accounts.

A. Maintenance of escrow accounts.

1. If money is to be held in escrow, each firm or sole proprietorship shall maintain in the name by which it is licensed one or more federally insured separate escrow accounts in a federally insured depository ~~in Virginia~~ into which all down payments, earnest money deposits, money received upon final settlement, rental payments, rental security deposits, money advanced by a buyer or seller for the payment of expenses in connection with the closing of real estate transactions, money advanced by the broker's client or expended on behalf of the client, or other escrow funds received by him or his associates on behalf of his client or any other person shall be deposited unless all principals to the transaction have agreed otherwise in writing. The balance in the escrow accounts shall be sufficient at all times to account for all funds that are designated to be held by the firm or sole proprietorship. The principal broker shall be held responsible for these accounts, including having signatory authority on these accounts. The supervising broker and any other licensee with escrow account authority may be held responsible for these accounts. All such accounts, checks and bank statements shall be labeled "escrow" and the account(s)

shall be designated as "escrow" accounts with the financial institution where such accounts are established.

2. Funds to be deposited in the escrow account may include moneys which shall ultimately belong to the licensee, but such moneys shall be separately identified in the escrow account records and shall be paid to the firm by a check drawn on the escrow account when the funds become due to the licensee. Funds in an escrow account shall not be paid directly to the licensees of the firm. The fact that an escrow account contains money which may ultimately belong to the licensee does not constitute "commingling of funds" as set forth by subdivision C 2 of this section, provided that there are periodic withdrawals of said funds at intervals of not more than six months, and that the licensee can at all times accurately identify the total funds in that account which belong to the licensee and the firm.

3. If escrow funds are used to purchase a certificate of deposit, the pledging or hypothecation of such certificate, or the absence of the original certificate from the direct control of the principal or supervising broker, shall constitute commingling as prohibited by subdivision C 2 of this section.

B. Disbursement of funds from escrow accounts.

1. a. Purchase transactions. Upon the ratification of a contract, earnest money deposits and down payments received by the principal broker or supervising broker or his associates must be placed in an escrow account by the end of the fifth business banking day following ratification, unless otherwise agreed to in writing by the parties principals to the transaction, and shall remain in that account until the transaction has been consummated or terminated. In the event the transaction is not consummated (nonconsummation), the principal broker or supervising broker shall hold such funds in escrow until (i) all principals to the transaction have agreed in writing as to their disposition, and the money shall be returned to the agreed upon principal within 30 days of the agreement, or (ii) a court of competent jurisdiction orders such disbursement of the funds, or (iii) the funds are successfully interpleaded into a court of competent jurisdiction pursuant to this section, or (iv) the broker can pay the funds to the principal to the transaction who is entitled to receive them in accordance with the clear and explicit terms of the contract which established the deposit. In the latter event, prior to disbursement, the broker shall give written notice to the principal to the transaction not to receive the deposit by either (i) hand delivery receipted for by the addressee, or (ii) by certified mail return receipt requested, with a copy to the other party, that this payment will be made unless a written protest from that principal to the transaction is received by the broker within 30 days of the hand delivery or mailing, as appropriate, of that notice. If the notice is sent within 90 days of the date of

nonconsummation, the broker may send the notice by receiptable email or facsimile if such email address or facsimile information is set forth in the contract or otherwise provided by the recipient. In all events, the broker may send the notice to the notice address, if any, set forth in the contract. If the contract does not contain a notice address and the broker does not have another address for the recipient of the notice, the broker may send it to the last known address of the recipient. No broker shall be required to make a determination as to the party entitled to receive the earnest money deposit. The broker shall not be deemed to violate any obligation to any client by virtue of making such a determination. A broker who has carried out the above procedure shall be construed to have fulfilled the requirements of this chapter.

A principal broker or supervising broker holding escrow funds for a principal to the transaction may seek to have a court of competent jurisdiction take custody of disputed or unclaimed escrow funds via an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If a principal broker or supervising broker is holding escrow funds for the owner of real property and such property is foreclosed upon by a lender, the principal broker or supervising broker shall have the right to file an interpleader action pursuant to § 16.1-77 of the Code of Virginia.

If there is in effect at the date of the foreclosure sale a real estate purchase contract to buy the property foreclosed upon and the real estate purchase contract provides that the earnest money deposit held in escrow by a firm or sole proprietorship shall be paid to a principal to the contract in the event of a termination of the real estate purchase contract, the foreclosure shall be deemed a termination of the real estate purchase contract, and the principal broker or supervising broker may, absent any default on the part of the purchaser, disburse the earnest money deposit to the purchaser pursuant to such provisions of the real estate purchase contract without further consent from, or notice to, the principals.

b. Lease transactions: security deposits. Any security deposit held by a firm or sole proprietorship shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction. Each such security deposit shall be treated in accordance with the security deposit provisions of the Virginia Residential Landlord and Tenant Act, Chapter 13.2 (§ 55-248.2 et seq.) of Title 55 of the Code of Virginia, unless exempted therefrom, in which case the terms of the lease or other applicable law shall control. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow

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account required by the lease without the written consent of the tenant. If there is in effect at the date of the foreclosure sale a tenant in a residential dwelling unit foreclosed upon and the landlord is holding a security deposit of the tenant, the landlord shall handle the security deposit in accordance with applicable law, which requires the holder of the landlord's interest in the dwelling unit at the time of termination of tenancy to return any security deposit and any accrued interest that is duly owed to the tenant, whether or not such security deposit is transferred with the landlord's interest by law or equity, and regardless of any contractual agreements between the original landlord and his successors in interest. Nothing herein shall be construed to prevent the landlord from making lawful deductions from the security deposit in accordance with applicable law.

c. Lease transactions: rents or escrow fund advances. Unless otherwise agreed in writing by all principals to the transaction, all rents and other money paid to the licensee in connection with the lease shall be placed in an escrow account by the end of the fifth business banking day following receipt, unless otherwise agreed to in writing by the principals to the transaction, and remain in that account until paid in accordance with the terms of the lease and the property management agreement, as applicable.

2. a. Purchase transactions. Unless otherwise agreed in writing by all principals to the transaction, a licensee shall not be entitled to any part of the earnest money deposit or to any other money paid to the licensee in connection with any real estate transaction as part of the licensee's commission until the transaction has been consummated.

b. Lease transactions. Unless otherwise agreed in writing by the principals to the lease or property management agreement, as applicable, a licensee shall not be entitled to any part of the security deposit or to any other money paid to the licensee in connection with any real estate lease as part of the licensee's commission except in accordance with the terms of the lease or the property management agreement, as applicable. Notwithstanding anything in this section to the contrary, unless the landlord has otherwise become entitled to receive the security deposit or a portion thereof, the security deposit shall not be removed from an escrow account required by the lease without the written consent of the tenant.

3. On funds placed in an account bearing interest, written disclosure in the contract of sale or lease at the time of contract or lease writing shall be made to the principals to the transaction regarding the disbursement of interest.

4. A licensee shall not disburse or cause to be disbursed moneys from an escrow or property management escrow account unless sufficient money is on deposit in that account to the credit of the individual client or property involved.

5. Unless otherwise agreed in writing by all principals to the transaction, expenses incidental to closing a transaction, e.g., fees for appraisal, insurance, credit report, etc., shall not be deducted from a deposit or down payment.

C. Actions including improper maintenance of escrow funds include:

1. Accepting any note, nonnegotiable instrument, or anything of value not readily negotiable, as a deposit on a contract, offer to purchase, or lease, without acknowledging its acceptance in the agreement;

2. Commingling the funds of any person by a principal or supervising broker or his employees or associates or any licensee with his own funds, or those of his corporation, firm, or association;

3. Failure to deposit escrow funds in an account or accounts designated to receive only such funds as required by subdivision A 1 of this section;

4. Failure to have sufficient balances in an escrow account or accounts at all times for all funds that are designated to be held by the firm or sole proprietorship as required by this chapter; and

5. Failing, as principal broker, to report to the board within three business days instances where the principal broker reasonably believes the improper conduct of a licensee, independent contractor, or employee has caused noncompliance with this section.

18VAC135-20-185. Maintenance and management of financial records.

A. A complete record of financial transactions conducted under authority of the principal broker's Virginia license shall be maintained in the principal broker's place of business, or in a designated branch office. When the principal broker's office is located outside of Virginia and the firm has a branch office in Virginia, a copy of these records shall be maintained in the Virginia office. These records shall show, in addition to any other requirements of the regulations, the following information: from whom money was received; the date of receipt; the place of deposit; the date of deposit; and, after the transaction has been completed, the final disposition of the funds.

B. The principal broker shall maintain a bookkeeping or recordkeeping system which shall accurately and clearly disclose full compliance with the requirements outlined in this section. Accounting records which are in sufficient detail to provide necessary information to determine such compliance shall be maintained.

C. Actions constituting improper recordkeeping by a principal broker or supervising broker include:

1. ~~Failing, as a principal or supervising broker, to retain for a period of three years from the date of the closing or ratification, if the transaction fails to close, a complete and legible copy of each disclosure of a brokerage relationship,~~

~~and each executed contract, agreement, and closing statement related to a real estate transaction, in the broker's control or possession, unless prohibited by law execution, each brokerage agreement, each disclosure of a brokerage relationship to an unrepresented party, each disclosure and consent to dual agency or dual representation, and each disclosure and consent to designated agency or designated representation;~~

~~2. Having received moneys on behalf of others and failed to maintain Failing to retain for a period of three years from the date of closing or from ratification, if the transaction fails to close, a complete and legible copy of each executed contract of sale, any executed release from contract, any executed lease agreement, any executed property management agreement, and each settlement statement related to a real estate transaction, in the broker's control or possession unless prohibited by law;~~

~~3. Failing to maintain~~ a complete and accurate record of such receipts and their disbursements for moneys received on behalf of others for a period of three years from the date of the closing or termination of the sales transaction or termination of a lease or conclusion of the licensee's involvement in the lease; and

~~3. 4. Failing, within a reasonable time, to account for or to remit any moneys coming into a licensee's possession which belong to others to maintain any records required by this section for three years.~~

18VAC135-20-190. Advertising by licensees.

A. Definitions. The following definitions apply unless a different meaning is plainly required by the context:

"Advertising" means all forms of representation, promotion and solicitation disseminated in any manner and by any means of communication to consumers for any purpose related to licensed real estate activity.

"Contact information" means telephone number or web address.

"Disclosure" in the context of ~~online~~ electronic media advertising means (i) advertising that contains the firm's licensed name, ~~the city and state in which the firm's main office is located and the jurisdiction in which the firm holds a license or~~ (ii) advertising that contains the licensee's name, and the name of the firm with which the licensee is active, the city and state in which the licensee's office is located and the jurisdiction in which the licensee holds a license and is one click away from the main page.

"Disclosure" in the context of other advertising means ~~(a)~~ (i) advertising by the firm that contains the firm's licensed name ~~and the firm's address or~~ (ii) advertising by an affiliated licensee that contains the licensee's name; ~~and the name of the firm with which the licensee is active and the firm's address.~~

~~"Institutional advertising" means advertising in which no real property is identified.~~

"Viewable page" means a page that may or may not scroll beyond the borders of the screen and includes the use of framed pages.

B. All advertising must be under the direct supervision of the principal broker or supervising broker, in the name of the firm and, when applicable, comply with the disclosure required by § 54.1-2138.1 of the Code of Virginia. The firm's licensed name must be clearly and legibly displayed on all advertising.

C. ~~Online~~ Electronic media advertising.

1. Any online electronic media advertising undertaken for the purpose of any licensed activity is subject to the provisions of this chapter.

2. All online electronic media advertising that can be viewed or experienced as a separate unit (i.e., ~~e-mail~~ email messages and web pages) must contain disclosure as follows:

a. The web. If a firm or licensee owns a webpage or controls its content, the viewable page must include disclosure or a link to disclosure.

~~b. E-mail, newsgroups, discussion lists, bulletin boards. All such formats shall include disclosure at the beginning or end of each message. The provisions of this subsection do not apply to correspondence in the ordinary course of business~~ All other electronic media. Firm's name, licensee's name and license number, and contact information. The disclosure must be prominently displayed on the viewable page.

~~c. Instant messages. Disclosure is not necessary in this format if the firm or licensee provided the disclosures via another format prior to providing, or offering to provide, licensed services.~~

~~d. Chat/Internet based dialogue. Disclosure is required prior to providing, or offering to provide, licensable services during the chat session, or in text visible on the same webpage that contains the chat session if the licensee controls the website hosting the chat session.~~

~~e. Voice Over Net (VON). Disclosure is required prior to advertising or the disclosure text must be visible on the same webpage that contains the VON session.~~

~~f. Banner ads. A link to disclosure is required unless the banner ad contains the disclosure.~~

3. All online electronic media listings advertised must be kept current and consistent as follows:

a. Electronic media listing information must be consistent with the property description and actual status of the listing. The licensee shall update in a timely manner material changes to the listing status authorized by the seller or property description when the licensee controls the online electronic media site.

b. The licensee shall make timely written requests for updates reflecting material changes to the listing status or

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property descriptions when a third party ~~online~~ electronic media listing service controls the website displaying the listing information.

~~e. All listing information shall indicate in a readily visible manner the date that the listing information shown was last updated.~~

D. Other advertising.

1. Signage shall include but not be limited to the firm's name and the firm's primary or branch office telephone number.

2. Business cards shall include but not be limited to the licensee's name, the firm name, and contact information.

~~D. E.~~ The following activities shall be prohibited:

1. Implying that property listed by a licensee's firm and advertised by the firm or licensee is for sale, exchange, rent or lease by the owner or by an unlicensed person;

2. Failing to include a notice in all advertising that the owner is a real estate licensee if the licensee owns or has any ownership interest in the property advertised ~~and is not using the services of a licensed real estate entity;~~

3. Failing to include the firm's licensed name on any sign displayed outside each place of business;

4. Failing to obtain the written consent of the seller, landlord, optionor or licensor prior to advertising a specific identifiable property; and

5. Failing to identify the type of services offered when advertising by general description a property not listed by the party making the advertisement.

18VAC135-20-210. Disclosure of interest.

If a licensee knows or should have known that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest, is acquiring or attempting to acquire or is selling or leasing real property through purchase, sale, or lease and the licensee is a party to the transaction, the licensee must disclose in writing that information he is a licensee and that he, any member of his family, his firm, any member of his firm, or any entity in which he has an ownership interest has or will have an ownership interest to the owner, purchaser or lessee in writing in the offer to purchase, the application, the offer to lease or lease other parties to the transaction. This disclosure shall be made to the purchaser, seller or lessee upon having substantive discussions about specific real property.

18VAC135-20-220. Disclosure of brokerage relationships.

A. Purchase transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective buyer or seller who is not the client of the licensee and who is not represented by another licensee and with whom the licensee has substantive discussions about a specific property or properties, the person whom the licensee represents ~~in~~ pursuant to a brokerage

~~relationship agreement~~, as that term is defined in § 54.1-2130 of the Code of Virginia.

2. Except as otherwise provided in subdivision 3 of this subsection, such disclosure shall be made in writing at the earliest practical time, but in no event later than the time specific real estate assistance is first provided. Any disclosure complying with the provisions of § 54.1-2138 A of the Code of Virginia shall be deemed in compliance with this disclosure requirement.

3. A licensee acting as a dual or designated agent or as a dual or designated representative shall obtain the written consent of all clients to the transaction at the earliest practical time. Such consent shall be presumed to have been given by a client who signs a disclosure complying with the provisions of §§ 54.1-2139 and 54.1-2139.1 of the Code of Virginia. Such disclosure shall be given to, and consent obtained from, (i) the buyer not later than the time an offer to purchase is presented to the licensee who will present the offer to the listing agent or seller, and (ii) the seller not later than the time the offer to purchase is presented to the seller.

4. Any disclosure required by this subsection may be given in combination with other disclosures or information, but, if so, the disclosure must be conspicuous, printed in bold lettering, all capitals, underlined, or within a separate box or as otherwise provided by § 54.1-2138 of the Code of Virginia.

B. Lease transactions.

1. Unless disclosure has been previously made by a licensee, a licensee shall disclose to an actual or prospective landlord or tenant who is not the client of the licensee and who is not represented by another licensee, that the licensee has a brokerage relationship with another party or parties to the transaction. Such disclosure shall be in writing and included in the application for lease or the lease itself, whichever occurs first. If the terms of the lease do not provide for such disclosure, the disclosure shall be made in writing not later than the signing of the lease.

2. This disclosure requirement shall not apply to lessors or lessees in single or multi-family residential units for lease terms of less than two months.

18VAC135-20-225. Voluntary compliance.

A. Procedures for self audit or third-party audit; broker immunity.

1. A principal broker or supervising broker may conduct, or may have another person conduct, an audit of the practices, policies, and procedures of his firm or sole proprietorship in accordance with § 54.1-2111.1 of the Code of Virginia. A principal broker or supervising broker shall conduct an audit at least once during each license term in accordance with § 54.1-2106.2 of the Code of Virginia. The methods and findings of the audit shall be documented as described in this subsection.

2. A principal broker or supervising broker shall notify the board in writing within 30 days following the conclusion of a self audit, or within 30 days from the receipt of the final report of a third-party audit, of any matter he believes to constitute noncompliance with the provisions of Real Estate Board regulations or law. The principal broker or supervising broker shall also submit (i) a statement that such noncompliance has been remediated or (ii) a plan to correct such noncompliance within 90 days. Failure to comply with these requirements may result in loss of immunity from regulatory enforcement action.

3. A principal broker or supervising broker shall sign and date any report made pursuant to subdivision 2 of this subsection. Such report, properly submitted, shall provide immunity from enforcement against the principal broker or supervising broker by the board for the matters reported therein.

4. Immunity from enforcement action provided by this section shall not apply if the noncompliance with provisions of Real Estate Board regulations or law by the principal broker or supervising broker was intentional or was the result of gross negligence by the principal broker or supervising broker.

5. Immunity from enforcement action provided by this section shall apply only to the principal broker and supervising broker who conduct an audit and submit a voluntary compliance plan in accordance with this section and shall not extend to any other broker or salesperson who may not be in compliance with Real Estate Board regulations or law.

6. Failure to complete the voluntary compliance program within 90 days from the date of plan submission shall result in the loss of immunity from regulatory enforcement action. Repeated instances of a violation found as a result of an audit that was subject to the voluntary compliance program may be deemed by the board to constitute a failure to complete the prior voluntary compliance program.

B. Information needed for audit. In conducting an audit of practices, policies, and procedures of a broker, the principal broker or supervising broker or a third party shall examine and document all matters regarding the compliance by the firm or sole proprietorship with law and regulation regarding:

1. Proper handling of escrow deposits and maintenance of a complete record of financial transactions;
2. Compliance with federal and state fair housing laws and regulations if the firm or sole proprietorship engages in residential brokerage, residential leasing, or residential property management;
3. Advertising in all forms and media;
4. Negotiation and drafting of contracts, leases, and brokerage agreements;
5. Use of unlicensed individuals;

6. Agency relationships;

7. Distribution of information on new or changed statutory or regulatory requirements;

8. Proper documentation of required disclosures; and

9. Such other matters as necessary to assure the competence of licensees to comply with this chapter and Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia.

Upon request by any investigator, or by another agent of the board, a broker shall cooperate in the provision of records and documents pursuant to 18VAC135-20-240 within 10 days of receipt of the request, and for other requests by the board and its agents pursuant to 18VAC135-20-250, within 21 days of receipt.

18VAC135-20-240. Provision of records to the board.

Unless otherwise specified by the board, or as set forth in § 54.1-2108 of the Code of Virginia, a licensee of the Real Estate Board shall produce to the board or any of its agents within 10 days of the request evidence of signature cards or bank records, any document, book, or record concerning any real estate transaction in which the licensee was involved, or for which the licensee is required to maintain records for inspection and copying by the board or its agents. The board may extend such time frame upon a showing of extenuating circumstances prohibiting delivery within such 10-day period.

18VAC135-20-260. ~~Unworthiness and incompetence~~ Prohibited acts.

~~Actions constituting unworthy and incompetent conduct include~~ The following are prohibited acts:

1. Obtaining a license by false or fraudulent representation
Furnishing substantially inaccurate or incomplete information to the board in obtaining, renewing, reinstating, or maintaining a license;
2. Holding more than one license as a real estate broker or salesperson in Virginia except as provided in this chapter;
3. As a currently licensed real estate salesperson, sitting for the licensing examination for a salesperson's license;
4. As a currently licensed real estate broker, sitting for a real estate licensing examination;
5. Signing an experience verification form without direct supervision or actual knowledge of the applicant's activities as defined in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia;
6. Having been convicted or found guilty regardless of the manner of adjudication in any jurisdiction of the United States of a misdemeanor involving moral turpitude, sexual offense, drug distribution or physical injury, or any felony, there being no appeal pending therefrom or the time for appeal having elapsed. Review of convictions shall be subject to the requirements of § 54.1-204 of the Code of Virginia. Any plea of nolo contendere shall be considered a conviction for the purposes of this subdivision. The record

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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 conviction or guilt;

~~6.~~ 7. Failing to inform the board in writing within 30 days of pleading guilty or nolo contendere or being convicted or found guilty regardless of adjudication of any convictions as stated in subdivision ~~5~~ 6 of this section;

~~7.~~ 8. Having had a license as a real estate broker or real estate salesperson that was suspended, revoked, or surrendered in connection with a disciplinary action or that has been the subject of discipline in any jurisdiction;

~~8.~~ 9. Failing to inform the board in writing within 30 days of a disciplinary action as stated in subdivision ~~7~~ 8 of this section;

~~9.~~ 10. Having been found in a court or an administrative body of competent jurisdiction to have violated the Virginia Fair Housing Act, the Fair Housing Laws of any jurisdiction of the United States, including without limitation Title VIII of the Civil Rights Act of 1968 (82 Stat. 73), or the Civil Rights Act of 1866 (14 Stat. 27), there being no appeal therefrom or the time for appeal having elapsed;

~~10. Failing~~ 11. Actions constituting failing to act as a real estate broker or salesperson in such a manner as to safeguard the interests of the public, including but not limited to the following:

a. A broker failing to ensure proper supervision and accountability over the firm's day-to-day financial dealings, escrow account or accounts, and daily operations;

b. A broker failing to ensure the transaction was properly released and the money disbursed according to the regulations;

c. A broker failing to ensure salespersons working at the firm or sole proprietorship hold active licenses while practicing real estate;

d. A broker failing to provide accurate and timely reports to the board about a licensee's compliance with the board's laws and regulations;

e. A broker failing to have signatory authority on all accounts;

f. A broker failing to account for or remit any moneys coming into a licensee's possession that belong to another;

g. A licensee failing to submit to the broker in a timely manner, all earnest money deposits, contracts, listing agreements, deeds of lease, or any other documents for which the broker has oversight duties;

h. A salesperson negotiating leases, collecting security deposits, and receiving management fees for managing

properties through an unlicensed firm without a principal broker;

i. A salesperson operating an unlicensed firm acting as a principal broker;

j. A licensee practicing real estate with an inactive license;

k. A licensee providing the broker with an earnest money deposit check from an account with insufficient funds causing an escrow shortage;

l. A licensee providing lockbox codes to an unlicensed person allowing unsupervised access to a home;

m. A licensee failing to inform the broker of a transaction; and

n. A licensee submitting altered copies of a contract or contracts to the broker; and

~~11. Engaging~~ 12. Actions constituting engaging in improper, fraudulent, or dishonest conduct, including but not limited to the following:

a. A licensee attempting to divert commission from the firm or sole proprietorship and direct payment to a licensee or an unlicensed individual who is not a party to the transaction;

b. A licensee fabricating or altering any document with the intent to mislead;

c. A licensee failing to obtain a client's written or legal permission or authorization to sign documents;

d. A licensee making an earnest money deposit payable to himself or cashing the check without written authorization;

e. A licensee misrepresenting ownership of a property;

f. A licensee submitting copies of the same earnest money deposit check for inclusion with multiple offers;

g. A licensee entering into agreements to be compensated for real estate services while his license is inactive;

h. A licensee representing in offers he received the earnest money deposit when he knows the check is worthless; and

i. A licensee misrepresenting who is holding the earnest money deposit.

18VAC135-20-270. Conflict of interest.

Actions constituting a conflict of interest include:

1. Being active with ~~or receiving compensation from~~ a real estate broker other than the licensee's principal broker, without the written consent of the principal broker;

2. Acting for more than one client in a transaction governed by the provisions of §§ 54.1-2139, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia without first obtaining the written consent of all clients; and

3. ~~Acting~~ Performing regulated activities as a standard agent, limited service agent, or independent contractor for

any client outside the licensee's brokerage firm(s) or sole proprietorship(s) without the written consent of the principal broker.

18VAC135-20-280. Improper brokerage commission.

Actions resulting in an improper brokerage commission include:

1. Offering to pay or paying a ~~commission~~ transaction-based fee, fees, or other valuable consideration to any person for acts or services performed in violation of Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia, or this chapter; provided, however, that referral fees and shared commissions may be paid to any real estate entity licensed in this or another jurisdiction, or to any referral entity in the United States, the members of which are brokers licensed in this or another jurisdiction and which only disburses commissions or referral fees to its licensed member brokers not licensed in this or any jurisdiction for services that require a real estate license;
2. Accepting a commission, fee, or other valuable consideration, as a real estate salesperson or associate broker, for any real estate services from any person or entity except the licensee's principal broker at the time of the transaction, for the performance of any of the acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or the regulations of the board or related to any real estate transaction, without the consent of that broker. Unless he has notified the broker in writing of the activity or activities to be pursued and obtained the prior written consent of the principal broker, no salesperson or associate broker shall (i) use any information about the property, the transaction or the parties to the transaction, gained as a result of the performance of acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia or (ii) act as an employee of a company providing real estate settlement services as defined in the Real Estate Settlement Procedures Act (12 USC § 2601 et seq.) or pursuant to a license issued by the Commonwealth of Virginia to provide real estate settlement services to clients or customers of the firm;
3. Receiving a ~~fee or portion thereof including a referral fee or a commission or other valuable consideration for services required by the terms of the real estate contract when such costs are to be paid by either one or more principals to the transaction unless such fact is revealed in writing to the principal(s) prior to the time of ordering or contracting for the services~~ financial benefit from the use of any information about the property, the transaction, or the parties to the transaction, when the information is gained as a result of the performance of acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the prior written consent of the licensee's principal broker;
4. Offering or paying any money or other valuable consideration for services required by the terms of the real

~~estate contract to any party other than the principals to a transaction which results in a fee being paid to the licensee; without such fact being revealed in writing to the principal(s) prior to the time of ordering or contracting for the services~~ Receiving financial benefit from any person other than the licensee's principal broker at the time of the transaction, for the performance of any of the acts specified in Chapter 21 (§ 54.1-2100 et seq.) of Title 54.1 of the Code of Virginia without the prior written consent of the licensee's principal broker;

5. Receiving financial benefit or other valuable consideration for any work or service related to a transaction without the prior written acknowledgment of the person paying for such work or service; and
6. Making a listing contract or lease which provides for a "net" return to the seller/lessor, leaving the licensee free to sell or lease the property at any price he can obtain in excess of the "net" price named by the seller/lessor; ~~and~~
6. ~~Charging money or other valuable consideration to or accepting or receiving money or other valuable consideration from any person or entity other than the licensee's client for expenditures made on behalf of that client without the written consent of the client.~~

18VAC135-20-290. Improper dealing.

Actions constituting improper dealing include:

1. ~~Entering a brokerage relationship that (i) does not specify a definite termination date; (ii) does not provide a mechanism for determining the termination date; or (iii) is not terminable by the client;~~
2. ~~1.~~ Offering real property for sale or for lease without the knowledge and consent of the owner or the owner's authorized representative, or on any terms other than those authorized by the owner or the owner's authorized representative;
3. ~~2.~~ Placing a sign on any property without the consent of the owner of the property or the owner's authorized representative; and
4. ~~3.~~ Causing any advertisement for sale, rent, or lease to appear in any newspaper, periodical, or sign format or medium without including in the advertisement the name of the firm or sole proprietorship.

18VAC135-20-300. Misrepresentation/omission.

Actions constituting misrepresentation or omission, or both, include:

1. Using "bait and switch" tactics by advertising or offering real property for sale or rent with the intent not to sell or rent at the price or terms advertised, unless the advertisement or offer clearly states that the property advertised is limited in specific quantity and the licensee did in fact have at least that quantity for sale or rent;
2. Failure by a licensee representing a seller or landlord as a standard agent to disclose in a timely manner to a

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prospective purchaser or tenant all material adverse facts pertaining to the physical condition of the property which are actually known by the licensee;

3. Failing as a licensee to tender promptly to the buyer and seller every written offer, every written counteroffer, and every written rejection to purchase, option or lease obtained on the property involved;

4. Failure by a licensee acting as ~~a standard~~ an agent to disclose in a timely manner to the licensee's client all material facts related to the property or concerning the transaction when the failure to so disclose would constitute failure by the licensee to exercise ordinary care as defined in the brokerage agreement;

5. Notwithstanding the provisions of subdivision 4 of this section, a licensee acting as a dual representative shall not disclose to one client represented in the dual representation confidential information relating to the transaction obtained during the representation of another client in the same dual representation unless otherwise provided by law;

6. Failing to include the complete terms and conditions of the real estate transaction, including but not limited to any lease, property management agreement or offer to purchase;

7. Failing to include in any application, lease, or offer to purchase identification of all those holding any deposits;

8. Knowingly making any false statement or report, or willfully misstating the value of any land, property, or security for the purpose of influencing in any way the action of any lender upon:

a. Applications, advance discounts, purchase agreements, repurchase agreements, commitments or loans;

b. Changes in terms or extensions of time for any of the items listed in this subdivision 8 whether by renewal, deferment of action, or other means without the prior written consent of the principals to the transaction;

c. Acceptance, release, or substitution of security for any of the items listed in subdivision 8 a of this section without the prior written consent of the principals to the transaction;

9. Knowingly making any material misrepresentation or making a material misrepresentation; and

10. Making a false promise through agents, salespersons, advertising, or other means.

18VAC135-20-310. Delivery of instruments.

Actions constituting improper delivery of instruments include:

1. Failing to make prompt delivery to each principal to a transaction, complete and legible copies of any written disclosures required by §§ 54.1-2138, ~~and 54.1-2139~~, 54.1-2139.01, and 54.1-2139.1 of the Code of Virginia, listings, lease, offers to purchase, counteroffers, addenda and

ratified agreements, and other documentation required by the agreement;

2. Failing to provide in a timely manner to all principals to the transaction written notice of any material changes to the transaction;

3. Failing to deliver to the seller and buyer, at the time a real estate transaction is completed, a complete and accurate statement of receipts and disbursements of moneys received by the licensee, duly signed and certified by the principal or supervising broker or his authorized agent; provided, however, if the transaction is closed by a settlement agent other than the licensee or his broker, and if the disbursement of moneys received by the licensee is disclosed on the applicable settlement statement, the licensee shall not be required to provide the separate statement of receipts and disbursements; and

4. Refusing or failing without just cause to surrender to the rightful owner, upon demand, any document or instrument which the licensee possesses.

18VAC135-20-360. Proprietary school standards, instructor qualifications and course requirements.

A. Every applicant to the Real Estate Board for a proprietary school certificate shall meet the standards provided in subsection A of § 54.1-2105 ~~54.1-2105.02~~ of the Code of Virginia by submitting a CPA-certified letter attesting to the applicant's net worth or a balance sheet or financial statement certified to be accurate by the applicant. Such applicant shall show a minimum net worth of \$2,000.

B. Every applicant to the Real Estate Board for ~~approval certification~~ as an instructor for prelicense education ~~shall have one~~ must meet two of the ~~following~~ qualifications outlined in subdivisions 1 through 6 of this subsection:

1. ~~Baccalaureate~~ A baccalaureate degree, ~~a~~ an active Virginia real estate broker's license, and two consecutive years of discipline-free active real estate experience immediately prior to application;

2. ~~Five~~ An active Virginia real estate broker's license and ~~five~~ five consecutive years of discipline-free active real estate experience ~~acquired in the real estate field~~ immediately prior to application ~~and an active Virginia broker's license;~~ ~~or~~

3. ~~Expertise in a specific field of real estate with at least three years of active experience in that field. Such applicants will teach only in the area of their expertise and will be required to furnish proof of their expertise including, but not limited to, educational transcripts, professional certificates and letters of reference which will verify the applicant's expertise. A professional designation such as, but not limited to, Accredited Land Consultant (ALC), Certified Residential Specialist (CRS), Certified Commercial Investment Member (CCIM), Certified Property Manager (CPM), Certified Residential Broker (CRB), Counselor Real Estate (CRE), Member Appraisal~~

Institute (MAI), Society Industrial Office Realtors (SIOR), Senior Residential Appraiser (SRA), or Senior Real Estate Property Appraiser (SRPA);

4. A fully designated membership of the Real Estate Educators Association holding the Designated Real Estate Instructor (DREI) designation;

5. Possession of a valid teaching credential or certificate issued by the Commonwealth of Virginia, or any other state with qualifications that are equal to or exceed Virginia teacher qualifications, or at least five years of teaching experience in an accredited public, private, or parochial school, or an accredited junior college, college, or university; and

6. An attorney member of the Virginia State Bar who is engaged in the field of real estate-related law.

7. The board shall also consider evaluations from previous education courses the applicant has instructed and recommendations of course providers, coordinators, administrators, and institutions who have employed the applicant.

8. The board may waive the requirements of subdivisions 1 through 6 of this subsection upon review of proof of experience in related fields of real estate. The board has discretion to deny an applicant who has been the subject of a disciplinary action.

C. Every applicant to the Real Estate Board for approval as an instructor for continuing education and ~~postlicense~~ post license education shall have expertise in a specific field of real estate with at least three years of active experience and will teach only in the area of their expertise. Such applicants will be required to furnish proof of their expertise, possibly including, but not limited to, educational transcripts, professional certificates, and letters of reference (a maximum of three), a resume, or any other type of documentation that will verify the applicant's expertise.

D. Prelicense courses must be acceptable to the board, be taught by a certified prelicense instructor, and are required to have a monitored, final written examination. Distance learning prelicense courses may be considered as meeting the board's standard of quality if they have Association of Real Estate License Law Officials (ARELLO) distance education certification, or a substantially equivalent distance education certification, and online distance learning courses must include a timer requiring licensees to be actively engaged online learning course content for at least 50 minutes to receive one hour of credit. Those schools which propose to offer prelicensing courses (Principles and Practices of Real Estate, Real Estate Brokerage, Real Estate Finance, Real Estate Law or Real Estate Appraisal, etc.) must submit a request, in writing, to the board prior to offering the course(s) and supply the following information:

1. Course content. All Principles and Practices of Real Estate courses must include the 25 topic areas specified in

18VAC135-20-400. All requests to offer broker courses must include a course syllabus acceptable to the board;

2. Name of the course's text and any research materials used for study assignments;

3. Description of any research assignments;

4. Copies of test or quizzes;

5. Information explaining how the "Principles" course will require 60 hours of study, or how each broker related course will require 45 hours of study, in compliance with § 54.1-2105 of the Code of Virginia; and

6. Information about recordkeeping for the type of course delivery.

E. Providers of continuing education and post license education courses shall submit all subjects to the board for approval prior to initially offering the course. Correspondence and other distance learning courses offered by an approved provider must include appropriate testing procedures to verify completion of the course, including requiring licensees who complete correspondence or other distance learning courses to file a notarized affidavit certifying compliance with the course requirements with the education provider or with the licensee's own records. Distance learning continuing education and post license education courses may be considered as meeting the board's standard of quality if they have Association of Real Estate License Law Officials (ARELLO) distance education certification, or a substantially equivalent distance education certification, and online distance learning courses must include a timer requiring licensees to be actively engaged online learning course content for at least 50 minutes to receive one hour of credit. The board shall approve courses and the number of hours approved for each course based on the relevance of the subject to the performance of the duties set forth in §§ 54.1-2100 and 54.1-2101 of the Code of Virginia.

F. Approval of prelicense, continuing education and ~~postlicense~~ post license education courses shall expire on December 31 ~~five~~ three years from the year in which the approval was issued, as indicated on the approval document.

G. All schools must establish and maintain a record for each student. The record shall include: the student's name and address, the course name and clock hours attended, the course syllabus or outline, the name or names of the instructor, the date of successful completion, and the board's course code. Records shall be available for inspection during normal business hours by authorized representatives of the board. Schools must maintain all student and class records for a minimum of five years.

H. All schools must provide each student with a certificate of course completion or other documentation that the student may use as proof of course completion. Such documentation shall contain the student's name, school name, course name, course approval number, course completion date, hours of

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credit completed, and a statement that the course is "Approved by the Real Estate Board."

I. All providers of continuing education or post license education courses shall electronically transmit course completion data to the board in an approved format within five business days of the completion of each individual course. The transmittal will include each student's name, license number or social security number; the date of successful completion of the course; the school's code; and the board's code.

VA.R. Doc. No. R12-3250; Filed June 7, 2013, 1:24 p.m.

BOARD OF SOCIAL WORK

Final Regulation

Title of Regulation: 18VAC140-20. Regulations Governing the Practice of Social Work (amending 18VAC140-20-10, 18VAC140-20-40, 18VAC140-20-45, 18VAC140-20-51, 18VAC140-20-110).

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

Effective Date: July 31, 2013.

Agency Contact: Catherine Chappell, Executive Director, Board of Social Work, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4406, FAX (804) 527-4435, or email catherine.chappell@dhp.virginia.gov.

Summary:

The amendments to the regulation (i) require that the national licensing examination be passed within five years prior to application or, if the examination was passed before that time period, that the applicant demonstrate evidence of social work practice at the appropriate level (social worker or clinical social worker) within an exempt setting prior to application; (ii) eliminate certain application requirements for licensure by endorsement applicants and, at the same time, clarify the meaning of "active practice" to demonstrate competency in the field of social work and provide an alternative to the experience requirement; and (iii) address the issue of reactivation and reinstatement for applicants who have either been not practicing social work in recent years or practicing elsewhere in an exempt setting by requiring practice under supervision for at least 360 hours in the 12 months preceding licensure in Virginia. In response to comment during the public comment period for the proposed regulation, in 18VAC140-20-110, the board changed the term "resident" to "supervisee."

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 General Provisions

18VAC140-20-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-3700 of the Code of Virginia:

Board

Casework

Casework management and supportive services

Clinical social worker

Practice of social work

Social worker

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

"Accredited school of social work" means a school of social work accredited by the Council on Social Work Education.

"Active practice" means post-licensure practice at the level of licensure for which an applicant is seeking licensure in Virginia and shall include at least 360 hours of practice in a 12-month period.

"Clinical course of study" means graduate course work which includes specialized advanced courses in human behavior and social environment, social policy, research, clinical practice with individuals, families, groups and a clinical practicum which focuses on diagnostic, prevention and treatment services.

"Clinical social work services" include the application of social work principles and methods in performing assessments and diagnoses based on a recognized manual of mental and emotional disorders or recognized system of problem definition, preventive and early intervention services and treatment services, including but not limited to psychotherapy and counseling for mental disorders, substance abuse, marriage and family dysfunction, and problems caused by social and psychological stress or health impairment.

"Exempt practice" is that which meets the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Face-to-face supervision" means the physical presence of the individuals involved in the supervisory relationship during either individual or group supervision.

"Nonexempt practice" is that which does not meet the conditions of exemption from the requirements of licensure as defined in § 54.1-3701 of the Code of Virginia.

"Supervisee" means an individual who has submitted a supervisory contract and has received board approval to provide clinical services in social work under supervision.

"Supervision" means a professional relationship between a supervisor and supervisee in which the supervisor directs, monitors and evaluates the supervisee's social work practice

while promoting development of the supervisee's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

Part II

Requirements for Licensure

18VAC140-20-40. Requirements for licensure by examination as a licensed clinical social worker.

Every applicant for examination for licensure as a licensed clinical social worker shall:

1. Meet the education requirements prescribed in 18VAC140-20-49 and experience requirements prescribed in 18VAC140-20-50.
2. Submit in one package to the board office:
 - a. A completed notarized application;
 - b. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-50 along with documentation of the supervisor's out-of-state license where applicable. Applicants whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
 - c. The application fee prescribed in 18VAC140-20-30;
 - d. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant; and
 - e. Documentation of applicant's out-of-state licensure where applicable.

~~3. [An applicant for licensure by examination shall provide] evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing clinical social work services in an exempt setting for at least 360 hours per year for two of the past five years.~~

18VAC140-20-45. Requirements for licensure by endorsement.

Every applicant for licensure by endorsement shall submit in one package:

1. A completed application and the application fee prescribed in 18VAC140-20-30.
2. Documentation of social work licensure in good standing obtained by standards ~~substantially equivalent to those outlined in 18VAC140-20-49 and 18VAC140-20-50 for a licensed clinical social worker or 18VAC140-20-60 for a licensed social worker,~~ required for licensure in

another jurisdiction as verified by the out-of-state licensing agency on a board-approved form. Licensure in the other jurisdiction shall be of a comparable type as the licensure that the applicant is seeking in Virginia.

3. Verification of a passing score as established by the board on a board-approved national exam at the level for which the applicant is seeking licensure in Virginia.

~~4. Official transcript or transcripts in the school's original sealed envelope.~~

~~5.~~ 4. Verification of active practice in another jurisdiction for 36 out of the past 60 months or evidence of supervised experience requirements substantially equivalent to those outlined in 18VAC140-20-50 and 18VAC140-20-60.

~~6.~~ 5. Certification that the applicant is not the respondent in any pending or unresolved board action in another jurisdiction or in a malpractice claim.

18VAC140-20-51. Requirements for licensure by examination as a licensed social worker.

A. In order to be approved to sit for the board-approved examination for a licensed social worker, an applicant shall:

1. Meet the education requirements prescribed in 18VAC140-20-60 A.
2. Submit in one package to the board office:
 - a. A completed notarized application;
 - b. The application fee prescribed in 18VAC140-20-30; and
 - c. Official transcript or transcripts in the original sealed envelope submitted from the appropriate institutions of higher education directly to the applicant.

B. In order to be licensed by examination as a licensed social worker, an applicant shall:

1. Meet the education and experience requirements prescribed in 18VAC140-20-60; and
2. Submit, in addition to the application requirements of subsection A, the following:

- a. Documentation, on the appropriate forms, of the successful completion of the supervised experience requirements of 18VAC140-20-60 along with documentation of the supervisor's out-of-state license where applicable. An applicant whose former supervisor is deceased, or whose whereabouts is unknown, shall submit to the board a notarized affidavit from the present chief executive officer of the agency, corporation or partnership in which the applicant was supervised. The affidavit shall specify dates of employment, job responsibilities, supervisor's name and last known address, and the total number of hours spent by the applicant with the supervisor in face-to-face supervision;
- b. Verification of a passing score on the board-approved national examination; and

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c. Documentation of applicant's out-of-state licensure where applicable.

3. [An applicant for licensure by examination shall provide Provide] evidence of passage of the examination prescribed in 18VAC140-20-70. If the examination was not passed within five years preceding application for licensure, the applicant may qualify by documentation of providing social work services in an exempt setting for at least 360 hours per year for two of the past five years.

18VAC140-20-110. Late renewal; reinstatement; reactivation.

A. A social worker or clinical social worker whose license has expired may renew that license within four years after its expiration date by:

1. Providing evidence of having met all applicable continuing education requirements.
2. Paying the penalty for late renewal and the biennial license fee for each biennium as prescribed in 18VAC140-20-30.

B. A social worker or clinical social worker who fails to renew the license for four years or more and who wishes to resume practice shall apply for reinstatement, pay the reinstatement fee and provide documentation of having completed all applicable continued competency hours equal to the number of years the license has lapsed, not to exceed four years. An applicant for reinstatement shall also provide evidence of competency to practice by documenting:

1. Active practice in another U.S. jurisdiction for at least three of the past five years immediately preceding application;
2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or
3. Practice as a [resident supervisee] under supervision for at least 360 hours in the 12 months immediately preceding licensure in Virginia.

C. A social worker wishing to reactivate an inactive license shall submit the renewal fee for active licensure minus any fee already paid for inactive licensure renewal, and document completion of continued competency hours equal to the number of years the license has been inactive, not to exceed four years. An applicant for reactivation shall also provide evidence of competency to practice by documenting:

1. Active practice in another U.S. jurisdiction for at least three of the past five years immediately preceding application;
2. Active practice in an exempt setting for at least three of the past five years immediately preceding application; or
3. Practice as a [resident supervisee] under supervision for at least 360 hours in the 12 months immediately preceding licensure in Virginia.

VA.R. Doc. No. R10-2415; Filed June 5, 2013, 4:25 p.m.

BOARD FOR PROFESSIONAL SOIL SCIENTISTS, WETLAND PROFESSIONALS, AND GEOLOGISTS

Proposed Regulation

Title of Regulation: **18VAC145-20. Professional Soil Scientists Regulations (amending 18VAC145-20-10, 18VAC145-20-60, 18VAC145-20-90, 18VAC145-20-91, 18VAC145-20-100, 18VAC145-20-120, 18VAC145-20-130, 18VAC145-20-140, 18VAC145-20-151, 18VAC145-20-160, 18VAC145-20-170; adding 18VAC145-20-145; repealing 18VAC145-20-70, 18VAC145-20-111).**

Statutory Authority: §§ 54.1-201 and 54.1-2200 of the Code of Virginia.

Public Hearing Information:

August 7, 2013 - 10 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room 2, Richmond, VA

Public Comment Deadline: August 30, 2013.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email bpssandwp@dpor.virginia.gov.

Basis: Chapters 777 and 859 of the 2011 Acts of Assembly require that the board's regulatory program for soil scientists change from certification to licensure. Section 54.1-201 of the Code of Virginia states that the board has the power and duty "To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) necessary to assure continued competency, to prevent deceptive or misleading practices by practitioners and to effectively administer the regulatory system administered by the regulatory board." Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia provides for requirements for professional soil scientists, wetland professionals, and geologists.

It is mandatory for an agency to comply with the relevant changes to Virginia statutes.

Purpose: The regulation amendments are required for the board to comply with the mandates of Chapters 777 and 859 of the 2011 Acts of Assembly requiring the board's regulatory program for soil scientists change from certification to licensure effective July 1, 2013. These minimum licensing standards establish a baseline performance that must be met by all licensed professionals, offering the public increased protection against incompetent practice.

Substance: The proposed amendments contain changes to the regulations to facilitate the transition of the program from certification to licensure, including (i) the board's adoption of the Council of Soil Science Examiners (CSSE)-prepared exams, (ii) requirements for continuing education for license renewal and reinstatement, and (iii) modifications to the

regulation language to make it easier to read and understand and to eliminate of language already established in statute.

Issues: The primary advantage to the public is that individuals practicing soil science work will now be required to adhere to established minimum standards in order to obtain a license to practice. The primary disadvantage to individuals is the new requirement for licensure. Individuals presently practice soil science work without being required to be certified because certification is voluntary. However, licensure is mandatory; individuals will be required to earn their soil scientist license in order to legally continue to practice soil science work. Also, the adoption of the CSSE-prepared national exam as a result of the program transition to licensure could facilitate the ability of citizens of the Commonwealth to more easily obtain licensure in other states.

The primary advantage to the agency is compliance with Chapters 777 and 859 of the 2011 Acts of Assembly. The primary advantage to the Commonwealth is a soil science regulatory program that may invite licensed soil scientists from other states to do business in Virginia due to potential reciprocal licensure agreements. No primary disadvantage to the agency or Commonwealth has been identified.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. Pursuant to Chapters 777 and 859 of the 2011 Acts of the General Assembly, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists proposes 1) to change the current certification program to a licensure program, 2) to add continuing education requirements, and 3) to replace the state licensure examination with the national licensure examination.

Result of Analysis. There is insufficient data to accurately compare the magnitude of the benefits versus the costs. A detailed analysis of the benefits and costs can be found in the next section.

Estimated Economic Impact. Chapters 777 and 859 of the 2011 Acts of the General Assembly change the current soil scientist program from certification to licensure. Pursuant to the statutory mandate, the Board for Professional Soil Scientists, Wetland Professionals, and Geologists (the Board) will start issuing licenses on July 1, 2013. Individuals with certification as of July 1, 2013 will be eligible for grandfathering until July 1, 2015. According to the Department of Professional and Occupational Regulation (DPOR), there are 133 certified soil scientists in Virginia and the membership in the Virginia Association of Professional Soil Scientists is estimated to be about 200.

The main economic effect of these proposed regulations stem from the fact that a certification program is voluntary while a licensure program is mandatory. Under a certification program, a soil scientist does not have to have certification to practice, but may choose to obtain certification to signal that he or she is competent. Under a licensure program, on the

other hand, a soil scientist is prohibited from practice unless he or she holds a valid license. In short, the proposed licensure program represents a much stronger form of regulation than the current certification program.

It appears that the main goal of switching to a stronger form of regulation is to offer the public increased protection against risks that may be posed by incompetent practices. For example, work of a soil scientist may put the quality of groundwater and surface water at risk, or may threaten the integrity of structures and viability of agricultural resources. In other words, the licensure is hoped to help maintain a certain service quality so that the risks are minimized.

However, the proposed switch from certification to licensure makes it also possible to restrict entry of new soil scientists into the profession. Any type of barriers to entry into an occupation would generally be expected to promote monopolistic behavior which usually leads to reduced competition, higher prices, reduced production, and consequently, reduced consumer choice.

Empirical literature on the economic effects of occupational licensure versus certification is very limited. And, limited available research does not seem to support the notion that stricter licensure improves quality in the long run. A fairly recent comprehensive study¹ offers some insights into the likely economic effects by comparing data from Wisconsin, which licensed certain healthcare occupations, such as physical therapists, respiratory care providers, and physician assistants and data from Minnesota, which certified the same occupations.

The study finds some support that licensing has positive impacts immediately following its implementation as the occupation initially focuses on quality through the standardization of the quality of the service, but in the long term, the focus may have shifted toward restriction of supply of services through entry tests and other legal barriers that can limit the number of practitioners who enter the occupation. This research finds no meaningful difference, in the long term, in consumer complaints between Wisconsin and Minnesota, but finds evidence from other data sources that licensing drives up prices and earnings in the regulated profession. Thus, whether the focus in the long term will be on quality or restriction of supply would determine actual economic effects of the proposed stronger form of regulation for the soil scientists.

Finally, the Board proposes to switch from a state initial licensure examination to a national examination. According to DPOR, access to the national exam would necessitate a \$2,000 per year membership to the Soil Science Society of America. DPOR estimates that the cost of updating current state exam is about the same, thus no additional costs are expected due to this change. However, the current state examination fee is \$75 per part or \$150 total while the national exam fee is \$150 per part or \$300 for total.

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Therefore, applicants for licensure will experience an increase in compliance costs.

Businesses and Entities Affected. The proposed regulations will require soil scientists in Virginia to obtain a license. According to DPOR, currently there are 133 certified soil scientists in Virginia and the membership in Virginia Association of Professional Soil Scientists is estimated to be about 200. However, the number of soil scientists, who are not certified by the Board, or not a member of the association, but who may be currently practicing in Virginia, is not known.

Localities Particularly Affected. The proposed regulation applies throughout the Commonwealth.

Projected Impact on Employment. The proposed regulations have the potential to restrict entry into soil scientist profession in Virginia which would have a negative effect on employment. In addition, the proposed continuing education requirement and switch to a national exam will add to the compliance costs which may discourage some of the soil scientists practicing in Virginia and have a negative effect on employment.

Effects on the Use and Value of Private Property. The proposed regulations do not have a direct effect on the use and value of private property. Indirectly however, higher compliance costs would have a negative effect on the asset value of soil scientist businesses while restricted entry into the profession would have a positive effect. Furthermore, if the proposed changes lead to improvement in service quality, risks to environmental assets may be reduced and have a positive effect on the use and value of private property in the vicinity.

Small Businesses: Costs and Other Effects. Most, if not all, of the soil scientist businesses in Virginia are believed to be small businesses. Thus, all of the costs and other effects discussed above apply to them.

Small Businesses: Alternative Method that Minimizes Adverse Impact. Given the statutory mandate, the Board does not appear to have discretion on switching from certification to licensure. While the Board appears to have discretion on the quantity of the proposed continuing education and on the proposed switch to the national examination, it is not clear that an alternate method such as fewer hours of continuing education would achieve exactly the same goals.

Real Estate Development Costs. No direct effects on real estate development costs are expected. However, if the competency of soil scientists is affected by the proposed licensure rules, there could be some indirect effects on real estate development costs. For example, improved competency may help a soil scientist identify a difficult-to-detect environmental risk associated with a development project. Or, a solution to a known environmental risk associated with a development project may be produced by a more competent professional.

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.

¹ Kleiner, Morris M. 2006. "Licensing Occupations: Ensuring Quality or Restricting Competition?" Upjohn Institute for Employment Research. Kalamazoo, Michigan.

Agency's Response to Economic Impact Analysis: The Board for Professional Soil Scientists, Wetland Professionals, and Geologists generally concurs with the Department of Planning and Budget's economic impact analysis.

Summary:

The proposed amendments facilitate the requirements of Chapters 777 and 859 of the 2011 Acts of Assembly that the soil scientist regulation program transition from certification to licensure and also include the following changes: (i) the board's adoption of the Council of Soil Science Examiners prepared exam, (ii) addition of continuing education requirements for the renewal and maintenance of licensure, and (ii) technical changes to eliminate language in the regulation that duplicates existing language in corresponding statutes and to clarify and improve the readability of the regulations.

Part I

General

18VAC145-20-10. Definitions.

Section 54.1-2200 of the Code of Virginia provides definitions of the following terms and phrases as used in this chapter:

Board

Soil

Soil evaluation

Soil science

Soil scientist

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

"Application" means a completed application with the appropriate fee and any other required documentation, including but not limited to references, employment verification, degree verification, and verification of examination and licensure.

"Board" means the Board for Professional Soil Scientists as established by Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

"CSSE" means the Council of Soil Science Examiners.

"Department" means the Department of Professional and Occupational Regulation.

"Field study" means the investigation of a site to secure soils information by means of landscape analysis and soil borings, excavations or test pits which are plotted on a base map or other documents (e.g., aerial photographs, topographic maps, scaled site plans, subdivision plans, or narrative description of the location).

"Practice of soil evaluation" means the evaluation of soil by accepted principles and methods including, but not limited to, observation, investigation, and consultation on measured, observed and inferred soils and their properties; analysis of the effects of these properties on the use and management of various kinds of soil; and preparation of soil descriptions, maps, reports and interpretive drawings.

"Soil" means the groups of natural bodies occupying the unconsolidated portion of the earth's surface which are capable of supporting plant life and have properties caused by the combined effects, as modified by topography and time, of climate and living organisms upon parent materials.

"Soil evaluation" means plotting soil boundaries, describing and evaluating the kinds of soil and predicting their suitability for and response to various uses.

"Soil map" means a map showing distribution of soil types or other soil mapping units in relation to the prominent landforms and cultural features of the earth's surface.

"Soil science" means the science dealing with the physical, chemical, mineralogical, and biological properties of soils as natural bodies.

"Soil scientist" means a person having special knowledge of soil science and the methods and principals of soil evaluation as acquired by education and experience in the formation, description and mapping of soils.

"Soil survey" means a systematic field investigation of the survey area that provides a soil evaluation and a system of uniform definitions of soil characteristics for all the different

kinds of soil found within the study area, all of which are incorporated into a soil report which includes a soil map.

Part II

Entry

18VAC145-20-60. ~~Qualifications for certification~~ General application requirements.

A. Applicants for certification licensure shall meet the education, eligibility, experience and examination requirements specified established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia.

B. All applications and accompanying materials become the property of the board upon receipt by the board.

C. The board may make further inquiries and investigations with respect to applicants' qualifications and documentation to confirm or amplify information supplied.

D. Applicants who do not meet the requirements of this chapter may be approved following consideration by the board in accordance with the provisions of the Virginia Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia).

18VAC145-20-70. ~~Qualifications for examination.~~ (Repealed.)

An applicant shall satisfy one of the following criteria in order to qualify for the examination:

1. Hold a bachelor's degree from an accredited institution of higher education in a soil science curriculum (see 18VAC145-20-91) which has been approved by the board and have at least four years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or
2. Hold a bachelor's degree in one of the natural sciences and have at least five years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or
3. Have a record of at least eight years of experience in soil evaluation, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist; or
4. Have at least four years of experience in soil science research or as a teacher of soil science curriculum in an accredited institution of higher education which offers an approved four year program in soils and at least two years of soil evaluation experience, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist.

18VAC145-20-90. Qualifying experience in soil evaluation.

An applicant Minimum experience requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia. Applicants shall satisfy the length of

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experience established relative to their education. Applicants shall demonstrate experience in two or more of the following areas:

1. Soil mapping. ~~Compiling of~~ Compiled soil maps representing at least 5,000 acres as a part of a soil survey or surveys with a formal mapping legend under the direct guidance of an experienced technical supervisor. ~~Acceptable maps shall be~~ Only maps in a published report, a report scheduled to be published, or a report of a publishable quality shall be deemed as acceptable for this type of experience;

2. Soil evaluation. ~~Conducting~~ Conducted at least 20 soil evaluations for specific land uses under the direct guidance of an experienced technical supervisor. Examples of such uses include, but are not limited to, ~~on-site~~ onsite wastewater disposal, residential and commercial development, sanitary landfill sites, forestry or agriculture production, soil erosion and sediment control, shrink-swell, or hydric soils. The finished product ~~shall~~ must have been submitted to a client or government agency (e.g., Health Department, Environmental Protection Agency, Department of Environmental Quality, Department of Conservation and Recreation, or local planning commission);

3. Field/Laboratory studies. ~~Conducting~~ Conducted at least 10 detailed field or laboratory studies under the direct guidance of an experienced technical supervisor. The field or laboratory study ~~shall~~ must have resulted in a soil evaluation report that was accepted by the client or government agency;

4. Research/Teaching. ~~Conducting~~ Conducted at least one research project as part of a thesis or publication or ~~teaching taught~~ at least one ~~full-time~~ full-time course in a soil science curriculum at an accredited institution of higher education, the quality of which demonstrates to the board that the applicant is competent to practice as a professional soil scientist;

5. Consulting (public/private). ~~Assembling or compiling~~ Assembled or compiled soil information ~~either~~ with existing data or field studies; and ~~evaluating~~ evaluated data for a specific land use. The work may ~~be either~~ have been done independently or under supervision. At least three written reports ~~shall~~ must have been submitted to the client or government agency; or

6. Education. Each year of full-time undergraduate study in a soils curriculum or related natural science may count as one-half year of experience up to a maximum of two years. Each year of full-time graduate study in a soils curriculum may count as one year of experience up to a maximum of two years. ~~With a passing grade, 30 semester credit hours or 45 quarter credit hours is considered to be one year~~ One year equals 30 semester credit hours earned or 45 quarter credit hours earned. Credits Any credits used to meet the education requirements established in Chapter 22 (§ 54.1-

2200 et seq.) of Title 54.1 of the Code of Virginia may not be used to meet experience requirements.

18VAC145-20-91. Core course requirements.

A. At least 15 semester hours selected from the identified courses ~~below in this subsection~~ or the equivalent are required for course work or a degree core to be considered a degree in a soil science degree curriculum or a ~~soil science~~ related natural science degree.

Intro to Crop and Soil Environmental Sciences	Soil - Plant - Animal Interrelationships in Grasslands
Soil Evaluation	Aluminum Chemistry in the Soil System
Soils	Soil Physics or Physical Properties
Soils Lab	Soil Genesis/Classification
Man and Environment	Soil Fertility/Management
Soil Survey/Taxonomy	Soil Fertility/Management Lab
Soil Microbiology	Soil/Groundwater Pollution
Soil Resource Management	Soils for Waste Disposal
Soil Chemistry	Soil Microbiology Lab
Topics in Soil Genesis	Forest Soils/Hydrology
Soil Seminar	Clay Mineralogy
Special Studies (Soils Based)	Soil Interpretations
Field Studies (Soils Based)	Advanced Concepts in Soil Genesis
Soils and Land Use	Independent Studies (Soil Based)
Soil Physical and Colloidal Chemistry	Soil Biochemistry
Chemistry	Soil Geomorphology
Soil - Plant Relations	Soil Conservation

B. ~~An applicant~~ Applicants may petition the board ~~in writing~~ to review the syllabus and other supporting documents of a course not listed in subsection A of this section for academic credit. The course ~~shall~~ must contain content ~~to enhance the that enhances applicants' knowledge of the applicant~~ in the study of soils. ~~The applicant~~ Applicants must demonstrate course equivalency in order to receive academic credit. Petitions to the board for such review must be made in writing.

18VAC145-20-100. Examination.

~~A. A board approved examination shall be administered at least twice a year, at a time designated by the department.~~

~~B. An applicant must meet all eligibility requirements as of the date the application is filed with the department.~~

~~C. A candidate who is unable to take the examination at the time scheduled must notify the department in writing prior to the date of the examination; such a candidate will be rescheduled for the next examination without additional fee. Failure to so notify the department will result in forfeiture of the examination or reexamination fee.~~

~~D. A candidate approved to take an examination shall do so within one year of the date of approval or submit a new application and fee in accordance with these regulations.~~

~~E. Candidates will be notified of passing or failing the examination.~~

~~F. Upon payment of the reexamination fee, a candidate who fails the examination or any part thereof shall be allowed to retake the failed examination or any part thereof within one year of the date of initial failure notification. After the one-year period has elapsed, an applicant shall be required to submit a new application and fee in accordance with this chapter in order to take the examination.~~

A. Applicants shall be required to pass all parts of the CSSE-prepared exam.

B. Applicants shall meet all other requirements established in Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia in order to be granted board approval to sit for the exam.

C. Completed applications must be received by the board no less than 60 days prior to the exam date or applicants may be deferred to the next exam administration.

D. Applicants approved by the board shall be exam-eligible for a period of three years from the date of their initial board approval. Applicants who do not pass the exam at the end of the three-year period are no longer exam-eligible.

E. To become exam-eligible again, applicants shall reapply to the board and meet all entry requirements current at the time of their reapplication. Upon approval by the board, applicants shall become exam-eligible for another period of three years.

F. Board-approved applicants eligible for admission to both parts of the exam must first pass the Fundamentals in Soil Science exam before being admitted to the Professional Practices in Soil Science exam.

G. Applicants will be notified by the board of whether they passed or failed the exam. The exam may not be reviewed by applicants. Exam scores are final and not subject to change.

18VAC145-20-111. Waiver from examination through reciprocity. (Repealed.)

~~An applicant qualified to take the examination may be granted a Virginia certificate without written examination,~~

~~provided that the applicant holds an unexpired professional soil scientist certificate or equivalent issued on the basis of equivalent requirements for certification in Virginia, by a regulatory body of another state, territory or possession of the United States and is not the subject of any disciplinary proceeding before such regulatory body that could result in the suspension or revocation of his certificate, and such other regulatory body recognizes the certificates issued by this board.~~

Part III
Renewal/Reinstatement and Fees

18VAC145-20-120. Expiration.

Certificates Licenses issued under this chapter shall expire two years from the last day of the month in which they were issued, as indicated on the certificate license.

18VAC145-20-130. Procedures for renewal.

~~A. The department shall mail board sends a renewal notice to the certificate license holder at the last known address of record at least 30 days prior to expiration of the license. Failure to receive this notice does not relieve the certificate license holder from the requirement to renew the certificate license. If the certificate holder fails to receive the renewal notice, a copy of the certificate shall be submitted with the required fee in lieu of the renewal notice. A certificate holder License holders shall keep the department board informed of his their current mailing address. Change Changes of address shall be reported to the department board in writing within 30 calendar days of the change.~~

B. In addition to the established fee, proof of satisfactory completion of continuing education (CE) shall be required to renew a license. Documentation submitted as proof of completion of CE must demonstrate that the CE meets the requirements established in 18VAC145-20-145.

C. If the renewal fee is and proof of completion of CE are not received by the department board within 30 calendar days following the license expiration date noted on the certificate, a late renewal fee of \$25 shall be required in addition to the regular renewal fee. If the certificate is renewed after 30 days from the expiration date and prior to 180 days of the expiration date, the effective date of the renewal shall be the original renewal date Upon receipt of the requisite fee and proof of completion of CE, the license shall be renewed for an additional two years. No certificate may be renewed more than 180 days following the date of expiration noted on the certificate A license that is not renewed within six months after its expiration is no longer eligible for renewal. The license may be reinstated pursuant to the requirements of 18VAC145-20-140.

D. The date a the fee is and documented proof of completion of CE are received by the department board or its agent shall determine whether a late renewal fee or, the requirement for reinstatement fee, or reapplication is applicable required.

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~~D.~~ E. A ~~certificate~~ license suspended by board order shall ~~may~~ not be renewed until the period of suspension has ended and all terms and conditions of the board's order have been met. Individuals renewing ~~certificates~~ licenses within 30 days after the suspension is lifted will not be required to pay a late fee.

~~E.~~ F. A revoked ~~certificate~~ license may not be renewed. An individual whose ~~certificate~~ license has been revoked ~~must~~ shall file a new application and obtain ~~approval of the board~~ board approval to recover ~~certification~~ licensure. Examination ~~shall~~ may not be waived.

18VAC145-20-140. Reinstatement.

A. If the renewal fee ~~and~~ late renewal fee, and documented proof of completion of CE are not received by the ~~department board~~ department board within ~~180 days~~ six months following the license expiration date noted on the certificate, the ~~certificate~~ license holder shall ~~no longer be considered a certificate holder and will be required to apply for certificate~~ pay the fee for reinstatement. The applicant shall meet the current eligibility standards for certification as a professional soil scientist. The applicant may apply by examination or by reciprocity. The board may require reexamination. The fee for reinstatement shall include the regular renewal fee plus the reinstatement fee.

B. If the reinstatement fee ~~is~~ and documented proof of completion of CE are not received by the ~~department board~~ department board within ~~360 days~~ one year following the license expiration date noted on the certificate, the ~~applicant, the individual~~ applicant, the individual shall ~~no longer be considered a license holder. To become licensed again, the individual~~ shall apply as a new applicant and meet all current education, experience, and examination requirements as may be required by the board established in this chapter.

18VAC145-20-145. Continuing education requirements.

A. Licensees shall complete eight contact hours of continuing education (CE) per year for renewal or reinstatement. CE shall be completed pursuant to the provisions of this section.

B. CE must be completed during the time prior to the renewal or reinstatement of a license and shall be valid for that renewal or reinstatement only.

C. CE activities completed by licensees may be accepted by the board provided the activity:

1. Consists of content and subject matter directly related to the practice of soil science;
2. Has a clear purpose and objective that will maintain, improve, or expand the skills and knowledge relevant to the practice of soil science and may be in areas related to business practices, including project management, risk management, and ethics, that have demonstrated relevance to the practice of soil science as defined in § 54.1-2200 of the Code of Virginia;

3. Is taught by instructors who are competent in the subject matter, either by education or experience, for those activities involving an interaction with an instructor;

4. Contains an assessment by the sponsor at the conclusion of the activity that verifies that the licensee has successfully achieved the purpose and objective for any self-directed activity; and

5. Results in documentation that verifies the licensee's successful completion of the activity.

D. Computation of credit.

1. Fifty contact minutes shall equal one hour of CE. For activities that consist of segments that are less than 50 minutes, those segments shall be totaled for computation of CE for that activity.

2. The number of hours required to successfully complete any CE activity must have been predetermined by the sponsor. A licensee shall not claim more credit for any CE activity than was predetermined by the sponsor at the time the activity was completed.

3. A licensee may not receive credit for any CE activity that was not completed in its entirety. No credit shall be given for partial completion of a CE activity.

4. A licensee applying for renewal or reinstatement shall not receive credit for completing a CE activity with the same content more than once during the time period prior to the renewal or reinstatement.

18VAC145-20-151. Fees.

The fees for ~~certification~~ licensure are listed below. Checks or money orders 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 as authorized by § 2.2-614.1 C of the Code of Virginia.

Fee Type	When due <u>Due</u>	Amount due <u>Due</u>
New application	With application	\$90
Examination fee	Upon approval for exam	\$150
Reexamination fee	Upon request to be rescheduled for exam	\$75 for each part
Renewal fee	With renewal card <u>Prior to license expiration</u>	\$70
Late renewal fee	30 days after date of expiration <u>More than 30 days after license expiration</u>	\$25

Reinstatement fee	180 days after date of expiration <u>More than six months after license expiration</u>	\$90
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Part IV
Standards of Practice and Conduct

18VAC145-20-160. Professional conduct.

A ~~certified~~ licensed professional soil scientist:

1. Shall not submit any false statements, make any misrepresentations, or fail to disclose any facts requested concerning any application for ~~certification or recertification~~ initial licensure, renewal, or reinstatement;
2. Shall not engage in any fraud, deceit, or misrepresentation in advertising, in soliciting, or in providing professional services;
3. Shall not knowingly sign, stamp, or seal any plans, drawings, blueprints, surveys, reports, specifications, maps, or other documents not prepared or reviewed and approved by ~~the certificate holder, him~~;
4. Shall not knowingly represent a client or employer on a project on which ~~the certificate holder~~ he represents or has represented another client or employer without making full disclosure thereof;
5. Shall express a professional opinion only when it is founded on adequate knowledge of established facts at issue and based on a background of technical competence in the subject matter;
6. Shall not knowingly misrepresent factual information in expressing a professional opinion;
7. Shall immediately notify the client or employer and the appropriate regulatory agency if ~~the certificate holder's~~ his professional judgment is overruled and not adhered to when advising appropriate parties of any circumstances of a substantial threat to the public health, safety, or welfare; and
8. Shall exercise reasonable care when rendering professional services and shall apply the technical knowledge, skill, and terminology ordinarily applied by practicing soil scientists.

18VAC145-20-170. ~~Grounds for suspensions, revocation, denial of application, renewal or other disciplinary action~~ Sanctions and powers of the board.

A. The board has the power to ~~fine any certificate holder or to revoke or suspend any certificate~~ sanction any license holder at any time after a hearing conducted pursuant to the Administrative Process Act, (§ 2.2-4000 et seq. of the Code of Virginia, ~~when the person is found to have~~). Sanctions may include but are not limited to the issuance of fines, the suspension of a license, the revocation of a license, or the levying of an additional requirement for remedial education. Sanctions may be levied against any regulant who has been determined by the board to have:

1. Committed fraud or deceit in obtaining or attempting to obtain ~~certification~~ initial licensure, renewal, or reinstatement;
2. Performed any act in the practice of his profession likely to deceive, defraud, or harm the public;
3. Committed any act of gross negligence, incompetence, or misconduct in the practice of soil science;
4. Been convicted of a felony under the terms specified in § 54.1-204 of the Code of Virginia; or

~~The board may suspend or revoke a certificate or may fine a certificate holder when the certificate holder has been found to have violated or cooperated with others in violating any provisions of Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board.~~

5. Violated or cooperated with others having violated any provisions of Chapter 22 (§ 54.1-2200 et seq.) of Title 54.1 of the Code of Virginia or any regulation of the board.

B. The board may, ~~in its discretion~~, refuse to grant, renew, or reinstate ~~a certificate~~ the license of any person for any of the reasons specified in subsection A of this section, or in circumstances where an individual fails to comply with the requirements of Chapter 22 (§ 54.1-2200 et seq.) of the Code of Virginia and this chapter.

VA.R. Doc. No. R12-2917; Filed June 7, 2013, 1:25 p.m.

Proposed Regulation

Title of Regulation: 18VAC145-40. Regulations for the Geology Certification Program (amending 18VAC145-40-20).

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

Public Hearing Information:

August 7, 2013 - 11 a.m. - Department of Professional and Occupational Regulation, 9960 Mayland Drive, Board Room 2, Richmond, VA

Public Comment Deadline: August 30, 2013.

Agency Contact: Kathleen R. Nosbisch, Executive Director, Board for Professional Soil Scientists, Wetland Professionals, and Geologists, 9960 Mayland Drive, Suite 400, Richmond, VA 23233, telephone (804) 367-8514, FAX (866) 465-6206, or email bpssandwp@dpor.virginia.gov.

Basis: Section 54.1-113 of the Code of Virginia (commonly referred to as the Callahan Act) requires regulatory boards to periodically review and adjust fees. It states, in part, "Following the close of any biennium, when the account for any regulatory board within the Department of Professional and Occupational Regulation or the Department of Health Professions maintained under § 54.1-308 or § 54.1-2505 shows expenses allocated to it for the past biennium to be more than ten percent greater or less than moneys collected on behalf of the board, it shall revise the fees levied by it for certification or licensure and renewal thereof so that the fees are sufficient but not excessive to cover expenses."

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Section 54.1-201 A 4 of the Code of Virginia describes the power and duty of regulatory boards to "levy and collect fees for certification or licensure and renewal that are sufficient to cover all expenses for the administration and operation of the regulatory board and a proportionate share of the expenses of the Department of Professional and Occupational Regulation and the Board for Professional and Occupational Regulation."

Subdivision 3 of § 54.1-304 of the Code of Virginia describes the authority of the department to "collect and account for all fees prescribed to be paid into each board and account for and deposit the moneys so collected into a special fund from which the expenses of the Board, regulatory boards and Department shall be paid."

Section 54.1-308 of the Code of Virginia requires costs to be paid by regulatory boards. It states, "The compensation of the Director and the employees within the Department, including the compensation of the members of each board, shall be paid out of the total funds collected and charged to the accounts of the respective boards. The Director shall maintain a separate account for each board showing the moneys collected on its behalf and the expenses allocated to each board."

The above sections of the Code of Virginia mandate that the board manage and periodically review and adjust fees. In addition, the department must:

1. Pay expenses of each board and the department from revenues collected;
2. Establish fees adequate to provide sufficient revenue to pay expenses;
3. Account for the revenues collected and expenses charged to each board; and
4. Adjust fees as necessary to ensure that revenue is sufficient but not excessive to cover all expenses.

To comply with these requirements, the department:

1. Distinctly accounts for the revenue collected for each board;
2. Accounts for direct board expenses for each board, and allocates a proportionate share of agency operating expenses to each board;
3. Reviews the actual and projected financial position of each board biennially to determine whether revenues are adequate, but not excessive, to cover reasonable and authorized expenses for upcoming operating cycles; and
4. Recommends adjustments to fees to respond to changes and projections in revenue trends and operating expenses. If projected revenue collections are expected to be more than sufficient to cover expenses for upcoming operating cycles, decreases in fees are recommended. If projected revenue collections are expected to be inadequate to cover operating expenses for upcoming operating cycles, increases in fees are recommended.

Purpose: The intent of the proposed changes in the regulation is to increase certification fees for professional geologist

applicants and regulants of the Board for Professional Soil Scientists, Wetland Professionals, and Geologists. The board must establish fees adequate to support the costs of board operations and a proportionate share of the department's operations.

The board provides protection for the health, safety, and welfare of the citizens of the Commonwealth by ensuring that only individuals who meet specific criteria set forth in statute and regulations receive certification as professional geologists; by ensuring its regulants meet standards of practice and conduct set forth in the regulation; and by imposing penalties for not complying with the governing statutes and regulations. Without adequate funding, complaints against regulants, brought to the attention of the board by citizens, cannot be investigated and processed in a timely manner. Ensuring that professional geologists have at least the minimal competencies to perform geological work protects the health, safety, and welfare of Virginia citizens.

The department receives no general fund money, but instead, is funded almost entirely from revenue collected through applications for certification, licensure, renewals, examination fees, and other certification and licensing fees. The department is self-supporting, and must collect adequate revenue to support its mandated and approved activities and operations. Fees must be established at amounts that will provide adequate revenue. Fee revenues collected on behalf of the boards fund the department's authorized special revenue appropriation.

The Board for Professional Soil Scientists, Wetland Professionals, and Geologists has no other source of revenue from which to fund its operations.

Substance: The existing regulation is being amended to increase the fees related to obtaining and maintaining certification as a professional geologist.

1. The application fee for certification is increased from \$40 to \$90.
2. The fee for renewal of certification is increased from \$35 to \$70.
3. The penalty fee for late renewal remains \$25.
4. The reinstatement fee is increased from \$40 to \$90.

Issues: The Code of Virginia establishes the board as the state agency that oversees certification of professional geologists providing services in Virginia. The board's primary mission is to protect the citizens of the Commonwealth, and it views certification as a broad concept that offers the public significant protection by prescribing requirements for minimal competencies; by prescribing standards of conduct and practice; and by imposing penalties for not complying with the regulations. Further, the department is compelled to comply with § 54.1-113 of the Code of Virginia (commonly referred to as the Callahan Act). The proposed fee increases will ensure that the board has sufficient revenues to fund its operating expenses.

There are no disadvantages to the public or the Commonwealth in raising the board's fees as proposed.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Professional Soil Scientists, Wetland Professionals, and Geologists (Board) proposes to increase fees paid by individuals certified as geologists.

Result of Analysis. There is insufficient information to accurately gauge whether benefits are likely to outweigh costs for these proposed changes.

Estimated Economic Impact. Under regulations promulgated by the now defunct Board of Geology, certified geologists pay \$40 for initial certification, \$35 for renewal of certification, a \$25 additional fee for late renewal of certification and \$40 for reinstatement of certification. The Board of Professional Soil Scientists, Wetland Professionals, and Geologists, which now has authority to certify geologists now propose to raise most fees paid by geologists.

Below is a comparison table for current and proposed fees:

FEE TYPE	CURRENT FEE	PROPOSED FEE %	% INCREASE
Initial Geologist Certification	\$40	\$90	125%
Certification Renewal	\$35	\$70	100%
Certification Reinstatement	\$40	\$90	125%

According to information provided by the Board, fees are being increased to bring geologists' fees in line with others charged by this Board and because information technology costs have increased precipitously over the last few years. Board staff reports that the Department of Professional and Occupational Regulation (DPOR) has already paid \$3.6 million, and expects to pay an additional \$1.6 million, for its new automated licensure system. These costs are additional to other IT (VITA) costs which have increased for all state agencies. It is likely that most of the per regulant expenditure increase in the last decade is due to these increased information systems costs. Over the 02-04 biennium, DPOR spent \$60.98 per regulant; for the 04-06 biennium, per regulant spending was \$52.19. During the 06-08 biennium, per regulant spending increased to \$76.63 and has increased in both of the biennia since (estimated spending for the current biennium is approximately \$87 per regulant). Given this information, it is not at all clear that these increased information systems costs represent a net benefit for the Board's regulated entities.

Increasing fees will likely increase the cost of being certified and, so, will likely slightly decrease the number of people who choose to be certified by the Commonwealth. This will

likely not greatly decrease the number of individuals actually practicing geology because certification is voluntary. To the extent that the public benefits from the Board regulating this professional population, they will likely benefit from the Board's proposed action that will increase fees to support Board activities. There is insufficient information to ascertain whether benefits will outweigh costs.

Businesses and Entities Affected. Board staff reports that the Board currently regulates 883 geologists.

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

Projected Impact on Employment. Employment in the Commonwealth is unlikely to be affected by this proposed regulatory action.

Effects on the Use and Value of Private Property. Fee increases will likely slightly decrease business profits and make affected businesses slightly less valuable.

Small Businesses: Costs and Other Effects. Board staff reports that most of the individuals regulated by the Board likely qualify as small businesses. Affected small businesses will bear the costs of proposed increased fees.

Small Businesses: Alternative Method that Minimizes Adverse Impact. There are several actions that the Board could take that might mitigate the necessity of raising fees overall. The Board could slightly lengthen the time that it takes to process both certification applications and complaints so that staff costs could be cut. This option would benefit current certificate holders but would slightly delay certification for new applicants. Affected small businesses would also likely benefit from increased scrutiny of the IT costs that are driving increases in Board expenditures.

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,

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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 result of Department of Planning and Budget's analysis is there is insufficient information to accurately gauge whether benefits are likely to outweigh costs for the proposed fee adjustments.

The Department of Professional and Occupational Regulation (DPOR) is proposing the fee adjustment now because geologists renew certification in August of even fiscal years. While it will be too soon to have the fee adjustment in place for August 2013, it is needed to be in place before August 2015. Fee increases would end up being substantially higher if the fee adjustment is not in place before August 2015. Although it may seem premature to submit the fee adjustment at this time, the entire approval process has been taking three years or more for other DPOR boards. DPOR is trying to minimize the size of the adjustment now as well as future adjustments, while also trying to avoid from entering into deficit cash positions.

As to the magnitude of the fee increase, it is important to note that fees for geologists were actually higher in 1995 than the current proposed fees. Incremental fee increases are not possible due to the three year approval process and are in order to sufficiently cover expenses.

Summary:

The proposed amendments increase the application, renewal, and reinstatement fees for professional geologists and align the fees with those of professional soil scientists and wetland professionals.

18VAC145-40-20. Fees.

All fees for application, examination, renewal, and reinstatement shall be established by the board pursuant to § 54.1-201 of the Code of Virginia. All fees are nonrefundable and shall not be prorated.

1. The application fee for certification shall be ~~\$40~~ \$90.
2. The fee for renewal of certification shall be ~~\$35~~ \$70.
3. The application fee for the Geologist-in-Training (GIT) designation shall be \$20.
4. The fee for examination or reexamination is subject to contracted charges to the department by an outside vendor. These contracts are competitively negotiated and bargained for in compliance with the Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia). Fees may be adjusted and charged to the candidate in accordance with this contract.
5. The penalty fee for late renewal shall be \$25 in addition to the renewal fee.

6. The reinstatement fee shall be ~~\$40~~ \$90.

VA.R. Doc. No. R12-3180; Filed June 7, 2013, 1:24 p.m.

◆ **TITLE 22. SOCIAL SERVICES**

STATE BOARD OF SOCIAL SERVICES

Proposed Regulation

Title of Regulation: **22VAC40-880. Child Support Enforcement Program (amending 22VAC40-880-10, 22VAC40-880-20, 22VAC40-880-90, 22VAC40-880-100, 22VAC40-880-190, 22VAC40-880-240, 22VAC40-880-250, 22VAC40-880-290, 22VAC40-880-320, 22VAC40-880-350, 22VAC40-880-380, 22VAC40-880-390, 22VAC40-880-405, 22VAC40-880-410, 22VAC40-880-430, 22VAC40-880-440, 22VAC40-880-480, 22VAC40-880-560; repealing 22VAC40-880-30 through 22VAC40-880-80, 22VAC40-880-110 through 22VAC40-880-180, 22VAC40-880-200, 22VAC40-880-210, 22VAC40-880-220, 22VAC40-880-230, 22VAC40-880-260, 22VAC40-880-270, 22VAC40-880-280, 22VAC40-880-300, 22VAC40-880-310, 22VAC40-880-330, 22VAC40-880-340, 22VAC40-880-360, 22VAC40-880-370, 22VAC40-880-385, 22VAC40-880-420, 22VAC40-880-450, 22VAC40-880-460, 22VAC40-880-470, 22VAC40-880-490 through 22VAC40-880-550, 22VAC40-880-570 through 22VAC40-880-720).**

Statutory Authority: § 63.2-217 of the Code of Virginia; 42 USC § 651 et seq.

Public Hearing Information: No public hearings are scheduled.

Public Comment Deadline: August 30, 2013.

Agency Contact: Alice Burlinson, Senior Assistant Attorney General, Department of Social Services, 4504 Starkey Road, Suite 103, Roanoke, VA 24018, telephone (540) 776-2779, FAX (540) 776-2797, or email alice.burlinson@dss.virginia.gov.

Basis: Section 63.2-217 of the Code of Virginia authorizes the Board of Social Services to adopt such regulations, not in conflict with Title 63.2 of the Code of Virginia, as may be necessary or desirable to carry out the purpose of Title 63.2. Section 63.2-1901 of the Code of Virginia provides that the purpose of Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 of the Code of Virginia is to promote the efficient and accurate collection, accounting, and receipt of support for financially dependent children and their custodians and to further the effective and timely enforcement of such support while ensuring that all functions in the Department of Social Services are appropriate or necessary to comply with applicable federal law.

Purpose: The child support regulation supplements the statutory law by providing a framework to promote the efficient and accurate administration of the child support

program. The efficient and accurate administration of the program is critical to the health and well-being of children on whose behalf the funds are collected and disbursed. The primary functions of the child support program include locating noncustodial parents, establishing paternity, establishing and modifying child support orders, and enforcing support obligations. This proposed action is the result of a comprehensive review of the child support regulation. The regulation has not been thoroughly reviewed since 2002. Statutory and program changes since that time required a complete review of all portions of the regulation to reflect current federal and state legislative and program requirements.

Substance: This regulatory action primarily involves removing numerous sections that are duplicative of existing state and federal law and federal regulations, updating obsolete terms with current terminology, and clarifying the remaining sections by making the regulation easier to read and understand for the user. As a result, there are no substantive changes, except for 22VAC40-880-405, Passport Denial, which is amended to provide for an appeal process to circuit court pursuant to the Setoff Debt Collection Act.

Issues: The primary advantages of this proposed regulatory action to the public are to streamline the administrative code, remove unnecessary language, correct incorrect citations, and clarify the program. These are no disadvantages to the public.

The primary advantages to the agency and the Commonwealth are to streamline and clarify the regulation and remove unnecessary provisions. There are no disadvantages to the agency or the Commonwealth.

Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The State Board of Social Services (Board) proposes to amend its regulations that govern the child support enforcement program to 1) update the definitions section, 2) allow appeal of a social services hearing officer's decision on passport denial to the circuit court, 3) remove specific language that currently governs case prioritization and replace it with a general notice that the department has the authority to prioritize cases based on available information and 4) to repeal 49 of the 72 sections in these regulations.

Result of Analysis. Benefits likely outweigh costs for several proposed changes. Costs likely outweigh benefits for other proposed changes.

Estimated Economic Impact. Current regulations include several definitions for terms that are obsolete or no longer used in the body of the regulations. The Board proposes to eliminate some definitions and add others so that they better help interested parties understand the regulatory text. No affected entity is likely to incur any costs on account of the proposed changes to the definitions. To the extent that obsolete terms might confuse readers, removing these terms will benefit them.

Current regulations explicitly state that the decisions of department hearing officers for appeals of passport denial are final. Department staff reports that the Setoff Debt Collection Act now allows individuals to appeal the decision of a department hearing officer to the circuit court. Because of this, the Board proposes to remove the statement that the decision of the hearing officer is final and to insert notice that such decisions may be appealed to the circuit court. No affected entity is likely to incur any costs on account of these proposed changes. Affected entities will benefit from these changes as erroneous information is being removed and replaced with notice that affected entities have the right of appeal.

Current regulations have specific criteria for case prioritization that includes notice to clients that cases where current contact information for a absent or putative father is available will be handled before cases where such information is not known or where the department would be unlikely to be able to enforce a child support order. The Board proposes to remove all specific information on case prioritization and replace it with a general statement that the department has the authority to prioritize cases based on available information. Unless current criteria for prioritization no longer reflect current department practice, there does not appear to be much benefit in removing them from the regulations. Affected entities will be subject to increased uncertainty as to how the department will prioritize cases under the proposed regulatory language. Because, absent some information that current regulatory text is obsolete or wrong, there appears to be little benefit to removing specific criteria from these regulations and because doing so will likely increase uncertainty as to the rules and decrease understanding of those rules, costs likely outweigh benefits for these proposed changes.

The remaining substantive changes proposed by the Board consist of repealing 49 of the 72 sections in current regulations. Board staff reports that the Board proposes to repeal these sections to streamline regulations and because they were advised that Executive Order 14 (EO 14) requires them to remove language that is duplicative of federal or state code. EO 14 doesn't call for the repeal of duplicative sections but it does state that "regulations shall be designed to achieve their intended objective in the most efficient, cost-effective manner." However, it also states that "regulations shall be clearly written and easily understandable by the individuals and entities affected." To the extent that duplicative language is necessary to fully explain an area of regulation, it likely is also necessary to make sure regulations are clearly written and easily understandable.

DPB has identified one section for which repeal is proposed that now contains a rule that is in contradiction with both federal and state law. 22VAC40-130 states that "the department may not require custodial parents to pay the costs associated with the provision of child support services unless contesting genetic test results". Since this requirement was

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promulgated into regulation, the federal Deficit Reduction Act (2005) required states to pay certain fees for child support enforcement services and gives states several options as to how those fees are collected. In 2007, the General Assembly amended § 63.2-1904 to require that these fees be collected directly from custodial parents who meet certain criteria. These statutory changes supersede the rule in these regulations. As the regulatory language listed above is now contradictory and has a large potential to cause confusion for affected entities who read the regulations, removing it will provide the benefit of clarity. For this proposed change, benefits outweigh costs.

It appears that the remaining sections that the Board proposes to repeal are duplicative of various parts of either the Code of Virginia, of federal code or of federal regulation. Repealing these sections will make the regulations shorter and less duplicative but it may not make them more efficient or easier to understand. Having rules that are listed in both code and regulations, while duplicative, also can provide interested individuals the benefit of being able to suss out the rules no matter which source they look to. Current regulations that the Board proposes to repeal also provide a benefit to affected entities in that they consolidate rules from several places into one source and, therefore, save affected entities the time that would need to be spent to search out the various sources from which the rules are derived. These benefits will be lost if these sections of regulations are repealed and affected entities will, instead, incur time costs for having to search various sources in order to be able to find all relevant rules. Board staff reports that DCSE has various resources on their website that provide information to affected entities. In particular, the "Child Support and You" booklet provides a very good overview, in the form of frequently asked questions, to interested individuals. This booklet, however, appears to lack the specificity that is found in current regulations and, so, may not completely substitute for information that will be lost with the repeal of approximately two thirds of these regulations. Repealing regulations that are duplicative of code may provide a benefit to the Board in the future as they would no longer have to amend regulations to reflect future code changes but that benefit likely does not outweigh the costs that will be incurred if these regulations are made less informative.

Businesses and Entities Affected. These proposed regulatory changes will affect DCSE and all individuals that are served by them.

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 Department of Social Services appreciated the opportunity to comment on the initial economic impact analysis (EIA), and the Department of Planning and Budget's posting of a revised EIA in response. However, the Department of Social Services is not in complete concurrence with the revised EIA and looks forward to receiving public comment on the proposed regulation.

Summary:

The proposed amendments (i) update terminology, (ii) allow appeal of a social services hearing officer's decision on passport denial to the circuit court, (iii) remove specific language that currently governs case prioritization and replace it with a general notice that the department has the authority to prioritize cases based on available information, (iv) update language to reflect statutory changes, and (v) repeal numerous sections that are duplicative of state and federal law and federal regulations.

Part I
Definitions

22VAC40-880-10. Definitions.

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

"Absent parent" means a responsible person as defined in § 63.1-250 of the Code of Virginia who is required under law to support a dependent child or the dependent child and the child's caretaker.

~~"Administrative" means noncourt ordered, legally enforceable actions the department may take to establish, modify, collect, distribute or enforce a child support obligation.~~

~~"AFDC" means Aid to Families with Dependent Children which is established under Title IV-A of the Social Security Act. This is a category of financial assistance paid on behalf of children who are deprived of one or both of their parents by reason of death, disability, or continued absence (including desertion) from the home. See also "TANF."~~

~~"AFDC/FC" means Aid to Families with Dependent Children or Foster Care which is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for AFDC and who are in the custody of local social services agencies.~~

"Appeal" means a request for a review of an administrative action taken by the division, or an action taken to contest a court order.

"Applicant" or "applicant/recipient" means a party who applies for and receives services from the division.

"Application" means a written document requesting child support enforcement services which the department provides to the individual or agency applying for services and which is signed by the applicant.

~~"Arrears" or "arrearage" "Arrearage" means unpaid child or medical support payments, interest, and other costs for past periods owed by a parent to the state or obligee. This may include unpaid spousal support when child support is also being enforced.~~

~~"Assignment" means any assignment of rights to child, spousal, or medical support or any assignment of rights to medical support and to payments for medical care from any third party.~~

"Bad check" means a check not honored by the bank on which it is drawn.

"Case summary" means a written statement outlining the actions taken by the department on a case that has been appealed.

"Child support guideline" means a federal requirement for the establishment and adjustment/modification of financial child support and is comprised of §§ 20-108.1 and method for

calculating a child support obligation as set out in § 20-108.2 of the Code of Virginia.

~~"Custodial parent" or "obligee" means (i) the natural or adoptive parent with whom the child resides, (ii) a stepparent or other person who has physical custody of the child and with whom the child resides, or (iii) a social service agency which has legal custody of a child in foster care.~~

~~"Debt" means the total unpaid support obligation established by court order, administrative order, or payment of public assistance that is owed by an obligor to either the custodial parent/obligee, to the Commonwealth, or to the obligor's dependents.~~

"Delinquency" means an unpaid child or medical support obligation. The obligation may include spousal support when child support is also being enforced.

"Department" means the Virginia Department of Social Services.

~~"District office" means a local office of the Division of Child Support Enforcement responsible for the operation of the Child Support Enforcement Program child support enforcement program.~~

"Division" means the Division of Child Support Enforcement of the Virginia Department of Social Services, also known as a IV-D agency.

"Enforcement" means ensuring the payment of child support through the use of administrative or judicial means as described in § 63.2-1904 of the Code of Virginia.

~~"Erroneous payment" means a payment sent to the custodial parent/obligee for which no funds were received by the department to be paid to that applicant/recipient.~~

~~"Federal foster care" means foster care that is established under Title IV-E of the Social Security Act. This is a category of financial assistance paid on behalf of children who otherwise meet the eligibility criteria for TANF and who are in the custody of local social service agencies.~~

"Financial statement" means the provision of financial information from the natural or adoptive parents.

~~"Foreclosure" means a judicial procedure to enforce debts involving forced judicial sale of the real property of a debtor.~~

~~"Genetic testing" means scientifically reliable genetic tests, including blood tests, as described in §§ 20-49.1, 20-49.3, 20-49.4, 20-49.8, and 63.1-250.1:2 of the Code of Virginia.~~

"Good cause" means, as it pertains to TANF and AFDC/FC federal foster care applicants and recipients, an agency determination that the individual ~~does not have~~ is not required to cooperate with Division of Child Support Enforcement the division in its efforts to collect child support.

~~"Health insurance coverage" means any plan providing hospital, medical, or surgical care coverage for dependent children provided such coverage is available and can be obtained by a parent at a reasonable cost.~~

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"Hearings officer" means ~~a disinterested person designated by the department to hold appeal hearings and render appeal decisions on administrative actions~~ an impartial person charged by the Commissioner of Social Services to hear appeals and decide if an agency followed its policy and procedures.

"Interest" means ~~charges accrued on past due child support at the prevailing judgment rate.~~

"IV-D agency" means a governmental entity administering the child support program enforcement under Title IV-D of the Social Security Act. In Virginia the IV-D agency is the Division of Child Support Enforcement.

~~"Judicial" means an action initiated through a court.~~

~~"Local social service agency" means one of Virginia's locally administered social service or welfare departments which operate the TANF and AFDC/FC programs and other programs offered by the department.~~

"Location" "Locate services" means obtaining information which is sufficient and necessary to take action on a child support case including information concerning (i) the physical whereabouts of the obligor or the obligor's employer, or (ii) other sources of income or assets, as appropriate. Certain individuals and entities such as courts and other state child support enforcement agencies can receive locate-only services from the department.

~~"Location only services" means that certain entities such as courts and other state child support enforcement agencies can receive only locate services from the department.~~

~~"Medicaid only" "Medicaid-only"~~ means a category of public assistance whereby a family receives Medicaid but is not eligible for or receiving AFDC TANF.

"Medical support services" means the establishment of a medical support order and the enforcement of health insurance coverage or, if court ordered, medical expenses.

~~"Mistake of fact" means an error in the identity of the obligor or in the amount of support owed.~~

~~"Noncustodial parent" means a responsible person, as defined in § 63.1-250 of the Code of Virginia, who is obligated under Virginia law for support of a dependent child or child's caretaker.~~

"Obligation" means the amount and frequency of payments which the obligor is legally bound to pay as set out in a court or administrative support order.

~~"Obligee" means an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered.~~

~~"Obligor" means an individual, or the estate of a decedent, who owes or is alleged to owe a duty of support, is alleged but has not been adjudicated to be a parent of a child, or is liable under a court order.~~

"Occupational license" means any license, certificate, registration, or other authorization to engage in a business, trade, profession, or occupation issued by the Commonwealth pursuant to Title 22.1, 38.2, 46.2, or 54.1 of the Code of Virginia or any other provision of law.

"Parent" means any natural or adoptive parent; the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; a local board that has legal custody of a child in foster care; or a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"Past due support" means support payments determined under a court or administrative order which have not been paid.

"Pendency of an appeal" means the period of time after an administrative appeal has been made and before the final disposition by an administrative hearing officer, or between the time a party files an appeal with the court hears a case and the court renders a final decision.

~~"Public assistance" means payments for TANF, or AFDC/FC, or Medicaid.~~

"Putative father" means ~~an alleged father;~~ a person ~~named as alleged to be~~ the father of a child ~~born out of wedlock but~~ whose paternity has not been established.

~~"Reasonable cost" means, as it pertains to health insurance coverage, available through employers, unions, or other groups without regard to service delivery mechanism.~~

"Recipient" means a person ~~who or agency that~~ has applied for or ~~is in receipt of~~ receives public assistance or child support enforcement services.

"Recreational license" means any license, certificate, or registration used for the purpose of participation in games, sports, or hobbies, or for amusement or relaxation.

"Service" or "service of process" means the delivery to or leaving of a child support document, in a manner prescribed by state statute, giving the party reasonable notice of the action being taken.

~~"Subpoena" means a document commanding a person to appear at a time and place to give testimony upon a certain matter.~~

~~"Subpoena duces tecum" means a document compelling production of specific materials relevant to facts in a pending judicial proceeding.~~

"Summons" means a document notifying ~~an absent or~~ eustodial a parent or other person that he or she must appear at a time and place named in the document to provide information needed to pursue child support actions.

~~"Supplemental Security Income" means a program administered by the federal government which guarantees a minimum income to persons who meet the requirement of aged, blind, or disabled.~~

"Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorneys' fees, and other relief.

"TANF" means Temporary Assistance for Needy Families, formerly known as AFDC.

Part II
General Information
Article 1
Services

22VAC40-880-20. Services provided.

A. Child support enforcement services shall be provided as a group to AFDC, AFDC/FC, and non AFDC clients to all TANF and non-TANF customers. Courts and other state IV-D agencies may apply for location only services. Medicaid only Medicaid-only clients shall be provided services to establish or enforce medical support and may, at their request, receive full services health care orders.

B. Child support enforcement services shall include the following services which may involve administrative or court action:

1. Location of absent parents, their employers, or their sources of income;
2. Establishment of paternity;
3. Establishment or modification of child support obligations, including the responsibility to provide health insurance coverage;
4. Enforcement of child support and medical support obligations, both administratively and judicially determined; and
5. Collection and disbursement of child support payments, regardless of whether the obligation is legally established.

B. The department shall provide locate services (i) whenever the location of parents or their sources of income or assets is needed in order to establish parentage, establish a child support order, or enforce a child support obligation and (ii) when there is sufficient identifying information available to the department to access locate sources.

22VAC40-880-30. Eligibility for services. (Repealed.)

A. Individuals who apply for TANF, AFDC/FC, or Medicaid only assistance are automatically eligible for child support services.

1. TANF and AFDC/FC applicants and recipients must subrogate all rights to support to IV D, which includes all child support services as a condition of eligibility for public assistance unless a determination of good cause has

been made for the IV D agency not to pursue child support services.

2. Medicaid applicants/recipients must accept medical support and paternity establishment services as a condition of eligibility for Medicaid unless the local social services agency determines that good cause exists for not accepting these services.

3. The department shall close a child support case in which the local social service agency has determined that good cause exists for not cooperating with the department in its pursuit of child support.

4. The department shall continue to provide child support services to an individual whose TANF, AFDC/FC, or Medicaid case closes.

a. The department shall provide these services without requiring a formal application.

b. The department shall continue to provide these services until the applicant/recipient states in writing that the services are no longer wanted. This request will result in closure of the child support case unless this action is contrary to state or federal law, or outstanding arrears are owed to the Commonwealth for TANF previously paid.

B. An individual who is not receiving TANF, AFDC/FC, or Medicaid assistance must make an application for child support services as a condition of eligibility for those services with the exception that an application is not required for cases transferred from the courts to the department on or after October 1, 1985. For such cases the payee shall be deemed as having executed an authorization to seek or enforce a support obligation with the department unless the payee specifically indicates that the department's services are not desired.

1. The child for whom child support is being requested must have an order in place for his support, or be under 18 years of age.

2. If the child for whom support is being sought is under 18 years of age, the applicant must be the parent or physical guardian of the child.

C. Individuals residing outside of Virginia shall be eligible for child support services:

1. Upon a request for services from the IV D agency in the state in which they reside; or

2. Upon receipt of an application from nonresident individuals and accompanying documentation.

D. Locate only services.

1. Custodial parents may apply for locate only services.

2. Noncustodial parents may apply for locate only services for custody and visitation purposes only.

3. Courts and other state IV D agencies are eligible for child support enforcement services or for location only services.

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Article 2

Department as Payee

22VAC40-880-40. Assignment of rights. (Repealed.)

~~A. Assignment of child support rights to the Commonwealth is automatic by operation of law with receipt of AFDC and AFDC/FC assistance and continues after the public assistance case closes unless the client requests in writing that the services be terminated.~~

~~B. Assignment of medical support rights to the Commonwealth is automatic by operation of law with receipt of Medicaid only assistance and continues after the public assistance case closes unless the client requests in writing that the service be terminated.~~

22VAC40-880-50. Authorization to seek or enforce a child support obligation. (Repealed.)

~~Persons receiving child support services shall give the department written authorization to seek or enforce support on behalf of the child or spouse and child.~~

22VAC40-880-60. Special conditions regarding receipt of TANF or AFDC/FC. (Repealed.)

~~Pursuant to § 63.1-251 of the Code of Virginia, receipt of TANF or AFDC/FC assistance creates a debt to the Commonwealth.~~

Article 3

Application

22VAC40-880-70. Application fees. (Repealed.)

~~The application fee for child support services is \$1.00 for nonpublic assistance clients. The department shall pay this fee on behalf of such applicants for child support enforcement services.~~

22VAC40-880-80. Application process. (Repealed.)

~~A. The department shall make applications accessible to the public and shall include with each application information describing child support enforcement services and the applicant's rights and responsibilities.~~

~~1. The department shall provide an application on the day an individual requests the application when the request is made in person.~~

~~2. The department shall send applications within five working days of the date a written or telephone request for an application is received.~~

~~B. The department shall provide TANF, AFDC/FC, and Medicaid recipients with the above information, and the rights and responsibilities of applicants, within five working days of receiving the referral from a local social service agency.~~

~~C. The department shall, within two calendar days of the date of application from a nonpublic assistance recipient or from the date a referral of a public assistance recipient is received, establish a case record, and within 20 calendar days, obtain the information needed to locate the noncustodial~~

~~parent, initiate verification of information, if appropriate, and gather all relevant facts and documents.~~

Article 4

Case Assessment and Prioritization

22VAC40-880-90. Case assessment.

~~The~~ After establishing a case record, the department shall (i) assess the case information to determine if sufficient information to establish or enforce a child support obligation is available and verified and, (ii) attempt to obtain additional case information if the information is not sufficient and, (iii) gather all relevant documents, and (iv) verify case information which is not verified.

22VAC40-880-100. Case prioritization.

~~A. The department shall give priority to cases which contain any of the following on the absent parent or putative father:~~

- ~~1. Verified, current, residential address; or~~
- ~~2. Current employer; or~~
- ~~3. Last known residential address or last known employer if the information is less than three years old; or~~
- ~~4. Social security number and date of birth.~~

~~B. The department shall give low priority but shall review periodically cases in which:~~

- ~~1. There is not adequate identifying or other information to meet requirements for submittal for location, or~~
- ~~2. The absent parent receives supplemental security income or public assistance.~~

The department shall have the authority to prioritize cases based on available information.

Article 5

Service of Process

22VAC40-880-110. Service of process. (Repealed.)

~~Service is necessary when child support obligations are established either administratively or through court action and, in some instances, when actions to enforce the obligation are taken. The department shall use diligent efforts to serve process as allowed by law.~~

Article 6

Administrative Summons

22VAC40-880-120. Administrative summons. (Repealed.)

~~The department may summons obligees, obligors, and parents to appear in the division's office to provide essential information necessary for the collection of child support.~~

~~The department may request the Department of Motor Vehicles to suspend or refuse to renew the driver's license of a party who fails to comply with a subpoena, summons, warrant, or writ of capias relating to paternity or child support proceedings pursuant to § 46.2-320 of the Code of Virginia.~~

Article 7
Program Costs

22VAC40-880-130. ~~Costs associated with the provision of child support services. (Repealed.)~~

~~A. The department may not require custodial parents to pay the costs associated with the provision of child support services unless contesting genetic test results.~~

~~B. The department shall assess and recover fees from the parties according to the rules set out in Part XII (22VAC40-880-680 et seq.) of this chapter.~~

Part III
Location

22VAC40-880-140. ~~Location services. (Repealed.)~~

~~The department shall provide location services (i) whenever the location of absent parents or their employers is needed in order to establish or enforce a child support obligation and (ii) when there is sufficient identifying information available to the department to access location sources.~~

22VAC40-880-150. ~~Location sources. (Repealed.)~~

~~Whenever location services are provided, the department shall access all necessary locate sources. Locate sources include but are not limited to:~~

- ~~1. Local public and private sources;~~
- ~~2. State Parent Locator Services;~~
- ~~3. Electronic Parent Locator Network;~~
- ~~4. Central Interstate Registry;~~
- ~~5. Federal Parent Locator Service; and~~
- ~~6. Parents, friends, and other personal sources.~~

22VAC40-880-160. ~~Location time requirements. (Repealed.)~~

~~A. The department shall access all appropriate location sources within 75 calendar days of receipt of the application for child support services or the referral of a public assistance recipient if the department determines that such services are needed and quarterly thereafter if the location attempts are unsuccessful.~~

~~B. The department shall review at least quarterly those cases in which previous attempts to locate absent parents or sources of income or assets have failed, but adequate identifying and other information exists to meet requirements for submittal for location.~~

~~C. The department shall provide location services immediately if new information is received which may aid in location.~~

~~D. The department shall utilize the Federal Parent Locator Service at least annually when other location attempts have failed with the exception of cases referred through the central registry.~~

~~E. When another state requests location services from the department, the department shall follow the time requirements described in 45 CFR § 303.7.~~

Part IV
Establishing Child Support Obligations
Article 1
Paternity Establishment

22VAC40-880-170. ~~Establishing paternity. (Repealed.)~~

~~In order for the department to establish a child support obligation and to enforce and collect child support payments from a putative father, the father must be determined to be legally responsible for the support of the child. In situations in which a putative father has not been legally determined to be the father of the child, paternity must be established before a child support obligation can be administratively ordered or court ordered. The department pursues paternity establishment in accordance with §§ 20-49.1 through 20-49.9 and 63.1-250.1:2 of the Code of Virginia.~~

- ~~1. The department shall obtain a sworn statement for each child from the mother acknowledging the paternity of the child or children for whom child support is sought.~~
- ~~2. Based on this sworn statement, the department shall attempt to locate the putative father, if necessary, according to the locate time requirements described in Part III (22VAC40-880-140 et seq.) of this chapter.~~
- ~~3. Once the putative father is located, the department shall contact him to determine if he is willing to sign a sworn statement voluntarily acknowledging paternity or to voluntarily submit to genetic testing to determine paternity.

 - ~~a. The department shall advise the putative father verbally and in writing of his rights and responsibilities regarding child support prior to obtaining a sworn statement of paternity.~~
 - ~~b. A putative father who signs a sworn statement of paternity along with an acknowledgement from the mother or who, through genetic testing, is affirmed by at least a 98% probability to be the father of the child is responsible for the financial support of the child or children.~~~~
- ~~4. When the putative father does not sign a sworn statement of paternity or does not voluntarily submit to genetic testing, the department shall order the putative father to submit to genetic testing. If the putative father refuses to comply with the genetic testing order, the department shall petition the court for a paternity determination when there is sufficient evidence to do so.~~
- ~~5. Within 90 calendar days of locating the putative father, the department shall:

 - ~~a. Obtain a sworn acknowledgement of paternity or arrange for voluntary or mandatory genetic testing or the purpose of establishing paternity, or~~~~

Regulations

~~b. File a petition with the court for paternity establishment.~~

~~6. In any case where more than one putative father has been identified, the department shall pursue paternity for all putative fathers.~~

22VAC40-880-180. Establishing paternity in interstate cases. (Repealed.)

~~The department shall establish, if possible, the paternity of children who do not reside in Virginia when the putative father resides in Virginia and a request for such services is received from another state IV-D agency.~~

Article 2

Administrative Support Orders

22VAC40-880-190. Administrative establishment of a child support obligation.

~~A. The department has statutory authority to establish child support obligations through noncourt ordered, legally enforceable child support orders. These administrative orders have the same force and effect as a support order established by the court. These administrative orders shall contain the information listed in § 63.1-252.1 of the Code of Virginia.~~

~~B. The amount of child support that is owed and the frequency with which it is paid must be established before the payment of child support can be enforced.~~

~~C. The administrative order shall be called the administrative support order.~~

~~D. A. The department shall use the administrative support order to establish a temporary child support obligation when judicial determinations of support are pending due to custody and visitation issues.~~

~~E. B. Within 90 calendar days of locating the putative father or noncustodial parent, and except as shown in subsection H D of this section, the department shall either establish an administrative child support order or petition the court to serve and complete service of process on the putative father or noncustodial parent to establish a child support obligation, or shall diligently attempt to complete the service of process necessary for an obligation to be ordered.~~

~~F. C. When a court dismisses a petition for a support order without prejudice or an administrative hearings officer overrules an administrative support action, the department shall examine the reasons for the dismissal or overruling to determine when or if further action is appropriate.~~

~~G. The child support obligation is established when an administrative support order has been served and the 10 day appeal period for the administrative order has elapsed.~~

~~H. A child support obligation shall not be established when the obligor is receiving Temporary Assistance for Needy Families (TANF), Supplemental Security Income (SSI), or General Relief (GR) benefits.~~

22VAC40-880-200. Determining the amount of the child support obligation. (Repealed.)

~~A. The administrative child support order shall include information and provisions as set forth in § 63.2-1916 of the Code of Virginia.~~

~~B. Verification of financial information and use of financial statements:~~

~~1. The department shall use financial statements obtained from the legally responsible parents to determine the amount of the child support obligation and shall verify financial information used to determine child support obligations.~~

~~2. The legally responsible parents shall complete financial statements upon demand by the department. Such responsible parties shall certify under penalty of perjury the correctness of the statement.~~

~~3. If the custodial parent is a recipient of public assistance, the department shall use the information obtained through the TANF or AFDC/FC eligibility process to meet the financial statement and financial information verification requirements.~~

~~4. The department shall define the type of financial information which shall be required based on § 63.2-1919 of the Code of Virginia which is incorporated by reference. The department has the authority to request verification of financial information for the purpose of establishing or modifying a child support obligation. The department will not provide credit for self employment tax paid if the most recent federal tax return and the Schedule H attachment are not provided by the party upon request.~~

~~5. When both parents are noncustodial, each parent must provide financial information. In this situation, the person with whom the child resides shall not be required to complete a financial statement.~~

~~C. The department shall determine the amount to be paid monthly toward past due support when the obligation is administratively ordered and when a court ordered obligation for support does not specify the amount to be paid toward the past due support. The monthly payment for past due support will be \$65 or 25% of the current obligation, whichever is greater, and shall not exceed the amount allowed under the federal Consumer Credit Protection Act.~~

22VAC40-880-210. Service of the administrative support order. (Repealed.)

~~The department must legally serve the administrative support order on the obligor in order to have an established obligation. The department shall also provide a copy of this document to the obligee in no less than 14 days from date of service on the obligor.~~

22VAC40-880-220. Medical support. (Repealed.)

~~A. The department shall have the authority to issue orders containing provisions for medical support services for the~~

dependent children of obligors if the coverage is available at reasonable cost as defined in § 63.1-250.1 of the Code of Virginia.

~~B. The obligor shall provide information regarding the availability of or changes in health insurance coverage for his or her dependent children.~~

~~C. The obligor shall provide health insurance coverage for the child or children if health insurance is available through his or her employment. The department may enter an administrative order or seek a judicial order requiring the obligor's employer to enroll the dependent children in a group health insurance plan or other similar plan providing health insurance coverage offered by the employer as provided in § 20-79.3 of the Code of Virginia.~~

22VAC40-880-230. Child support guideline. (Repealed.)

~~A. The department shall use the child support guideline, which includes the Schedule of Monthly Basic Child Support Obligations (§ 20-108.2 B of the Code of Virginia) and procedures in §§ 20-108.1 and 20-108.2 of the Code of Virginia in calculating obligation amounts except for obligations determined as set forth in 22VAC40-880-240 for which the presumptive amount will only be used as the initial support calculation.~~

~~B. The department may not include benefits from public assistance programs as defined in § 63.1-87 of the Code of Virginia, Supplemental Security Income, or child support received in calculating the combined gross income.~~

22VAC40-880-240. Administrative deviation from the child support guideline.

There shall be a rebuttable presumption that the amount of child support that results from the application of the guidelines is the correct amount of child support pursuant to §§ 20-108.1, 20-108.2, and ~~63.1-264.2~~ 63.2-1918 of the Code of Virginia. Deviations from the guideline shall be allowed as follows:

~~1. A deviation from the gross income of either parent shall be allowed when a parent has other dependent children residing with him or has child support orders for other dependent children for which either parent is legally and financially responsible and who are not included in a child support order.~~

~~a. If there is an order in place for such child, the actual amount of the order is allowed.~~

~~b. If there is no order in place (i.e., the child lives in the home of either parent), a deviation is allowed equal to the amount of support found in the Schedule of Basic Monthly Child Support Obligations (§ 20-108.2 B of the Code of Virginia) for the income of the parent receiving the deviation and the number of children for whom a deviation is allowable as described above.~~

~~2. 1. When either natural or adoptive parent is found to be voluntarily unemployed or fails to provide financial information upon request, income shall be imputed except~~

as indicated below. A natural or adoptive parent is determined to be voluntarily unemployed when he quits a job without good cause or is fired for cause.

a. The current or last available monthly income shall be used to determine the obligation if that income is representative of what the natural or adoptive parent could earn or otherwise receive.

b. If actual income is not available, use the federal minimum wage multiplied by 40 hours per week and converted to a monthly amount by multiplying the result by 4.333.

c. Where parents have never been employed, income shall not be imputed.

~~3. 2.~~ No other deviations from the child support guidelines may be made in establishing or adjusting administrative support orders or reviewing court orders. Should potential deviation factors exist, as stated in § 20-108.1 of the Code of Virginia, refer the case to court for additional action.

22VAC40-880-250. Periodic reviews of the child support obligation.

A. Either parent may request a review of the child support obligation once every three years. Additional requests may be made earlier by providing documentation ~~of a special circumstance~~ that a material change of circumstance has occurred that potentially affects the child support obligation. Such changes shall be limited to the following:

1. An additional child needs to be ~~covered by~~ added to the order;

2. A child ~~needs to be removed when another child remains covered by the order; is no longer eligible to receive current support due to a change of custody or emancipation and needs to be removed from an existing order that includes other children;~~

3. A provision for health care coverage needs to be added;

4. A provision ordering the natural or adoptive parents to share the costs of all unreimbursed medical/dental expenses exceeding \$250 per child per year covered by the order needs to be added; or

5. A change of at least 25% can be documented by the requesting ~~party~~ parent in the following circumstances:

a. Income of either ~~party~~ natural or adoptive parent;

b. Amount of medical insurance; or

c. Cost of ~~dependent care.~~ employment-related child-care costs.

B. The department shall adjust an administrative obligation when the results of the review indicate a change of at least 10% in the monthly obligation but not less than \$25.

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Part V
Enforcing Child Support Obligations

Article 1
General

22VAC40-880-260. Enforcement. (Repealed.)

A. ~~The department shall, whenever possible, administratively enforce compliance with established child support orders including both administrative and court orders.~~

B. ~~The department shall enforce child support obligations at the time the administrative support order is initially entered through the use of an income withholding order.~~

C. ~~The department shall enforce child support obligations when the obligation becomes delinquent through the use of one or more of the following administrative enforcement remedies:~~

- ~~1. Income withholding order;~~
- ~~2. Liens;~~
- ~~3. Orders to withhold and deliver;~~
- ~~4. Foreclosure;~~
- ~~5. Distraint, seizure, and sale;~~
- ~~6. Unemployment compensation benefits intercept;~~
- ~~7. Bonds, securities, and guarantees;~~
- ~~8. Tax intercept;~~
- ~~9. Internal Revenue Service full collection service;~~
- ~~10. Credit bureau reporting;~~
- ~~11. Enforcement remedies for federal employees;~~
- ~~12. Occupational and professional license suspensions;~~
- ~~13. Driver's license suspension;~~
- ~~14. Recreational or sporting license suspensions; or~~
- ~~15. Financial Institution Data Match.~~

D. ~~The department shall attempt to enforce current and delinquent child support payments through administrative means before petitioning the court for enforcement action unless it determines that court action is more appropriate.~~

E. ~~The department shall take appropriate enforcement action, unless service of process is necessary, within 30 calendar days of identifying a delinquency or of locating a noncustodial parent, whichever occurs later.~~

F. ~~The department shall take appropriate enforcement action if service of process is necessary within 60 calendar days of identifying a delinquency or of locating a noncustodial parent, whichever occurs later.~~

G. ~~The department shall take appropriate enforcement action within the above timeframes to enforce health insurance coverage.~~

H. ~~When an enforcement action is unsuccessful, the department shall examine the reason or reasons and determine when it would be appropriate to take an enforcement action in the future. The department shall take further enforcement~~

~~action at a time and in a manner determined appropriate by department staff.~~

I. ~~The department shall use high volume administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another state to enforce support orders, and shall promptly report the results of such enforcement procedures to the requesting state, pursuant to 42 USC § 666(a)(14).~~

22VAC40-880-270. Withholding of income. (Repealed.)

A. ~~The department shall issue an income withholding order against all income except income exempted under federal and state law.~~

B. ~~The department shall serve the income withholding order on the employer.~~

C. ~~The department shall release the income withholding order only if one of the following occurs:~~

- ~~1. The current support order terminates, and any past due support is paid in full;~~
- ~~2. Only past due support is owed and it is paid in full;~~
- ~~3. The whereabouts of the child or child and custodial parent become unknown;~~
- ~~4. Bankruptcy laws require release; or~~
- ~~5. A nonpublic assistance custodial parent or former public assistance custodial parent no longer wants the services of the department and no debt is owed to the Commonwealth.~~

Article 2

Income Withholding Enforcement Remedies

22VAC40-880-280. Withholding of income; administrative support orders. (Repealed.)

~~The administrative support order shall include a requirement for immediate withholding of the child support obligation from the noncustodial parent's income unless the parties agree in writing to an alternate payment arrangement, or good cause is determined by the department for not implementing an immediate withholding, pursuant to 42 USC § 666(a)(8)(B)(i) and § 63.1-258.1 of the Code of Virginia.~~

22VAC40-880-290. Determining the amount to be applied toward past due support.

~~The department shall collect any court-ordered court-ordered amount to be paid toward past due support. If the order does not specify an amount to be paid toward past due support, the department shall determine the amount to be paid monthly toward past due support. The monthly payment for past due support will be \$65 or 25% of the current or former obligation or \$65, whichever is greater. For disposable earnings, the total amount withheld shall not exceed the amount allowed under the federal Consumer Credit Protection Act. (See § 34-29 of the Code of Virginia.)~~

22VAC40-880-300. ~~Alternative payment arrangement. (Repealed.)~~

~~The custodial parent and noncustodial parent may mutually choose an alternative payment arrangement at the time the obligation is established as an alternate to immediate withholding of income for payment of child support.~~

Article 3

Other Enforcement Remedies

22VAC40-880-310. ~~Enforcement remedies. (Repealed.)~~

~~The department shall have the authority to administratively collect delinquent child support payments from absent parents. These are called enforcement remedies.~~

22VAC40-880-320. ~~Initiated withholding of income.~~

~~In all initial and modified administrative support orders, the department shall initiate an income withholding order unless the parties agree to an alternative payment arrangement. The department shall send initiate an income withholding order to an the noncustodial parent's employer requiring the deduction withholding of the child support obligation from the noncustodial parent's income under the following circumstances:~~

- ~~1. When a payment is delinquent in an amount equal to or exceeding one month's child support obligation, or~~
- ~~2. When either parent requests that withholding begin regardless of whether past due support is owed or support payments are in arrears.~~

22VAC40-880-330. ~~Liens. (Repealed.)~~

~~A. A lien arises by operation of law for overdue support pursuant to 42 USC § 666(a)(4)(A) and the department may file a lien on the real or personal property of the noncustodial parent when the division has:~~

- ~~1. Issued an administrative support order;~~
- ~~2. Received a Virginia court order; or~~
- ~~3. Received a support order from a jurisdiction outside of Virginia.~~

~~B. Any lien of the department shall have the priority of a secured creditor.~~

~~C. Any lien of the department shall be subordinate to the lien of any prior mortgagee.~~

~~D. Any lien shall be released when the past due support has been paid in full.~~

22VAC40-880-340. ~~Orders to withhold and deliver. (Repealed.)~~

~~A. The department may use orders to withhold and deliver to collect assets such as bank accounts, trust funds, stocks, bonds, and other types of financial holdings when past due support is owed.~~

~~B. The department may use high volume administrative enforcement (AEI) in response to a request made by another state to enforce support orders by using orders to withhold and deliver to collect assets such as bank accounts, trust~~

~~funds, stocks, bonds, and other types of financial holdings when past due support is owed. The department shall promptly report the results of such enforcement procedure to the requesting state.~~

~~C. The department shall release the order to withhold when the order cannot be served on the noncustodial parent.~~

~~D. The department shall release the order to deliver when:~~

- ~~1. The past due support is paid, or~~
- ~~2. The noncustodial parent makes satisfactory alternate arrangements for paying the full amount of the past due support.~~

22VAC40-880-350. ~~Distrain, seizure, and sale.~~

~~A. The department may use distraint, including booting of vehicle, seizure and sale against the real or personal property of a noncustodial parent when:~~

- ~~1. There are arrears is an arrearage of at least \$1,000 for a case with a current support obligation and at least \$500 for an arrears-only case;~~
- ~~2. Conventional enforcement remedies have failed or are not appropriate; and~~
- ~~3. A lien has been filed pursuant to § 63.2-1927 of the Code of Virginia.~~

~~B. Assets targeted for distraint, including booting of vehicle, seizure and sale are:~~

- ~~1. Solely owned by the noncustodial parent.~~
- ~~2. Co-owned by the noncustodial parent and current spouse.~~
- ~~3. Owned by a business in which the noncustodial parent is the sole proprietor. Assets owned by business partnerships or corporations which are co-owned with someone other than a noncustodial parent's current spouse do not qualify for booting of vehicle, or seizure and sale.~~

~~C. The Director director of the Division of Child Support Enforcement division or his designee shall give final approval for the use of distraint, seizure and sale. This includes immobilizing a vehicle using vehicle boots.~~

~~D. When initiating booting, or seizure and sale of vehicle, the department shall check with the Department of Motor Vehicles for vehicles registered in the noncustodial parent's name, the address on the vehicle registration, and the name of any lien holder on the vehicle.~~

~~E. Once a lien has been filed pursuant to § 63.2-1927 of the Code of Virginia, the department shall send a notice of intent to the noncustodial parent before initiating distraint, including booting of vehicle, seizure and sale action. If there is reason to believe that the noncustodial parent will leave town or hide the asset, the asset can be seized without sending the notice and with proper documentation.~~

~~F. If the noncustodial parent contacts the department in response to the intent notice, the department shall request payment of arrears the arrearage in full. The department shall~~

Regulations

negotiate a settlement if the noncustodial parent cannot pay the arrearage in full. The least acceptable settlement is 5.0% of the arrearage owed or \$500, whichever is greater, with additional monthly payments towards the ~~arrears~~ arrearage that will satisfy the arrearage within 10 years. The department may initiate distraint, including booting of vehicle, seizure and sale, without further notice to the noncustodial parent if the noncustodial parent defaults on the payments as agreed.

G. The department shall send a fieri facias request to each county or city where a lien is filed and a levy is being executed if the noncustodial parent does not contact the department in response to the intent notice.

H. The department shall set a target date for seizure or booting and have the sheriff levy the property or boot the vehicle.

I. Once property has been seized or booted by the sheriff, the department must (i) reach a payment agreement with the noncustodial parent of 5.0% of the arrearage owed or \$500, whichever is greater, with additional monthly payments towards the ~~arrears~~ arrearage that will satisfy the arrearage within 10 years and release the vehicle to the owner; (ii) proceed with the sale of the vehicle pursuant to § 63.2-1933 of the Code of Virginia; or (iii) at the end of 90 days from the issuance of the writ of fieri facias, release the vehicle to the owner.

J. The department shall send a cancellation notice to the sheriff if a decision is made to terminate the seizure action before the asset is actually seized.

K. If the department sells an asset and it is a motor vehicle, the department shall notify the Department of Motor Vehicles to issue clear title to the new owner of the vehicle.

~~22VAC40-880-360. Unemployment compensation benefits intercept. (Repealed.)~~

~~The department may intercept unemployment compensation benefits for support within the limits set by the federal Consumer Credit Protection Act pursuant to 15 USC § 1673(b) and § 34 29 of the Code of Virginia.~~

~~22VAC40-880-370. Bonds, securities, and guarantees. (Repealed.)~~

~~The department shall use administrative bonds, securities, and guarantees as an enforcement action only if the amount of the delinquency exceeds \$1,000 and:~~

- ~~1. After all other enforcement actions fail; or~~
- ~~2. When no other enforcement actions are feasible.~~

22VAC40-880-380. Tax intercept.

A. The department shall intercept state and federal income tax refunds due to obligors that owe support arrearages.

B. The Virginia Department of Taxation prescribes rules for interception of state tax refunds and notification to the person whose state tax refund is being intercepted.

1. The department may retain moneys up to the amount owed on the due date of the finalization notice from the department to the Virginia Department of Taxation.

2. The department may intercept state tax refunds when the ~~delinquent amount~~ arrearage equals at least \$25.

3. State tax refund intercepts shall be disbursed in the same manner as support payments. Federal tax intercepts shall be disbursed as required pursuant to 42 USC § 664.

4. The department may not disburse the intercepted state taxes if the noncustodial parent has appealed the intercept action and the appeal is pending.

5. The department shall issue a refund to the noncustodial parent when one of the following occurs:

- a. The intercept was made in error;
- b. The noncustodial parent pays the ~~delinquent amount~~ arrearage in full after the Department of Taxation has been notified of the ~~delinquency~~ arrearage and before the tax refund is intercepted; or
- c. The total amount intercepted is more than the amount of the ~~delinquency~~ arrearage owed at the time that notification of the tax intercept is received from the Department of Taxation, and the noncustodial parent does not agree to allow the department to apply the excess funds to any ~~delinquency~~ arrearage that accrued after certification for tax intercept.

~~C. The Internal Revenue Service has prescribed rules regarding the interception of federal tax refunds. 45 CFR 302.60 and 303.72 are incorporated by reference in this chapter.~~

22VAC40-880-385. License suspension. (Repealed.)

~~A. The department may petition the court to suspend any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation pursuant to 42 USC § 666(a)(16) and § 63.1 263.1 of the Code of Virginia.~~

~~B. The department may request the Department of Motor Vehicles to suspend or refuse to renew the driver's license of an obligor pursuant to 42 USC § 666(a)(16) and § 46.2 320 of the Code of Virginia.~~

~~C. The department may petition the court to suspend any recreation or sporting activity license issued to an obligor pursuant to 42 USC § 666(a)(16) and § 63.1 263.1 of the Code of Virginia.~~

Article 4

Federal Enforcement Remedies

22VAC40-880-390. Additional remedies.

In addition to state administrative enforcement remedies, the department shall ~~use~~ utilize available federal enforcement remedies to enforce child support obligations and collect accumulated support arrearages.

22VAC40-880-405. Passport denial program.

A. The department shall participate in the Passport Denial Program for the denial, revocation, or limitation of noncustodial parents' passports where child support arrearages exceed the federally mandated threshold.

B. The department shall certify the arrearages to the federal Office of Child Support Enforcement, which will then (i) send notice of the certification on behalf of the department to the individual and (ii) certify the arrearage to the Department of State pursuant to the Passport Denial Program.

C. An individual has the right to appeal per the notice to a Department of Social Services' hearing officer. The only issues reviewable on appeal are (i) whether the arrears met the threshold at the time of certification, or (ii) mistaken identity. ~~The decision of the hearing officer is final with no further appeal. An appeal from the hearing officer shall be to circuit court pursuant to the procedures under the Setoff Debt Collection Act (§ 58.1-520 et seq. of the Code of Virginia).~~ The issues in subsections D and E are not reviewable by the hearing officer.

D. An individual's child support arrearages shall be paid in full before the department notifies the federal Office of Child Support Enforcement that the individual is eligible to receive a passport.

E. Exceptions to paying all arrearages prior to release of a passport may be granted by the IV-D agency director upon written request documenting compelling evidence of a life-or-death situation of an immediate family member. Such decision whether to grant an exception shall be in the sole discretion of the IV-D agency director.

22VAC40-880-410. Enforcement remedies to be used against federal employees.

~~A. The department may apply its enforcement remedies against United States military and civilian active and retired personnel current and retired employees of the United States.~~

~~B. When enforcement under Virginia law is unsuccessful, the department may use involuntary allotments to enforce support obligations of certain federal employees, including active military personnel and public health services employees.~~

~~1. For the purposes of these enforcement actions, delinquency shall be defined as failure of the noncustodial parent to make support payments equal to the amount due for two months.~~

~~2. The amount of money withheld from these wages shall be up to the amount allowed under the federal Consumer Credit Protection Act pursuant to 15 USC § 1673(b) and § 34-29 of the Code of Virginia.~~

Part VI

Administrative Appeals

22VAC40-880-420. Appeal rules. (Repealed.)

~~Actions to establish and enforce child support obligations administratively may be appealed according to the following rules.~~

22VAC40-880-430. Validity of the appeal.

A. The department shall determine the validity of an administrative appeal.

1. The appeal must be in writing.
2. If the appeal is personally delivered, the appeal must be received within 10 working days of service of the notice of the proposed action on the appellant.
3. If mailed, the postmark must be within 10 business days from the date of service of the notice of the proposed action on the appellant.

~~B. The only exception to this shall be~~ For appeals of federal and state tax intercepts. ~~The, the~~ appellant shall have 30 days to note an appeal a tax intercept notice to the department.

22VAC40-880-440. General rules for appeals.

A. The appeal shall be heard by a hearing officer.

1. The hearing officer may hold the hearing by telephone or in the district office where the custodial parent or his or her case resides unless another location is requested by the appellant.
2. The parties parents may be represented at the hearing by legal counsel.
3. The appellant may withdraw the appeal at any time. The department may withdraw its actions at any time, ~~such as when a case review reveals new information or that prior action taken was incorrect.~~

4. The hearing officer shall accept a request for a continuance from the noncustodial parent or the custodial parent if:

- a. The request is made in writing at least five business days prior to the hearing, and
- b. The request is for not more than a 10-day continuance, except when the facts presented justify an exception.

B. The hearing officer shall notify the parties parents of the date and time of the hearing in accordance with § ~~63.1-267.1~~ 63.2-1942 of the Code of Virginia.

C. Prior to the hearing, the hearing officer shall send the parties parents a copy of the case summary prepared by the district office.

~~D. The hearing officer shall serve the appellant and mail the other party a copy of the hearing officer's decision either at the time of the hearing or no later than 45 days from the date the appeal request was first received by the department.~~

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E. The hearing officer shall notify the parties in writing by certified mail if the appeal is determined to be abandoned because the appellant did not appear at the hearing.

F. Either party may appeal the hearing officer's decision as follows:

1. For cases under the Setoff Debt Collection Act (§ 58.1-520 et seq. of the Code of Virginia), to the circuit court on the record within 30 days of the date of the decision.

2. For all other cases, to the juvenile and domestic relations district court de novo within 10 calendar days of receipt of the decision.

22VAC40-880-450. Appeal of enforcement actions. (Repealed.)

A. The absent parent may appeal the actions of the department to enforce a support obligation only under the following conditions:

1. For withholding of earnings; liens; distraint, seizure, and sale; and unemployment compensation benefits intercept the appeal shall be based only on a mistake of fact;

2. For orders to withhold and deliver the appeal shall be based only on (i) a mistake of fact or (ii) whether the funds to be withheld are exempt by law from garnishment; and

3. Federal and state tax intercepts may be appealed based only on (i) a mistake of fact or (ii) the validity of the claim.

B. A mistake of fact is based on:

1. An error in the identity of the absent parent, or

2. An error in the amount of current support or past due support.

22VAC40-880-460. Appeal of federal enforcement remedies. (Repealed.)

Actions to enforce child support payments through federal enforcement remedies may not be appealed through the Department of Social Services. Absent parents shall appeal these actions to the federal agency which took the action.

Part VII

Interstate Responsibilities

22VAC40-880-470. Long-arm authority. (Repealed.)

The department shall extend its authority whenever possible to establish and enforce child support obligations on out of state absent parents as provided in § 63.1-250.1 of the Code of Virginia.

22VAC40-880-480. Cooperation with other state IV-D agencies.

A. When the noncustodial parent and the custodial parent parents reside in different states, cooperation between these state agencies may be necessary.

B. The department shall provide the same services to other state IV-D cases that it provides to its own cases with the following conditions:

1. The request for services must be in writing; and

2. The request for services must list the specific services needed.

C. The department shall request in writing the services of other state IV-D agencies when one parent resides in Virginia, but the other parent resides in another state.

D. Other department responsibilities in providing services to other state IV-D cases and obtaining services from other state IV-D agencies are defined in 45 CFR 303.7 and §§ ~~63.1-274.6~~ 63.2-1902 and 20-88.32 through 20-88.82 of the Code of Virginia.

22VAC40-880-490. Central registry. (Repealed.)

A. The department shall manage the flow of interstate correspondence through a Central Registry located in the division's central office. Correspondence will be handled according to the rules established by the state and federal regulations cited by reference above.

B. The Central Registry shall act as the Uniform Interstate Family Support Act State Information Agent required by §§ 63.1-274.6 and 20-88.32 through 20-88.82 of the Code of Virginia.

Part VIII

Confidentiality and Exchange of Information

Article 1

Information Collected by the Department

22VAC40-880-500. Information collected from state, county, and city offices. (Repealed.)

A. The department may request and shall receive from state, county, city, and local agencies within and without the Commonwealth information about noncustodial parents.

B. The department shall use this information to locate and collect child support payments from noncustodial parents.

22VAC40-880-510. Subpoena of financial information. (Repealed.)

The department may subpoena financial records or other information relating to the obligor and obligee from a person, firm, corporation, association, political subdivision, or state agency to establish or enforce the collection of child support. A civil penalty not to exceed \$1,000 may be assessed for failure to respond to a subpoena, pursuant to 42 USC § 666 (e)(1)(B) and § 63.1-250.1 of the Code of Virginia.

Article 2

Information Released by the Department

22VAC40-880-520. Agencies to whom the department releases information. (Repealed.)

A. The department may release information on the parents as set forth in 45 CFR 303.21 to courts and other state child support agencies for the purpose of establishing or enforcing a child support order.

B. The department may release information directly bearing on the identity and whereabouts of a noncustodial parent or putative father to public officials and agencies seeking to

locate obligors for the purpose of enforcing child support obligations including but not limited to the Attorney General, law enforcement agencies, prosecuting attorneys, courts of competent jurisdiction and agencies in other states engaged in the enforcement of support of children and their caretakers.

C. The department shall provide information on the noncustodial or custodial parent to an entity other than the ones listed above with the written permission of that parent. However, the department may not release information regarding the noncustodial parent's debt to private collection agencies, if it deems such disclosure inappropriate.

D. The department shall release information concerning parents' medical support payments and medical support orders to the Department of Medical Assistance Services.

22VAC40-880-530. Release of information to and from the Internal Revenue Service. (Repealed.)

A. The department may not release information provided by the Internal Revenue Service to anyone outside of the department with the following exceptions:

1. The department may release the information to local social service agencies and the courts, but the source of the information may not be released.
2. The department may release information provided by the Internal Revenue Service if that information is verified by a source independent of the IRS.

B. The division director, or a designee, may release information on absent parents to the Internal Revenue Service.

22VAC40-880-540. Request for information from the general public. (Repealed.)

The department shall answer requests for information from the general public within five working days of receipt of the request or less as federal and state law may require.

22VAC40-880-550. Requests for information from parents. (Repealed.)

A. The department shall release, upon request from either parent, copies of court orders, administrative orders, enforcement actions, fiscal records, and financial information used to calculate the obligation. However, when a protective order has been issued or there is a risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be released.

B. The department shall release to either parent personal information contained in the case record which pertains to the individual requesting the information with one exception. The department may not release medical or psychological information for which the physician providing the information has stated the individual should not have access.

C. Either parent may correct, challenge, or explain the personal information which pertains to that individual and may challenge the financial information of the other parent.

D. The department shall charge a fee for copying case record information. The department shall base the fee on the cost of copying the material.

22VAC40-880-560. Release of health insurance information.

The department shall provide specific third party liability information to the Department of Medical Assistance Services in order for that agency to pursue the noncustodial parent's health insurance provider for any Medicaid funds expended for his or her dependents who are receiving TANF or AFDC/FC federal foster care or who are Medicaid-only clients.

A. The department shall release health insurance coverage information on TANF, AFDC/FC federal foster care, and Medicaid-only Medicaid-only cases to the Department of Medical Assistance Services as prescribed in the cooperative agreement between the department and that agency.

B. The department shall release health insurance coverage information on TANF, AFDC/FC federal foster care, and Medicaid-only Medicaid-only cases to other state child support agencies upon their request.

Part IX

Rights and Responsibilities of the Custodial Parent and of the Department

Article I

Custodial Parent's Rights and Responsibilities

22VAC40-880-570. Custodial parents. (Repealed.)

Throughout this chapter rights and responsibilities of the custodial parents are mentioned in general terms. This section of the chapter does not abridge those rights and responsibilities; it adds to them.

22VAC40-880-580. Custodial parent's rights. (Repealed.)

A. The department shall give the custodial parent prior notice of major decisions about the child support case.

B. The department shall periodically inform the custodial parent of the progress of the case.

C. The department shall provide the custodial parent with copies of appropriate notices as identified in this chapter.

D. The department shall advise custodial parents who receive AFDC of the following rights:

1. The \$50 disregard payments, and
2. Eligibility for continued Medicaid coverage when AFDC is no longer received.

E. The department shall advise parents who receive AFDC, AFDC/FC, and Medicaid only of their eligibility for continued child support services when public assistance is no longer received.

F. The department shall inform all non AFDC or AFDC/FC clients at the time of application for services of the effect of past receipt of AFDC or AFDC/FC on the collection of child support payments.

Regulations

~~22VAC40-880-590. Custodial parent's responsibilities. (Repealed.)~~

~~A. Custodial parents must give full and complete information, if known, regarding the absent parent's name, address, social security number, current employment, and employment history and provide new information when learned.~~

~~B. Custodial parents must inform the department of any public assistance which was received in the past on behalf of the parent and children.~~

~~C. Custodial parents must promptly (i) inform the department of any divorce actions or court actions to establish a child support order, (ii) send to the department copies of any legal documents pertaining to divorce, support, or custody, and (iii) inform the department of any changes in custody or plans for reconciliation with the absent parent.~~

~~D. Custodial parents must notify the department if an attorney is hired to handle a child support matter.~~

~~E. Custodial parents must notify the department immediately of any change in their financial circumstances.~~

~~F. Custodial parents must notify the department in writing regarding any change of their address or name. When possible, the custodial parent shall give this notification 30 days in advance.~~

Article 2

Department's Rights and Responsibilities

~~22VAC40-880-600. Department's rights. (Repealed.)~~

~~A. The department shall decide, in a manner consistent with state and federal requirements, the best way to handle a child support case.~~

~~B. The department shall decide when to close a case based on federal requirements and the criteria in Part XI (22VAC40-880-670 et seq.).~~

~~22VAC40-880-610. Department's responsibilities. (Repealed.)~~

~~A. The department shall act in a manner consistent with the best interests of the child.~~

~~B. The department shall establish a priority system for providing services which will ensure that services are provided in a timely manner.~~

~~C. The department shall keep custodial parents advised about the progress of the child support cases and shall include custodial parents in major decisions made about the handling of the child support case.~~

Part X Processing Support Payments

Article 1

Child Support and Medical Support Payments

~~22VAC40-880-620. Disbursement of payments. (Repealed.)~~

~~A. A noncustodial parent may have multiple child support obligations.~~

~~1. Each case shall receive full payment of the current obligation when possible.~~

~~2. If the noncustodial parent's disposable earnings do not cover the full payment for each current support order, the department shall prorate the amount withheld among all orders.~~

~~B. Current support obligations shall be satisfied before satisfying past due support.~~

~~C. The method by which child support and medical support payments are disbursed is governed by 45 CFR 302.51 and 302.52 which are incorporated by reference.~~

~~D. No refund shall be made of any overpayment of support under \$1 except upon written request by the payor.~~

Article 2

Payment Recovery

~~22VAC40-880-630. Bad checks. (Repealed.)~~

~~A. When a payment made by an employer or absent parent is not honored upon presentation to the bank on which it was drawn, the department shall first demand payment from the employer or absent parent.~~

~~B. If the employer or absent parent does not comply with the demand and the custodial parent is not an AFDC or AFDC/FC recipient, the department shall recover the payment from the custodial parent according to the methods described in 22VAC40-880-650.~~

~~C. The department shall concurrently take enforcement action against the absent parent or legal action against the employer.~~

~~D. If a check received from a custodial parent is not honored upon presentation to the bank upon which it was drawn, the department shall demand payment from the custodial parent.~~

~~22VAC40-880-640. Erroneous or duplicate disbursements. (Repealed.)~~

~~A. When the department sends the custodial parent a payment in error or a duplicate payment, the department shall first demand payment from the custodial parent.~~

~~B. If the custodial parent is not an AFDC or AFDC/FC recipient and does not comply with the demand, the department shall recover the amount of the payment according to the methods described in 22VAC40-880-650.~~

~~22VAC40-880-650. Methods of payment recovery from the custodial parent. (Repealed.)~~

~~A. If the custodial parent is not a TANF or AFDC/FC recipient, the department shall:~~

- ~~1. Intercept and retain payments for past due support (arrears) by retaining the lesser of the balance due or 100% of any intercepted funds and any amounts seized from bank accounts; and~~
- ~~2. Retain 10% of the current support payment.~~

~~B. If the custodial parent is a TANF or AFDC/FC recipient and retains an erroneous payment, the division shall notify the Division of Temporary Assistance Program.~~

~~Article 3
Uncollectible Debts~~

~~22VAC40-880-660. Debt discharge. (Repealed.)~~

~~The department may identify uncollectible support debts and discharge them from its record.~~

~~Part XI
Case Closure~~

~~22VAC40-880-670. General rules. (Repealed.)~~

~~A. The department shall terminate child support enforcement services when one of the criteria defined in the 45 CFR 303.11 is met.~~

~~B. The department shall continue to provide collection and disbursement services until alternate arrangement for these services has been made.~~

~~Part XII
Cost Recovery~~

~~Article 1
General~~

~~22VAC40-880-680. Recovery of fees. (Repealed.)~~

~~A. The department shall assess and recover from the noncustodial parent:~~

- ~~1. Attorney's fees;~~
- ~~2. Genetic testing fees for paternity establishment; and~~
- ~~3. Intercept programs' costs.~~

~~B. The department shall use any mechanism provided in Title 63.1 of the Code of Virginia to enforce these fees and costs.~~

~~22VAC40-880-690. Attorney's fees for enforcement. (Repealed.)~~

~~A. Attorney fees shall not exceed the amount allowed court appointed counsel in the district courts pursuant to subdivision 1 of § 19.2-163 of the Code of Virginia.~~

~~B. The department shall not recover attorneys' fees or costs in any case in which the absent parent prevails.~~

~~22VAC40-880-700. Genetic testing. (Repealed.)~~

~~A. The department shall set the costs of the genetic testing for paternity establishment at the rate charged the department by the provider of genetic testing services.~~

~~B. Where an original genetic test for paternity establishment is contested and either party requests additional testing, the department may require advance payment by the contestant.~~

~~22VAC40-880-710. Intercept programs. (Repealed.)~~

~~The department shall charge the absent parent the rate actually charged the department.~~

~~22VAC40-880-720. Service of process, seizure and sale. (Repealed.)~~

~~The department shall have the authority to charge the noncustodial parent the actual costs for service of process, and seizure and sale pursuant to a levy on a judgment in enforcement actions, per § 63.1-274.10 of the Code of Virginia.~~

VA.R. Doc. No. R11-2892; Filed May 29, 2013, 8:41 a.m.

GENERAL NOTICES/ERRATA

STATE AIR POLLUTION CONTROL BOARD

State Implementation Plan Revision - Sulfur Dioxide

Notice of action: The Department of Environmental Quality (DEQ) is announcing an opportunity for public comment on a proposed plan to assure necessary authorities are contained in the state implementation plan (SIP) to allow areas to attain and maintain the national ambient air quality standard for sulfur dioxide (SO₂). The Commonwealth intends to submit the plan as a revision to the Commonwealth of Virginia SIP in accordance with the requirements of § 110(a) of the federal Clean Air Act. The SIP is the plan developed by the Commonwealth in order to fulfill its responsibilities under the federal Clean Air Act to attain and maintain the ambient air quality standards promulgated by the U.S. Environmental Protection Agency (EPA) under the Act.

Purpose of notice: DEQ is seeking comment on the issue of whether the plan demonstrates the Commonwealth's compliance with federal Clean Air Act requirements related to general state plan infrastructure for controlling SO₂.

Public comment period: July 1, 2013, to August 1, 2013.

Public hearing: A public hearing will be conducted at the Department of Environmental Quality, 629 East Main Street, Second Floor Conference Room A, Richmond, Virginia, beginning at 10 a.m. on July 31, 2013.

Description of proposal: The proposed revision will consist of a demonstration of compliance with the general requirements of § 110(a)(2) of the federal Clean Air Act for the 2010 SO₂ national ambient air quality standard (NAAQS).

Federal information: This notice is being given to satisfy the public participation requirements of federal regulations (40 CFR 51.102). The proposal will be submitted as a revision to the Commonwealth of Virginia SIP under § 110(a) of the federal Clean Air Act in accordance with 40 CFR 51.104. It is planned to submit all provisions of the proposal as a revision to the Commonwealth of Virginia SIP.

How to comment: DEQ accepts written comments by email, fax, and postal mail. In order to be considered, comments must include the full name, address, and telephone number of the person commenting and be received by DEQ on the last day of the comment period. All information received is part of the public record.

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

- 1) DEQ Main Street Office, 629 East Main Street, 8th Floor, Richmond, VA, telephone (804) 698-4070,
- 2) Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA, telephone (276) 676-4800,
- 3) Blue Ridge Regional Office, Roanoke Location, 3019 Peters Creek Road, Roanoke, VA, telephone (540) 562-6700,
- 4) Blue Ridge Regional Office, Lynchburg Location, 7705 Timberlake Road, Lynchburg, VA, telephone (434) 582-5120,
- 5) Valley Regional Office, 4411 Early Road, Harrisonburg, VA, telephone (540) 574-7800,
- 6) Piedmont Regional Office, 4949-A Cox Road, Glen Allen, VA, telephone (804) 527-5020,
- 7) Northern Regional Office, 13901 Crown Court, Woodbridge, VA, telephone (703) 583-3800, and
- 8) Tidewater Regional Office, 5636 Southern Boulevard, Virginia Beach, VA, telephone (757) 518-2000.

Contact Information: Doris A. McLeod, Department of Environmental Quality, 629 East Main Street, P.O. Box 1105, Richmond, VA 23218, telephone (804) 698-4197, FAX (804) 698-4510, TDD (804) 698-4021, or email doris.mcleod@deq.virginia.gov.

STATE CORPORATION COMMISSION

Bureau of Insurance

May 20, 2013

Administrative Letter 2013-05

To: All Insurers and Other Interested Parties

Re: Legislation Enacted by the 2013 Virginia General Assembly

We have attached for your reference summaries of certain statutes enacted or amended and re-enacted during the 2013 Session of the Virginia General Assembly. The effective date of these statutes is July 1, 2013, except as otherwise indicated in this letter. Each organization to which this letter is being sent should review the summaries carefully and see that notice of these laws is directed to the proper persons, including appointed representatives, to ensure that appropriate action is taken to effect compliance with these new legal requirements. Copies of individual bills may be obtained at <http://lis.virginia.gov/lis.htm> or via the links we have provided in the summary headings. You may enter the bill number (not the chapter number) on the Virginia General Assembly Home Page, and you will be linked to the Legislative Information System. You may also link from the Legislative Information System to any existing section of the Code of Virginia. All statutory references made in the letter

are to Title 38.2 (Insurance) of the Code of Virginia unless otherwise noted. All references to the Commission refer to the State Corporation Commission. The federal Patient Protection and Affordable Care Act is referred to as the ACA throughout this letter.

Please note that this document is a summary of legislation. It is neither a legal review and interpretation nor a full description of the legislative amendments affecting insurance-related laws during the 2013 Session. Each person or organization is responsible for review of relevant statutes.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

Chapter 9 (House Bill 1396)

The bill amends § 38.2-1878 (Insurance Agents Chapter) to eliminate a provision that caps, at \$10 per customer, the incidental compensation that a vendor of portable electronics may provide to its employees or authorized representatives who sell portable electronics insurance.

Chapter 11 (House Bill 1510)

The bill amends § 38.2-4504 (Dental or Optometric Services Plans Chapter) to provide that each dental or optometric services plan must be offered through a nonstock corporation. The Commission shall consider the sufficiency of contingency reserves and subject the nonstock corporation to the requirements of Chapter 17 (Virginia Life, Accident and Sickness Insurance Guaranty Association) when considering the nonstock corporation's application for changing its status from an agent to a nonagent nonstock corporation. Subsection E of § 38.2-4504 is amended to require the nonstock corporation to maintain a contingency reserve of \$4 million.

Chapter 12 (House Bill 1527)

The bill amends Subsection B of § 38.2-2107 (Fire Insurance Policies Chapter) to clarify that excess fire coverage may be written as a stand-alone policy or as an endorsement to a policy. The bill also removes the requirement that insurers indicate in the title or the heading of the policy whether the coverage is written on a primary or excess basis.

Chapter 13 (House Bill 1528)

The bill amends § 38.2-231 (General Provisions Chapter) to permit insurers to send termination notices on commercial liability policies only to the first named insured listed in the policy's declarations page. Previously, the law required termination notices to be sent to all named insureds.

Chapter 27 (House Bill 2118)

The bill amends Subsection B of § 38.2-305 (Insurance Policies and Contract Provisions Chapter) to clarify which notice requirements are applicable to all insurers, and which requirements are applicable only to health maintenance organizations.

Chapter 29 (House Bill 2155)

The bill amends § 38.2-4809.1 (Surplus Lines Insurance Law Chapter). The bill makes technical changes to facilitate the transfer of the administration of premium license tax from the Commission to the Department of Taxation.

Chapter 75 (House Bill 1655)

The bill amends § 38.2-2201 (Liability Insurance Policies Chapter) to provide a mechanism by which health care providers may seek a valid assignment of medical expense benefits provided under a motor vehicle insurance policy in cases where the injury being treated arises out of the ownership, operation, or use of a motor vehicle. The bill provides that the health care provider must give the injured person notice of his rights regarding assignment of such benefits at the time he is asked to make the assignment. The injured person is not required to sign or initial the assignment in order to receive care. The amendment provides that the insured may wish to consult his insurance agent or an attorney before executing the form permitting the assignment of his medical expense benefits.

Chapter 93 (Senate Bill 777)

The bill restates and clarifies § 38.2-232 (General Provisions) relating to notice of a lapse or pending lapse of the types of life and accident and sickness policies or annuities as defined in §§ 38.2-102 through 38.2-109. The bill clarifies that the provisions of Subsection A of § 38.2-232 shall not apply to group policies, contracts or plans if the insurer, health services plan, or health care plan either (i) as a general business practice provides written notices of premium due; or (ii) has furnished a written notice separate from the policy that failure to pay premiums on a timely basis will result in lapse of the policy, contract or plan.

Chapter 136 (Senate Bill 780) and Chapter 210 (House Bill 1784) (Effective January 1, 2014)

The bill amends various sections of Title 38.2 to repeal the requirements for the offer of an open enrollment period for individual accident and sickness contracts. Section 58.1-2501 is also revised to change the tax rates for plans defined in §§ 38.2-4201 (Health Services Plans) and 38.2-4501 (Dental or Optometric Plans) for taxable years after 2012 to 2.25 percent of the direct gross subscriber fee income for all subscription contracts. The tax rate of .75 percent for open enrollment contracts and individual contracts referenced in that subdivision ends at tax year 2013. The provisions of the bill are effective on January 1, 2014.

Chapter 146 (Senate Bill 984)

The bill adds a new section in the General Provisions chapter to require insurers that issue a settlement check of at least \$5000 in satisfaction of a third party claim to a claimant's attorney to send a notice to the claimant within five days that

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such check has been sent to his attorney. The bill holds the insurer harmless if the notice is not given or is defective. The bill further provides that the failure to give notice or the provision of defective notice (i) does not create a cause of action against an insurer by any person; (ii) does not create a defense for any person in any such action; or (iii) does not in any way affect the settlement or satisfaction for which the payment was made by the insurer. The bill is applicable to all lines of insurance except those lines subject to §§ 38.2-4214 and 38.2-4319.

Chapter 203 (House Bill 1731)

This bill adds a new article in the Insurance Agents chapter. Storage unit insurance authority is added to the lines of insurance that may be sold by those holding a limited lines property and casualty agent license.

Chapter 212 (House Bill 1838)

The bill amends § 38.2-1822 (Insurance Agents) to prohibit an agent whose license has been revoked or voluntarily surrendered from directly or indirectly owning and operating, controlling or being employed in any manner by an insurance agent or agency during the time period in which the individual is unlicensed unless otherwise authorized by the Commission.

Chapter 257 (House Bill 1607)

The bill amends §§ 38.2-231 (General Provisions), 38.2-325 (Insurance Policy Provisions), 38.2-2113 and 38.2-2114 (Fire Insurance Policies) and 38.2-2208 and 38.2-2212 (Liability Insurance Policies) pertaining to termination notice requirements in certain insurance policies to permit insurers to send cancellation notices electronically, if the insured and insurer have agreed to conduct business by electronic means.

Chapter 473 (Senate Bill 1059)

The bill amends § 38.2-4509 (Dental or Optometric Plans) to subject dental and optometric plans to two additional requirements applicable to insurers which offer dental and optometric coverages. Dental and optometric plans must pay interest on claim payments not made in a timely manner if the interest is greater than \$5.00. The bill also amends § 38.2-4509 to require dental and optometric plans to file their explanation of benefit forms with the Bureau of Insurance for approval. The provision addressing interest is applicable to claims on and after January 1, 2014.

Chapter 497 (House Bill 2023)

The bill adds a new article to the Insurance Agents chapter to add travel insurance to the lines of insurance that may be sold by those holding a limited lines property and casualty agent license. The bill allows the sale of travel insurance by a travel retailer (i) holding a limited lines P&C license or (ii) under the direction and license of a travel insurance agent.

Chapter 595 (House Bill 2246) and Chapter 791 (Senate Bill 1261)

The bill adds a new article to the Accident and Sickness Insurance Policies chapter that identifies prohibited activities for health benefit exchange navigators as described in the ACA. The Commission is required to monitor and report on the activities of navigators in the Commonwealth.

Chapter 653 (Senate Bill 1243)

The bill amends § 38.2-3411 (Accident and Sickness Insurance Provisions) and 38.2-4319 (Health Maintenance Organizations) to require that health maintenance organizations provide coverage for newborn children in the same manner as coverage is provided in health insurance policies and subscription contracts with family coverage.

Chapter 670 (House Bill 1769) and Chapter 679 (Senate Bill 922)

The bill authorizes the Commission, with the assistance of the Virginia Department of Health, to perform plan management functions required to certify health benefit plans and stand-alone dental plans for participation in the federal health benefit exchange established by the Secretary of the U.S. Department of Health and Human Services pursuant to § 1321 of the ACA. The performance of plan management functions is contingent upon the availability of federal funding sufficient to pay the operating expenses necessary to carry out the functions, the necessary technological infrastructure being made available to the Commission and no other impediments to prevent the Commission from carrying out the functions. The bill also adds a new section in the Provisions Relating to Accident and Sickness Insurance Policies chapter to authorize the Commission to review and approve accident and sickness insurance premium rates applicable to health benefit plans in the individual and small group markets and health benefit plans providing health insurance coverage in the individual market to residents of the Commonwealth through a group trust, association, purchasing cooperative or other group that is not an employer plan.

Chapter 709 (House Bill 2138)

The bill establishes the Health Insurance Reform Commission to monitor the implementation of the ACA; determine whether Virginia should establish a state-based health insurance exchange; make recommendations regarding the health benefits that should be included within the scope of the essential health benefits provided under health insurance products offered in Virginia; provide assessments of existing and proposed mandated health insurance benefits and providers; develop recommendations to increase access to and reasonable costs for health insurance coverage; and ensure a robust health insurance market. Staff of the Bureau of Insurance will assist the Health Insurance Reform Commission in the assessment of the impact and efficacy of

legislation proposing mandated health insurance benefits or providers. The bill also repeals the establishment article for the Special Advisory Commission on Mandated Health Insurance Benefits.

Chapter 751 (House Bill 1900) Effective January 1, 2014

The bill amends many sections of Title 38.2 addressing requirements applicable to accident and sickness insurance policies and related products in order to be consistent with relevant requirements of the ACA. The bill also repeals provisions relating to the essential and standard plans in § 38.2-3431. The provisions of the bill are effective January 1, 2014.

* * *

June 4, 2013

Administrative Letter 2013-06

To: All Insurers and Other Interested Parties

Re: Senate Bill 984 (Section 38.2-236)

Effective July 1, 2013, Section 38.2-236 requires insurers to send notices to claimants when such insurers issue payments, in partial or full settlement of claims of \$5000 or more, if the insurers send such settlement checks to attorneys licensed in Virginia, or to other representatives of such claimants or judgment creditors. The primary purpose of this law is to ensure that claimants who are represented by attorneys or other representatives are aware of the amount of and the date that an insurer sends a payment of \$5000 or more to a claimant's attorney or other representative. Additionally, any court approved settlements, such as those involving wrongful death claims and claims by infants, of \$5000 or more sent to the attorney or representative trigger the notice requirement.

The law applies to both first and third party claims. The notice must be sent within five business days after the date payment is made or the offer of settlement is sent to the claimant's attorney or representative. Section 38.2-236 applies to all lines of insurance except those lines subject to Sections 38.2-4214 and 38.2-4319.

This statute applies to the following:

- Partial settlements of claims where the payment is \$5000 or more, and
- Full and final settlements of \$5000 or more.

The notice must be sent to the claimant (first or third party) or judgment creditor any time the insurer sends a payment to the claimant's attorney or representative. This would include those circumstances where the check is made payable to the claimant only or where the check is made payable to both the claimant and his attorney or representative.

In certain situations, an insurer sends a settlement offer and check to the claimant's attorney or representative with a

request that the offer be presented to the claimant. Notice must be sent by the insurer to the claimant once the claimant agrees to accept the settlement offer, and it must be sent within five business days of the claimant's agreement to accept the offered settlement.

In the case when an insurer is paying the injured worker's portion of his workers' compensation claim (of \$5000 or more) directly to the worker, and the injured worker's attorney's portion of the settlement is sent directly to the attorney, the insurer is not required to send the notice under Section 38.2-236. However, if the injured person's settlement of a workers' compensation claim is \$5000 or more and payment is sent to the injured person's attorney, licensed in Virginia, then the notice required by the statute must be given by the insurer.

Questions concerning this administrative letter may be addressed to Life and Health Division, Joanne Spruill, Chief Insurance Market Examiner, telephone (804) 371-9231, or email joanne.spruill@scc.virginia.gov.

Property & Casualty Division, Katie Johnson, AIE, CIC, Coordinator of Special Projects, telephone (804) 371-9688, or email katie.johnson@scc.virginia.gov.

/s/ Jacqueline K. Cunningham
Commissioner of Insurance

DEPARTMENT OF ENVIRONMENTAL QUALITY

Restore Water Quality in Clinch River and Certain Tributaries

Public meeting location: Norton Community Center, 201 East Park Avenue NE, Norton, VA on July 11, 2013, from 6 p.m. to 8 p.m.

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) and the Department of Conservation and Recreation (DCR) are announcing an effort to restore water quality, a public comment opportunity, and public meeting.

Meeting description: First public meeting on a study to restore water quality.

Description of study: DEQ has been working to identify sources of bacterial contamination and sources of pollutants affecting aquatic organisms. The mainstem of the Clinch River is impaired for failure to meet the Recreational Use because of fecal coliform bacteria violations and violations of the E. coli standard. Bear Creek, Fall Creek, Little Stoney Creek, Russell Creek, Staunton Creek, Stony Creek, Cove Creek, Stock Creek, Copper Creek, Moll Creek, Valley Creek, North Fork Clinch River, and Blackwater Creek are impaired for failure to meet the Recreational Use because of fecal coliform bacteria violations and violations of the E. coli standard. Bark Camp Branch in Wise County, Laurel Creek in Russell and Tazewell counties, as well as Thompson Creek in Tazewell County are impaired for failing to meet the

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Aquatic Life Use (benthic impairment) based on violations of the general standard for aquatic organisms. Bark Camp Branch is also impaired for failure to meet the Aquatic Life Use based on violations of the pH water quality standard.

During the study, the sources of bacterial contamination and pollutants impairing the aquatic community will be identified and total maximum daily loads, or TMDLs, will be developed for the impaired waters. To restore water quality, contamination levels must be reduced to the TMDL amount. A TMDL is the total amount of a pollutant a water body can contain and still meet water quality standards.

How a decision is made: The development of a TMDL includes public meetings and a public comment period once the study report is drafted. After public comments have been considered and addressed, DEQ will submit the TMDL report to the U.S. Environmental Protection Agency for approval.

How to comment: DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting and be received by DEQ during the comment period, July 11, 2013, to August 11, 2013. DEQ also accepts written and oral comments at the public meeting announced in this notice.

To review fact sheets: Fact sheets are available on the impaired waters from the contacts below or on the DEQ website:

<http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs.aspx>.

Contact for additional information: Martha Chapman, TMDL Coordinator, Department of Environmental Quality, Southwest Regional Office, 355-A Deadmore Street, Abingdon, VA 24210, telephone (276) 676-4800, FAX (276) 676-4899, or email martha.chapman@deq.virginia.gov.

Total Maximum Daily Load for North Fork Rockfish River, South Fork Rockfish River, and Rockfish River Watersheds

The Department of Environmental Quality (DEQ) seeks written and oral comments from interested persons on the amendment of total maximum daily load (TMDL) implementation plans (IPs) for the North Fork Rockfish River, South Fork Rockfish River, and Rockfish River watersheds in Nelson County. These streams were listed on the 2004 and 2006 § 303(d) TMDL Priority List and Report as impaired due to violations of the state's water quality standard for bacteria. The bacteria impairment on the North

Fork Rockfish begins in the headwaters and extends 7.2 miles to its confluence with the Rockfish River. The South Fork Rockfish bacterial impairment extends 11.6 miles from its headwaters to its confluence with the mainstem Rockfish River. The bacteria impairment on the Rockfish River extends from the confluence of its north and south forks to its confluence with Davis Creek, which is a total of 6.5 miles.

Section 303(d) of the Clean Water Act and § 62.1-44.19:7 C of the Code of Virginia require DEQ to develop TMDLs for pollutants responsible for each impaired water contained in Virginia's § 303(d) TMDL Priority List and Report. In addition, § 62.1-44.19:7 C of the Code of Virginia requires the development of an IP for approved TMDLs. The IP should provide measurable goals and the date of expected achievement of water quality objectives. The IP should also include the corrective actions needed and their associated costs, benefits, and environmental impacts. The Rockfish IP has been amended to include just the best management practices related to these bacterial impairments and TMDLs.

The public comment period for the amended implementation plan will last from July 1, 2013, to July 31, 2013. Written comments should include the name, address, and telephone number of the person submitting the comments and should be sent to Tara Sieber, Department of Environmental Quality, 4411 Early Road, P.O. Box 3000, Harrisonburg, VA 22801, telephone (540) 574-7870, FAX (540) 574-7878, or email tara.sieber@deq.virginia.gov.

The Implementation Plan document will be available on the DEQ website during the public comment period at the following address: <http://www.deq.virginia.gov/Programs/Water/WaterQualityInformationTMDLs/TMDL/TMDLImplementation/TMDLImplementationPlans.aspx>.

Total Maximum Daily Load for Potomac River Tributaries

Purpose of notice: The Virginia Department of Environmental Quality (DEQ) announces the release of two revised draft TMDL reports on the Potomac River tributaries to members of the community for review and comment.

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

General Notices/Errata

Waterbody Name	Watershed Location	Segment Size	Cause	Segment Description
Sugarland Run	Fairfax County Loudoun County Town of Herndon	0.95 miles	Escherichia coli	Segment begins at the confluence with Folly Lick Branch, at approximately rivermile 5.75, and continues downstream until the boundary of the PWS designation area, at rivermile 4.82.
Sugarland Run	Fairfax County Loudoun County Town of Herndon	4.77 miles	Escherichia coli	Segment begins at the boundary of the PWS designation area, at rivermile 4.82, and continues downstream until the confluence with the Potomac River.
Mine Run	Fairfax County	0.93 miles	Escherichia coli	Segment begins at the confluence with an unnamed tributary to Mine Run, approximately 0.5 rivermile upstream from River Bend Road, and continues downstream until the confluence with the Potomac River.
Pimmit Run	Arlington County Fairfax County	1.62 miles	Escherichia coli	Segment begins at the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695, and continues downstream until the confluence with the Potomac River.
Pimmit Run	Arlington County Fairfax County	2.46 miles	Escherichia coli	Segment begins at the Route 309 bridge crossing, at rivermile 4.16, and continues downstream until the confluence with Little Pimmit Run, approximately 0.1 rivermile downstream from Route 695.
Pimmit Run	Arlington County Fairfax County	3.29 miles	Escherichia coli	Segment begins at the headwaters of Pimmit Run, approximately 0.12 rivermile upstream from Route 7, and continues downstream until the Route 309 bridge crossing, at rivermile 4.16.
Powells Creek	Prince William County	4.62 miles	Escherichia coli	Segment begins approximately 0.2 rivermiles below Lake Montclair and continues downstream until the end of the free-flowing waters of Powells Creek.
Quantico Creek	Prince William County Town of Dumfries	1.45 miles	Escherichia coli	Segment begins at the confluence with South Fork Quantico Creek, approximately 0.75 rivermile upstream from I-95, and continues downstream until the start of the tidal waters of Quantico Bay.
South Fork Quantico Creek	Prince William County Town of Dumfries	4.63 miles	Escherichia coli	Segment begins at the headwaters of the South Fork Quantico Creek and continues downstream until the start of the impounded waters, adjacent to what is labeled as Mawavi Camp No. 2 on the Joplin quad.

General Notices/Errata

North Branch Chopawamsic Creek	Stafford County Prince William County	6.9 miles	Escherichia coli	Segment begins at the headwaters of North Branch Chopawamsic Creek and continues downstream until the confluence with Middle Branch.
Unnamed tributary to the Potomac River	Stafford County	2.9 miles	Escherichia coli	Segment begins at the headwaters of the unnamed tributary and continues downstream until its confluence with the Potomac River.
Austin Run	Fauquier County Stafford County	0.79 miles	Fecal coliform	Segment begins at the confluence with an unnamed tributary to Austin Run (streamcode XGQ) and continues downstream until the confluence with Aquia Creek.
Accokeek Creek	Stafford County	4.21 miles	Escherichia coli	Segment begins at the confluence with an unnamed tributary to Accokeek Creek (rivermile 8.62), approximately 0.33 rivermile downstream from Route 1, and continues downstream until the end of the free-flowing waters.
Potomac Creek	Stafford County	2.18 miles	Escherichia coli	Segment begins at the railroad crossing at the west end of swamp, upstream from Route 608, and continues downstream until the east end of swamp.
Potomac Run	Stafford County	6.13 miles	Escherichia coli	Segment begins at the headwaters of Potomac Run and continues downstream until the confluence with Long Branch.

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

In February of 2012, DEQ held public meetings and released the draft TMDL reports for two bacteria TMDL studies involving tributaries to the Potomac River. Those TMDL reports were:

1. Bacteria TMDL for Tributaries to the Potomac River: Sugarland Run, Mine Run, and Pimmit Run.
2. Bacteria TMDL for Tributaries to the Potomac River: Prince William and Stafford Counties.

The impaired streams included in this report were Powells Creek, Quantico Creek, North Branch Chopawamsic Creek, South Fork Quantico Creek, unnamed tributary to

the Potomac River, Austin Run, Accokeek Creek, Potomac Creek, and Potomac Run.

During the public comment period for these reports, DEQ received comments on both projects. Because of those comments, DEQ decided to pursue several changes to the TMDLs. The changes involved revising the water quality models to incorporate changes to pet loading assumptions and to the distribution of wildlife loadings, as well as accounting for reported sanitary sewer overflow loadings. Additionally, the revised reports include updated urban area information as defined by the 2010 U.S. census.

How to comment: The public comment period on the revised draft of the TMDL reports will extend from July 1, 2013, to July 31, 2013. DEQ accepts written comments by email, fax, or postal mail. Written comments should include the name, address, and telephone number of the person commenting, and be received by DEQ during the comment period. Please send all comments to the contact listed below.

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

STATE LOTTERY DEPARTMENT

Director's Orders

The following Director's Orders of the State Lottery Department were filed with the Virginia Registrar of Regulations on May 29, 2013. The orders may be viewed at the State Lottery Department, 900 East Main Street, Richmond, VA, or at the office of the Registrar of Regulations, 910 Capitol Street, 2nd Floor, Richmond, VA.

Director's Order Number Forty-Three (13)

Virginia Lottery's "\$50,000 Summer Cash Bash Promotion" Final Requirements for Operation (effective May 28, 2013)

Director's Order Number Forty-Four (13)

Virginia's Online Game Lottery; "Fast Play Crossword" Final Rules for Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play Crossword" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Crossword" game rules.)

Director's Order Number Forty-Five (13)

Virginia's Online Game Lottery; "Fast Play Fast \$50's Gold Bar Doubler" Final Rules for Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play Fast \$50's Gold Bar Doubler" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Fast \$50's Gold Bar Doubler" game rules.)

Director's Order Number Forty-Six (13)

Virginia's Online Game Lottery; "Fast Play Summer Sizzler" Final Rules for Game Operation (This Director's Order becomes effective on the first sale date of the Matrix set forth in the "Fast Play Summer Sizzler" Official Game Rules, as adopted, and shall remain in full force and effect unless amended or rescinded by further Director's Order. Upon the effective date, these rules shall supersede and replace any and all prior Virginia Lottery "Fast Play Summer Sizzler" game rules.)

Director's Order Number Fifty-One (13)

"Cornhole Ticket Dispenser Promotion" Virginia Lottery Retailer Incentive Program Requirements (This Director's Order becomes effective on the date of its signing (June 6, 2013) and shall remain in full force and effect until ninety

(90) days after the conclusion of the Incentive Program, unless otherwise extended by the Director.)

Director's Order Number Fifty-Two (13)

Certain Virginia Game Promotion; End of Promotion

In accordance with the authority granted by §§ 2.2-4002 B (15) and 58.1-4006 A of the Code of Virginia, I hereby give notice that the following Virginia Lottery Promotion will officially end at midnight on Monday, June 3, 2013:

Virginia Lottery's "\$50,000 Summer Cash Bash" Promotion
(43 13)

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

This Director's Order is effective nunc pro tunc to midnight on June 3, 2013, and shall remain in full force and effect unless amended or rescinded by further Director's Order.

Director's Order Number Fifty-Three (13)

Virginia Lottery's "\$50,000 Summer Cash Bash Promotion" Final Requirements for Operation (effective nunc pro tunc to midnight on June 3, 2013)

Director's Order Number Fifty-Seven (13)

Virginia's Instant Game Lottery 1427 "Red Hot Crossword" Final Rules for Game Operation (effective June 6, 2013)

Director's Order Number Fifty-Eight (13)

Virginia's Instant Game Lottery 1416 "Sapphire Riches" Final Rules for Game Operation (effective June 6, 2013)

Director's Order Number Fifty-Nine (13)

Virginia's Instant Game Lottery 1447 "Cash on the Spot" Final Rules for Game Operation (effective June 6, 2013)

Director's Order Number Sixty (13)

Virginia's Instant Game Lottery 1431 "Jewel 7's" Final Rules for Game Operation (effective June 6, 2013)

DEPARTMENT OF MEDICAL ASSISTANCE SERVICES

Notice of Intent to Request 1115 Waiver for Early Implementation of MAGI Rules

The Virginia Department of Medical Assistance Services (DMAS) hereby affords the public notice of its intention to solicit public comment on the department's request for Section 1115 demonstration waiver for early implementation of the modified adjusted gross income (MAGI) provisions related to eligibility determinations for certain medical assistance programs (Medicaid and FAMIS).

General Notices/Errata

The Patient Protection and Affordable Care Act of 2010 mandates significant changes in how eligibility is determined for medical assistance programs for children, parent or caretaker relatives, and pregnant women beginning January 1, 2014.

The change requires the use of IRS tax rules for determining income and household composition for these individuals and brings the determination of eligibility in line with determinations of eligibility for the advance premium tax credit (APTC) and cost-sharing subsidies for individuals through the Federally Facilitated Marketplace. The Federally Facilitated Marketplace (Marketplace) will begin use of these new rules in October 2013 when open enrollment for health insurance coverage begins. In addition to making determinations of eligibility for the APTC and cost sharing subsidies, the Marketplace will also be assessing potential eligibility for medical assistance coverage using the same rules. If an individual or family appears to meet Medicaid or FAMIS requirements using the new rules, the Marketplace will send the application electronically to local departments of social services for processing. However, if the Virginia medical assistance programs are not using the same rules as the Marketplace, individuals assessed as being potentially eligible will be evaluated using a different set of rules, which could lead to a denial of coverage. Using two sets of rules to evaluate the same population could lead to confusion on the part of the applicants, as they will be informed by the Marketplace of their potential eligibility for medical assistance, and to unnecessary transfers of information between the two entities.

DMAS will hold two separate public hearings on this issue in July. DMAS will publish the details regarding these two hearings on the Commonwealth Calendar (<http://www.virginia.gov/connect/commonwealth-calendar>). This notice is intended to satisfy the requirements of the Center for Medicaid and CHIP Services State Health Official Letter #12-001 and section 10201(i) of the Patient Protection and Affordable Care Act. A copy of this notice is available for public review from Cindy Olson, Policy Division, Department of Medical Assistance Services, 600 Broad Street, Suite 1300, Richmond, VA 23219, and this notice is available for public review on the Regulatory Town Hall (www.townhall.com).

The full public notice is available from the Department of Medical Assistance Services home page at <http://dmas.virginia.gov/> through a link in the "What's New" column. Comments or inquiries may be submitted, in writing, within 30 days of this notice publication to Ms. Olson and such comments are available for review at the same address.

Contact Information: Cindy Olson, Policy Division, Department of Medical Assistance Services, 600 East Broad Street, Richmond, VA 23219, telephone (804) 225-4282,

FAX (804) 786-1680, or email cindy.olson@dmas.virginia.gov.

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/connect/commonwealth-calendar>.

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/documents/cumultab.pdf>.

Filing Material for Publication in the Virginia Register of Regulations: Agencies use the Regulation Information System (RIS) to file regulations and related items for publication in the *Virginia Register of Regulations*. The Registrar's office works closely with the Department of Planning and Budget (DPB) to coordinate the system with the Virginia Regulatory Town Hall. RIS and Town Hall complement and enhance one another by sharing pertinent regulatory information.

ERRATA

MARINE RESOURCES COMMISSION

Title of Regulation: 4VAC20-1090. Pertaining to Licensing Requirements and License Fees.

Publication: 29:21 VA.R. 2550-2553 June 17, 2013.

Correction to Final Regulation:

Page 2550, Summary, clause (iv) should reflect that the amendments establish a recreational saltwater license and fee for "resident individuals" age 65 and older instead of for "nonresident individuals."

Page 2553, 4VAC20-1090-30, last line, the name of the license should read, "Individual Resident Lifetime License age 65 or older"

VA.R. Doc. No. R13-3762; Filed June 20, 2013, 10:20 a.m.

BOARD FOR CONTRACTORS

Title of Regulation: **18VAC50-22. Board for Contractors Regulations.**

Publication: 29:19 VA.R. 2342-2347 May 20, 2013.

Correction to Emergency Regulation:

Page 2343, 18VAC50-22-65, change the section number to 18VAC50-22-62.

Page 2344, 18VAC50-22-130 C, second and third lines, change "18VAC50-22-65" to "18VAC50-22-62"

Page 2346, 18VAC50-22-260 B, at the end of subdivision 32, insert "33. Failure to obtain a building permit or applicable inspection, where required."

Page 2346, 18VAC50-22-260 B 33, change the subdivision number to 34

Page 2347, 18VAC50-22-260 B 34, change the subdivision number to 35

VA.R. Doc. No. R13-2849; Filed June 21, 2013, 3:49 p.m.

